

CONSTANT CONTACT® FRANCHISE, DISTRIBUTOR & DIRECT SELLER AGREEMENT

**ATTENTION! THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING UPON YOU BY CLICKING THE "I HAVE READ AND AGREE TO THE TERMS & CONDITIONS" BUTTON DISPLAYED HEREWITH. YOU SHOULD CAREFULLY READ THE FOLLOWING AGREEMENT BEFORE CLICKING THE "I HAVE READ AND AGREE TO THE TERMS & CONDITIONS" BUTTON. BY CLICKING ON THE "I HAVE READ AND AGREE TO THE TERMS & CONDITIONS" BUTTON, YOU ARE REPRESENTING THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY, ORGANIZATION OR OTHER LEGAL ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN YOU MUST NOT CLICK ON THE "I HAVE READ AND AGREE TO THE TERMS & CONDITIONS" BUTTON AND YOU WILL NOT BE ELIGIBLE FOR PARTICIPATION IN THE FRANCHISE, DISTRIBUTOR & DIRECT SELLER PROGRAM.**

Last revised September 2019

This Constant Contact Franchise, Distributor & Direct Seller Agreement (the "Agreement") is by and between Constant Contact, Inc., a Delaware corporation ("Constant Contact"), and you or your company, organization or other legal entity for whom you have authority to enter into this Agreement ("Partner"). This Agreement shall be effective on the date that Constant Contact accepts this Agreement and notifies Partner at the email address Partner provided during the registration process (the "Effective Date"). If Constant Contact does not accept this Agreement in writing within 10 days, the Agreement is deemed rejected and null and void. Constant Contact and Partner are each hereinafter sometimes individually referred to as the "Party" and collectively as the "Parties."

Constant Contact and Partner wish to enter into this Agreement to facilitate Partner's efforts to promote and market Constant Contact's products and services, all on the terms and conditions hereinafter set forth.

The Parties hereby agree as follows:

**1. Definitions.**

- (a) "Co-Branded Landing Page" means a Constant Contact Site, from which prospective Customers may subscribe to the Products, that is co-branded with Marks of both Partner and Constant Contact.
- (b) "Constant Contact Email Product" means a variety of online tools and resources to collect visitor email addresses and to create, launch, and manage online email, survey, event and other campaigns provided by Constant Contact to businesses and organizations.
- (c) "Constant Contact Materials" means any information, content and materials provided by Constant Contact to Partner describing the Products for use in marketing the Products.
- (d) "Constant Contact Site" means a Constant Contact web site, including [www.constantcontact.com](http://www.constantcontact.com) and any related domains and subdomains, through which prospective customers may subscribe to the Products and/or customers may access and use the Products.

(e) "Customer" means a third party (including franchisees, locations, representatives, distributors, direct sellers or similar) that has subscribed to the Products through use of the Co-Branded Landing Page, or, where applicable, has subscribed to the Products, directly or through Partner, through use of the Partner Console that has not been removed from Partner's account by Constant Contact (i) following such Customer's request or (ii) because such Customer requires access to certain templates or other features and belongs under another partner, as determined by Constant Contact (e.g. a franchisee who requires access to a franchisor's templates).

(f) "Customer Data" means information relating to Customers collected by or for Constant Contact in connection with the Products, including the Customer's contact information.

(g) "Discount Products" means the Email and Email Plus tiers of the Constant Contact Email Product and any other products that Constant Contact offers a discount on, in its sole discretion.

(h) "Intellectual Property" means any and all intellectual property or proprietary rights under any jurisdiction including (i) Marks, and all goodwill associated therewith and symbolized thereby; (ii) inventions, discoveries and ideas, whether patentable or not, and all patents, registrations, and applications thereof; (iii) published and unpublished works of authorship, whether copyrightable or not (including databases and other compilations of information), copyrights therein and thereto, and registrations and applications thereof; (iv) trade secrets; (v) all moral rights in the foregoing (that is, the right to claim authorship of or object to the modification of any work); and (vi) all applications, renewals, extensions, restorations and reinstatements of the foregoing.

(i) "Marks" means the trademarks, including registered and common law trademarks, trade names, service marks, logos, domain names and designations of a Party.

