



*Note: This is a pdf copy of the SPLICE Terms of Service. No changes made to this copy are agreed to by SPLICE Software Incorporated. Updated and active Terms of Service exist at <https://splicesoftware.com/legal/tos>. If you have any questions, please contact your SPLICE Software Account Team.*

*Last updated: March 16, 2023*

PLEASE READ AND REVIEW THESE TERMS OF SERVICE CAREFULLY.

ONCE ACCEPTED, THESE TERMS BECOME A LEGALLY BINDING AND ENFORCEABLE AGREEMENT BETWEEN YOU AND SPLICE SOFTWARE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, YOU SHOULD NOT ACCEPT THEM OR USE THE SERVICES.

If you have a separate agreement with us for the use of our services, these terms may not apply to you. These terms will apply if any services you use are not covered under that separate agreement.

These Terms of Service ("TOS") constitute the agreement ("Agreement") between SPLICE Software Incorporated ("SPLICE"), and you, the users, and/or the organization on whose behalf you are accepting the agreement ("the Client").

SPLICE Software may update these terms from time to time. If you have an active agreement with us, you will be notified of any material changes at least thirty (30) days prior to the effective date of the updated term, unless such material updates result from changes in laws, regulations, or requirements. The notice of said updates to this agreement will be provided in accordance with Section 8.3 (Notices). The updated version of this Agreement supersedes all prior versions. If you do not agree to the updated version of this Agreement, you must stop using the Services immediately.

## **1. Definitions**

"Agreement" means this Agreement, including all schedules, and all instruments supplementing, amending or confirming this Agreement and references to "Article" or "Section" mean and refer to the specified Article or Section of this Agreement;

"Applications" means the different Applications with SPLICE's platform that are available as a Service;

"Business Day" means a day, other than a Saturday, Sunday, or day on which the commercial banks are authorized or required to be closed. For Canadian Clients, we acknowledge those commercial banks in the city of Calgary, Alberta. For United States Clients, we acknowledge those commercial banks in the city of New York, New York;

"Campaign" means personalized voice messages, text messages, emails, personalized landing pages, mobile landing pages, and/or videos sent to the customers of the Client;

"Client Data" means Reports and any data provided by the Client to SPLICE in an agreed upon format and includes, but is not limited to, phone number data, personalization data, and Do Not Contact List data;

"Content" means all assets, scripts, advertising, offers, images, templates, and instructions from the Client to SPLICE;

"Customer" means the customers of the Client for whom the Client shall provide contact information to SPLICE and who are to be contacted;



"Documentation" means any applicable documents related to SPLICE's services;

"Do Not Contact List" means a list which enables consumers to register their home phone, cellular phone, VoIP, email, or fax number free of charge in order to reduce the number of telemarketing calls, text messages, emails, and faxes they receive;

"DPSA" has the meaning set forth in Section 6.1;

"Express Consent" means consent that meets the E-Sign Act in the respective country The Client sends communications. Records of consent must be kept and referenceable, including timestamps of the consent being completed.

"Law(s)" means and is intended to be construed broadly to include all (i) state, provincial, local, federal, foreign and international treaties, statutes and ordinances, including, without limitation, the US Telephone Consumer Protection Act (TCPA), the California Consumer Privacy Act (CCPA) and related implementing statutes and regulations; (ii) regulations, rules, decrees orders, and any other official pronouncements or approvals of any governmental authority, board, commission, agency or department including, without limitation, the Canadian Radio-television Telecommunications Commission (CRTC), Federal Communications Commission (FCC), and the Federal Trade Commission (FTC); and (iii) decrees, rulings, judgments, opinions, holdings and orders of any court, administrative body or arbitrator;

"Letter of Agreement" means the Agreement and Fees set forth between SPLICE and The Client. Quotes will be sent electronically to the Client.

