

## Terms and Conditions of Harmonic Media Services

Harmonic Media, Inc., a Colorado corporation with offices located at 2735 S Raritan St., Englewood, CO 80110 (“**Harmonic Media**”) agrees to provide the Services (as defined herein) to the customer (the “**Customer**”). These Terms and Conditions (this “**Agreement**”) are the terms and conditions upon which Harmonic Media agrees to provide the Services. This Agreement is made part of the Work Description (as defined below) and shall govern the relationship between Harmonic Media and the Customer. By signing and agreeing to the first Work Description, the Customer also agrees to be bound by the terms and conditions contained in this Agreement.

WHEREAS, Harmonic Media has the capability and capacity to provide large format printing, custom graphics, design, and installation services, as described in more detail in Section 1 of the Agreement (the “**Services**”); and

WHEREAS, Customer desires to retain Harmonic Media to provide the said Services, and Harmonic Media is willing to perform such Services under the terms and conditions hereinafter set forth.

1. Services. Harmonic Media shall provide to the Customer the Services and/or the Work Product (as defined below) set out in one or more quotes that have been mutually agreed by the Parties and made a part of this Agreement (each, a “**Work Description**”). Additional Work Descriptions shall be deemed issued and accepted if signed, or electronically agreed to, by Harmonic Media and the Customer. For the avoidance of doubt, this Agreement shall apply to all Work Descriptions

2. Harmonic Media Obligations. Harmonic Media shall perform the Services and/or provide any Work Product set out in each Work Description in accordance with this Agreement.

3. Customer Obligations. Customer shall:

3.1 Respond promptly to any requests from Harmonic Media for instructions, information, or approvals required by Harmonic Media to provide the Services and/or Work Product (and, unless provided for in a Work Description to the contrary, in not later than either (i) the deadline on which Harmonic Media requests such instructions, information, or approvals be provided or (ii) 5 days prior to the delivery date of the Services or Work Product). In the event the Customer fails to timely respond, Harmonic Media may, in its discretion, add a “rush charge” of 25% of the fees for such Services and/or Work Product.

3.2 Cooperate with Harmonic Media in its performance of the Services and provide access to Customer’s premises, employees, contractors, Harmonic Medias and equipment as required to enable Harmonic Media to provide the Services and/or Work Product.

3.3 Take all steps necessary, including obtaining any required licenses, permits, or consents in a timely manner, to prevent Customer-caused delays in Harmonic Media’s provision of the Services and/or Work Product.

3.4 Assume risk of loss of, and damage to, all Work Product immediately upon completion of installation by Harmonic Media or, if no installation is required by the Work Description, when the Work Product is electronically or hand delivered to Customer or tendered to the postal service or a shipping company. Customer bears the risk of loss or damage to Work Product in transit. If the Work Description provides for Customer to pick up Work Product, and Customer fails to get the Work Product within 30 days after the pick-up date, the Work Product will be

destroyed, or disposed of, at Harmonic Media’s option.

4. Fees, Expenses, and Payment.

4.1 In consideration of the provision of the Services and/or Work Product by Harmonic Media, Customer shall pay the fees set out in the applicable Work Description. Unless otherwise provided in the applicable Work Description, fees will be paid by Customer in two installments: 50% upon entering into the Work Description and 50% payable upon completion of the Services and/or delivery or installation of the Work Product. If Customer fails to pick-up any Work Product, schedule installation of Work Product, or approve installation in a timely manner, Customer will pay all resulting fees and expenses immediately upon such failure. All amounts payable to Harmonic Media shall be paid by Customer in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

4.2 Customer shall promptly reimburse Harmonic Media for all reasonable expenses incurred in accordance with the Work Description or as deemed necessary by Harmonic Media and approved by the Customer (including through oral approval). Harmonic Media will provide Customer with receipts and reasonable supporting documentation of the expenses.

4.3 Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder; provided, that in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Harmonic Media’s income, revenues, gross receipts, personnel, or real or personal property, or other assets.

4.4 Except for payments that the Customer has successfully disputed, all late payments shall be subject to the late payment charge specified in the applicable Work Description, or, if no late charge is specified, will bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Harmonic Media for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under this Agreement or at law (which Harmonic Media does not waive by the exercise of any rights hereunder), Harmonic

Media shall be entitled to suspend the provision of any Services and/or delivery or installation of any Work Product without penalty if the Customer fails to pay any undisputed amounts when due hereunder and such failure continues for three days following written notice thereof.

(a) Unless otherwise specified in the applicable Work Description or expressly agreed by Harmonic Media, Customer will pay all fees and expenses, including recurring fees and expenses, via payment card. Customer will provide the payment card information as required by Harmonic Media's authorized payment processor. Customer: (a) authorizes Harmonic Media and/or its payment processor to initiate charges (including recurring charges) for all fees and expenses due and owing for each Work Description until such time as the Agreement is terminated; (b) authorizes payments for any additional fees or expenses that Customer may incur under the Agreement; and (c) represents and warrants that (i) the payment card information Customer supplies is true, correct and complete, (ii) Customer is duly authorized to use such payment method to pay the fees and expenses, including recurring fees and expenses, (iii) payments made and charges incurred by Customer will be honored, and (iv) Customer will pay all fees, expenses and all applicable taxes, if any, in the amounts applicable at the time the payment is due.