(j) "Partner Console" means a partner console that Constant Contact may make available to Partner in Constant Contact's sole discretion.

(k) "Partner Site" means Partner's web site through which prospective Customers will access the Co-Branded Landing Page.

(l) "Products" means the Constant Contact Email Product and any other Constant Contact online products and services.

(m) "Subscriber" means for each Customer, the individuals or entities contained within a Product database for such Customer's use of such Products.

(n) "Subscriber Data" means all information and data relating to Subscribers collected by Constant Contact in connection with the Customer's use of the Products, including Subscribers' names, addresses and e-mail addresses.

(o) "User Agreements" means Constant Contact's Web Site and Products Terms and Conditions of Use, Privacy Statement, Anti-Spam Policy, and any other acceptable use policy, content restrictions, user agreements, and other terms and conditions governing use of the Products, generally available through the Constant Contact Site, as each of the foregoing may be amended by Constant Contact from time to time in its sole discretion.

## **2. Activities and Responsibilities.**

(a) Appointment. Constant Contact wishes to engage Partner on a non-exclusive basis to provide the resale, referral, promotion and marketing services set forth in this Agreement, and Partner

accepts such engagement and wishes to refer, promote and market the Products.

(b) Product Resale. Subject to the terms and conditions of this Agreement and Constant Contact's then-current policies and requirements, Constant Contact, in its sole discretion, may permit Partner to resell the Products to prospective Customers through use of the Partner Console made available to Partner by Constant Contact in Constant Contact's sole discretion. In the event Partner is to be invoiced directly for all or a portion of its Customers' use of the Products in accordance with Constant Contact policies and procedures, Partner shall be solely responsible for all payments due to Constant Contact in connection with such use, regardless of whether each Customer pays Partner for such use.

(c) Link from Partner Site to Co-Branded Landing Page. Promptly following the Effective Date, the Parties will establish a link, using links and navigation procedures specified by Constant Contact, from the Partner Site to the Co-Branded Landing Page. Upon establishing such links and navigation procedures, Constant Contact shall make the Products available to prospective Customers, subject to the User Agreements.

(d) Marketing. The Parties will mutually agree upon marketing activities designed to promote the Constant Contact user benefit to be delivered to the Customers in connection with this Agreement. These marketing efforts may include an announcement email to Customers describing the Product offering; webinars; conference speaking opportunities; thought leadership content articles; sharing leads; disseminating marketing collateral; conducting training sessions, sales meetings or informational briefings; and making joint sales presentations and product demonstrations. Constant Contact will also make available marketing resources to Partner (some of which may include additional charges). It is expected that Partner will adhere to the same industry best practices with respect to its marketing activities as Constant Contact.

(e) Marketing Collateral. Constant Contact, in its sole discretion and subject to Constant Contact's then-current policies and procedures and any applicable terms and conditions, may provide Partner with (i) marketing collateral (which may include electronic marketing materials and corporate logo, marketing brochures, product lists, tutorials or demonstrations) concerning the Products in such quantities as deemed necessary by Constant Contact and (ii) access to the Constant Contact extranet website for promotional materials for marketing Constant Contact, in each case, for distribution to prospective Customers and other valid purposes. Additional content may be provided to Partner by Constant Contact, in its sole discretion, upon request by Partner. Constant Contact may also make available a link to a third party website where Partner may obtain Constant Contact-approved marketing collateral.

(f) Limitations. If Partner provides information regarding the Products to Customers or prospective Customers, Partner is authorized to represent to Customers or prospective Customers only those facts about the Products as are stated in current Product descriptions and advertising or are delivered in other non-confidential or non-proprietary written material. Partner is not authorized to transfer, sell or license or otherwise assign, or enter into binding agreements for, any of Constant Contact's products or services.

(g) Constant Contact Policy and End User Requirements. Partner agrees to Constant Contact's policies posted on the Constant Contact Site and in effect from time to time, including the User Agreements. Partner shall not distribute or otherwise make available the Products to any third party (each an "End User") except through the Co-Branded Landing Page or the Partner Console. In any case, Partner shall not make the Products available to an End User unless such End User obtains a subscription for the Products (directly or indirectly through Partner) and acknowledges and agrees to abide by, or Partner is authorized to bind End User to abide by, the User Agreements. Partner agrees to use commercially reasonable efforts to ensure its Customers

comply with the User Agreements and will cooperate with Constant Contact to investigate any alleged breaches thereof.

