

CUSTOMER AGREEMENT

This CUSTOMER AGREEMENT ("Agreement") is made by and between HUBCAST, INC, a Delaware corporation ("HubCast") with its principal place of business located at 500 Edgewater Drive, Suite 568, Wakefield, MA 01880, and you, as the customer (the "Customer") as further identified in any applicable Order (as defined below). HubCast and Customer shall sometimes be referred to individually as a "Party" and together as the "Parties".

BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED ON THE ORDERING PAGE OF THE HUBCAST WEBSITE, YOU, AS A DULY AUTHORIZED REPRESENTATIVE OF, AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF CUSTOMER. YOU ALSO CONFIRM YOUR PRIOR AGREEMENT TO BE BOUND BY THE TERMS OF WEBSITE USE (AS DEFINED BELOW). YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND IN SUCH CASE YOUR ORDER WILL BE CONSIDERED NULL AND VOID.

1. CERTAIN DEFINITIONS.

"Agreement" means these terms and conditions, Orders, whether written or submitted on-line, and any other documents specifically referred to herein.

"Content" means any text, graphics, information, images, documents, presentations and other material made available to the Customer by HubCast in connection with the Services, excluding the Software.

"Customer" means the Person identified in the Order or the preamble of this Agreement.

"HubCast Website" means the HubCast portal website located at www.hubcast.com.

"Intellectual Property Rights" means shall mean all of a Person's right, title and interest in and to the following: fictitious names, trade names, trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications, copyrights, copyright registrations, copyright applications, patent rights, logos, domain name rights, mask work rights, know-how and other trade secrets, and all other intellectual property rights, derivatives and thereof and forms of protection of a similar nature and the goodwill associated with any of the foregoing now owned or hereafter acquired by a Person.

"HubCast" shall have the meaning specified in the preamble of this Agreement.

"Order" or "Orders" means the document or documents confirming the Customer's purchase of Services from HubCast in either electronic form or written form. Each order shall be issued pursuant to and governed by the terms of this Agreement.

"Person" means any natural person, corporation, association, general or special partnership, limited liability company, joint venture or governmental agency.

“Services” shall have the meaning specified in Section 2.2 of this Agreement.

“Software” means any proprietary software made available to Customer by HubCast or its Third Party Licensors in connection with the Services.

“Subscription Services” means the Services and the document storage services described in Section 2.3.

“Terms of Website Use” means the terms and conditions relating to Customer’s use of the HubCast Website previously agreed to by Customer.

“Third Part Licensors” means any third party software provider who has granted HubCast the right to use and distribute its software in connection with providing the Services.

"Users" means individuals who are authorized by Customer to use the Subscription Services, for whom subscriptions have been purchased, and who have been supplied user identifications and passwords. Users may include but are not limited to Customer’s employees, consultants, contractors and agents; or third parties with which Customer transacts business.

2. **SERVICES.**

2.1 **HubCast Website Access and Use.** Subject to the terms and conditions of this Agreement and the Terms of Website Use previously agreed to by Customer, HubCast hereby grants to the Customer, during the term of this Agreement, a nonexclusive, nontransferable right to access and use the HubCast Website, Subscription Services, Software and Content solely to use HubCast’s cloud print and storage services. Such right is granted to Customer solely for its own internal business purposes and operations.

2.2 **HubCast Services.** HubCast shall provide one or more of the following services as identified in the Order (collectively, the “Services”):

2.2.1 acknowledge, complete, close Orders in a timely manner, such that, subject to the terms and conditions of this Agreement, Customer deadlines are met;

2.2.2 ship printed material per Order instructions; including exact delivery location; contact person and contact phone number.

2.3 **HubCast Cloud Storage.** In addition to providing Services, HubCast shall provide unlimited storage space for any conforming press ready PDF file. Customer shall have the ability to delete, edit, or revise PDF files.

2.4 **User Subscriptions.** Unless otherwise specified in the applicable Order, (i) Subscription Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one

User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Subscription Services.

2.5 HubCast Website Limitations. Although Customer generally will be able to access the HubCast Website twenty-four (24) hours a day, subject to maintenance of the HubCast Website and other downtime required by HubCast, HubCast may restrict Customer's access to the HubCast Website during non-business hours. HubCast may also establish reasonable limitations regarding the HubCast Website support it will render to the Customer.