#### 5. Limited Warranty and Limitation of Liability.

5.1 Harmonic Media warrants that it shall perform the Services and provide Work Product:

(a) In accordance with the terms and subject to the conditions set out in the respective Work Description and this Agreement;

(b) Using personnel of required skill, experience, and qualifications;

(c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services and Work Product.

(d) Notwithstanding the provisions of Sections 5.1(a) – (b) above, Harmonic Media does not warrant and will not be responsible for Services or Work Product if any non-conformity is caused by or results from information, measurements, instructions, or approvals (including art dimensions) provided to Harmonic Media by Customer or its authorized representatives.

5.2 Harmonic Media's sole and exclusive liability and Customer's sole and exclusive remedy for breach of any warranty contained in Section 5.1 shall be as follows:

(a) Harmonic Media shall re-perform at its expense any Services or Work Product that is not in compliance with the warranty.

(b) Harmonic Media shall use reasonable commercial efforts to promptly cure any breach of warranty; provided, that if Harmonic Media cannot cure such breach within a reasonable

time (but no more than 30 days after Customer's written notice of such breach) Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 7.2.

(c) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 24 hours after delivery of such non-conforming Services or Work Product to Customer.

5.3 HARMONIC MEDIA MAKES NO WARRANTIES EXCEPT FOR THOSE PROVIDED IN SECTION 5.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

5.4 IN NO EVENT SHALL HARMONIC MEDIA BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT HARMONIC MEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

5.5 IN NO EVENT SHALL HARMONIC MEDIA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO HARMONIC MEDIA PURSUANT TO THE APPLICABLE WORK DESCRIPTION GIVING RISE TO THE CLAIM.

#### 6. Intellectual Property.

6.1 For the purposes of this Agreement, "**Intellectual Property Rights**" shall mean copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith.

6.2 Customer warrants that all Intellectual Property Rights that Customer or its authorized representatives provide to Harmonic Media for the provision of the Services and/or Work Product under this Agreement, including without limitation all branding, tag lines and similar information, are owned by, or licensed by, Customer and Customer has the right to use, and allow Harmonic Media to use, all Intellectual Property Rights necessary for Harmonic Media to provide the Services and/or Work Product free and clear of any claims by third parties. Customer hereby agrees to indemnify Harmonic Media for any

and all claims, costs, expenses, or damages incurred by Harmonic Media as a result of the Customer's breach of the foregoing representations. Customer hereby grants Harmonic Media a license to use all such Customer Intellectual Property Rights free of additional charge and on a non-exclusive, non-transferable, non-sublicenseable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Harmonic Media to provide the Services and/or Work Product to Customer.

6.3 Work Made For Hire. After all applicable fees and expenses have been paid by Customer to Harmonic Media in full, Harmonic Media agrees to the following:

(a) that any work product, deliverables, or other works, copyrightable or not, prepared by Harmonic Media and delivered to Customer as a result of performing Services under a Work Description (collectively the "**Work Product**") were specially ordered and commissioned by and were created under the direction of Customer;

(b) all Work Product is a "work made for hire" under the Copyright laws (17 U.S.C. § 101 et seq.;

(c) all Work Product is the sole property of Customer free and clear from all claims and rights of any nature relating to Harmonic Media's contributions and efforts; and

(d) to the extent that any Work Product does not qualify as a work made for hire under U.S. Copyright Law, Harmonic Media hereby assigns to Customer, irrevocably and in perpetuity, any and all right, title, and interest that Harmonic Media may have in and to the Work Product.

## 7. Term, Termination, and Survival.

7.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Work Descriptions, unless sooner terminated pursuant to this Section 7. Notwithstanding the foregoing, if, within one year of the term of this Agreement having expired, the Parties continue to do business together as if this Agreement were still in effect, such practices shall constitute a renewal of the Agreement until the expiration or sooner termination of such business.

7.2 Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:

(a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not dismissed or vacated within 45 days after filing;

(d) Is dissolved or liquidated or takes any corporate

action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3 Notwithstanding anything to the contrary in Section 7.2(a), Harmonic Media may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder: (a) and such failure continues for 10 days after Customer's receipt of written notice of nonpayment; or (b) more than two times in any six month period;

7.4 The rights and obligations of the parties set forth in this Section 7.3 and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

7.5 Entire Agreement. This Agreement, including and together with any related Work Descriptions, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The Work Description may contain additional terms and conditions. To the extent any terms in an applicable Work Description conflicts with the terms of this Agreement, then the terms in the Work Description shall control (with respect to the Services provided thereunder).

8. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing, and signed by an authorized representative of each party.

9. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other party. In the case of the Customer, such notices will be sent to the addresses provided by the Customer in the Work Description.

10. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving.

12. Assignment. This Agreement shall not be assigned without the consent of the other party.

13. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their

respective permitted successors and permitted assigns.

14. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15. Choice of Law; Venue. This Agreement and all related documents are governed by, and construed in accordance with, the laws of the State of Colorado, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado in each case located in Denver, Colorado, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*.

16. Dispute. If a dispute arises between the Parties regarding

their rights or obligations under this Agreement, the Parties shall first attempt to settle the dispute by direct discussions. If the dispute cannot be settled by the parties by direct discussions, any unresolved dispute arising from or relating to this Agreement or a breach of this Agreement shall be resolved as provided by this Agreement and by law.

17. Force Majeure. Harmonic Media shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Harmonic Media including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of thirty (30) days, Customer shall be entitled to give notice in writing to Harmonic Media to terminate this Agreement.