"License Fee" has the meaning set forth in Section 2.6;

"NDA" means a confidentiality and non-disclosure agreement set forth in Section 5;

"Optout" means the request by a Customer to no longer be included in Campaigns until such time that express consent is given by the Customer to be included;

"Parties" means SPLICE and the Client collectively, and "Party" means any one of them;

"Professional Services Fee" has the meaning set forth in Section 2.8;

"Program" means specific use cases or Campaigns operated within SPLICE Software's Platform and SPLICE's services.

"Quote" means the Agreement and cost estimate, or Fees set forth between SPLICE and The Client. Quotes will be sent electronically to the Client.

"Segment" means a specific number of characters set forth by providers and by SPLICE as allotted for text messages and may be invoiced as such.

"Services" means the products and services provided by SPLICE Software that you use, including, but not limited to services that are free trials or free of charge, or any services agreed upon by both parties.

"Software" has the meaning set forth in Section 8.8; and

"SPLICE Invoices" has the meaning set forth in Section 2.9.



“Statement of Work” means the Agreement and Fees set forth between SPLICE and The Client. Quotes will be sent electronically to the Client.

1.1 Severability. If any of the provisions contained in this Agreement are found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby.

1.2 Headings. Headings contained herein are included solely for convenience, are not intended to be full or accurate descriptions of the content thereof and shall not be considered part of this Agreement.

1.3 Language. In this Agreement, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 Entire Agreement. The Parties have expressed herein their entire understanding and agreement concerning the subject matter of this Agreement and no implied covenant, condition, term or reservation shall be read into this Agreement relating to or concerning such subject matter nor shall any oral or written understanding heretofore entered into modify or compromise any of the terms and conditions herein.

1.5 Currency. All references to money and currency mean lawful money of either the United States of America or for Canada, based on the quote, Statement of Work, or Letter of Agreement agreed upon, and all amounts to be paid or calculated pursuant to this Agreement are to be paid or calculated in lawful money of the United States of America or Canada.

1.6 Governing Laws and Attornment. This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract. Each Party hereto irrevocably attorns to and submits to the non-exclusive jurisdiction of the Courts of Alberta with respect to any matter arising hereunder or related hereto.

## **2. Licensing & Services**

2.1 Provision of Services. SPLICE will provide services to the Client pursuant to this Agreement, any applicable Documentation, and any applicable Quote(s), Statement of Work(s), and/or Letter of Agreement(s). SPLICE will comply with the SPLICE SLA and any security provisions required in compliance with SOC2 and general security practices. SPLICE will provide services in compliance with any applicable laws or requirements applicable to the provision of services. SPLICE will use reasonable efforts to provide the correct personnel for support services and guidance for each program or campaign. SPLICE shall have the right, but not the obligation, to preview, monitor, or review, at any time, for any reason at its sole discretion, all Campaigns or Programs, Content, and Client Data, in order to (i) determine compliance with this Agreement; or (ii) determine compliance with any applicable Laws; provided, however, that SPLICE shall hold no responsibility or liability for improperly represented Content and Client Data.

2.2 Usage of Services. The Client will be responsible for all the use of the provisioned Services. Notwithstanding anything else contained herein, the Services are for use exclusively by the Client for its internal business and are not for resale to, or use by, any third party. SPLICE may modify or discontinue specific Services, from time to time, at its discretion. Services must be used only in accordance with this agreement, Acceptable Use Policy (“AUP”), any applicable Documentation, any applicable Quote(s), Statement of Work(s), and/or Letter of Agreement(s), any specific service and country requirements, and any applicable laws or regulations. The Client will be solely responsible for any actions or activities of your End Users, including their compliance of this Agreement. Use reasonable efforts to prevent unauthorized access or use to SPLICE. Use reasonable efforts and cooperation regarding information requests from law enforcement, regulators, or telecommunication providers. The Client must maintain accuracy of any applicable optouts or unsubscribes provided to and from SPLICE within the Dialog Controller™.