(h) **Partner Reporting.** In Constant Contact's sole discretion and subject to Constant Contact's then-current policies and procedures and any applicable terms and conditions, Constant Contact may provide Partner with access to a partner console showing activity reports for all Customer accounts.

(i) **Consent to Contact.** By entering into this Agreement, Partner consents to receiving email, text or any other type of messages from Constant Contact to inform it of changes or additions to the Products, this Agreement and any other matter related to the foregoing and for general marketing purposes (Partner may unsubscribe from marketing messages at any time, but not transactional messages). Partner acknowledges that Constant Contact may, but is not obligated to, monitor or record any telephone conversations and chat texts for quality control purposes, for purposes of training employees and for Constant Contact's own protection.

3. **Partner Marketing Account.** Subject to Constant Contact's then-current policies and procedures, Constant Contact shall provide Partner with a free Constant Contact Email Plus account during the Term (the "Partner Marketing Account") for up to 5,000 contacts. Partner will be responsible for all fees associated with any use of the Partner Marketing Account above the 5,000 contact level, although Constant Contact, in its sole discretion, may provide Partner with a discount on such fees. During the Term, Partner may only use the Partner Marketing Account to promote the Products and Partner's products and services to current or prospective Customers (for example, Partner may not send out emails on behalf of its Customers by means of the Partner Marketing Account). If at any time during the Term, Partner has fewer than ten (10) paying Customers, Constant Contact may, in its sole discretion, require Partner to pay for its use of the Partner Marketing Account. Partner's use of the Partner Marketing Account is subject to the User Agreements and may not be resold or sublicensed. Notwithstanding anything set forth herein to the contrary, Constant Contact reserves the right, in its sole discretion and with or without notice, to modify the features and limitations of the Partner Marketing Account, which includes the right to remove the right to such account entirely. Upon termination of the Agreement, any fee waivers granted to Partner in connection with the Partner Marketing Account shall cease.

4. **Discount.** Subject to the terms and conditions set forth herein, and in its sole discretion, Constant Contact may provide Partner or Partner's customers with a discount (the "Discount"). The Discount, if any, will only apply to the Discount Products and shall be subject to the terms and requirements set forth in the Constant Contact Partnership Proposal provided to you by Constant Contact, which shall be deemed Constant Contact Confidential Information (as defined below). If Constant Contact agrees to provide Partner with a Discount, such obligation shall not survive beyond the termination of the Agreement.

5. **Intellectual Property.**

(a) **IP Ownership.** Constant Contact shall retain sole and exclusive right, title, and interest to each Constant Contact Site, the Products, the technology underlying or related to the Products, Constant Contact's Intellectual Property, including all intellectual property rights in and to all aspects of the Products, and the Constant Contact Materials. Partner shall retain sole and exclusive right, title, and interest to Partner's Intellectual Property. Except as licensed herein, this Agreement does not transfer any Intellectual Property rights between the Parties.

(b) **Marks License.**

(i) Constant Contact Marks. During the Term and subject to the terms and conditions set forth herein, Constant Contact grants to Partner a non-exclusive, non-transferable, royalty-free right and license to use and publicly display the Constant Contact Marks solely (A) in connection with any activities set forth herein, (B) with prior written approval of Constant Contact in connection with each use, and (C) in accordance with Constant Contact's standard trademark guidelines or other restrictions imposed in the approval.

(ii) Partner Marks. During the Term and subject to the terms and conditions set forth herein, Partner grants to Constant Contact a non-exclusive, nontransferable, royalty-free right and license to use and publicly display the Partner Marks solely (A) in connection with any activities set forth herein, (B) with prior written approval of Partner in connection with each use, and (C) in accordance with Partner's standard trademark guidelines provided to Constant Contact or other restrictions imposed in the approval.

(iii) Trademark Review and Approval. Each Party will have the right to pre-approve any and all uses of such Party's Marks, including any marketing collateral (whether off line or online) and press releases related to the Agreement.

