

Software-As-A-Service Agreement - Agency

Last updated: 1/20/2022

BY EXECUTING A SALES ORDER (THE "SO") THAT INCORPORATES BY REFERENCE THIS SOFTWARE-AS-A-SERVICE AGENCY AGREEMENT (THIS "SOFTWARE-AS-A-SERVICE AGENCY AGREEMENT", TOGETHER WITH THE SO, THIS "AGREEMENT"), YOU (AS AN INDIVIDUAL, COMPANY, BUSINESS, CORPORATION OR OTHER ENTITY, "CUSTOMER") ACCEPT AND AGREE TO THIS AGREEMENT. THIS AGREEMENT CONSTITUTES A LEGAL AGREEMENT BETWEEN CUSTOMER AND MAVRCK LLC, A DELAWARE LIMITED LIABILITY COMPANY. CUSTOMER'S USE OF THE MAVRCK PRODUCTS (AS DEFINED BELOW) IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW, SO CUSTOMER SHOULD TAKE THE TIME TO FULLY UNDERSTAND HOW THIS SOFTWARE-AS-A-SERVICE AGENCY AGREEMENT GOVERN CUSTOMER'S RELATIONSHIP WITH MAVRCK AND CUSTOMER'S USE OF THE MAVRCK PRODUCTS. CUSTOMER'S RIGHT TO USE THE MAVRCK PRODUCTS IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THIS SOFTWARE-AS-A-SERVICE AGENCY AGREEMENT. IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY, BUSINESS, CORPORATION OR OTHER ENTITY, YOU AND THE APPLICABLE COMPANY, BUSINESS, CORPORATION OR OTHER ENTITY EACH REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU", "YOUR" AND "CUSTOMER" WILL REFER TO SUCH ENTITY. IF CUSTOMER DOES NOT AGREE WITH ANY PROVISION OF THIS AGREEMENT, CUSTOMER MUST AND MAY NOT ACCESS OR USE THE MAVRCK PRODUCTS IN ANY MANNER FOR ANY PURPOSE.

Mavrck makes available certain products and services, including Mavrck's proprietary software-as-a-service influencer marketing platform and related influencer identification, activation, engagement, incentive management and processing and dashboards and/or analytics products and services.

Customer desires to use for itself and on behalf of Brand(s) (as defined below) the Mavrck products and services set forth in the SO (the "Mavrck Products") to conduct marketing campaigns using the Mavrck Products, in accordance with the terms and conditions set forth below.

1. SUBSCRIPTION

Subject to the terms and conditions of this Agreement, Mavrck hereby grants to Customer, and Customer accepts, a non-transferable, non-sublicensable, non-exclusive right to access and use the Mavrck Products, in object code format only, to identify, activate and engage with influencers on social media websites (such as Facebook and Twitter) on behalf of Customer and on behalf of Customer's customers that are identified in the applicable SO (each, a "Brand"). Subject to the terms and conditions of this Agreement, Mavrck will provide Customer with access to the Mavrck Products. Customer has a limited right to sublicense the foregoing rights to each Brand for and in connection with the evaluation, creation and engagement of influencers on behalf of such Brand. Customer will ensure that each Brand will only use the Mavrck Products as expressly permitted by this Agreement (including the applicable SO), and will be responsible and liable for any acts or omissions of each Brand in violation of this Agreement as if such Brand were "Customer" hereunder. Customer acknowledges that its access and use of the Mavrck Products will be limited to only the access available on www.mavrck.co and any other designated websites for which Mavrck provides access to Customer to use the Mavrck Products.

The following limitations and restrictions shall apply to the Mavrck Products:

- a) Customer shall not provide access to the Mavrck Products to any person who is not an employee of Customer, unless otherwise agreed to in writing by MARVCK ("Authorized Users").
- b) Except as expressly permitted hereunder, Customer shall not, and shall not permit or authorize any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Mavrck Products; (ii) modify, translate or create derivative works based on the Mavrck Products; (iii) copy (except for archival purposes), rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the Mavrck Products; (iv) use the Mavrck Products for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Mavrck Products or their related systems, hardware or networks or any content or technology incorporated in any of the foregoing; or (vi) remove or obscure any proprietary notices or labels of Mavrck or its suppliers on any Mavrck Product.

