

MAKEENA BRAND TERMS OF USE AND AGREEMENT

THIS MAKEENA BRAND TERMS OF USE AND AGREEMENT (“AGREEMENT”) REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING THIS WEBSITE OR ANY OTHER WEBSITES OF MAKEENA, INC., ITS AFFILIATES OR AGENTS (“**MAKEENA**”) WITH LINKS TO THIS AGREEMENT (COLLECTIVELY, THE “**WEBSITE**”) IN ANY WAY, INCLUDING USING THE SERVICES AND RESOURCES AVAILABLE OR ENABLED VIA THE WEBSITE BY MAKEENA, COMPLETING THE REGISTRATION PROCESS, AND/OR MERELY BROWSING THE WEBSITE, OR DOWNLOADING THE MAKEENA’S MOBILE APPLICATION (THE “**APPLICATION**”), YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH MAKEENA, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THESE TERMS OF SERVICE, PERSONALLY OR ON BEHALF OF THE MAKEENA YOU HAVE NAMED AS THE CUSTOMER, AND TO BIND THAT MAKEENA TO THESE TERMS OF SERVICE. THE TERM “**YOU**” OR “**CUSTOMER**” REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE CUSTOMER WHEN YOU REGISTERED ON THE WEBSITE. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS OF SERVICE, YOU MAY NOT ACCESS OR USE THIS WEBSITE OR THE MAKEENA SERVICES (DEFINED BELOW). IF THE PARTIES HAVE ENTERED INTO A WRITTEN AND PEN-SIGNED LICENSE AGREEMENT REGARDING THE SUBJECT MATTER HEREOF, THAT AGREEMENT WILL SUPERSEDE THIS AGREEMENT TO THE EXTENT OF ANY CONFLICT. CAPITALIZED TERMS ARE GENERALLY DEFINED IN SECTION 12.

1. SERVICES

1.1 Registering Your Account. To use certain features of the Services, Customer will need to create an account with Makeena (“**Account**”), and provide certain information as prompted by the Website or Application. Customer represents and warrants that: (a) all required registration information Customer submits is truthful and accurate (“**Account Information**”); and (b) Customer will maintain the accuracy of such information. Customer acknowledges and agrees that Makeena may share certain Account Information with certain third party payment processors (each, a “**Payment Processor**”) as necessary for Campaign (as defined below) management and payment of Rebates to End Users. Makeena may suspend or terminate Customer’s Account in accordance with Section 8. Customer is responsible for maintaining the confidentiality of its Account login information and is fully responsible for all activities that occur under its Account. Customer agrees to immediately notify Makeena of any unauthorized use, or suspected unauthorized use of Customer’s Account or any other breach of security. Makeena will not be liable for any loss or damage arising from Customer’s failure to comply with the above requirements.

1.2 License Grant. Subject to the terms and conditions of this Agreement, Makeena grants to Customer a non-exclusive, non-transferable license, during the Term of this Agreement (a) to use and access the Services solely for Customer’s internal business purposes; and (b) use the Application on any iOS or Android-enabled device that Customer owns or controls. With respect to any Application accessed through or downloaded from the Apple App Store, Google Chrome Web Store, Google Play marketplace or any similar store or marketplace (each, an “**App Store**” and references to an App Store include the corporate entity and its subsidiaries making such App Store available to Customer), Customer agrees to comply with all applicable third party terms of the relevant App Store (e.g. Apple App Store’s “Usage Rules”) (the “**Usage Rules**”). As between Makeena and Customer, the Website, Application and Services (the “**Makeena Properties**”) and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of Makeena and its suppliers. All rights in and to the Makeena Properties not expressly granted to Customer in this Agreement are reserved by Makeena and its suppliers.

1.3 Campaigns. After establishing an Account, the Makeena Services will enable Customer to publish and manage targeted campaigns to be displayed on the Consumer App (each a “**Campaign**”) in connection with one or more products offered for sale by Customer (each, a “**Product**”). Customer may offer End-Users Rebates in connection with those Product(s) subject to the Campaign. Customer acknowledges and agrees that the

Services are a technology platform that enables companies to upload and publish certain promotional materials and Campaigns. Further, Customer acknowledges and agrees that Makeena does not provide any counsel, advice, strategy or guidance on Customer's Campaign's or with any services related to consumer advertising, rebates, deceptive trade practices or marketing. As such, Customer is solely responsible for the content of all Campaigns, and its compliance with all applicable laws, rules and regulations, including, without limitation, providing conspicuous notice of all terms related to Rebates and Rebate Periods.

1.4 Access Restrictions. Customer's access and use of the Services is subject to the following restrictions: (a) Customer shall not license, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Makeena Properties; (b) Customer shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Makeena Properties; (c) Customer shall not access the Makeena Properties in order to build a similar or competitive service; and (d) except as expressly stated herein, no part of the Makeena Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means. Any future, release, update or other addition to the functionality of the Makeena Properties shall be subject to the terms of this Agreement.