(iv) Termination Based on Trademark Usage. Each Party shall be entitled to terminate this Agreement without penalty if, in its reasonable discretion, the use by the other Party of its Marks tarnishes, blurs, or dilutes its Marks or misappropriates the associated goodwill and such problem is not cured within three (3) business days of receiving notice of the problem.

(c) Sales and Marketing Materials License. During the Term, Constant Contact grants Partner the non-exclusive, non-transferable, non-sub licensable right and license to: (i) use the Constant Contact Materials during the Term solely in conjunction with the marketing and promotion of the Products, and (ii) modify certain of the Constant Contact Materials expressly designated for such purpose by incorporating Partner's Marks, subject to Constant Contact's prior written approval. All such modified materials will be deemed Constant Contact Materials under this Agreement, except that Constant Contact's ownership of the Constant Contact Materials shall not include any of Partner's Marks included therein. Partner agrees that Partner will not at any time during the Term or thereafter assert or claim any interest in or do anything that may adversely affect the validity of the Constant Contact Materials or Constant Contact Marks, or any other materials, trademark, trade name or product designation belonging to or licensed to Constant Contact.

(d) Data License. Subject to the terms and conditions of this Agreement, (i) Partner hereby grants to Constant Contact a non-exclusive, worldwide, royalty-free, sublicensable, transferable, perpetual, irrevocable license to use the Customer Data and Subscriber Data to provide the Products to Partner and Customers and (ii) Partner hereby grants to Constant Contact a non-exclusive, worldwide, royalty-free, sublicensable, transferable, perpetual, irrevocable license to use the Customer Data in connection with the Products and to communicate with Customers regarding the Products (including with respect to the marketing and sale of other Constant Contact products and services). Partner represents that it has the right to grant the foregoing rights to Constant Contact. In the event that Partner uses functionality provided by Constant Contact to

send emails on behalf of Customers (“Central Send”), Partner represents to Constant Contact that it has a right to obtain and use Subscriber Data for its own purposes.

## **6. Confidentiality and Non-Disclosure and Data Privacy.**

### **(a) Confidential Information**

(i) Defined. A Party's "Confidential Information" is defined as any information of the disclosing Party, which (i) if disclosed in a tangible form is marked using a legend such as "Confidential" or "Proprietary" or if not so marked, should be reasonably understood by the receiving Party from the context of disclosure or from the information itself, to be confidential, or (ii) if disclosed orally or visually is declared to be confidential or, if not so declared, should be reasonably understood by the receiving Party from the context of disclosure or from the information itself to be confidential. “Confidential Information” of Constant Contact shall include any data about its customers or users that it makes available to Partner from time to time in its sole discretion (“Constant Contact User Data”).

(ii) Mutual Obligations. Each Party shall (A) hold the other Party's Confidential Information in confidence, (B) not disclose such Confidential Information to third parties nor use the other Party's Confidential Information for any purpose other than as required to perform its obligations under this Agreement or as expressly permitted hereby and (C) use the same degree of care to protect the confidentiality of the other Party's Confidential Information that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care). Such restrictions shall not apply to Confidential Information that (i) is already known by the recipient, (ii) becomes publicly known through no act or fault of the recipient, (iii) is received by recipient from a third party without a restriction on disclosure or use, or (iv) is independently developed by recipient without reference to the other Party's Confidential Information. Where Confidential Information is required to be disclosed by a court, government agency, regulatory requirement, or similar disclosure requirement, the Party subject to such requirement shall immediately notify the disclosing Party upon learning of the existence or likely existence of such requirement and shall use reasonable efforts to avoid such disclosure and, if necessary, use reasonable efforts to obtain confidential treatment or protection by order of any disclosed Confidential Information. The Parties' respective obligations to maintain the confidentiality of information disclosed hereunder shall survive the expiration or early termination of this Agreement or until such time as such information becomes public information through no fault of the receiving Party.

(iii) Ownership. All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing Party.

(b) Data Privacy. Partner agrees to treat Personal Information (as defined below) in accordance with the provisions set forth below. With respect to Personal Information that is also Constant Contact's Confidential Information, the following obligations shall be in addition to the obligations set forth above (the Parties agreeing that in the event of any conflict, the provision affording the greater protection to the information shall control):

(i) Partner may receive or have access to certain personal, individually-identifiable information in connection with this Agreement, including Constant Contact User Data (the "Personal Information").

