

## **SIMPLENIGHT Terms of Service**

**Last Updated: October 1, 2021**

These Terms of Service (“**Terms**”) apply to the services offered by Simplenight Inc. (“**SIMPLENIGHT**,” “**we**,” or “**us**”) through its website located at <https://www.simplenight.com/> (and any related subdomains) (“**Site**”) and other SIMPLENIGHT software applications and systems (collectively, the “**Service**”).

THESE TERMS CREATE A BINDING LEGAL CONTRACT BETWEEN YOU AND SIMPLENIGHT, AND YOU SHOULD READ AND BE SURE YOU UNDERSTAND THEM BEFORE USING THE SERVICE. BY USING THE SERVICE, YOU REPRESENT AND WARRANT THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT ACCEPT THESE TERMS, YOU MUST NOT USE – AND ARE NOT AUTHORIZED TO USE – ALL OR ANY PORTION OF THE SERVICE.

**AS FURTHER DESCRIBED BELOW, THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

### 1. General.

1.1 Description. The Service allows end-users (“**Customers**”) to access and use SIMPLENIGHT’s Global Experience Platform™ that serves as a marketplace, relational database, index, and booking and payment system between global distribution channels (“**Channels**”) and suppliers (“**Suppliers**”) of products, services and experiences (collectively, “**Inventory**”). The Service, among other things, allows Customers to purchase Inventory by providing them with product data, booking, scheduling, and payment processing services.

1.2 Eligibility; Subscribing Entities. To use the Service, you must be at least 18 years of age, or have the consent of your parent or legal guardian. Accordingly, by accepting these Terms, you hereby represent that you are at least 18 years of age, or you otherwise have obtained the consent of your parent or legal guardian. If you use the Service on behalf of a company, entity or organization (each, a “**Subscribing Entity**”), then you represent and warrant that you: (a) are an authorized representative of that Subscribing Entity with the authority to bind such entity to these Terms, and (b) agree to be bound by these Terms on behalf of such Subscribing Entity.

1.3 Other Terms. You may be required to agree to additional terms and conditions imposed by Suppliers and/or Channels in connection with Inventory purchased through the Service, including, by way of example and without limitation, terms relating to pricing, cancellations and refunds (“**Third Party Terms**”). In the event of any conflict or

inconsistency between these Terms and any Third Party Terms, the former will control solely to the extent of the conflict or inconsistency.

1.4 Changes to These Terms. SIMPLENIGHT reserves the right to revise these Terms in its sole discretion at any time and without prior notice to you other than by posting the revised Terms on the Service. Revisions to the Terms are effective upon posting. The Terms will be identified as of the most recent date of revision. Your continued use of the Service after a revised version of these Terms has been posted on the Service by SIMPLENIGHT constitutes your binding acceptance of the revised Terms. SIMPLENIGHT will endeavor to provide you with prior notice of any material changes to these Terms by posting them to the Service. Notwithstanding the preceding sentences of this Section 1.4, no revisions to these Terms will apply to any dispute between you and SIMPLENIGHT that arose prior to the date of such revision.

1.5 Evolving Nature of Service. The Service is continually evolving and changes to the Service may be made at any time. If you do not like the Service or in any way disagree with these Terms, we hope you will let us know and give us constructive feedback. Please feel free to e-mail us at any time at [legal@simplenight.com](mailto:legal@simplenight.com).

1.6 Privacy. Your use of the Service is subject to the Privacy Policy located at <http://www.simplenight.com/privacy-policy> ("**Privacy Policy**"), which is hereby incorporated by reference into these Terms. By using the Service you agree that you have read, understood, and agree to the data collection, use, and disclosure provisions set forth in the Privacy Policy.

1.7 Consent to Electronic Communications. By using the Service, you consent to receive communications from us as further described in the Privacy Policy. Please read the Privacy Policy to learn more about your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements.