2. FEES AND PAYMENTS

2.1 Payment. Customer agrees to pay all fees or charges to its Account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Company reserves the right at any time to change prices and billing methods, either immediately upon posting notice on the Website or by e-mail delivery to Customer. All payments made are nonrefundable unless otherwise expressly stated herein or as required under applicable law.

2.2 Rebate Accounts. Within five (5) business days of the Effective Date, Customer will pay at least five hundred dollars (\$500.00) (the "**Base Amount**") to Makeena to place into an account that can be used to process payments of rebates to End Users (the "**Payment Account**"). Within a mutually agreeable time after each End-User's submission of proof of a Qualifying Purchase to Makeena, Makeena shall draw down the applicable Rebate from the Payment Account, and remit the Rebate to such End-User. In the event the amount in the Payment Account falls below one hundred dollars (\$100.00), Customer will promptly replenish the Payment Account to the Base Amount.

2.3 Taxes. Makeena's fees are net of any applicable sales, use, and excise taxes ("**Taxes**"). If any Makeena products or services, or payments for such products or services, are subject to Taxes in any jurisdiction and Customer has not remitted the applicable Taxes to Makeena, Customer will be responsible for the payment of such Taxes and any related penalties or interest to the relevant tax authority, and Customer will indemnify Makeena for any liability or expense it may incur in connection with such Taxes. Upon Makeena's request, Customer will provide Makeena with official receipts issued by the appropriate taxing authority, or other such evidence that Customer has paid all applicable taxes.

3. CUSTOMER CONTENT AND DATA. Customer grants Makeena a non-exclusive, worldwide, royalty-free and fully paid license to reproduce, display, perform, distribute and use the Customer Content as necessary for purposes of providing the Services and to perform its obligations under this Agreement. The Customer Content hosted by Makeena as part of the Services, and all worldwide Intellectual Property Rights in it, is the exclusive property of Customer. Makeena may use and disclose, in its discretion, any aggregated and de-identified Customer Data. Any disclosure of such information will not identify Customer or any specific use by Customer. Makeena is not obligated to back up any Customer Content; the Customer is solely responsible for creating backup copies of any Customer Content at Customer's sole cost and expense.

4. WARRANTIES AND DISCLAIMERS

4.1 By Customer. Customer represents and warrant to Makeena that (a) Customer has the authority to enter into this agreement personally (if Customer is a natural person), or on behalf of the entity entering into this agreement, and to bind that entity; (b) that any Customer Content provided to Makeena as part of the Services, shall not infringe any copyright, trademark, or patent, or misappropriate any trade secret; (c) Customer will use the Services only for legal purposes and its use of the Services will at all times comply with applicable laws, rules and

regulations; and (d) the Customer Content does not contain any content which is obscene, defamatory, harmful to minors, vulgar or otherwise unlawful. Customer agrees that any use of the Services contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Services.

4.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WEBSITE, APPLICATION, AND SERVICES ARE PROVIDED “AS IS,” AND MAKEENA MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE WEBSITE, APPLICATION, SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY MAKEENA. MAKEENA DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SOFTWARE AND SERVICES SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

5. LIMITATION OF LIABILITY

5.1 Types of Damages. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, MAKEENA OR ITS SUPPLIERS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH MAKEENA’S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE WEBSITE, APPLICATION, SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF MAKEENA HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

5.2 Amount of Damages. THE MAXIMUM LIABILITY OF MAKEENA ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO MAKEENA DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY, IF THE AGREEMENT HAS BEEN IN EFFECT ONE YEAR OR MORE. IN NO EVENT SHALL MAKEENA’S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE MAKEENA’S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF MAKEENA OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

5.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this Section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

6. INDEMNIFICATION

6.1 By Makeena. Makeena will (1) defend, or at its option settle, any suit filed by a third party against Customer (a “Suit”) to the extent such Suit claims that Customer’s use of the Services as permitted in this Agreement constitutes Customer’s infringement of a third party’s intellectual property rights; and (2) pay (i) any final judgment or award directly resulting from such Suit or (ii) those damages agreed to by Makeena in a monetary settlement of such Suit. If any portion of the Application or the Services becomes, or in Makeena’s opinion is likely

to become, the subject of a claim of infringement, Makeena may, at Makeena's option: (a) procure for Customer the right to continue using the Application or the Services; (b) replace the Application or the Services with non-infringing software or services; (c) modify the Application or the Services so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Customer to Makeena for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Makeena Properties. Notwithstanding the foregoing, Makeena shall have no obligation under this section or otherwise with respect to any infringement claim that would not have arisen but for (x) any use of the Makeena Properties not in accordance with this Agreement; (y) any use of the Makeena Properties in combination with other products, equipment, software or data not supplied by Makeena; or (z) any modification of the Makeena Properties by any person other than Makeena or its authorized agents. This subsection states the sole and exclusive remedy of Customer and the entire liability of Makeena, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

6.2 By Customer. Customer will indemnify, defend and hold harmless Makeena and its officers, directors, employees, affiliates, subsidiaries and agents from any claims, suits, losses, damages, expenses and costs (including reasonable attorney's fees) arising out of or relating to Customer's breach or alleged breach of any of Customer's representations or warranties herein, its breach of Section 2.2 or any unauthorized use of the Services.