(ii) Partner shall only use or disclose the Personal Information as necessary to perform its obligations under this Agreement, or pursuant to the unambiguous prior consent of the individual (for which Partner has the responsibility of obtaining), or as otherwise required by law.

(iii) Partner shall implement reasonable precautions to protect the Personal Information from loss; misuse; and unauthorized access, disclosure, alteration, or destruction. Partner shall promptly report to Constant Contact any improper or prohibited use or disclosure of the Personal Information of which it becomes aware.

(c) Subscriber Data. Constant Contact and Partner each acknowledge that it shall not make any use of the Subscriber Data except as necessary for permitted use of the Products by Customers and/or Subscribers or as otherwise consented to by a Subscriber.

## **7. Term and Termination.**

(a) Acceptance; Term. Constant Contact may, in its sole discretion, accept this Agreement within a reasonable period of time following the date that Partner clicks the "I have read and agree to the Terms & Conditions" button (the date on which Constant Contact provides such acceptance shall be the "Effective Date"). If Partner is accepted as a Constant Contact partner, Partner will be notified at the email address Partner has provided during the registration process; otherwise, Partner will not be eligible to participate in the Constant Contact partner program described herein. If Constant Contact does not accept this Agreement in writing within a reasonable period of time, the Agreement is deemed rejected. This Agreement shall commence as of the Effective Date and shall remain in effect for a period of one (1) year from the Effective Date (the "Initial Term"). The Agreement shall thereafter automatically renew for successive one (1) year periods (each a "Renewal Term"; all such Renewal Terms together with the Initial Term, the "Term"), unless either Party sends written notice of non-renewal at least thirty (30) days prior to expiration of the current one (1) year term (the "Termination Notice"). In the event that Partner pays for the Customer accounts under the partnership, upon Constant Contact's receipt of the Termination Notice, the Parties will work together to notify Customers that Partner will no longer be paying for their accounts and that they will be invoiced at the rates set forth on the Constant Contact website generally available to all Constant Contact customers (or a discounted rate to be determined by Constant Contact in its sole discretion) and assist Constant Contact in encouraging such Customers to remain paying customers of Constant Contact.

(b) Right to Terminate. Notwithstanding any other provision hereof, this Agreement may be terminated as follows: (i) by Constant Contact with fifteen (15) days' advance written notice; (ii) by Partner with ninety (90) days' advance written notice; (iii) in the event either Party materially breaches any of the provisions hereof, and such breach is not curable, this Agreement shall be immediately terminable by the non-breaching Party upon written notice to the other Party (any violation of the confidentiality, non-disclosure and data privacy provisions hereof shall constitute a non-curable breach); or (iv) immediately by either Party in the event that the other Party becomes insolvent, files or is forced to file any petition in bankruptcy, or makes an assignment for the benefit of its creditors.

(c) Effect of Termination. Any termination of this Agreement shall not release Partner from paying any fees owed to Constant Contact for any periods prior to or after termination. Upon termination of this Agreement for any reason, all rights granted to Partner herein shall immediately cease, including any discounts provided hereunder, and Partner shall immediately cease all marketing and promotion of the Products and all use of the Co-Branded Landing Page. Additionally, Partner shall immediately delete, destroy or return all originals and copies of any Constant Contact Confidential Information, including all documentation, manuals, instructions

and other information associated with the products and services, and upon request, provide Constant Contact with certification thereof. Without in any way limiting the foregoing, the Parties agree that following termination of this Agreement, Constant Contact may continue to make the Products available directly to Customers, without any liability or obligation to Partner. Partner acknowledges and agrees that neither upon nor after termination of the Agreement will Constant Contact remove or modify any Customer or Subscriber Data in Customer accounts that remain open and paid for by Customers following termination, except as required by law, court order, or Constant Contact's standard policies or procedures. Notwithstanding the foregoing, upon termination of the Agreement and request by Partner, Constant Contact shall use commercially reasonable efforts to remove any custom templates from Customer accounts that were provided by Partner during the Partnership (the "Custom Templates"). For the avoidance of doubt, Constant Contact will not remove or modify any archived emails found in such Customer accounts, regardless of whether they contain Custom Templates, except as required by law, court order, or Constant Contact's standard policies or procedures.