2. CUSTOMER SUPPORT

Mavrck will provide Customer with technical support for Customer's designated representatives by phone or email during Mavrck's regular business hours (Monday through Friday, 8:30 a.m. to 6:00 p.m. (Eastern Time), except for holidays as observed in the Commonwealth of Massachusetts. As long as Customer is in compliance with the terms of this Agreement, Mavrck shall provide Customer with the services described in the Service Level Agreement located at www.mavrck.co/legal/sla.

3. CUSTOMER RESPONSIBILITIES

Customer will, and will ensure that each Brand will, (a) provide approval, changes, or their own creative work within ten (10) days of the Effective Date (as defined below) or Mavrck shall use any publically available creative to deliver the Mavrck Products to the Customer; (b) be solely responsible for managing the Customer Content and Influencer Content (as defined below) on the Mavrck Products except as such responsibility is delegated to Mavrck as part of the services described in the SO; (c) use the Mavrck Products only for purposes permitted by this Agreement and any applicable local, state, national or international law or regulation; (d) not use the Mavrck Products in a manner that violates any third-party agreements to which Customer is a party or that are provided to Customer by Mavrck in advance, (e) include a link within the Mavrck Products to Customer's privacy policy and comply with such privacy policy; (f) not use the Mavrck Products to solicit the performance of any illegal activity or other activity which infringes Mavrck's rights or the rights of others; (g) not use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Mavrck Products, or in any way reproduce or circumvent the navigational structure or presentation of the Mavrck Products, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Mavrck Products; (h) not attempt to gain unauthorized access to any portion or feature of the Mavrck Products, or any other systems or networks connected to the Mavrck Products or to any of our servers, by hacking, password "mining" or any other means; (i) not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Mavrck Products or our systems or networks, or any systems or networks connected to the Mavrck Products; (j) not use any device, software or routine to interfere or attempt to interfere with the proper working of the Mavrck Products or any transaction being conducted on the Mavrck Products, or with any other person's use of the Mavrck Products; and (k) not remove the "Powered by Mavrck" logo and/or hyperlink on any Mavrck Products. Customer will also be responsible for entering into an agreement with each influencer that is engaged by

Customer or any Brand in connection with use of the Mavrck Products (whether by including a link within the Mavrck Products to Customer's terms of use or otherwise), pursuant to which Customer will obtain the rights necessary for Customer, the applicable Brand and Mavrck to use the content created by such influencers on behalf of Customer or such Brand ("Influencer Content") as contemplated by this Agreement and any agreement between Customer and such Brand.

Only Authorized Users who have been assigned a unique login to the Mavrck Products shall be entitled to access and use the Mavrck Products under this Agreement. Customer shall: (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Mavrck Products and notify Mavrck promptly of any such unauthorized access or use; (b) be solely responsible for the accuracy, quality, integrity and legality of the Customer Content and Customer Data (each, as defined below) and (c) use the Mavrck Products only in accordance with the documentation, this Agreement and any applicable laws and regulations. Customer will be solely liable for any uses of accounts linked to Customer's or its Authorized Users' login credentials.

4. CONTENT

As used herein, "Customer Content" means any text, book excerpts, promotional materials, images, photos, video, sounds, musical works or other works of authorship that is provided by Customer or any Brand to Mavrck under this Agreement, including via the Mavrck Products, but expressly excluding Customer Data (as defined below). Subject to the terms and conditions of this Agreement, Customer hereby grants to Mavrck a nonexclusive, worldwide, royalty-free, fully paid up, nonsublicensable (except to contractors performing services on behalf of Customer or Mavrck), nontransferable (except as set forth in Section 19) right and license to copy, distribute, display, modify and otherwise use the Customer Content and Influencer Content in connection with making available the Mavrck Products to Customer hereunder. As between the parties, Customer reserves any and all right, title and interest in and to the Customer Content and Influencer Content other than the rights expressly granted to Mavrck under this Agreement. Customer is responsible for maintaining copies, duplicates or back-ups of any Customer Content or Influencer Content. Mavrck may not remove any copyright or trademark notice or any other notices included in or with any Customer Content or Influencer Content.

