

## Customer Terms of Service

These Customer Terms of Service describe the rights and obligations with respect to the use of our Software. These Customer Terms of Service, together with any Sales Orders, Supplements, or attached exhibits form a binding contract (the “Contract”) between the customer identified in the Sales Order to which these Customer Terms of Service are attached (“Customer”) and PLAYERLYNC, LLC, a Colorado limited liability company (“PL,” “we,” or “us”). The Contract takes effect upon execution of the applicable Sales Order (the “Effective Date”).

### I. Definitions

Whenever used in the Contract, the following terms will have the following specified meanings:

**1.1 “Authorized Users”** means Customer and Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Software under the rights granted to Customer under the Contract and (ii) for whom access to the Software has been purchased hereunder.

**1.2 “Competitor”** means a Person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in a business which is competitive with PL.

**1.3 “Confidential Information”** means information that is disclosed or made available by either Party about its business affairs, products, intellectual property, and other sensitive information designated as, or reasonably understood to be confidential. Without limitation of the foregoing, any data or other information relating to the operation and other characteristics of the Software is Confidential Information of PL, and any Customer Data is Confidential Information of Customer. However, Confidential Information does not include any information that: (a) is independently developed by the recipient; (b) is acquired by the recipient from another source without restriction as to use or disclosure; or (c) is or becomes part of the public domain through no fault or action of the recipient.

**1.4 “Documentation”** means any user manuals, technical manuals, specifications, operating environment and other documentation relating to the Software available via PL’s Knowledge Base and Support Portal located at <https://help.playerlync.com/>.

**1.5 “Software”** means the software modules listed in the applicable Sales Order made available to Customer under the Contract.

**1.6 “Customer Data”** means any data or information belonging to Customer that is processed, stored, made available through, or otherwise used or accessed by the Software.

**1.7 “Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**1.8 “Mark”** means any name, trade name, brand, logo, service mark, trademark or trade dress of a Party.

**1.9 “Party”** means PL, Customer, or any Person that becomes bound by the terms of the Contract.

**1.10 “Person”** means an individual, corporation, partnership, trust, governmental organization, or other legal entity.

**1.11 “Proprietary Rights”** means any patent, copyright, trademark, trade secret or other intellectual property right protected under the laws of the United States of America or any state of the United States of America.

**1.12 “Supplement”** means a written supplement or amendment entered into by the Parties after the date of the Contract.

**1.13 “Third Party”** means any Person other than PL or Customer.

**1.14 “Update”** means any revision, update, correction, or other modification of the Software necessary to ensure that the Software continues to operate in accordance with the applicable Sales Order.

## **II. Access and Use**

**2.1 Provisions of Access.** Subject to the terms of the Contract, PL hereby grants to Customer a non-exclusive, non-transferable right to access and use the Software during the Term, solely for Customer’s internal business operations.

**2.2 Updates.** PL may from time to time provide Updates to Customer, which shall be available at no additional charge. Updates will automatically be pushed to Customer, Customer agrees to download and install Updates in a timely manner, and Customer acknowledges that the Software or portions thereof may not properly operate should Customer delay in downloading or installing the Updates. Customer further agrees that all Updates will be deemed part of the Software and will be subject to all terms and conditions of the Contract.

**2.3 General Restrictions and Limitations.** Customer shall not, and shall not permit any Authorized User to, use the Software or Documentation for any purposes beyond the scope of access granted under the Contract. Without limiting the generality of the foregoing, Customer may not, and shall not allow any Authorized User to: (a) sell, sublicense, assign, publish, transfer, or otherwise make available the Software or Documentation except as expressly permitted under Contract; (b) copy, modify, or create derivative works or improvements of the Software, in whole or in part; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof; (d) remove, obscure, or alter any notice of copyright, trademark, trade secret, or other proprietary right related to the Software or Documentation; or (e) use the Software or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

**2.4 Customer Responsibilities.** Customer shall be responsible for ensuring that its devices, network, and any other systems used to access the Software comply with all specifications set forth in the applicable Sales Order and the PL Knowledge Base located at <https://help.playerlync.com/pl-supported-devices-browsers>. Further, Customer acknowledges that PL shall not be responsible for the accuracy, maintenance or use of any Customer Data processed, stored or otherwise used by the Software.

**2.5 PL Support and Onboarding.** Throughout the Term, PL shall provide Customer with the support services described on PL’s website located at <https://help.playerlync.com/getting-started> and <https://help.playerlync.com/pl-support/contacting-support> and on the applicable Sales Order.

### III. Payment

**3.1 Fees and Payment.** Customer shall pay PL the fees and charges set forth on the applicable Sales Order. All fees shall be paid in advance, in accordance with the billing frequency stated in the applicable Sales Order. Where Customer is billed annually, all fees must be paid within 30 days of the invoice date. Where Customer is billed on a month-to-month basis, all fees must be paid within 3 days of the invoice date.