**8. Representations and Warranties; DISCLAIMER.**

(a) General. The Parties each represent and warrant as of the Effective Date and for as long as this Agreement is in effect as follows: (i) if the Party is an entity, it is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized, is duly qualified and in good standing as a foreign corporation in every state in which the character of its business requires such qualifications, and has the power to own its property and to carry on its business as now being conducted and the execution and delivery of this Agreement and compliance with all provisions of this Agreement are within the corporate power and authority of such Party; and (ii) the Agreement has been duly executed and constitutes a valid and binding agreement, enforceable in accordance with its terms. Partner further represents and warrants that the information set forth in its application to join the Constant Contact Franchise, Distributor & Direct Seller Program is true and correct and that the person clicking on the "I have read and agree to the terms and conditions" button has the authority to enter into this Agreement on behalf of Partner and bind Partner to the terms and conditions hereof.

(b) DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY OF ITS PRODUCTS OR SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. CONSTANT CONTACT MAKES NO WARRANTY THAT THE PRODUCTS WILL MEET USER REQUIREMENTS OR THAT USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

9. **Indemnification.** Partner shall defend, indemnify and hold Constant Contact harmless from and against any lawsuit, claim, damage, liability, or expense (including reasonable attorneys' fees) incurred by Constant Contact as a result of any third-party claim against Constant Contact resulting from or relating to Constant Contact's use of the Partner Marks, the content on Partner's website, Partner's products or services, Partner's unauthorized marketing, promotion, use or distribution of the Products, Partner's failure to abide by the applicable terms of any User Agreement, Partner's breach of this Agreement, or the infringement or misappropriation of any patent, copyright, trademark, or other intellectual property right of any third party that relates to any information provided to Constant Contact by Partner.



In the event that Partner requests access to current or future Subscriber Data to use in connection with Central Send, Partner hereby agrees to defend, indemnify and hold harmless Constant Contact and its business partners, third-party suppliers and providers, licensors, officers, directors, employees, distributors and agents from and against any and all direct or indirect damages, losses, liabilities, penalties, settlements and expenses (including costs and attorneys' fees) in connection with any claim, demand, action or suit that arises out of or relates to (i) Partner not having sufficient rights to obtain or use the Subscriber Data; (ii) Constant Contact providing the Subscriber Data to Partner; or (iii) Partner's use of the Subscriber Data.

10. **Limitation of Liability.** EXCEPT FOR PARTNER'S INDEMNIFICATION OBLIGATIONS HEREUNDER, (a) EACH PARTY'S LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT, UNDER ANY LEGAL THEORY, SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY PARTNER TO CONSTANT CONTACT UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRECEDING THE CLAIM AND (b) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR SPECULATIVE DAMAGES.

11. **Compliance with Laws; Privacy Policy.** Partner agrees (a) to comply with all applicable federal, state, local, and foreign laws, statutes, rules and regulations ("Laws"), including Laws regarding telemarketing, data privacy, email and facsimile marketing, customer solicitation and all applicable guidelines of the Direct Marketing Association ("DMA"), (b) not to engage in any form of harassment or fraud, (c) to comply with any applicable third party agreements, and (d) not to send unsolicited commercial email (spam) using the Products or otherwise. Partner acknowledges and agrees that it is Partner's sole responsibility to determine the applicability of, and ensure its own compliance with, any such Laws. Partner further agrees to have in place and comply with appropriate privacy policies and security features in accordance with its contractual obligations and applicable Laws.

## 12. Miscellaneous Provisions.

(a) Relationship of the Parties. The Parties are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

(b) Non-exclusive. Nothing contained in this Agreement shall be construed as creating an exclusive relationship between Partner and Constant Contact.

(c) Expenses. Except as otherwise specified herein or as otherwise mutually agreed upon by the Parties, each Party will bear its own costs of performing under this Agreement (including with respect to any marketing activities).

(d) Taxes. Each Party shall be liable for all taxes, duties, levies or tariffs or charges of any kind imposed by any federal, state, or local governmental entity with respect to the net income recognized by such Party in connection with this Agreement.

