



TERMS AND CONDITIONS OF SERVICE

I. **APPLICABILITY.** These HappyBelly Terms and Conditions of Service (these “*Terms*”), together with the terms of any Master Services Agreement (the “*MSA*”) entered into by HappyBelly and Client with respect to the Services (each as defined below) and any Service-specific addendum identified in a Statement of Work (each, an “*Addendum*”) (these Terms, the MSA, and each applicable Addendum, collectively, the “*Agreement*”), apply to all services provided by HappyBelly to Client (together with any goods, products, or Deliverables (as defined below) provided by HappyBelly in connection with such services, the “*Services*”) by HappyBelly Vending - Merchandise Management LLC (“*HappyBelly*”) to the individual or entity identified in the MSA (the “*Client*”). Any additional or different terms and conditions stated in any document provided by Client to HappyBelly (including, without limitation, in any purchase order or ordering document previously or in the future issued by Client) are expressly rejected by HappyBelly and will not be part of the Agreement (or any other agreement between the Parties). The Agreement (including these Terms) may not be modified orally by any representative of HappyBelly and any modifications to the Agreement must be made in a writing signed by Client and HappyBelly. HappyBelly and Client may be individually referred to herein as a “*Party*” and collectively as the “*Parties*.”

II. **SERVICES.** HappyBelly shall provide to Client the Services described in one or more statements of work executed by the Parties (each, a “*Statement of Work*”) under the MSA. HappyBelly shall use commercially reasonable efforts to provide the Services in accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement. Nothing in this Agreement shall give the Client the right to instruct, supervise, control, or direct the details and manner of the completion of the Services; provided, however, that the Services shall be subject to the Client’s general right of inspection throughout the performance of the Services and to secure reasonably satisfactory final completion.

III. **CLIENT OBLIGATIONS.** Client shall: (a) designate one or more of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “*Client Primary Contact*”), with such designation to remain in force unless and until a successor Client Primary Contact is appointed; (b) require that the Client Primary Contact respond promptly to any reasonable requests from HappyBelly for instructions, information, or approvals required by HappyBelly to provide the Services; (c) cooperate with HappyBelly in its performance of the Services and provide access to Client’s premises, employees, contractors, and equipment as required to enable HappyBelly to provide the Services; and (d) take all steps necessary, including obtaining any required licenses or consents, to prevent Client-caused delays in HappyBelly’s provision of the Services.

IV. **FEES AND EXPENSES.** In consideration of the provision of the Services by HappyBelly and the rights granted to Client under this Agreement, Client shall pay the fees and expenses set out in the applicable Statement of Work (the “*Fees*”). Unless otherwise provided in the applicable Statement of Work, the Fees are payable to HappyBelly as follows:

- A. **Services Requiring Revenue Collection.** To the extent the Services include concert tour administration and management, merchandise vending, payroll administration, or any other services whereby HappyBelly collects certain revenue on behalf of Client, Client expressly agrees that HappyBelly shall collect such revenue on Client’s behalf. HappyBelly shall deduct the Fees identified in the applicable Statement of Work from Client’s gross revenue (as collected by HappyBelly), less any applicable taxes and credit card processing fees and expenses (“*Client’s Adjusted Gross Revenue*”) upon the expiration or termination of the Term (as defined in the MSA), and thereafter remit the balance of Client’s Adjusted Gross Revenue to Client within a commercially reasonable period of time following the expiration or termination of the Term.
- B. **Generally.** For all other Services and Fees, Client shall pay the Fees set out in the Statement of Work within thirty (30) days following the date of HappyBelly’s invoice to Client without setoff, deduction, or recoupment. Client 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 Client hereunder; and to the extent HappyBelly is required to pay any such sales, use, excise, or other taxes or other duties or charges, Client shall reimburse HappyBelly in connection with its payment of fees and expenses as set forth in this Section. Notwithstanding the previous sentence, in no event shall Client pay or be responsible for any taxes imposed on, or regarding, HappyBelly’s income, revenues, gross receipts, personnel, or real or personal property or other assets. Any late payments of Fees shall bear interest at the lesser of (a) the rate of 5% per month and (b) the highest rate permissible under applicable law, calculated daily and compounded monthly. Client shall also reimburse HappyBelly 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 HappyBelly does not waive by the exercise of any rights hereunder), HappyBelly shall be entitled to suspend the provision of any Services if the Client fails to pay any Fees when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

V. **TERM; TERMINATION.** This shall continue for the Term identified in the MSA unless earlier terminated in accordance with these Terms. Either Party may terminate this Agreement, with or without cause, by providing the other Party at least thirty (30) days advance notice.

VI. **INTELLECTUAL PROPERTY.** All intellectual property rights, including 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, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Client under this Agreement or prepared by or on behalf of the HappyBelly in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the "**Deliverables**") shall be owned by HappyBelly. HappyBelly hereby grants Client a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Client to make reasonable use of the Deliverables and the Services. Client hereby grants HappyBelly an irrevocable, transferable, sub-licensable, fully paid-up, royalty-free, perpetual license to use any of Client's 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, solely as necessary or useful for HappyBelly to perform the Services.

VII. **INSURANCE.** During the term of this Agreement, Client shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability and workers' compensation insurance, with financially sound and reputable insurers. Upon HappyBelly's request, Client shall provide HappyBelly with a certificate of insurance from Client's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name HappyBelly as an additional insured. Except where prohibited by law, Client shall require its insurer to waive all rights of subrogation against HappyBelly's insurers and HappyBelly.