2.3 Suspension of Services. Without limiting any other remedies available to SPLICE, SPLICE may limit, suspend, or terminate the Services and the Client's account and take technical and legal steps to keep the Client from accessing or receiving the Services if (i) the Client is in breach of this Agreement and/or (ii) SPLICE has reason to believe that Client's use of the Services is (A) creating problems for SPLICE or any third party; (B) exposing SPLICE or any third party to possible legal action or liabilities; or (C) the Client is acting inconsistently with the spirit of this Agreement. Furthermore, SPLICE shall be entitled to pursue all remedies available to SPLICE against the Client and may charge the Client a reasonable late fee and/or interest for unpaid Services.

2.4 Modifications to Services. Features and functions of the Services provided may change or be updated over time. This may include additions, removals, or changes to features or capabilities, in efforts to improve our products and services, and The Client's experience. If any changes impact primary features or functionalities, SPLICE will use reasonable efforts to provide at least thirty (30) days notice prior.

2.5 Service Levels. SPLICE shall use reasonable efforts to (i) ensure that the Software and Services are available during generally accepted business hours; and (ii) prevent unauthorized access to restricted areas of its servers, Software, and any databases or other material generated from or used in conjunction with the Services. The Client is responsible for creating back-ups of any important or critical information that is stored by SPLICE in connection with the Services. SPLICE is not responsible, and shall not have any liability for, any delays in the provision of the Services resulting from delays in the Client approving the Campaign Content.

### **3. Fees & Payment Terms**

3.1 Fees. The Client agrees to pay any fees set forth in any Quote(s), Statement of Work(s), and/or Letter of Agreement(s), or any other applicable fees implemented and documented. Payment obligations under this Agreement are non-cancelable, and all Fees paid under the Agreement are non-refundable, subject to the dispute notification noted in Section 3.6.

3.2 License Fee. License fees consist of fees required to utilize specific Applications and Services within the Product - Dialog Suite™. The Client agrees to pay the amounts set forth in the agreed upon Quote(s), Statement of Work(s), and/or Letter of Agreement(s) to SPLICE in exchange for a non-exclusive, non-transferable, limited right to use the Software provided by SPLICE on a monthly and/or annual basis (the "License Fee").

3.3 Campaign Fee. The Client agrees to pay the amounts set forth in the agreed upon Quote(s) and Rate Schedule to SPLICE in exchange for the set-up, dispatch, additional services, and rush/late fees for Campaigns (the "Campaign Fee").

3.4 Setup Fee. The Client agrees to pay the amounts set forth in the agreed upon Quote(s), Statement of Work(s), and/or Letter of Agreement(s) to SPLICE in exchange for the set-up for Programs or Campaigns (the "Campaign Fee").

3.5 Professional Services Fee. The Client agrees to pay the amounts set forth in the agreed upon Quote(s), Statement of Work(s), and/or Letter of Agreement(s) to SPLICE in exchange for the design, development, testing, and implementation of custom services for the Client (the "Professional Services Fee").

3.6 Invoices. Except as otherwise set forth in any applicable Quote(s), Statement of Work(s), and/or Letter of Agreement(s), invoices will be sent each month to the email address(es) provided to SPLICE for The Client. The SPLICE Invoices shall be deemed to be accurate in all material respects if the Client does not give written notice of a dispute within five (5) days of delivery of a SPLICE Invoice. If adjustments are necessary following resolution of a dispute over a SPLICE Invoice such adjustment shall be credited to the Client's account with SPLICE within five (5) Business Days after resolution.



3.7 Payment of Invoices. Except as otherwise set forth in any applicable Quote(s), Statement of Work(s), and/or Letter of Agreement(s), The Client must pay the Fees due within thirty (30) days of the date of invoice. Except as otherwise set forth, the Fees are payable in United States dollars. If The Client fails to pay the Fees or provide a written dispute as stated in 3.6, SPLICE may issue late fee charges, or suspend Services until all Fees due are paid in full.