## 2. Using the Service.

2.1 Merchant of Record. SIMPLENIGHT will be the merchant of record for all Inventory purchased through the Service. Accordingly, SIMPLENIGHT will receive payments for Inventory purchased through the Service, and will thereafter pay any amounts owed to Channels and Suppliers pursuant to SIMPLENIGHT's agreements with such parties. As merchant of record, SIMPLENIGHT will also reimburse you for cancellations, refunds and other payment-related adjustments (collectively, "**Adjustments**") that SIMPLENIGHT actually receives from the applicable Supplier or Channel. Accordingly, SIMPLENIGHT has no obligation to pay you any Adjustments that SIMPLENIGHT does not actually recover from a Supplier or Channel under the applicable Third Party Terms.

2.2 Third Party Sites. The Service connects with and links to external sites and applications owned or controlled by third parties. You are responsible for evaluating whether you want to access or use them. We are not responsible for and do not endorse any features, content, advertising, products, services or other materials on third party websites or applications available through the Service. Accordingly, you assume all risk and we disclaim all liability arising from your use of third party sites and/or applications.

2.3 Prohibitions. In using the Service, you further agree not to:

- (a) Create a false identity or impersonate another person or entity in any way;
- (b) Restrict, discourage or inhibit any person from using the Service, disclose personal information about a third person through the Service without the consent of such person, or collect information about users of the Service;
- (c) Undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of any aspect of the Service or any part thereof, or attempt to do any of the foregoing;
- (d) Gain unauthorized access to the Service, to other users' names or personally identifiable information, or to other computers or websites connected or linked to the Service;
- (e) Reproduce, distribute, publicly display, publicly perform, sell, trade, resell or exploit any portion of the Service, use of the Service, access to the Service or content obtained through the Service, for any purpose other than as expressly permitted by these Terms;
- (f) Transmit or make available any virus, worm, spyware or any other computer code, file or program that may or is intended to damage or hijack the operation of any hardware, software or telecommunications equipment, or any other aspect of the Service or communications equipment and computers connected to the Service;
- (g) Remove, disable, damage, circumvent or otherwise interfere with any security-related features of the Service, features that prevent or restrict the use or copying of any part of the Service or any content on the Service, or features that enforce limitations on the use of the Service or any content on the Service;
- (h) Use any scraper, spider, robot or other automated means of any kind to access the Service, deep-link to any feature or content on the Service, bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Service;
- (i) Interfere with or disrupt the Service, networks or servers connected to the Service or violate the regulations, policies or procedures of such networks or servers;

Terms; or

- (j) Violate any applicable federal, state or local laws or regulations or these

- (k) Assist or permit any persons in engaging in any of the activities described above.

3. Information Provided to SIMPLENIGHT.

3.1 Registration/Sign-up. You may be required to register with SIMPLENIGHT to gain access to certain portions or features of the Service. You agree to provide true, accurate, current, and complete information as requested in any registration or sign-up form that you submit to SIMPLENIGHT through the Service, and to update this information promptly, and as necessary, to keep it current and accurate.

3.2 Log In Credentials. You are responsible for maintaining the security of your log in credentials required to use or access certain portions or features of the Service, and are fully responsible for all activities that occur through the use of your credentials by you or any third party. You agree to notify SIMPLENIGHT immediately at [legal@simplenight.com](mailto:legal@simplenight.com) if you suspect or know of any unauthorized use of your log in credentials or any other breach of security with respect to your account. SIMPLENIGHT will not be liable for any loss or damage arising from unauthorized use of your credentials.

3.3 Transactional Information. You also agree to provide true, accurate, current, and complete information to SIMPLENIGHT in connection with any purchase of Inventory on or through the Service, and to update this information promptly, and as necessary, to keep it current and accurate.