2.6 HubCast Website Security. Customer shall receive or already has an account ID username and password to gain access the HubCast Website. Customer shall maintain the confidentiality of its username and password. Customer shall be fully responsible for all activities that occur under its username or password. Customer shall (i) not allow any unauthorized person to use its account, username or password at any time, and (ii) notify HubCast of any actual or suspected unauthorized use of its username or password. Customer shall designate one administrator who will have sole authority for adding other users to Customer's account (such individual, the "Customer Administrator"). If Customer requires more than one authorized user to have access to the HubCast Website such that Customer requests use of more than one username and password, then the Customer Administrator shall add such additional users. HUBCAST SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OR DAMAGE ARISING FROM ANY UNAUTHORIZED USE OF CUSTOMER'S USERNAME OR PASSWORD.

2.7 Unlawful or Prohibited Acts. Customer shall not use the HubCast Website, Subscription Services, Software or Content for any purpose that is unlawful or prohibited by law or the terms or conditions contained in this Agreement or the Terms of Use. Customer shall not (i) reverse engineer, decompile or disassemble any portion of the HubCast Website or tamper in any way with the operation of the HubCast Website, or (ii) insert or make use of any type of disabling device including, but not limited to, viruses, worms, Trojan horses, time bombs, cancelbots or any similar device that may impair, damage or interfere with the proper working order of the HubCast Website.

2.8 Links to Third-Person Sites. The HubCast Website may contain hyperlinks to web sites operated by persons other than HubCast (the "Additional Web Sites"). These hyperlinks are provided for Customer's reference only. HubCast does not control the Additional Web Sites and is not responsible for their contents. The inclusion of the hyperlinks to the Additional Web Sites does not imply any endorsement of the material on the Additional Web Sites or any association with their operators. HubCast shall not be responsible for damages or losses caused by any delays, defects or omission that may exist in the services, information or other content provided in the Additional Web Sites, whether actual, special, consequential or punitive. HubCast does not make any guarantees or representations to Customer as to, and shall have no liability for, any electronic content delivered to Customer by any third Person including, without limitation, the accuracy, subject matter, equality or timelines of any electronic content.

2.9 Use of the Internet. Customer acknowledges that neither HubCast nor its Third Party Licensors control the transfer of data over communications networks and facilities, including the internet. As a result, Subscription Services may be subject to limitations, delays and other problems inherent in the use of the internet and other electronic communications. Neither HubCast nor its Third Party Licensors shall be responsible for any delays, delivery failures or any other damages resulting from any such problems.

2.10 Customer Obligations. In connection with any Subscription Services to be provided by HubCast to Customer, Customer shall provide the following:

2.10.1 Customer shall specify and supply hyperlink text, graphical material, HTML or other code thereto, which provides links from Customer websites to the HubCast Website (“HubCast Link”).

2.10.2 Customer shall supply HubCast service only press ready PDF files. No additional files formats are accepted by HubCast.

2.10.3 Customer shall not: (a) make the HubCast Website available through the Customer’s website (“Customer Website”) in any manner other than through the HubCast Link, unless otherwise approved by HubCast; (b) engage in or authorize making the HubCast Link or any portion thereof available as part of a “co-branded” or “private label” web site, web service, or internet access service, or as part of a “channel” through a software or internet service, or similar arrangements; (c) frame the HubCast Website or otherwise display the HubCast Website as part of another web site or web service; (d) index the HubCast Website by a web search engine that is not operated as part of the Customer Website; and/or (e) make any claims whatsoever about any of the products or services of HubCast or of the HubCast Website.

2 WARRANTY.

3.1 HubCast Warranty. HubCast warrants to Customer that the Services shall (i) conform to the specifications, drawings, samples or other descriptions specified by Customer; (ii) be prepared in a professional manner, consistent with the skill and care exercised within HubCast’s industry on projects of comparable scope and complexity, in a similar location and in conformance with the requirements of this Agreement; (iii) of good material and workmanship; and (iv) be completed within specified time frame (collectively, the “HubCast Warranty”).

3.2 Non-Compliant Services. In the event that HubCast provides Customer with Services that do not comply with the HubCast Warranty, including work that is (i) damaged, (ii) a non-calibrated color certification print, or (iii) otherwise does not comply with the specifications provided in this Section, and such non-compliant Services are not a result of a Customer Error (as defined below) or the accuracy or adequacy of any Electronic Data, (as described in Section 6), HubCast, in its sole discretion, shall either pay for and cause the Services to be reprinted or otherwise replaced or issue the Customer a credit for future Subscription Services.

3.3 Customer Error. For purposes of this Section, “Customer Error” shall mean files provided by Customer that contain typographical errors, page bleed, incorrect page order, incorrect page size, incorrect page orientation or incorrect page count, improper layout, hidden layers, incorrect overprint and knock out settings or corrupt fonts.