5. DATA RIGHTS

As used herein, "Mavrck Data" means any and all data or information provided or otherwise made available by Mavrck to Customer under this Agreement, including, without limitation, any influencer data or information accessed by Customer via the Mavrck Products. Subject to the terms and conditions of this Agreement, Mavrck hereby grants Customer a royalty-free, nonexclusive, nonsublicensable, nontransferable (except as expressly permitted herein) license, during the term of this Agreement, to use the Mavrck Data to perform marketing activities within the Mavrck Products. Except as expressly set forth herein, Customer acquires no rights or interests in the Mavrck Data under this Agreement.

As used herein, "Customer Data" means any and all data or information provided or otherwise made available by Customer or any Brand to Mavrck under this Agreement, including, without limitation, any influencer data or information provided by Customer or any Brand via the Mavrck Products. Subject to the terms and conditions of this Agreement, Customer hereby grants to Mavrck a nonexclusive, royalty-free, fully paid up, nonsublicensable (except to contractors performing services on behalf of Customer or Mavrck), nontransferable (except as set forth in Section 19) right and license to copy, distribute, display, modify and otherwise use the Customer Data (a) in connection with making available the Mavrck Products to Customer hereunder and (b) with respect to any Customer Data that is publicly available, for the purposes of growing Mavrck's influencer communities, conducting marketing activities and conducting marketing and statistical analysis. For the avoidance of doubt, during the term of this Agreement and thereafter, Mavrck may use any publicly available data or data that is already in Mavrck's control, regardless of whether such data is Customer Data hereunder, for any purposes permitted by applicable law; provided, that, Mavrck will not use any such data in a manner that identifies Customer as a source of such data. In the case that Customer Data includes personal data subject to the European Union (EU) General Data Protection Regulation 2016/679 ("GDPR"), the parties will enter into a separate Data Processing Addendum in order to address the processing of personal data in accordance with the GDPR.

6. TRADEMARKS AND MARKETING

Customer hereby grants to Mavrck a nonexclusive, worldwide, royalty-free, fully paid up, nonsublicensable (except to contractors performing services on behalf of Customer or Mavrck), nontransferable (except as set forth in Section 19) right and license to copy, display and otherwise use Customer's and each Brand's trademarks, service marks, trade names, image, character, logos, domain names and other distinctive brand features or other identification ("Trademarks") in connection with its performance hereunder. Any

other proposed use of the Trademarks shall be subject to Customer's prior written approval in each instance, except that Mavrck may list Customer as a client on Mavrck's website(s). Neither party will portray the other in a false, misleading, or derogatory manner. The parties further agree to prepare press releases, marketing inquiries, and case studies and all such joint marketing activities shall be mutually agreed upon prior to publication.

7. INTELLECTUAL PROPERTY RIGHTS

Except as expressly set forth in Section 1 above, Customer does not have, and will not acquire, any right, title or interest in or to the Mavrck Products, any updates, enhancements, improvements or modifications thereto, or any intellectual property rights which subsist therein (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Mavrck grants no, and reserves any and all, rights other than the rights expressly granted to Customer under this Agreement.

8. FEEDBACK

Mavrck will be free to implement, use, modify or otherwise exploit, Customer's ideas, suggestions, feedback or materials (or any part thereof) related to the Mavrck Products without any payment or other obligation to Customer, and Customer agrees never to assert against Mavrck any claim based on any proprietary rights therein. Customer acknowledges that Mavrck may modify, update or otherwise change the Mavrck Products from time to time, in its sole discretion. If any such changes result in diminished functionality, Customer may terminate this Agreement without any penalty for exercising such right under the termination provisions in Section 12 of this Agreement.