4. Service Security. You are prohibited from violating, or attempting to violate, the security of the Service. Any such violations may result in criminal and/or civil penalties against you, as well as the termination of your privilege to use the Service, at SIMPLENIGHT's sole discretion. SIMPLENIGHT reserves the right to investigate any alleged or suspected violations and, if a criminal violation is suspected, refer such suspected violation to the appropriate law enforcement agencies and cooperate fully with such investigations, including, but not limited to, the disclosure of any or all of your activities on or related to the Service.

5. Intellectual Property Rights.

5.1 Generally. The content made available on the Service, including without limitation, any text, graphics, photos, software and interactive features, may be protected by copyright or other intellectual property rights, and is solely owned by SIMPLENIGHT or its third party licensors (collectively, "**SIMPLENIGHT Content**"). No SIMPLENIGHT Content may be copied, reproduced, uploaded, republished, transmitted, posted, or distributed in any way without express

written permission of SIMPLENIGHT or as otherwise specified in these Terms or permitted by functionalities of the Service. Modification of SIMPLENIGHT Content is a violation of the copyrights and other proprietary rights of SIMPLENIGHT or its licensors. All design rights, databases, compilation and other intellectual property rights in and to the Site and all other SIMPLENIGHT systems, software, technology and assets used in the Service, in each case whether registered or unregistered, and all related goodwill, are proprietary to and owned solely by SIMPLENIGHT.

5.2 Trademarks. All of SIMPLENIGHT's trademarks, service marks, logos and trade names used in the Service, whether registered or unregistered, are proprietary to and owned solely by SIMPLENIGHT. You may not reproduce, download or otherwise use any such trademarks, service marks, logos or trade names without the prior express written consent of SIMPLENIGHT.

5.3 License Grant to You. You are hereby granted a limited, non-assignable, revocable license to access and use the Service for your personal use, including any SIMPLENIGHT software included in the Service, as provided for in these Terms and pursuant to the authorized features of the Service without modification, so long as you agree to these Terms, subject to SIMPLENIGHT's right to terminate your right to use the Service in its sole discretion at any time.

5.4 No Implied Rights. There are no implied licenses granted in these Terms and all rights not granted to you as a user are expressly reserved by SIMPLENIGHT.

6. Feedback. We appreciate hearing from our users and welcome your comments regarding the Service. Please be advised, however, that if you send us creative ideas, suggestions, inventions, or materials (collectively, "**Feedback**"): (a) you hereby grant to us a worldwide, non-exclusive, irrevocable, perpetual, royalty-free and unlimited license to use the Feedback, whether written or oral, in any manner whatsoever; (b) we will not be subject to any obligation of confidentiality and will not be liable for any use or disclosure of any Feedback; and (c) we will be entitled to unrestricted use of the Feedback for any purpose whatsoever, commercial or otherwise, without compensation to you or any other person.

7. Copyright Infringement. The Digital Millennium Copyright Act (the "**DMCA**") provides recourse for copyright owners who believe that material appearing online infringes their rights under U.S. law. If you believe in good faith that materials posted on the Service infringe your copyrights, you (or your agent) may send SIMPLENIGHT a "Notification of Claimed Infringement" requesting that the material be removed, or access to it blocked. The notice must include the following information:

7.1 A physical or electronic signature of a person authorized to act on behalf of the owner of the works that have been allegedly infringed;

7.2 Identification of the copyrighted work alleged to have been infringed (or if multiple copyrighted works located on the Service are covered by a single notification, a representative list of such works);

7.3 Identification of the specific material alleged to be infringing or the subject of infringing activity, and information reasonably sufficient to allow SIMPLENIGHT to locate the material on the Service;

7.4 Your name, address, telephone number, and email address (if available);

7.5 A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

7.6 A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send SIMPLENIGHT a counter-notice.

Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA; see <http://www.loc.gov/copyright/> for details. Notices and counter-notices with respect to the Service should be sent to 44 East 30<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, NY 10016 (with a copy sent to [legal@simplenight.com](mailto:legal@simplenight.com)). Consult your legal advisor and see 17 U.S.C. § 512 before filing a notice or counter-notice as there are penalties for false claims under the DMCA.