3.8 Manner of Payment. Payment of the License Fee, Campaign Fee, Setup Fee and/or Professional Services Fee shall be made by way of cheque or bank draft, made payable to SPLICE Software Inc. The Client may pay by Visa or MasterCard but payment is subject to a 4% service charge which is subject to change without notice. The amount to be paid by the Client to SPLICE is inclusive of goods and services tax and provincial and state sales tax. SPLICE may require prepayment for some Services. This requirement will be set forth in the applicable Quote(s), Statement of Work(s), and/or Letter of Agreement(s).

3.9 Taxes. All Fees are exclusive of any applicable taxes. The Client agrees to pay any taxes applicable for any Fees.

3.10 Additional Charges. When applicable, all fees exclusive of Fees of any applicable Service(s), or any fees or surcharges imposed on SPLICE by a provider or vendor, due to your usage, will be invoiced and require payment. The Client will pay any and all costs or penalties imposed on SPLICE by any regulatory body or provider as a result of your usage of the Services.

#### **4. Term**

4.1 Term. The term (the "Term") of this Agreement shall commence on the date of this Agreement and shall continue unless otherwise terminated in accordance with the terms of this Agreement – Section 4.2.

4.2 Termination. Either party may terminate this Agreement for convenience by providing the other party with at least ninety (90) days prior written notice. Notwithstanding the preceding sentence, if there are any applicable Quote(s), Statement of Work(s), and/or Letter of Agreement(s) in effect, this Agreement will not terminate until all such Quote(s), Statement of Work(s), and/or Letter of Agreement(s) have expired or have been terminated in accordance with the terms therein. SPLICE or The Client reserves the right to immediately discontinue Services under this agreement if either party is out of compliance with the terms and conditions herein. Notice of termination shall be in writing to the other party. The out of compliance party has thirty (30) calendar days from the receipt of notice to resolve out of compliance terms and conditions. If the parties agree the out of compliance has been appropriately resolved, such notice of termination shall be rescinded. If the Client does not pay SPLICE the Fees as provided for in Section 2 hereof, SPLICE may, by notice in writing to the Client, terminate this Agreement, and, upon such notice, the Parties' obligations hereunder, if any, shall immediately terminate if not paid with 15 calendar days of notice. For the sake of clarity, such termination does not terminate the Client's obligation to pay the Fees.

#### **5. Confidentiality and Non-Disclosure**

5.1 Confidentiality. The Parties hereto acknowledge and agree that they have entered into a Non-Disclosure Agreement ("NDA"), and that the use and treatment of any confidential information in relation to this Agreement, its negotiation, execution or termination shall be governed by the NDA, which agreement is hereby incorporated herein in its entirety. Notwithstanding anything to the contrary in the NDA, the NDA shall remain effective for the duration of the term of this Agreement.

5.2 Confidential Information. Confidential information means any and all information not available to the general public, including but not limited to (a) any information that the party disclosing Confidential Information to the other party to this Agreement which provide or disclose Confidential Information under this Agreement ("Disclosing Party") designates as being confidential or which, under the circumstances surrounding disclosure of



such information, ought to be treated as confidential; (b) any information relating to the business and affairs of the Disclosing Party; (c) any information relating to ideas, concepts, know-how, techniques, trade secrets, software, hardware, source code, computer systems, computer programs, data, system documentation, designs, manuals, databases, formulae, discoveries, concepts, technology, inventions, drawing, and specifications of the Disclosing Party; (d) any intellectual property of the Disclosing Party; (e) information concerning products, pricing, sales and marketing policies, techniques, and concepts of the Disclosing Party; (f) lists of present and prospective clients and/or customers, and phone numbers of the Disclosing Party and related information, including names, phone numbers, and addresses; and (g) any other materials or information relating to the property, ideas, concepts, personnel, business operations, financing, or activities of the Disclosing Party which are not generally known to the public or others engaged in similar businesses or activities.

Confidential Information shall not include any information that is or subsequently becomes known to the public without a breach by the party receiving Confidential Information from the other party to this Agreement which receive Confidential Information from the Disclosing Party and includes parties to whom the Receiving Party reveals or discloses the Confidential Information ("Receiving Party") of any obligations owed to the Disclosing Party under this Agreement or which otherwise became known to the Receiving Party prior to the Disclosing Party's disclosure of such information to the Receiving Party or from a source other than the Disclosing Party or information that is independently developed by the Receiving Party.

