

**Monthlys Inc.**  
**Merchant Agreement**

**ADDITIONAL TERMS AND CONDITIONS**

**1. Ownership of Merchant Content, Products, Services and Other Materials:**

(a) All right, title, and interest in and to Vendor's intellectual property, including but not limited to (i) Vendor's Confidential Information, (ii) any of Vendor's trademarks, trade dress, trade names, and logos, (iii) all copyrighted works of Vendor, and (iv) any concepts, ideas, and inventions of Vendor that are or may be protectable under the patent laws of the United States or any foreign country, and other proprietary rights inherent in or appurtenant to items (i) – (iv) are owned and retained exclusively by Vendor except as expressly provided otherwise herein.

(b) All right, title, and interest in and to Merchant's intellectual property, products, and services including but not limited to (i) Merchant's Confidential Information, (ii) the Merchant Content and any of Merchant's trademark, trade dress, trade names, and logos, (iii) all copyrighted works of Merchant, (iv) any concepts ideas, and inventions of Merchant that are or may be protectable under the patent laws of the United States or any foreign country, and (v) any product, service or personal property, and other proprietary rights inherent in or appurtenant to items (i) – (v) are owned and retained exclusively by Merchant except as expressly provided otherwise herein. Vendor is not a reseller of nor is taking title to any of Merchant's personal property, products or services.

2. **Linking:** The linking arrangement described herein reflects a simple linking arrangement between two Internet sites that are independently owned and operated. Neither party is a publisher, distributor, agent, partner, franchiser or endorser of the other party's site, content or features. Each party retains exclusive editorial control over its own site and has the right to make administrative or operational decisions it deems necessary or helpful in the normal course of business. Each site may link to the other's site by using framing or other boundary control techniques in displaying the content of the site to visitors that access it, and commercial advertisements may appear in the frame border. If linking is requested by a party, party authorizes deep linking to its site.

3. **Warranties:** Merchant represents and warrants that: (i) Merchant is the owner of, or otherwise has the right to use and distribute, the Merchant Content,

the Merchant's Site and all content thereon and other works or materials that are contained in or otherwise necessary for Vendor to make use of the Merchant Content and otherwise exercise the rights as provided in and granted under this Merchant Agreement; (ii) the Merchant Content, the Merchant's Site and all content thereon, and other works or materials owned or used by Merchant in fulfilling its obligations under this Merchant Agreement do not, to the knowledge of Merchant, infringe upon any third party copyright, trademark, patent, trade secret, or other third-party right and do not contain: (a) any content or feature which a reasonable person would consider abusive, profane or offensive, which is false or misleading, defamatory or harassing, excessively violent, or which violates or encourages others to violate any applicable law, or (b) any obscene, pornographic or sexually explicit materials; and (iii) it carries business insurance to protect its assets in reasonable amounts and consistent with industry standards. During the term of this Merchant Agreement, Merchant shall not license or provide the Merchant Content to any competitor of Vendor's without Vendor's prior written approval.

4. **Quality of Services:** Merchant represents and warrants that the Merchant Content and any other content and services it provides for the Site, and related features, materials, or product provided by Merchant, will be developed and transferred using standard industry tools and methods. Any dispute between Merchant and User related to quality of products and services will be the sole responsibility of the Merchant.

5. **Refunds, Returns, Exchanges:** Merchant will establish its own policy in regards to refunds, returns or exchanges. However, the refunds, returns and exchanges policy must be clearly displayed on the Site. If no policy is posted or policy is not acceptable to Vendor, Merchant authorizes Vendor to give a full refund for any products or services at the request of a User. Any refunds will be withheld and paid from any fees owed to Merchant by Vendor.

6. **Customer Service:** Merchant will be solely responsible for responding to all User customer service inquiries in a timely manner. Merchant will provide a customer service phone number or email address on the Site and Vendor will direct all customer service inquiries to that phone number or email address. Merchant will ensure that a customer service representative is available at that phone number or email address to answer all customer service inquiries during regular business hours.

7. **Schedule for Completion of Tasks:** Merchant shall provide all Merchant Content required hereunder on a timely basis, considering Vendor's obligations and duties to launch the Site.

8. **Relationship:** Vendor and Merchant are and shall be independent contractors in their relationship with each other and neither is nor shall be considered an agent, employee, or legal representative of the other for federal or state tax purposes or for any other purposes whatsoever. Neither party has express or implied authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any way, except as specifically set forth herein.

9. **Technical Services and Support:**

(a) By entering this Merchant Agreement, Merchant accepts Vendor's Site in its existing format and system architecture.

(b) Vendor agrees to make all reasonable efforts to ensure that Site remains available at all times. However, server and network malfunctions do occur, and Merchant agrees that it will not seek to hold Vendor liable for any such periodic service outages.

10. **Disclaimer of Warranties:** EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SITE, THE SITE AND DOCUMENTATION IS DELIVERED "AS IS" AND WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND BY EITHER VENDOR OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF SUCH OFFERINGS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY, COMPLETENESS, OR SUITABILITY OF ANY OF THE MATERIAL ON THE SITE OR DOCUMENTATION. VENDOR MAKES NO WARRANTY THAT THE SITE WILL BE AVAILABLE, UNINTERRUPTED, ERROR FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

11. **Limitation of Liability:** UNDER NO CIRCUMSTANCES SHALL VENDOR BE LIABLE TO MERCHANT OR ITS USERS ON ACCOUNT OF ANY CLAIM (WHETHER BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, THE FAILURE OF ANY LIMITED REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, OR FOR ANY DAMAGES OR SUMS PAID TO THIRD PARTIES, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VENDOR'S

TOTAL LIABILITY HEREUNDER WILL NOT EXCEED THE FEES COLLECTED BY VENDOR (LESS ANY FEES REMITTED TO MERCHANT) UNDER THIS AGREEMENT FOR THE PRECEDING TWELVE (12) MONTH PERIOD.