**3.2 Overdue Charges.** If Customer fails to make any payment when due, without limiting PL's other rights and remedies: (a) PL may charge interest on the past due amount at a rate of 1.5% per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; (b) PL may suspend Customer's access to the Software until the payment is made in full.

**3.3 Billing Information.** Customer shall be responsible for providing complete and accurate billing and contact information to PL and notifying PL of any changes to such information.

### IV. Ownership

**4.1 Ownership.** As between PL and Customer, (a) PL exclusively owns all right, title, and interest, including all Proprietary Rights, in and to the Software, Documentation, and Confidential Information of PL, and (b) Customer exclusively owns all right, title, and interest, including all Proprietary Rights, in and to the Customer Data and Confidential Information of Customer. No title to or ownership of any Software, Documentation or Confidential Information, or any Proprietary Rights associated therewith, is transferred to Customer or any other Person under the Contract, and no title to or ownership of any Customer Data or Confidential Information, or any Proprietary Rights associated therewith, is transferred to PL or any other Person under the Contract.

**4.2 Collection and Use of Information.** Customer acknowledges that PL may collect and store information regarding use of the Software and about equipment on which the Software is accessed and used. Customer agrees that PL may use such information for any purpose related to any use of the Software by Customer or on Customer's equipment, including but not limited to: (a) improving the performance of the Software or developing Updates; and (b) verifying Customer's compliance with the terms of the Contract and enforcing the PL's rights in and to the Software and Documentation.

**4.3 Trademarks and Trade Names.** Each Party reserves all right, title and interest (including, without limitation, any Proprietary Rights) that it may have in any Mark and associated goodwill. No license or right in any Mark or associated goodwill is granted or otherwise transferred by virtue of the Contract. Further, except as specifically set forth in the Sales Order, neither Party will use any Mark of the other Party in any advertising, promotional, marketing or other materials without the prior written consent of the other Party.

**4.4 Notices.** Customer shall include appropriate notices preserving PL's Proprietary Rights in any copy or other reproduction of the Software or Documentation made or authorized by PL in accordance with the Contract.

**4.5 Non-Disclosure of Confidential Information.** Neither Party may disclose any Confidential Information of the other Party to any Person without the prior written consent of the disclosing Party. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (a) to exercise or perform its rights or obligations under the Contract; (b) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law,

provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (c) to establish a Party's rights under the Contract, including to make required court filings.

#### **4.6 Protection of Information.**

- (a) Customer shall implement and maintain security measures reasonably sufficient to protect the Software, Documentation, and Confidential Information of PL from unauthorized access by a Third Party.
- (b) PL shall implement and maintain security measures reasonably sufficient to protect Customer Data and Confidential Information of Customer from unauthorized access by a Third Party.
- (c) If either Party becomes aware of any unauthorized access by a Third Party, it shall promptly notify the other Party of such unauthorized access, and take all steps reasonably necessary to terminate such unauthorized access.

**4.7 Software Audit Rights.** PL may, at its own expense, periodically inspect and audit Customer's use of the Software pursuant to the Contract. If an audit by PL discloses that Customer used the Software in excess of the usage paid for under the Sales Order, PL will provide an invoice to Customer charging Customer for the additional usage.

### **V. Limited Warranties**

**5.1 Media.** PL warrants that (i) the functionality of the Software will not be materially decreased during the Term; and (ii) the Software delivered by PL to Customer will be free of Malicious Code.

**5.2 Exclusions.** PL's warranties under Section 5.1 do not apply to any noncompliance caused by: (a) Customer's devices and networks used to access the Software; (b) any failure of Customer to comply with the Contract; or (c) any modification, damage, misuse or other action of Customer or any Third Party.

**5.3 DISCLAIMER.** THE WARRANTIES SET FORTH IN THIS SECTION 5 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF PL, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY ERROR, DEFECT, OR DEFICIENCY IN ANY SOFTWARE, DOCUMENTATION, OR OTHER ITEMS PROVIDED BY OR ON BEHALF OF PL UNDER THE CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE).

### **VI. Term and Termination**

**6.1 Term.** Unless otherwise terminated in accordance with Section 6.2, 6.3, or 6.4, the Contract shall continue for the Term as defined in the Sales Order. Except as otherwise specified in the Sales Order, and unless either Party provides the required notice of non-renewal, the Contract shall automatically renew: (a) for additional periods equal to the lesser of the expiring Sales Order Term or one year; and (b) at pricing equal to the greater of the pricing set forth in the expiring Sales Order plus 5%, or PL's then-current one-year pricing plus 5%. For purposes of the foregoing, any notice of non-renewal shall

be given: (i) 30 days prior to the expiration of the Term for all Sales Orders with a month-to-month Term; and (ii) 90 days prior to the expiration of the Term for all other Sales Orders.