Notwithstanding the foregoing sentence, however, the contents of customer lists provided by a Disclosing Party, and information associated therewith such as address and phone numbers, shall in no event cease to be Confidential Information merely by reason of the fact that the name of any individual customer (or such associated information) could be obtained via non-confidential means such as phone books or internet search engines. Only to the extent the contents of customer lists and such information associated therewith is actually independently obtained by Receiving Party by means completely independent of disclosure by the Disclosing party (and without violating the terms of this Agreement) may such information be deemed to be not Confidential Information.

5.3 Confidentiality Undertaking. The Receiving Party hereby agrees and acknowledges (a) that in the course of marketing or other presentations, business negotiations, discussions or transactions with the Disclosing Party, the Receiving Party will have access to and will be entrusted with certain Confidential Information concerning the Disclosing Party; (b) that Confidential Information includes, but may not be limited to, Confidential Information as defined herein; (c) that the disclosure of any Confidential Information to competitors of the Disclosing Party or to the general public, except in accordance with any authorized use, would be highly detrimental to the best interests of the Disclosing Party; (d) that the Receiving Party may only disclose Confidential Information to its directors, officers, or employees on a "need to know" basis and prior to disclosing Confidential Information of the Disclosing Party to its employees, agents or consultants, the Receiving Party will ensure that all such employees, consultants, directors, officers or agents will have executed a confidentiality undertaking reflecting the provisions of this Agreement sufficient to ensure the Receiving Party complies with all of the provisions of this Agreement; (e) that the right to maintain the confidentiality of such Confidential Information, and the right to preserve its goodwill constitute proprietary rights which the Disclosing Party is entitled to protect; and (f) that the Confidential Information could be used to the detriment of the Disclosing Party.

The Receiving Party covenants and agrees with the Disclosing Party that, save with the prior written consent of the Disclosing Party, it will not, directly or indirectly disclose, reveal, publish or transfer any Confidential Information to any person, nor shall it use the same for any purpose.

The Receiving Party acknowledges and agrees that the Disclosing Party will suffer irreparable harm in the event that any of its obligations contained in this Agreement are breached and that monetary damages will be inadequate to compensate the Disclosing Party for the breach. Accordingly, the Receiving Party acknowledges and agrees that, in the event of a breach or threatened breach by the Receiving Party of any of the provisions of this Agreement, the Disclosing Party, in addition to and not in limitation of any other rights, remedies or damages available to it at law



or in equity, shall be entitled to an interim injunction, interlocutory injunction and permanent injunction in order to prevent or to restrain any such breach by the Receiving Party.

The Receiving Party undertakes that it has taken and will in future take appropriate precautions to safeguard all Confidential Information received by it and agrees not to use the Confidential Information for any purpose other than as authorized by the Disclosing Party.

The Receiving Party agrees that all rights, title and interest in any Confidential Information disclosed to it by the Disclosing Party shall be and shall remain the exclusive property of the Disclosing Party.

The Receiving Party agrees to return to the Disclosing Party (and destroy Confidential Information contained on drives, tapes, e-files and the like) all Confidential Information in its possession or under its control at the request of the Disclosing Party.

Each of the parties to this Agreement have carefully considered the provisions of this Agreement and, having done so, agree that the restrictions set forth in this Agreement are fair and reasonable and are reasonably required for the protection of the interests of the Disclosing Party and its business, officers, directors, and employees.

5.4 Notification. The Receiving Party shall immediately notify the Disclosing Party upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Receiving Party. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to assist the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use.

5.5 Costs of Enforcement. The Receiving Party shall pay to the Disclosing Party, on demand, all reasonable costs and expenses (including, without limitation, all legal fees and disbursements, on a solicitor and his own client basis) incurred by the Disclosing Party in relation to the enforcement of its rights under this Agreement or the bringing of any action, suit or proceeding with respect to the enforcement of its rights under this Agreement or seeking any remedy which may be available to the Disclosing Party at law or in equity.