(e) Overdue Payments; Offset. If Partner has an overdue balance owed to Constant Contact, Partner authorizes and consents to Constant Contact deducting from any payment it is entitled to hereunder, the amount of any funds that are due and owing to Constant Contact or its affiliates. Constant Contact further reserves the right to withhold payment, or offset any amounts owed to Partner, if it reasonably determines that such amounts owed are as a result of any fraudulent or

illegitimate behavior, including the fraudulent use of credit cards or other means of payment. Partner agrees to cooperate with Constant Contact in its investigation of any of the foregoing.

(f) **Governing Law and Jury Trial Waiver.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., except for its conflicts of laws principles. The Parties consent to the exclusive jurisdiction of, and venue in, the state and federal courts in Boston, Massachusetts. **CONSTANT CONTACT AND PARTNER IRREVOCABLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.**

(g) **Public Announcements.** All media releases, public announcements or public disclosures (including promotional or marketing material) by either Party relating to this Agreement are prohibited without the prior written consent of both Parties.

(h) **Assignment; No Waiver.** This Agreement binds and is for the benefit of the successors and permitted assigns of each Party. Partner may not assign this Agreement or any rights under it, in whole or in part, without Constant Contact's prior written consent. Any attempt to assign this Agreement other than as permitted above will be null and void. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

(i) **Force Majeure.** Neither Party hereto shall be responsible for any failure to perform its obligations under this Agreement if such failure is caused by acts of God, war, strikes, revolutions, lack or failure of transportation facilities, laws or governmental regulations or other causes that are beyond the reasonable control of such Party. Obligations hereunder, however, shall in no event be excused but shall be suspended only until the cessation of any cause of such failure.

(j) **Control over Products.** Partner acknowledges that (i) the Products and any related services may be subject to temporary shutdowns due to cause beyond Constant Contact's reasonable control; and (ii) subject to the terms of this Agreement, Constant Contact retains sole right and control over the development, content and conduct of its products and services.

(k) **Responsibility.** Partner agrees to ensure that each of its employees, contractors, subcontractors, agents and team members comply with Partner's obligations under this Agreement.

(l) **Modification.** Constant Contact may update or amend this Agreement at anytime in its sole discretion by posting the new agreement on the Constant Contact Site, and such new Agreement shall be effective immediately upon such posting.

(m) **Entire Agreement.** Except as set forth in the next sentence, this Agreement (including any Exhibits hereto and other documents referenced herein) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior oral, written or online agreements. If Partner has previously entered into a "Business Partner Services Agreement" (or any similar agreement) with Constant Contact, then the Parties hereby agree that such prior agreement shall be terminated and shall be superseded by the terms and conditions set forth herein. Each Party acknowledges and agrees that the other has not made any representations, warranties or agreements of any kind, except as expressly set forth herein. Except as expressly set forth herein, this Agreement does not govern any use by Partner of the Products and any use by Partner of the Products shall be governed by the User Agreements and any other agreement

Partner agrees to in connection with its use of such Products.

(n) Severability. If any provision of this Agreement shall be held illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

(o) Notices. Partner agrees that Constant Contact may provide notice to Partner by emailing such notice to the email address listed by Partner during Partner's registration or mailing it to the street address designated by Partner during Partner's registration. Such notice shall be considered to be received by Partner within 24 hours of the time it is emailed to Partner unless Constant Contact receives notice that the email was not delivered. If the notice is sent by mail, Constant Contact will consider it to have been received by Partner three (3) business days after such notice has been sent. Any notice to Constant Contact must be sent by postal mail or overnight courier to: The Endurance International Group, Inc., Attention: Chief Legal Officer, 10 Corporate Drive, Burlington, Massachusetts 01803, with a copy to: Constant Contact, Inc., Attention: Senior Manager, Channel Sales & Operations, 1601 Trapelo Road, Waltham, Massachusetts 02451.

(p) Survival. The Sections of this Agreement relating to Confidential Information and Non-Disclosure and Data-Privacy, Indemnification, Limitation of Liability, Disclaimer, and this Section (Miscellaneous) shall survive any termination or expiration of this Agreement.