8. Indemnity. You agree to indemnify and hold SIMPLENIGHT, and its officers, directors, employees, agents, successors, and assigns harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected to (a) your access, use, or misuse of the Service or

SIMPLENIGHT Content, or (b) your violation of these Terms. SIMPLENIGHT will use reasonable efforts to notify you of any such claim, action or proceeding for which it seeks an indemnification from you upon becoming aware of it, but if SIMPLENIGHT is unable to communicate with you in a timely manner because of an inactive e-mail address for you, your indemnification obligation will continue notwithstanding SIMPLENIGHT's inability to contact you in a timely manner.

9. Warranty Disclaimers. While we make reasonable efforts to provide you with the Service, you must be aware that we are unable to control users who use the Service and we are unable to control the Internet or other factors that may impact your use of the Service. THE SERVICE,

INCLUDING ALL SOFTWARE, INVENTORY AND CONTENT MADE AVAILABLE ON OR ACCESSED THROUGH THE SERVICE, IS PROVIDED "AS IS" AND WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SERVICE. FURTHER, TO THE FULLEST EXTENT PERMISSIBLE BY

APPLICABLE LAW, WE HEREBY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE SERVICE, OR ANY SOFTWARE, CONTENT OR OTHER MATERIALS CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICE OR ANY SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE WILL NOT BE LIABLE TO ANY EXTENT FOR ANY SOFTWARE, MOBILE APPLICATIONS, CONTENT OR OTHER FUNCTIONALITY OR MATERIALS MADE AVAILABLE ON OR THROUGH THE SERVICE BY ANY THIRD PARTY.

10. Limitation of Liability. IN NO EVENT WILL SIMPLENIGHT BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR OTHER CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST DATA, LOST OPPORTUNITIES, COSTS OF COVER, EXEMPLARY, PUNITIVE, PERSONAL INJURY/WRONGFUL DEATH, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SIMPLENIGHT BE LIABLE IN THE AGGREGATE FOR ANY DAMAGES INCURRED BY YOU THAT EXCEED ONE HUNDRED DOLLARS.

The carriers, hotels and other Suppliers providing Inventory for SIMPLENIGHT are independent contractors and not agents or employees of SIMPLENIGHT or its affiliates. SIMPLENIGHT and its affiliates are not liable for the acts, errors, omissions, representations, warranties, breaches or negligence of any such Supplier or for any personal injuries, death, property damage, or other damages or expenses resulting therefrom. SIMPLENIGHT and its affiliates have no liability and will make no refund in the event of any strike, force majeure or other causes beyond their direct control. SIMPLENIGHT and its affiliates have no responsibility for any additional expense, omissions, delays, re-routing or acts of any government or authority.

11. Basis of the Bargain. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, YOU AGREE THAT BECAUSE SUCH WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND SIMPLENIGHT, AND ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND SIMPLENIGHT, SIMPLENIGHT'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

12. Term and Termination. These Terms are effective when you first access and use the Service and will remain in full force and effect throughout your use of the Service. SIMPLENIGHT may terminate your use of the Service or any features or functionalities of the Service at any time and for any reason, with or without notice, for conduct violating these Terms or upon

SIMPLENIGHT's sole determination. You hereby agree to SIMPLENIGHT's broad right of termination. You agree that if your use of the Service is terminated pursuant to these Terms, you will not attempt to use the Service, and further agree that if you violate this restriction after being terminated, you will indemnify and hold us harmless from any and all liability that we may incur therefor. You are free to terminate your use of the Service at any time; you can simply choose to stop visiting or using any aspect of the Service.

13. Jurisdictional Matters. The Service is controlled and operated by SIMPLENIGHT from its offices within the State of New York. SIMPLENIGHT makes no representation that materials on the Service or through the Service are appropriate or available for use in other locations. Those who choose to access or use the Service from other locations, including from outside the United States of America, do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Access to the Service from jurisdictions where the contents or practices of the Service are illegal, unauthorized or penalized is strictly prohibited.