3.4 Delivery. Shipment will be F.O.B. from HubCast’s place of shipment, at which time risk of loss and title will pass to Customer. By placing an Order using third party billing services, bill

recipient, Customer agrees to pay all shipping charges and fees associated with an Order, and further agrees to be bound by such third party's terms and conditions of use, including, but not limited to, agreeing to be charged back for charges and fees if the third party billing service reverses shipping charges back to HubCast. HubCast's primary third billing service provider is FedEx Corp. Please follow this link for FedEx's [Terms of Use](#).

4 CONFIDENTIALITY.

4.1 Confidential Information. HubCast shall keep confidential, secret and shall not disclose, publish, divulge, furnish or make accessible to anyone any information, whether tangible or intangible, supplied by Customer, including but not limited to: trade secrets, software programs, technical data, methodologies, know-how processes, development work, artwork, content, marketing requirements, marketing plans, pricing and cost data, quotations and quotation methodologies, Customer information (including, but not limited to any personal information related to any identified or identifiable natural person or legal person), financial and business information, and any other proprietary information (collectively, the "Confidential Information"). HubCast shall only disclose the Confidential Information to its employees and other agents in order for HubCast to perform its obligations under this Agreement.

4.2 Exclusions. Confidential information will not include information that (i) is or becomes a part of the public domain through no act or omission of HubCast, (ii) is lawfully disclosed to HubCast by a third party without restriction on disclosure, or (iii) is independently developed by Customer as proven by dated written records. In addition, nothing contained in this Agreement will be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, HubCast will first have given notice to Customer of such order.

5 INTELLECTUAL PROPERTY AND PREPARATORY MATERIALS.

5.1 Intellectual Property. HubCast (and its Third Party Licensors, where applicable) shall retain title and ownership to all HubCast Intellectual Property, Software and Content. The term "HubCast Intellectual Property" shall mean any Intellectual Property now owned by or licensed to HubCast.

5.2 Customer Intellectual Property and Preparatory Materials. Customer shall retain title and ownership to all Customer Intellectual Property and Customer Preparatory Materials furnished by Customer to HubCast. Customer grants to HubCast a nontransferable, nonexclusive license to use the Customer Intellectual Property and Customer Preparatory Materials solely in connection with providing the Services to the Customer. The term "Customer Intellectual Property" shall mean any Intellectual Property now owned or licensed to Customer. The term "Customer Preparatory Materials" shall include, but is not limited to electronic data or files now owned or hereafter acquired or developed by a Customer and provided to HubCast in connection with the Services.

6 ELECTRONIC DATA.

6.1 Definition. "Electronic Data" shall mean all information regardless of form that Customer has entered or transferred or provided to HubCast through the HubCast Website. HubCast

shall not be responsible for the loss or destruction of any Electronic Data owned by Customer.

6.2 Ownership. HubCast will own, and have the right to use in accordance with this Agreement and its [Privacy Policy](#), all Electronic Data generated by use of the HubCast Website that it collects on its servers and databases. Except as expressly permitted under this Agreement or its Privacy Policy, HubCast will not share with any third party any Electronic Data obtained through this Agreement that in any way identifies Customer individually without Customer's express written consent. However, notwithstanding anything herein to the contrary, nothing shall restrict HubCast from: (i) in any way including Electronic Data as a part of aggregated Electronic Data used by HubCast or others for analyzing market and business trends or any other purpose so long as HubCast does not attribute any such information to Customer individually; (ii) using Electronic Data to generate reports and fulfilling its duties and obligations under this Agreement; (iii) using Electronic Data to enhance the HubCast Website; or (iv) disclosing information if HubCast believes in good faith that the disclosure is necessary to comply with law or to enforce its rights under the Agreement.

6.3 Customer Responsibility. Customer accepts sole responsibility for the accuracy and adequacy of all Electronic Data, and subsequent changes to recorded Electronic Data provided by Customer to HubCast. HubCast shall not be responsible for errors or omissions resulting from the inaccuracy or defect in any Electronic Data supplied by Customers.

7 FEES, PAYMENT AND TAXES.

7.1 Fees. Customer shall pay all fees specified in all Orders. Except as otherwise specified herein or in an Order, (i) fees are quoted and payable in United States dollars (ii) fees are based on Services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant term stated on the Order. Fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

7.2 Invoicing and Payment. Customer will provide HubCast with valid and updated credit card information or with a valid purchase order or alternative document reasonably acceptable to HubCast. If Customer provides credit card information to, Customer authorizes HubCast to charge such credit for all Subscription Services listed in an Order for the initial subscription term and any renewal subscription term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order. If the Order specifies that payment will be by a method other than a credit card, HubCast will invoice Customer in advance and otherwise in accordance with the relevant Order. Customer is responsible for maintaining complete and accurate billing and contact information.