6.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

7. APPLICATION STORE ADDITIONAL TERMS AND CONDITIONS. The following additional terms and conditions apply to you if you are using an Application from an App Store. To the extent the other terms and conditions of this Agreement are less restrictive than, or otherwise conflict with, the terms and conditions of this Section, the more restrictive or conflicting terms and conditions in this Section apply, but solely with respect to Applications from the App Store. Makeena and you acknowledge that this Agreement is concluded between Makeena and you only, and not with the App Store, and Makeena, not the App Store, is solely responsible for Application and the content thereof. To the extent this Agreement provides for usage rules for Application that are less restrictive than the Usage Rules set forth for Application in, or otherwise is in conflict with, the App Store terms of service, the more restrictive or conflicting App Store term applies, as applicable. The license granted to you for Application is limited to a non-transferable license to use Application on either an iOS or Android device that you own or control and as permitted by the Usage Rules. Makeena is solely responsible for providing any maintenance and support services with respect to Application, as specified in this Agreement (if any), or as required under applicable law. Makeena and you acknowledge that the App Store has no obligation whatsoever to furnish any maintenance and support services with respect to Application. Makeena is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of Application to conform to any applicable warranty, you may notify the App Store, and the App Store may refund the purchase price for Application to you; and to the maximum extent permitted by applicable law, the App Store will have no other warranty obligation whatsoever with respect to Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Makeena's sole responsibility. Makeena and you acknowledge that the App Store is not responsible for addressing any claims of you or any third party relating to Application or your possession and/or use of Application, including, but not limited to: (i) product liability claims; (ii) any claim that Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. This Agreement does not limit Makeena's liability to you beyond what is permitted by applicable law. Makeena and you acknowledge that, in the event of any third party claim that Application or your possession and use of Application infringes that third party's intellectual property rights, Makeena, not the App Store, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. You represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties. Makeena's contact information for any end-user questions, complaints or claims with respect to Application is set forth below. You must comply with applicable third party terms of agreement when

using Application. You agree that the App Store (and its subsidiaries) is a third party beneficiary of this Agreement and will have the right to enforce this Agreement.

8. TERM AND TERMINATION

8.1 Term of Agreement. This Agreement commences on the date Customer accepts it (as described in the preamble) and continues for a period of 12 months (the “**Initial Term**”). This Agreement shall automatically renew for successive 1 year terms (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”), unless either party provides written notice of its intent not to renew this Agreement at least thirty (30) days prior to the end of the then-current term.

8.2 Termination for Cause. Makeena may cancel, suspend or block your use of the Makeena Property without notice if there has been any actual or suspected breach of this Agreement by Customer, including non-payment of fees or failure to maintain the minimum in the Payment Account. Customer’s right to use the Makeena Properties will end once Customer’s Account has been terminated, and any data that Customer may have stored on the Makeena Properties, including Customer Content, may be unavailable later, unless Makeena is required to retain it by law. Makeena is not responsible or liable for any records or information that is made unavailable to Customer as a result of Customer’s termination of its Account. CUSTOMER AGREES THAT MAKEENA WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY TERMINATION OF CUSTOMER’S ACCESS TO THE MAKEENA PROPERTY. Customer’s payment obligations and Sections 2-12 shall survive the expiration or termination of this Agreement.

9. CONFIDENTIALITY. Each party shall hold the other party’s Confidential Information in confidence and shall not disclose such Confidential Information to third parties nor use the other party’s Confidential Information for any purpose other than as required to perform under this Agreement. Such restrictions shall not apply to Confidential Information which (a) is already known by the recipient, (b) becomes, through no act or fault of the recipient, publicly known, (c) is received by recipient from a third party without a restriction on disclosure or use, or (d) is independently developed by recipient without reference to the Confidential Information. The restriction on disclosure shall not apply to Confidential Information which is required to be disclosed by a court or government agency.

10. MISCELLANEOUS

10.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Colorado, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for the county in which Makeena’s principal place of business is located for any lawsuit filed there against Customer by Makeena arising from or related to this Agreement.

10.2 Dispute Resolution.

PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.