9. INCENTIVES

If, in connection with a given campaign, Customer desires Mavrck to manage Customer's incentives, including without limitation the delivery to any influencer(s) of any Incentive Products, the parties will set forth in reasonable detail the terms surrounding such deliveries and Incentive Products in the applicable SO. "Incentive Products" means any products or other materials provided by Customer to Mavrck pursuant to such SO (e.g., cash, gift cards, and merchandise). If Mavrck manages any of Customer's incentives, Customer will require, or will ensure that each Brand requires, each influencer to which Customer (or the applicable Brand) wishes Mavrck to deliver any Incentive Products

hereunder to register through the Mavrck Products pursuant to the terms and conditions which each such influencer agrees to upon registration. Mavrck may subcontract or otherwise delegate such Incentive Products deliveries through its third-party contractors. Mavrck (including its subcontractors) is a bailee with respect to such Incentive Products and is forwarding such Incentive Products to the applicable influencer(s) on Customer's behalf, and Mavrck (including its subcontractors) is neither a seller nor a distributor of any Incentive Products. Any delivery by Mavrck (including its subcontractors) of Incentive Products to any influencer is contingent on Mavrck's receipt of the same from Customer and/or the applicable Brand in accordance with the applicable SO. If an SO contemplates cash, or cash equivalents (*i.e.*, gift cards), as an Incentive Product, Mavrck will make no payments to influencers prior to Mavrck's receipt of such funds from Customer and/or the applicable Brand, unless the Parties mutually agree to invoicing terms in the applicable SO, which will be subject to Sections 10 and 11. Title to all Incentive Products will at all times remain with Customer (or the applicable Brand) until delivered to the applicable influencer(s), at which time title to such Incentive Products will pass directly from Customer (or the applicable Brand) to such influencer(s).

10. FEES AND PAYMENTS

Customer will pay to Mavrck all fees set forth in the SO, in accordance with the terms set forth herein and therein. All payments shall be due upon receipt of invoice and shall be payable within thirty (30) days of the date of the invoice unless otherwise noted in the SO. A late fee may be charged on overdue amounts at the rate of eighteen percent per annum (18%), or the maximum permitted by law, and late fees shall be applied monthly on all outstanding balances commencing with the date payment was due. All costs incurred for collection of amounts due (including, but not limited to, attorneys' fees) and any bank charges shall be paid to Mavrck by Customer.

11. TAXES

The fees and all other amounts due under this Agreement are net amounts, exclusive of all taxes, duties, and assessments, including without limitation all sales, withholding, VAT, excise, ad valorem, and use taxes (collectively, the "Taxes") and are not subject to offset or reduction because of any taxes incurred by Customer or otherwise due as a result of this Agreement. Customer shall be responsible for and shall pay directly, any and all Taxes relating to its use of the Mavrck Products, except for Taxes based on Mavrck's income. In all other cases, Customer will be responsible for collecting applicable Taxes on the sale of

Customer's products (including Incentive Products) and remitting payments to the appropriate taxing authority. Customer will indemnify, defend and hold Mavrck harmless from and against any applicable Taxes arising from transactions executed on the Mavrck Products, except for Taxes based on Mavrck's income.

12. TERM AND TERMINATION

This Agreement commences on the date of execution of the SO (the "Effective Date") and shall continue in effect thereafter until the end date set forth in the SO, unless superseded or otherwise terminated in accordance with this Section 12 or by written agreement of the parties. Either party may terminate this Agreement upon written notice if the other party materially breaches any of the terms of this Agreement and the breaching party fails to cure such breach within thirty (30) days of receipt of written notice thereof.

If either party shall be adjudicated a bankrupt, institute voluntary proceedings for Chapter 7 Bankruptcy protection, make a general assignment for the benefit of its creditors, apply for or consent to the appointment of a receiver for it or its property, or admit in writing its inability to pay its debts as they become due, the other party may terminate this Agreement upon written notice.

Any termination or expiration of this Agreement shall not relieve either party from any accrued obligations hereunder. Customer will pay in full for the use of the Mavrck Products up to and including the last day on which the Mavrck Products are provided to Customer hereunder. Upon any termination or expiration of the Agreement, all rights granted by Mavrck hereunder and all obligations of Mavrck to provide the Mavrck Products shall immediately terminate and Customer shall cease use of the Mavrck Products. Upon any termination or expiration of this Agreement, each party will return or destroy all copies or other embodiments of the other party's Confidential Information. Upon termination or expiration of this Agreement, Mavrck shall return to Customer all Customer Content and destroy copies of all such Customer Content and shall delete all such Customer Content from any computers, networks or software system under its control and shall certify to Customer its compliance with the requirements of this provision.