7.3 Overdue Charges. If any charges are not received from Customer by the due date, then at HubCast's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) HubCast may condition future subscription renewals and Orders on payment terms shorter than those specified in

Section 7.2.

- 7.4 Suspension of Service and Acceleration. If any amount owing by Customer under this or any other agreement for Subscription Services is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer has authorized HubCast to charge to Customer's credit card), HubCast may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations so that all such obligations become immediately due and payable, and suspend HubCast's services until such amounts are paid in full.
- 7.5 Payment Disputes. HubCast shall not exercise its rights under Section 7.3 (Overdue Charges) or 7.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.
- 7.6 Taxes. Unless otherwise stated, HubCast fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with the Subscription Services, except for any taxes payable based on the income of HubCast. If HubCast has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides HubCast with a valid tax exemption certificate authorized by the appropriate taxing authority.

8 COMPLIANCE WITH LAWS.

HubCast and Customer each agree to comply with all applicable state, local, national and foreign laws, regulations, conventions or treaties in connection with use of the Subscription Services, Software or Content, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. HubCast and its Third Party Licensors make no representation that the Subscription Services, Software or Content is appropriate or available for use in all locations. When using the Subscription Services from outside the United States of America, Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Customer acknowledges and agrees that the Subscription Services, Software and Content may be subject to the U.S. Export Administration laws and regulations and Customer agrees to comply strictly with such laws and regulations. Customer agrees that no part of the Subscription Services, Software, Content or information obtained through use of the Subscription Services, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice. Customer certifies that Customer is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. The Subscription Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts

9 INDEMNIFICATION.

9.1 HubCast Indemnification. HubCast shall indemnify, defend and hold harmless the Customer from and against any and all liabilities, losses, suits, claims, demands, judgments, fines, damages, costs, and expenses (including reasonable attorneys' fees) finally awarded against Customer by a court of competent jurisdiction arising out of or in connection with a claim by a third party alleging that the Services, Software, or Content directly infringes a U.S. patent, copyright, or trademark or misappropriates a trade secret of a third party; provided that Customer (i) notifies HubCast in writing promptly after Customer becomes aware of a claim or the possibility thereof; (ii) grant HubCast sole control of the settlement, compromise, negotiation and defense of any such claim; and (iii) cooperate in good faith in the defense of any such action or claim and provide HubCast with all information and assistance related to the action that is reasonably requested by HubCast, at HubCast's expense. The foregoing indemnity shall not apply to any infringement claim that arises from (i) modifications to the Services, Software or Content by anyone other than HubCast, its duly authorized agents or Customer, if so authorized by HubCast; (ii) use of the Services, Software or Content other than in accordance with this Agreement; (iii) where the use of the Customer's Intellectual Property or Customer Preparatory Materials in providing the Services gave rise to the infringement claim; or (iv) use of the Services, Software or Content in combination with third party software or hardware not provided or specified by HubCast, where use with such software or hardware gave rise to the infringement claim. If use of the Services, Software or Content is enjoined or if HubCast reasonably believes that use of the Services, Software or Content may be enjoined, HubCast shall, at its option, (i) obtain the right for Customer to continue using the Services, Software or Content or (ii) replace or modify the Services, Software or Content so it is no longer infringing, or if neither (i) nor (ii) can reasonably be accomplished, (iii) terminate this Agreement and refund any amounts paid by Customer in connection with the infringing Services, Software or Content. HubCast shall not be liable hereunder for any settlement made by Customer without HubCast's advance written approval, or for any award from any action in which HubCast was not granted control of the defense. THIS SECTION STATES CUSTOMER'S EXCLUSIVE REMEDY AND HUBCAST'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9.2 Customer Indemnification. Customer shall defend, indemnify and hold HubCast and its Third Party Licensors harmless against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees) finally awarded against HubCast and/or its Third Party Licensors' by a court of competent jurisdiction in connection with a claim by a third party (i) alleging that the Customer Intellectual Property or Customer Preparatory Materials, or any use thereof, infringes the rights of, or has caused harm to, a third party, provided that HubCast and/or its Third Party Licensor's (i) promptly give written notice of the claim to Customer; (ii) give Customer sole control of the defense and related settlement negotiations; and (iii) provide Customer with all available information and assistance related to the action that is reasonably requested by Customer, at Customer's expense.

9.3 Term of Indemnification Covenants. The Indemnification obligations contained in this Agreement shall survive the expiration or termination of this Agreement for any reason.