12. **Indemnification:**

(a) Merchant shall indemnify, defend, and hold harmless Vendor (including its officers, directors, employees, members, and agents) from and against any and all suits, losses, liabilities, damages, claims, costs, and expenses (including attorneys' fees) based on or arising directly or indirectly from (i) the negligence or willful misconduct of Merchant, (ii) Merchant's breach of this Merchant Agreement, (iii) Merchant's breach of its representation and warranties contained in this Agreement, (iv) any allegation that the Merchant Content, the Merchant's Site and all content thereon, and other Works or materials owned or used by Merchant in fulfilling its obligations under this Merchant Agreement, infringes the rights of any third party, (v) Vendor's proper use of the Merchant Content as provided for in this Merchant Agreement, (vi) failure of Merchant to pay any Tax, and (vii) any type of escheatment claim.

(b) Vendor shall indemnify, defend, and hold harmless Merchant (including its officers, directors, employees, members, and agents) from and against any and all suits, losses, liabilities, damages, claims (including patent and copyright infringement), costs, and expenses (including attorneys' fees) based on or arising directly or indirectly from (i) the negligence or willful misconduct of Vendor and (ii) Vendor's breach of this Merchant Agreement.

13. **Confidentiality:** Each party acknowledges that it may receive confidential or proprietary information or trade secrets of the other party (collectively, "Confidential Information"). The recipient of Confidential Information shall (i) use such Confidential Information solely in connection with the discharge of its obligations under this Agreement, and (ii) not disclose such Confidential Information to any person other than those of its agents and representatives who need to know such Confidential Information in order to accomplish the objectives for which it was disclosed. The recipient shall inform such agents and representatives of the confidential nature of the information and cause them to observe the limitations on the use and disclosure thereof. Notwithstanding the foregoing, the recipient of Confidential Information may disclose it to the extent necessary to comply with applicable laws or regulations or with an order issued by a court or regulatory body with competent jurisdiction; provided that, in connection with such disclosure, the recipient uses reasonable efforts to

For purposes hereof, notwithstanding the foregoing, Confidential Information does not include information that (i) is or hereafter becomes generally available to the public other than as a result of a disclosure by the recipient, (ii) was already known to the recipient prior to receipt from the disclosing party as evidenced by prior written documents in its possession, (iii) is disclosed to the recipient on a non-confidential basis by a person who is not in default of any confidentiality obligation to the disclosing party, or (iv) is developed by or on behalf of the recipient without reliance on information disclosed by the disclosing party hereunder. The obligations under this Section 15 shall remain in effect from the date of this Agreement through the fifth anniversary of the expiration or termination hereof. The parties agree that any breach by either party or any of its officers, directors or employees, or any provision of this section may cause immediate and irreparable injury to the other party and that monetary damages in such event would be inadequate to compensate the non-breaching party. Consequently, the non-breaching party shall be entitled, in addition to such monetary relief as may be recoverable by law, to such injunctive or other relief as may be necessary to restrain any threatened, continuing or further breach of this section, without showing or proving actual damage and without posing a bond.

14. **Integration:** This Agreement, any applicable Exhibits and/or web site policies associated with the Site constitute the entire agreement between Vendor and Merchant relating to the Site and: (a) supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter; and (b) prevails over any conflicting or additional terms of any quote, order, acknowledgement, or similar communication between parties during the term of this Agreement. No modification to this Agreement will be binding, unless in writing and signed by a duly authorized representative of each of the parties.

15. **Miscellaneous:**

(a) The waiver of any breach of this Merchant Agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach of this Merchant Agreement.

(b) If any term or provision of this Merchant Agreement shall be held invalid or unenforceable, the remainder of this Merchant Agreement will not be affected and each such term or provision of this Merchant Agreement shall continue to be valid, binding and enforceable to the fullest extent permitted by law, except to the extent that such unenforceability may deprive a party of the

benefits reasonably expected by that party as an inducement to enter into or to renew this Merchant Agreement.

(c) Neither party shall be in default by reason of any failure in performance of this Merchant Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, acts of God or of the public enemy, U.S. or foreign governmental acts in either a sovereign or contractual capacity, labor, fire, flood, epidemic, restrictions, strikes, and/or freight embargoes.

(d) Any notices required or desired to be given under this Merchant Agreement shall be effective if in writing and delivered personally or by certified mail, postage prepaid and return receipt requested, to a party hereto at the address for such party first set forth below or to such other address as a party may specify by written notice to the other party similarly given, and shall be effective five days after it was mailed or, if delivered by hand, facsimile, or electronic means, when received.

(e) This Merchant Agreement and the rights and obligations contained herein shall be binding upon and inure to the benefit of Vendor and Merchant, and their respective successors and assigns.

16. **Choice of Law, Venue and Remedies.** This Merchant Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Illinois except that disputes concerning trademark, copyright and patent issues shall be decided under federal law. Any action with respect to this Merchant Agreement shall be brought in or venued to a court of competent jurisdiction in Cook County, Illinois. In any such action, the prevailing party shall be entitled to recover its costs and expenses (including attorneys' fees), in addition to whatever other remedies are available at law, in equity, or otherwise.