13. SURVIVAL

Accrued payment obligations, this Section 13, the second-to-last sentence of Section 5 and Sections 6, 8, 9, 10, 11, 12, 14, 16, 17, 18 and 19 will survive any expiration or termination of this Agreement.

14. CONFIDENTIALITY

“Confidential Information” means any and all non-public confidential and/or proprietary information, regardless of whether it is in tangible form, disclosed by either party that the disclosing party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party; provided, however, that a disclosing party’s business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services shall be deemed Confidential Information of the disclosing party even if not so marked or identified. Mavrck’s Confidential Information includes, without limitation, the Mavrck Products, the Mavrck Data and the terms of this Agreement. Except as permitted by this Agreement, neither party will (a) make any use of the other party’s Confidential Information; (b) acquire any right in the other party’s Confidential Information; (c) disclose any of the other party’s Confidential Information to a third party; or (d) refuse to promptly return or destroy the other party’s Confidential Information upon request. Notwithstanding the foregoing, this Section will not apply to any information that the receiving party can demonstrate: (i) is or becomes a part of the public domain through no fault of its own; or (ii) was in the possession of the receiving party at the time of its disclosure by the disclosing party as evidenced by files existing at the time of disclosure. Each party will use reasonable measures to protect the confidentiality and value of the other party’s Confidential Information. Notwithstanding any provision of this Agreement, either party may disclose the other party’s Confidential Information, in whole or in part to its employees, officers, directors, consultants and professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives) who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations or, in the case of professional advisors, are bound by ethical duties to keep such Confidential Information confidential consistent with the terms of this Agreement. Further, either party may disclose the other party’s Confidential Information to the extent required by law or by order of a court or governmental agency after providing notice to the other party, and providing such party with the opportunity to seek a protective order. The parties shall issue mutually approved press releases announcing the consummation of this Agreement and the parties may disclose the existence of this Agreement and the parties’ relationship in their respective marketing materials, financial

reports, presentations, website materials, customer lists and other media but Customer shall submit any such disclosure to Mavrck for approval prior to any disclosure and in no event may either party disclose the financial or other terms of this Agreement. In the event of actual or threatened breach of the provisions of this Section 14, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party shall promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

15. REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties contained elsewhere herein:

Mavrck represents and warrants that: (a) it has the full power and authority necessary to enter into this Agreement and to perform its obligations under this Agreement; (b) this Agreement is a valid and binding obligation; (c) it will perform its obligations under this Agreement in compliance with all applicable laws, rules and regulations; (d) its performance of its obligations under this Agreement will not violate any provision of any agreement to which it is a party or by which it is bound; (e) to Mavrck's knowledge, the Mavrck Products and the use of the Mavrck Products as contemplated by this Agreement do not infringe or misappropriate any intellectual property rights of any third party; and (f) it will use commercially reasonable efforts to keep the Mavrck Products free from any material that allows or causes the installation, transferring or in any way facilitating the installation or transfer of any malware including, without limitation, spyware, viruses, worms, rootkits, adware, keystroke loggers, dialers, time bombs or time locks, or bot software.

Customer represents and warrants that: (a) it has the full power and authority necessary to enter into this Agreement and to perform its obligations under this Agreement; (b) this Agreement is a valid and binding obligation; (c) it will perform its obligations under this Agreement in compliance with all applicable laws, rules and regulations; (d) its performance of its obligations under this Agreement will not violate any provision of any agreement to which it is a party or by which it is bound; (e) it has all rights, licenses and permits necessary to perform its obligations under this Agreement; (f) it owns the Customer Content, or otherwise has the right to use the Customer Content in connection with the Mavrck Products, and Mavrck's use of the Customer Content as permitted hereunder will not violate any rights of any person; and (g) it has the right to (i) sell any

products or services that it sells through the Mavrck Products and (ii) deliver any Incentive Products to Mavrck for forwarding to the applicable influencer(s).