10 LIMITATION OF LIABILITY.

- 10.1 Limitation of Damages. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY OR ANY THIRD PARTY LICENSOR EXCEED THE TOTAL AMOUNT PAID BY AND/OR DUE FROM THE CUSTOMER IN THE ORDER GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY OR ANY THIRD PARTY LICENSOR BE LIABLE TO ANYONE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES OR ANY OTHER DAMAGE OF ANY KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY ORDER REGARDLESS OF CAUSE (WHETHER IN AN ACTION IN CONTRACT OR NEGLIGENCE OR OTHER TORTIOUS ACTION), EVEN IF THE PARTY FROM WHOM DAMAGES ARE SOUGHT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY IN THE EVENT OF CUSTOMER'S BREACH OF SECTION 2(SERVICES), TO EITHER PARTY'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 9(INFRINGMENT INDEMNITY) OR IN THE EVENT OF EITHER PARTY'S BREACH OF SECTION 4(CONFIDENTIALITY).
- 10.2 Exclusions. CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

11 GENERAL.

- 11.1 Effective Date and Termination. This agreement shall become effective as of the date upon which Customer clicks I ACCEPT to manifest its assent hereto (such date, the "Effective Date"). The term of this Agreement shall be one year and shall automatically renew every year until terminated by either party by written notice of termination, to be delivered at least thirty (30) days before the then-applicable anniversary of the Effective Date.
- 11.2 Integration and Amendments. This Agreement , Terms of Use and any Orders shall constitute the entire agreement between the Parties with respect to the Services and shall supersede all prior or simultaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the Parties with respect to the Services, whether written or oral. In the event of any conflict between any provision contained in this Agreement, Terms of Use and any Order, the provisions contained in this Agreement shall be controlling. This Agreement may not be amended except by a written agreement executed by both Parties.
- 11.3 Binding Effect and Assignment. This Agreement shall be binding upon inure to the benefit of the Parties and the respective successors and assigns. This Agreement may not be assigned by either Party without the prior written consent of the other Party (such consent will not be unreasonably withheld), except that either Party may assign this Agreement, with advance written notice to (i) its parent or subsidiary, (ii) an acquirer of substantially all of its assets or stock or (iii) a successor by merger, provided that such assignee agrees to be bound by the terms of this Agreement.
- 11.4 Waiver. Either Party's waiver of any item or condition of this Agreement or any Order must be in writing and shall not be construed to be a waiver of any other term or condition thereof. Either Party's waiver of any term or condition of this Agreement or any Order shall not be deemed a waiver of a subsequent breach of the same term or condition contained in

this Agreement or any Order. The failure or delay of either Party to enforce any of its rights under this Agreement or any Order shall not constitute a waiver of such rights or any future rights under this Agreement or any Order.

- 11.5 Independent Contractors. HubCast and Customer are independent contractors. Each Party shall have sole responsibility for the payment of all employees taxes, compensations, wages, benefits; contributions, insurance and like expenses, if any, of its employees. Nothing contained in this Agreement or the Orders shall be construed as (i) either creating a partnership or joint venture between the Parties, or (ii) authorizing the other Party from acting as an agent or representative of the other Party, except to the extent expressly authorized by this Agreement. Neither Party shall make any contract, agreement, warranty or representation on behalf of the other Party.
- 11.6 Jury Trial Waiver. The Parties hereby waive trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity arising out of or in any way related to this Agreement or the Orders.
- 11.7 Choice of Law and Venue. This Agreement and the Orders shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to the conflict of law principles. The Parties hereby submit to the jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States located in Middlesex County, Massachusetts and each Party agrees not to raise and waive any objections to or defense based on the venue of any such court or forum non convenience.
- 11.8 Force Majeure. Neither party shall be responsible for any failure to perform its obligations (other than payment obligations) under this Agreement if performance of such obligations is prevented or delayed by force majeure conditions or any cause beyond its reasonable control.
- 11.9 Survival The obligations of the Parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive such termination, expiration or cancellation.
- 11.10 Notices. All notices, consents, waivers and other communications required or permitted to be given pursuant to this Agreement of any Order, shall be transmitted to the respective party, shall be in writing, and shall be considered to have been duly given or served when sent via email. HubCast may from time to time amend, supplement or modify the terms and conditions of this Agreement.
- 11.11 Section Titles. The section titles are solely for convenience of reference and shall not affect the meaning or construction of any provision of this Agreement.
- 11.12 Severability. If any term or provision of this Agreement or the Orders shall be held or deemed to be or shall in fact be illegal inoperative or unenforceable this provision shall not affect any other provision or provisions contained in this Agreement or the Orders.