14. Dispute Resolution.

14.1 SIMPLENIGHT is not a party to, has no involvement or interest in, makes no representations or warranties as to, and has no responsibility or liability with respect to any communications, transactions, interactions, disputes or any relations whatsoever between you and any third party in connection with your use of the Service. Disputes between a user and SIMPLENIGHT are subject to this Section 14.

14.2 Mandatory Arbitration. Please read this carefully. It affects your rights. YOU AND SIMPLENIGHT AND EACH OF OUR RESPECTIVE SUBSIDIARIES, AFFILIATES, PREDECESSORS IN INTEREST, SUCCESSORS, AND PERMITTED ASSIGNS AGREE TO ARBITRATION (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT), AS THE EXCLUSIVE FORM OF DISPUTE RESOLUTION EXCEPT AS PROVIDED FOR BELOW, FOR ALL DISPUTES AND CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE SERVICE. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a jury or judge, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Please visit [www.adr.org](http://www.adr.org) for more information about arbitration.

(a) Commencing Arbitration. A party who intends to seek arbitration must first send to the other, by certified mail, a written notice of intent to arbitrate (a "**Notice**"), or, in the absence of a mailing address provided by you to SIMPLENIGHT, to you via any other method available to SIMPLENIGHT, including via e-mail. The Notice to SIMPLENIGHT should be addressed to Simplenight Inc., 20105 NE 21<sup>st</sup> CT, Miami, FL 33179, Attn: Chief Executive Officer (the "**Arbitration Notice Address**"). The Notice must (a) describe the nature and basis of the claim



or dispute; and (b) set forth the specific relief sought (the “**Demand**”). If you and SIMPLENIGHT do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or SIMPLENIGHT may commence an arbitration proceeding as set forth below or file a claim in small claims court. THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (“**AAA**”) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES AND THE SUPPLEMENTARY PROCEDURES FOR CONSUMER RELATED DISPUTES (the “**Rules**”), AS MODIFIED BY THIS AGREEMENT. The Rules and AAA forms are available online at [www.adr.org](http://www.adr.org). If you are required to pay a filing fee to commence an arbitration against SIMPLENIGHT, then SIMPLENIGHT will promptly reimburse you for your confirmed payment of the filing fee upon SIMPLENIGHT’s receipt of Notice at the Arbitration Notice Address that you have commenced arbitration along with a receipt evidencing payment of the filing fee, unless your Demand is equal to or greater than \$1,000 or filed in bad faith, in which case you are solely responsible for the payment of the filing fee.

(b) Arbitration Proceeding. The arbitration shall be conducted in the English language. A single independent and impartial arbitrator shall be appointed pursuant to the Rules, as modified herein. You and SIMPLENIGHT agree to comply with the following rules, which are intended to streamline the dispute resolution process and reduce the costs and burdens on the parties: (a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner to be chosen by the party initiating the arbitration; (b) the arbitration shall not require any personal appearance by the parties or witnesses unless otherwise mutually agreed in writing by the parties; and (c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(c) No Class Actions. YOU AND SIMPLENIGHT AGREE THAT YOU AND SIMPLENIGHT 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. FURTHER, YOU AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS OF MORE THAN ONE PERSON’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND THAT IF THIS SPECIFIC PROVISIO IS FOUND TO BE UNENFORCEABLE, THEN THE ENTIRETY OF THIS SECTION 14.2 SHALL BE NULL AND VOID.

(d) Decision of the Arbitrator. Barring extraordinary circumstances, the arbitrator shall issue his or her decision within 120 days from the date the arbitrator is appointed. The arbitrator may extend this time limit for an additional 30 days in the interests of justice. All arbitration proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitration award. The award of the arbitrator shall be in writing and shall include a statement setting forth the reasons for the disposition of any claim. The arbitrator shall apply the laws of the State of New York in conducting the arbitration. You acknowledge that these Terms and your use of the Service evidence a transaction involving interstate commerce. The United States Federal Arbitration Act

shall govern the interpretation, enforcement, and proceedings pursuant to the Mandatory Arbitration clause in these Terms.