5.6 Governing Laws and Attornment. This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated, in all respects, as an Alberta contract. Each Party hereto irrevocably attorns to and submits to the non-exclusive jurisdiction of the Courts of Alberta with respect to any matter arising hereunder or related hereto.

5.7 Further Assurance. Each party hereto shall and will in a timely fashion from time to time and at all times hereafter at the reasonable request and sole cost of the other and without further consideration, do or perform or cause to be done or performed all such further acts and things, execution and deliver or cause to be executed and delivered all such further and other deeds, documents and other writings and generally give or cause to be given all such further and other assurances as shall be reasonably required in order to ensure and give full force and effect to the provisions and intent, purpose and meaning of this Agreement.

## **6. Data Privacy and Security**

6.1 Data Privacy and Security. The Parties hereto acknowledge and agree that they have entered into a Data Privacy and Security Agreement (the "DPSA"), and that the use and treatment of any Client Data related to this Agreement, its ownership, receipt, use, protection, retention, transmission, and deletion shall be governed by the DPSA, which agreement is hereby incorporated herein in its entirety. Notwithstanding anything to the contrary in the DPSA, the DPSA shall remain effective for the duration of the term of this Agreement.

## **7. Warranties and Indemnities**





7.1 Content, Client Data, Communication, and Communication Dispatch. The Client warrants that although SPLICE shall provide services and guidance, the Client and SPLICE share responsibility for the Content. The Client is solely responsible for the definition and identification of the Client Data provided to SPLICE and shall provide and authorize the use of Content and Client Data. SPLICE shall be solely responsible for the Dispatch of Content and Client Data.

The Client is solely responsible and liable for ensuring that Client Data and Content are properly represented to SPLICE and do not violate any Laws. SPLICE is solely responsible and liable for ensuring that its Services, including the Communication Dispatch, do not violate any Laws.

The Client understands and agrees that SPLICE shall not be held responsible, or liable, for damages to the Client or any third party incurred due to the Client's failure to properly represent Client Data and Content.

7.2 Disclaimer and Warranties. The Client acknowledges and agrees that SPLICE shall not be held liable for any unsuccessful calls which occur as a result of incorrect contact information having been supplied by the Client.

SPLICE makes no warranty that the services shall meet the Client's requirements, or that the services shall be uninterrupted, timely, secure, error free or that any defects in the Services shall be corrected, except as may be expressly set forth in this Agreement. SPLICE makes no representations or warranties regarding the results to be achieved by the Client after performance of the Services. Except as set forth below, SPLICE disclaims all warranties of any kind, express, implied and statutory, including without limitation, any implied warranty of non-infringement, fitness for a particular purpose and merchantability or any implied warranties arising out of a course of performance, dealing or trade usage. The Client is not authorized to make any warranty or representation concerning the Services. Except as may be expressly set forth in this Agreement, SPLICE does not warrant the accuracy or reliability of the results obtained through the Services or any data or information downloaded or otherwise obtained or acquired through or in connection with the Services. The Client acknowledges that any data or information downloaded or otherwise obtained or acquired through or in connection with the Services are at the Client's sole risk and discretion and SPLICE shall be responsible to uphold diligent data security practices and protect against cyberthreats. SPLICE shall not be liable or responsible for any damage to the Client or the Client's property in connection therewith.

SPLICE represents, warrants and covenants that: (i) in the performance of its Services hereunder, SPLICE shall be in material compliance with all applicable Laws; (ii) in rendering the Services, it and its personnel have all materially necessary rights, authorizations, or licenses to provide the Services hereunder and to provide all related materials and services required under this Agreement; (iii) each individual assigned to perform the Services shall have the proper skill, training, and background so as to be able to perform in a competent manner; and (iv) the Services shall be delivered in a manner consistent with good commercial practice.