Except for either party’s claims of infringement or misappropriation of the other party’s patent, copyright, trademark, or trade secret, any and all disputes between you and Makeena arising under or related in any way to this Agreement, must be resolved through binding arbitration as described in this section. This agreement to arbitrate is intended to be interpreted broadly. It includes, but is not limited to, all claims and disputes relating to your use of any of the App.

YOU AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU AND MAKEENA ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AND MAKEENA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.

The arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), as modified by this section. For any claim where the total amount of the award sought is \$10,000 or less, the AAA, you and Makeena must abide by the following rules: (a) the arbitration shall be conducted solely based on written submissions; and (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties. If the claim exceeds \$10,000, the right to a hearing will be determined by the AAA rules, and the hearing (if any) must take place in Denver, Colorado. The arbitrator’s ruling is binding and may be entered as a judgment in any court of competent jurisdiction. In the event this agreement to arbitrate is held unenforceable by a court, then the disputes that would otherwise have been arbitrated shall be exclusively brought in the state or federal courts located in Denver, Colorado. Notwithstanding the foregoing, we may seek injunctive or other equitable relief to protect our intellectual property in any court of competent jurisdiction.

10.3 International Users. The Website can be accessed from countries around the world and may contain references to the Services and other content that are not available in certain countries. These references do not imply that Makeena intends to announce such Services in all countries. The Services are controlled and offered by Makeena from its facilities in the United States of America. Makeena makes no representations that the Makeena Properties are appropriate or available for use in other locations. Those who access or use the Makeena Properties from other jurisdictions do so at their own volition and are responsible for compliance with local law.

10.4 Export. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit any Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

10.5 CHANGE TO THESE TERMS. PLEASE NOTE THAT THIS AGREEMENT IS SUBJECT TO CHANGE BY MAKEENA IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Makeena will make a new copy of this Agreement available at the Website. We will also update the “Last Updated” date at the bottom of this Agreement. If we make any material changes, and you have registered with us to create an Account, we will also send an e-mail to you at the last e-mail address you provided to us pursuant to this Agreement. Any changes to this Agreement will be effective immediately for new Users of the Makeena Properties and will be effective thirty (30) days after posting notice of such changes on the Website for existing Users, provided that any material changes shall be effective for Users who have an Account with us upon the earlier of thirty (30) days after posting notice of such changes within the Website or thirty (30) days after dispatch of an e-mail notice of such changes to Users who have registered for an Account. Makeena may require you to provide consent to the updated Agreement in a specified manner before further use of the Website, Application and/or the Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Makeena Properties. Otherwise, your continued use of the Makeena Properties constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT AGREEMENT.

10.6 General. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Customer acknowledges that the Makeena Properties contain valuable trade secrets and proprietary information of Makeena, that any actual or threatened breach by Customer of its obligations with respect to Intellectual Property Rights of Makeena may constitute immediate, irreparable harm to Makeena for which monetary damages would be an inadequate remedy. In such case, Makeena may be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Makeena Properties or any portions thereof, that Customer attempts to import into any country or territory be seized, impounded and destroyed by customs officials. Customer shall not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of Makeena, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Makeena may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of Customer. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered

a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible. Customer's relationship to Makeena is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Makeena. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and the Makeena.

11. MAKEENA NAME AND ADDRESS. Makeena's contact information for any End User or User questions, complaints, or claims with respect to Makeena Properties is info@makeena.com.

12. DEFINITIONS. Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

12.1 "Consumer App" means Makeena's consumer facing mobile application that enables consumers to search for, locate and compare natural products brands as well as create shopping lists, compare nutritional information and receive special rebates from their favorite brands.

12.2 "Confidential Information" means any confidential or proprietary information of a party which is disclosed to the other party in a writing marked confidential or, if disclosed orally, is identified as confidential at the time of disclosure and is subsequently reduced to a writing marked confidential and delivered to the other party within 10 days of disclosure, or any information the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary by the disclosing party. For the purposes of clarity, consumer purchases or preferences, and aggregated or anonymized information about a brand's, retailer's, or subscriber's product sales and performance will not be deemed Confidential Information.

12.3 "Customer Content" means any content submitted to Makeena by Customer via the Service or Website.

12.4 "Customer Data" means the data collected by Makeena in connection with the Services.

12.5 "End User" means any end-user of the Consumer App.

12.6 "Intellectual Property Rights" means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

12.7 "Qualifying Purchase" means the purchase by an End-User, during the Rebate Period, of a Product subject to a Rebate.

12.8 "Rebate" means an amount paid, or to be paid, by way of refund via the Consumer App on what has already been paid by a consumer for a particular Product.

12.9 "Rebate Period" means the period of time in which a End-User must purchase Rebate Product in order to be eligible for a Rebate.

12.10 "Services" means the software and certain technology and materials that enable customers to publish and distribute Campaigns and offer Rebates to consumers via the Website and Application.

12.11 "User" means any end-user of the Services.