14.3 Choice of Law; Choice of Forum. These Terms and your use of the Service shall be governed by the substantive laws of the State of New York without reference to its choice or conflicts of law principles. Only if the Mandatory Arbitration clause is deemed to be null and void, then all disputes arising between you and SIMPLENIGHT under these Terms shall be subject to the exclusive jurisdiction of the state and federal courts located in New York County, New York, and you and SIMPLENIGHT hereby submit to the personal jurisdiction and venue of these courts and waive any defense of inconvenient forum.

14.4 Equitable Relief. The foregoing provisions of this Dispute Resolution Section do not apply to any claim in which SIMPLENIGHT seeks equitable relief of any kind. You acknowledge that, in the event of a breach of these Terms by SIMPLENIGHT or any third party, the damage or harm, if any, caused to you will not entitle you to seek injunctive or other equitable relief against SIMPLENIGHT, and your only remedy shall be for monetary damages, subject to the limitations of liability set forth in these Terms.

14.5 Claims. You and SIMPLENIGHT agree that, notwithstanding any other rights the party may have under law or equity, any cause of action arising out of or related to these Terms or the Service, excluding a claim for indemnification, must commence within one year after the cause of action accrues. Otherwise, such cause of action is permanently barred.

14.6 Improperly Filed Claims. All claims you bring against SIMPLENIGHT must be resolved in accordance with this Dispute Resolution Section. All claims filed or brought contrary to this Dispute Resolution Section shall be considered improperly filed. Should you file a claim contrary to this Dispute Resolution Section, SIMPLENIGHT may recover attorneys' fees and costs up to \$5,000, provided that SIMPLENIGHT has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

## 15. Miscellaneous.

15.1 Entire Agreement. These Terms and the Privacy Policy constitute the entire agreement between you and SIMPLENIGHT relating to your use of the Service and supersede all previous and contemporaneous communications, representations, understandings and agreements, either oral or written, between you and SIMPLENIGHT with respect to your use of the Service. These Terms shall not be modified except in writing, signed by both parties, or by a change to these Terms made by SIMPLENIGHT as authorized in these Terms.

15.2 Waiver. A provision of these Terms may be waived only by a written instrument executed by the party entitled to the benefit of such provision. No failure or delay on the part of SIMPLENIGHT in the exercise of any power or right under these Terms shall operate as a waiver thereof. No single or partial exercise of any right or power under these Terms shall operate as a waiver of such right or of any other right or power. The waiver by

SIMPLENIGHT of a breach of any provision of these Terms shall not operate or be construed as a waiver of any other or subsequent breach of these Terms.

15.3 Severability. If any provision of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

15.4 Assignment. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by SIMPLENIGHT without restriction. Any assignment attempted to be made by you in violation of these Terms shall be void. These Terms will be binding upon and inure to the benefit of the parties hereto, and permitted successors and assigns.

15.5 No Agency. You agree that no joint venture, partnership, employment, or agency relationship exists between you and SIMPLENIGHT as a result of these Terms or use of the Service.

15.6 Survival. Sections 1.1-1.4, 1.7 and 2.2-15 will survive any termination of these Terms.

15.7 Headings. The heading references in these Terms are for convenience purposes only, do not constitute a part of these Terms, and shall not be deemed to limit or affect any of the provisions hereof.

15.8 Communication. You can contact SIMPLENIGHT by email at [legal@simplenight.com](mailto:legal@simplenight.com) by mail at 20105 NE 21<sup>st</sup> CT, Miami, FL 33179, Attn: Chief Executive Officer, and by phone at +1 **800.625.2306**