Certain proprietary Client Data might be provided to SPLICE for use in the ordinary fulfilment and delivery of the Services. Use of Client Data by SPLICE for any purpose outside the scope of providing the Services or as otherwise specified in this Agreement is strictly prohibited without the prior written consent of the owner of the Client Data. Client Data must be provided to SPLICE in the form and format specified by SPLICE. Any Client Data supplied to SPLICE that is not properly formatted shall either be returned to the Client for reformatting, rejected by SPLICE, or be re-formatted by SPLICE and such reformatting Services shall be subject to additional fees that include, without limitation, SPLICE's then-current data processing fees. SPLICE may use the Client Data for internal forecasting and accounting purposes, solely for performance of the Services hereunder.

7.3 Incomplete Message. The Client acknowledges and agrees that SPLICE is unable to guarantee that the Customers shall listen or read, as applicable, to the entirety of the message, or to the message at all, delivered during the Campaign.





7.4 Indemnity. The Client shall protect, indemnify and save harmless SPLICE, and its employees, agents, representatives, invitees and subcontractors, and, at SPLICE's request, investigate and defend such entities from and against all claims, demands, and causes of action, of every kind and character, without limitation, arising in favour of or made by third parties, on account of bodily injury, death or damage to or loss of their property resulting from any negligent act or wilful misconduct of the Client, and from (i) any breach or alleged breach of any of Client's representations and warranties hereunder; (ii) Client's negligent acts, omissions, and/or wilful misconduct under this Agreement.

SPLICE shall protect, indemnify and save harmless the Client, and its employees, agents, representatives, invitees and subcontractors, and, at Client's request, investigate and defend such entities from and against all claims, demands, and causes of action, of every kind and character, without limitation, arising in favour of or made by third parties, on account of bodily injury, death or damage to or loss of their property resulting from any negligent act or wilful misconduct of the SPLICE, and from (i) any breach of any of SPLICE's representations and warranties hereunder; and (ii) SPLICE's negligent acts, omissions, and/or wilful misconduct in providing the Services under this Agreement

7.5 Limitations of Liability. Notwithstanding anything else in this Agreement, the aggregate liability of SPLICE to the Client in any way relating out or related to this Agreement shall be limited to the lesser of (i) direct damages and (ii) a maximum of the Service Fee, License Fee and Dispatch Fee paid by the Client for the Campaign in dispute. Each Campaign shall be deemed to be satisfactory in all material respects if the Client does not give written notice of dispute within ten (10) days of completion of such Campaign. In no event shall SPLICE be liable for special, consequential, or indirect damages, even if it is given notice of same, including lost profits, loss of revenue, or failure to realize expected saving. These limitations apply in respect of all causes of action, whether for breach of contract, tort (including negligence) or otherwise. SPLICE shall not be liable for any failure to perform due to causes beyond its reasonable control. The limitations in this section are an essential element of the bargain between the Parties and shall survive and apply notwithstanding the validity of the limited remedies provided for in the Agreement or if any such limited remedy fails of its essential purpose.

7.6 Survival of Terms. The terms of this ARTICLE/Section 7 shall survive any termination or expiry of this Agreement.

## 8. Miscellaneous Provisions

8.1 Assignment. Upon written notice to the other Party, a Party may assign the Agreement to a third party provided that the assignee must, in writing, agree to perform all covenants and obligations of the assigning party hereunder to the extent and as if the assignee had originally executed this Agreement.

8.2 Relationship. This Agreement does not and shall not be construed to create a partnership or agency relationship whatsoever as between SPLICE and the Client.

8.3 Notice. Any notices to SPLICE must be sent to a known or documented splicesoftware.com email and will be deemed delivered as of the date of actual receipt. All notices to The Client will be provided via email to the relevant contact(s) designated on account, from a splicesoftware.com email. SPLICE may give notice by telephone calls to the phone numbers on record. The Client must keep all account information current.