16. DISCLAIMERS AND LIMITATION OF LIABILITY

In connection with Customer's access and use of the Mavrck Products, Mavrck may make available to Customer certain template documents that could be useful to Customer in connection with its use of the Mavrck Products, including, without limitation, template terms of use and privacy policies (the "Template Policies"). MAVRCK MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE TEMPLATE POLICIES. CUSTOMER ACKNOWLEDGES AND AGREES THAT MAVRCK IS NOT PROVIDING ANY LEGAL OR OTHER ADVICE WITH RESPECT TO THE TEMPLATE DOCUMENTS. MAVRCK IS NOT A LAW FIRM AND IS NOT ENGAGED IN THE PRACTICE OF LAW. THE TEMPLATE POLICIES SHOULD NOT BE USED IN LIEU OF THE ADVICE OF COMPETENT LEGAL COUNSEL. CUSTOMER AGREES THAT CUSTOMER, AND NOT MAVRCK, MUST EVALUATE AND BEAR ALL RISKS ASSOCIATED WITH THE USE OF THE TEMPLATE POLICIES, INCLUDING ANY RELIANCE ON THE ACCURACY, LEGALITY, APPROPRIATENESS, COMPLETENESS OR USEFULNESS OF ANY SUCH TEMPLATE POLICIES. CUSTOMER IS RESPONSIBLE FOR INFORMING ITSELF OF THE LAWS AND REGULATIONS APPLICABLE TO ITS JURISDICTION AND FOR COMPLYING WITH THEM.

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE MAVRCK PRODUCTS MADE AVAILABLE HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT. MAVRCK DOES NOT WARRANT THAT THE MAVRCK PRODUCTS ARE ERROR-FREE OR THAT OPERATION OF THE MAVRCK PRODUCTS WILL BE UNINTERRUPTED. MAVRCK EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE INCENTIVE PRODUCTS.

EXCEPT FOR LIABILITY ARISING FROM (A) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 17, (B) BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS IN SECTION 14 OR (C) A PARTY'S INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR (A) ANY LOST PROFITS, cost of procurement of substitute goods or services, OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES, EVEN

IF A PARTY HAS ADVISED THE OTHER IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND SUCH DAMAGES ARE FORESEEABLE OR (B) ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) the amounts received BY MAVRCK under this Agreement IN the preceding 12 months; provided, however, that such limitation shall not apply in the case of a party's gross negligence or willful misconduct.

EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

17. INDEMNIFICATION

Mavrck shall defend Customer and the officers, directors, agents, and employees of Customer ("Customer Indemnified Parties") against any third party claim, allegation or legal action (a "Claim") arising from an allegation that Customer's authorized use of any Mavrck Product infringes any copyright or misappropriates a trade secret of any third party. Further, Mavrck shall indemnify the Customer Indemnified Party against any damages actually awarded or paid in connection therewith, including any reasonable attorneys' fees. Notwithstanding the foregoing, Mavrck's indemnification obligation will not apply to claims to the extent arising from (a) modification of any Mavrck Product by any party other than Mavrck without Mavrck's express consent; (b) the combination, operation, or use of any Mavrck Product with other product(s), data or services where such Mavrck Product would not by itself be infringing; or (c) unauthorized or improper use of any Mavrck Product. If the use of any Mavrck Product by Customer has become, or in Mavrck's opinion is likely to become, the subject of any claim of infringement, Mavrck may at its option and expense (i) procure for Customer the right to continue using such Mavrck Product as set forth hereunder, (ii) replace or modify such Mavrck Product to make it non-infringing so long as such Mavrck Product has at least equivalent functionality, (iii) substitute an equivalent for such Mavrck Product or (iv) if options (i)-(iii) are not reasonably practicable, terminate this Agreement. This Section 17 states Mavrck's entire obligation and Customer's sole remedies in connection with any claim regarding the intellectual property rights of any third party.