VIII. **CONFIDENTIALITY.** From time to time during the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs and services, confidential information, and materials comprising or relating to intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure and as established by documentary evidence: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section by the Receiving Party or any of its representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed pursuant to applicable law. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

IX. **LIMITED WARRANTY AND DISCLAIMER.** Subject to Client's compliance with the Agreement, HappyBelly warrants to Client (and only Client) that it shall perform the Services (a) in accordance with the terms and subject to the conditions set out in the applicable Statement of Work and this Agreement, (b) using personnel of industry standard skill, experience, and qualifications, and (c) a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services (the "**HappyBelly Warranty**"). HappyBelly's sole and exclusive liability and Client's sole and exclusive remedy for breach of the HappyBelly Warranty will be for HappyBelly to use reasonable commercial efforts to promptly cure any such breach; provided, that if HappyBelly cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, either Party may, at its option, terminate the Agreement by providing written notice of termination to the other Party. **NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE HAPPYBELLY WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY FOR THE SERVICES AND HAPPYBELLY MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, FOR THE SERVICES, ALL OF WHICH ARE DISCLAIMED AND**

EXCLUDED BY HAPPYBELLY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

X. INDEMNITIES.

- A. HappyBelly Indemnification. HappyBelly shall defend, indemnify, and hold harmless Client from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees, the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers ("**Losses**") arising out of or resulting from any third-party claim alleging: (a) breach by HappyBelly or any of any material representation, warranty, covenant, or other obligations set forth in this Agreement; or (b) that any of the Services or Deliverables or Client's receipt or use thereof infringes or violates the publicity or privacy rights or any other Intellectual Property Rights of a third party arising under the laws of the United States. Except as expressly set forth herein, HappyBelly does not indemnify, nor agrees to defend or hold Client harmless, against any liability, loss, damage or expense (including attorney's fees) relating to any claim whatsoever, including without limitation, a claim for personal injury, death or property damage.
- B. Client Indemnification. Client shall defend, indemnify, and hold harmless HappyBelly, and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**HappyBelly Indemnified Party**"), from and against any and all Losses arising out of or resulting from any third-party claim or direct claim arising out of or in connection with: (a) breach by Client of any material representation, warranty, covenant, or other obligations set forth in this Agreement or applicable law or regulation; (b) gross negligence or more culpable act or omission of Client (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (c) that HappyBelly's use of any of Client's Intellectual Property to perform the Services or to incorporate into the Deliverables in accordance with the terms of this Agreement infringes or violates the publicity or privacy rights or any other Intellectual Property Rights of a third party; and/or (d) liabilities, interest, penalties or fees assessed against HappyBelly arising from any failure by Client to pay any required taxes, costs, fees, wages, or penalties.
- C. Indemnification Procedures. A Party seeking indemnification under this Section (the "**Indemnified Party**") shall give the party from whom indemnification is sought (the "**Indemnifying Party**"): (a) prompt notice (of the relevant claim; provided, however, that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; and (b) reasonable cooperation in the defense of such claim. The Indemnifying Party shall have the right to control the defense and settlement of any such claim; provided, however, that the Indemnifying Party shall not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party shall have the right to participate in the defense at its own expense.

XI. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, (I) IN NO EVENT WILL HAPPYBELLY BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF CAPITAL, PROPERTY DAMAGE, INJURY, DEATH WHICH, IN EACH CASE, CLIENT ACKNOWLEDGES CONSTITUTE CONSEQUENTIAL DAMAGES) ARISING OUT OF, OR IN CONNECTION WITH, ANY SERVICES PROVIDED BY HAPPYBELLY OR THE AGREEMENT (WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE OR HAPPYBELLY WAS ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND (II) HAPPYBELLY'S TOTAL AGGREGATE LIABILITY UNDER THE AGREEMENT OR OTHERWISE RELATED TO CLAIMS ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE FEES PAYABLE BY CLIENT TO HAPPYBELLY UNDER THE STATEMENT OF WORK UPON WHICH THE LIABILITY IS BASED.

XII. RELATIONSHIP OF THE PARTIES. The Parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither Party is a legal representative of the other Party, and neither Party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other Party for any purpose whatsoever, except as necessary or useful for HappyBelly to provide the Services.

XIII. GENERAL. The Agreement: (a) supersedes all prior or contemporaneous oral or written understandings, representations and agreements between the Parties and represents the entire agreement between the Parties with respect to the subject matter

thereof; (b) is solely for the benefit of Client and HappyBelly and no other third parties; and (c) may not be assigned or transferred by Client (by operation of law or otherwise) without HappyBelly's prior written consent. Any purported transfer or assignment in violation of the foregoing will be null and void. If any clause in the Agreement is determined by a court of competent jurisdiction to be invalid, the invalidity of such clause shall not affect the validity of the remainder of the Agreement. Any waiver of any provision of the Agreement by HappyBelly must be made in writing and any waiver by HappyBelly of one provision on one occasion shall not be deemed a waiver on another occasion or with respect to another transaction. Upon expiration or termination of the Agreement, the obligations which by their nature are intended to survive expiration or termination of the Agreement shall survive. The Agreement (including these Terms) and any other agreements between the Parties will be governed by and construed in accordance with the laws of the State of Texas, without regard to the choice of law provisions. Client agrees that the sole and exclusive jurisdiction for resolving any disputes with HappyBelly will be in the state and federal courts in or having jurisdiction over Houston, Texas.

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