8.4 Dispute Resolution – Arbitration. Should any dispute arise between the Parties with respect to the interpretation or application of any provisions of this Agreement which cannot be resolved, the Parties agree to submit such dispute firstly to mediation, and failing resolution, to binding arbitration. Mediation shall be conducted by a third party neutral ("Neutral") as selected by the Parties. If the Parties cannot agree on the selection of such Neutral, the dispute shall be resolved through arbitration pursuant to the Arbitration Act



(Alberta). In the event of arbitration, the Parties shall each select an arbitrator and each of the arbitrators so selected shall select a third arbitrator as chairman of the arbitration panel.

8.5 Time. Time shall be of the essence of this Agreement.

8.6 Amendment. No amendment of this Agreement shall be binding upon any Party unless evidenced in writing and executed by both Parties hereto.

8.7 Further Assurances. Each Party hereto shall, from time to time and at all times hereafter at the reasonable request and sole cost of the other and without further consideration, do or perform or cause to be done or performed all such further acts and things, execute and deliver or cause to be executed and delivered all such further and other deeds, documents and other writings and generally give or cause to be given all such further and other assurances as shall be reasonably required in order to ensure and give full force and effect to the provisions and intent, purpose and meaning of this Agreement.

8.8 SPLICE Software. SPLICE hereby reserves all rights in the software used to provide the Services (collectively, the "Software"). Nothing in this Agreement shall be deemed to grant any license to the Client in the Software. The Client shall not attempt to copy the Software or reverse engineer or otherwise attempt to derive source code for the Software.

8.9 Prohibitions. The services may not be used in any manner:

- (1) to market, promote or advertise products or services in the following categories: alcohol, firearms, "adult" products/services, tobacco, religious products/services, or other products or services which SPLICE, in its sole discretion, designates as objectionable;
- (2) to market, promote or advertise products or services or transmit material in any way that (i) may result in any delivery or transmission of material or information (commercial or otherwise) in violation of any Laws; or (ii) violates or infringes on any person's intellectual property rights, privacy rights, rights of publicity, or any other rights of any person;
- (3) to display or transmit material which is unlawful, harassing, vulgar, harmful, abusive, hateful, obscene, pornographic, indecent, threatening, libelous or defamatory, false, misleading or inaccurate or which, in the sole opinion of SPLICE, is otherwise objectionable material of any kind or nature;
- (4) to create a false identity or forged email address, or otherwise attempt to mislead others as to the identity of the sender or the origin of the message;
- (5) to transmit any material that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs;
- (6) to interfere with or disrupt networks connected to or used by the Services or violate the regulations, policies, or procedures of such networks;
- (7) to attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to or that are used to provide the Services, through password mining or any other means; or
- (8) to interfere with another Client's use and enjoyment of the Services or another entity's use and enjoyment of similar services.



Without limiting any other remedies available to SPLICE, SPLICE may limit, suspend, or terminate the Services and the Client's account and take technical and legal steps to keep the Client from accessing or receiving the Services if (i) the Client is in breach of this Agreement and/or (ii) SPLICE has reason to believe that Client's use of the Services is (A) creating problems for SPLICE or any third party; (B) exposing SPLICE or any third party to possible legal action or liabilities; or (C) the Client is acting inconsistently with the spirit of this Agreement. Furthermore, SPLICE shall be entitled to pursue all remedies available to SPLICE against the Client and may charge the Client a reasonable late fee and/or interest for unpaid Services.

**8.10 No Legal Advice.** The Client is not relying upon SPLICE with respect to any legal advice in connection with any Services rendered by SPLICE and SPLICE has not provided any such legal advice to the Client. Each Party hereto confirms that it has read and fully understands the terms of this Agreement, that it has had the opportunity to obtain independent legal advice and that it voluntarily enters into this Agreement.

**8.11 No Solicitation.** The Client agrees not to solicit the services of, nor employ any of, SPLICE's employees during the term of this Agreement and for a period of twenty-four (24) months thereafter without SPLICE's prior written consent.

**8.12 Counterparts.** This Agreement may be executed in counterpart and delivered by facsimile, each of which shall be deemed to be an original and all of which shall be construed together as one Agreement.