Customer shall defend Mavrck and the officers, directors, agents, and employees of Mavrck ("Mavrck Indemnified Parties") against any Claims arising from (a) the gross negligence, bad faith, fraudulent acts or omissions, or intentional or willful misconduct of Customer or any

Brand, (b) any use or disclosure by Customer or any Brand of any Mavrck Product in violation of this Agreement, (c) the exercise of any rights granted to Mavrck by Customer in or to the Customer Content, Influencer Content or Customer Data in accordance with this Agreement, (d) Customer's or any Brand's use of any Template Policies, or (e) the Incentive Products. Further, Customer shall indemnify the Mavrck Indemnified Party against any damages actually awarded or paid in connection therewith, including any reasonable attorneys' fees.

The party seeking indemnification (the "Indemnified Party"), will notify the other party (the "Indemnifying Party") promptly in writing of any claim covered by the foregoing indemnifications. The parties agree to cooperate fully during such proceedings. The Indemnifying Party will have the right to defend any such claim with attorneys that are reasonably acceptable to the Indemnified Party, and will have control over the litigation, negotiation, and settlement of, any claim. The Indemnified Party may be represented by separate counsel at its own expense. Neither party will make any settlement that materially affects the rights of the other party, nor will either party be responsible for indemnifying the other party for any settlement made without the indemnifying party's consent, which will not be unreasonably withheld or delayed.

18. DISPUTES

Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to Customer's use of the Mavrck Products or this Agreement ("Action") must be filed within one year after such Action arose or be forever barred. Any Action must be resolved in accordance with one of the subsections below or as the parties otherwise agree in writing.

The formation, construction and interpretation of this Agreement are controlled by the laws of the Commonwealth of Massachusetts excluding any rule or principle that would refer to and apply the substantive law of any other state or jurisdiction. Except as permitted in the paragraph below, for all disputes relating to this Agreement, each party submits to the exclusive jurisdiction of the state and federal courts located in Boston, Massachusetts and waives any jurisdictional, venue, or inconvenient forum objections to such courts.

For any Action (excluding Actions for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, either party to the Action may elect to

resolve the dispute in a cost-effective manner through binding non-appearance-based arbitration (and if such election is made, the Action must be arbitrated as provided herein). In the event a party elects arbitration, they shall initiate such arbitration in the Commonwealth of Massachusetts and through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions; (ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

19. GENERAL

This Agreement constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Agreement. If any provision of this Agreement is found to be void, invalid or unenforceable: (a) the same will be conformed to the extent necessary to comply with applicable law or stricken if not so conformable, so as not to affect the validity of this Agreement; and (b) the remaining provisions will remain in effect. No amendment of this Agreement or any exhibit is binding unless in writing and executed by each of the parties. Any waiver or consent is valid only if in a signed writing and only in the specific instance in which it is given, and such waiver or consent is not to be construed as a waiver of any subsequent breach of any other provision or as a consent with respect to any similar instance or circumstance. This Agreement does not confer any third-party beneficiary rights and does not create a joint venture, partnership or employment relationship between the parties. Except as expressly provided herein, neither party has the right, power or authority to create any obligation or duty, express or implied, on behalf of the other. This Agreement inures to the benefit of and is binding upon the parties and their respective legal representatives, successors, and assigns. Customer may not directly or indirectly, including by assignment, operation of law or change of control, transfer or assign this Agreement without Mavrck's prior written consent. In the event a party incurs legal expenses to enforce this Agreement, the prevailing party, as determined by a court of competent jurisdiction, will be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs, and necessary disbursements, in addition to any other relief to which such party is entitled. This Agreement may be executed in counterparts, each of which will be an original, and all of which together will be one and the same agreement. A signed copy of this Agreement

delivered by facsimile, e-mail or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement. The headings of this Agreement are provided for convenience only and are not intended to affect its construction or interpretation. Any notice required or permitted under this Agreement must be in writing and sent to the address and the attention of the person set forth on the signature page to this Agreement, unless a party changes such information by notice given pursuant to this Section. If an act of God, government, war, terrorism, fire, flood, or other causes beyond the reasonable control of a party prevents such party from performing its obligations under this Agreement, such nonperformance will be excused and will not be a breach for so long as such conditions prevail.