**6.2 Termination.** In addition to any other termination rights set forth in the Contract:

- (a) PL may terminate the Contract, effective upon written notice to Customer, if Customer fails to pay any amount in accordance with Section 3.1, and such failure continues for more than 15 days; and
- (b) Either Party may terminate the Contract, effective upon written notice to the other Party, if the other Party materially breaches the Contract, and such breach: (i) is incapable of being cured; or (ii) remains uncured for 15 days (or such later date as may be specified by the non-defaulting Party) after the non-breaching Party provides the breaching Party with notice of such breach.

**6.3 Effect of Termination.** If the Contract is terminated pursuant to and in accordance with this Section 6, then, unless otherwise specifically provided for in writing by the Parties:

- (a) The Parties will cooperate to effect an orderly, efficient, effective and expeditious termination of the Parties' respective activities under the Contract;
- (b) The right of Customer to access or use the Software or Documentation will terminate effective as of the effective date of the termination;
- (c) Customer will promptly return to PL or destroy any Documentation in the possession or control of Customer;
- (d) PL will promptly return to Customer or destroy any Customer Data in its control or possession;
- (e) Without limiting the remedies otherwise afforded to Customer under the Contract or applicable law, if: (i) Customer terminates the Contract pursuant to Section 6.2(b); or (ii) PL terminates the Contract without cause prior to the expiration of the Term, then Customer will be relieved of any obligation to pay any fees or charges attributable to the period after the effective date of such termination; and
- (f) Without limiting the remedies otherwise afforded to PL under the Contract or applicable law, if: (i) PL terminates the Contract pursuant to Section 6.2(a) or 6.2(b); or (ii) Customer terminates the Contract without cause prior to the expiration of the Term, then all fees that would have become payable had the Contract remained in effect until the expiration of the Term will become immediately due and payable by Customer.

**6.4 Effect of Termination or Expiration of Trial Period or Freemium Offering.** NOTWITHSTANDING ANY OF THE FOREGOING, IF THE CUSTOMER IS ACCESSING OR USING THE SOFTWARE PURSUANT TO A TRIAL PERIOD OR FREEMIUM OFFERING, EITHER PARTY MAY TERMINATE THE CONTRACT AT ANY TIME FOR ANY REASON BY PROVIDING THE OTHER PARTY WRITTEN NOTICE THEREOF. UPON EXPIRATION OR TERMINATION OF THE TRIAL PERIOD OR FREEMIUM OFFERING, ANY ACCESS OR USE OF THE SOFTWARE GRANTED TO CUSTOMER SHALL TERMINATE UNLESS CUSTOMER EXECUTES A SALES ORDER FOR PAID ACCESS TO THE SOFTWARE. ANY DATA OR CONFIGURATION

ESTABLISHED IN THE TRIAL SYSTEM OR FREEMIUM SYSTEM MAY NOT CONTINUE ON A PRODUCTION PLATFORM. IF CUSTOMER UPGRADES TO PAID ACCESS FOR THE SOFTWARE, THE CONTRACT WILL CONTINUE TO GOVERN CUSTOMER'S USE OF THE SOFTWARE FOR THE APPLICABLE TERM.

**6.5 Survival.** Any and all liabilities accrued prior to the effective date of the termination, and the Parties' respective rights and obligations under Sections 4 and 7 of these Customer Terms of Service will survive termination or expiration of the Contract.

## **VII. Limitation of Liability and Indemnification**

**7.1 No Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFIT, REVENUE, DATA, BUSINESS OR USE.

**7.2 Limitation of Liability.** THE MAXIMUM AGGREGATE LIABILITY OF PL IN TORT, CONTRACT, SHALL NOT EXCEED THE COMPENSATION PAID BY CUSTOMER TO PL DURING THE PRECEDING 12 MONTHS OF THE CONTRACT.

**7.3 Indemnification by PL.** PL shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a Third Party alleging that the use of the Software as permitted hereunder infringes or misappropriates the intellectual property rights of a Third Party (a "Claim Against Customer"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer; provided that Customer (a) promptly gives PL written notice of the Claim Against Customer; (b) gives PL sole control of the defense and settlement of the Claim Against Customer (provided that PL may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to PL all reasonable assistance, at PL's expense.

**7.4 Indemnification by Customer.** Customer shall defend PL against any claim, demand, suit or proceeding made or brought against PL by a Third Party alleging that Customer's use of the Software infringes or misappropriates the intellectual property rights of a Third Party, if such infringement or violation occurs due to Customer's modification of the Software in breach of the Contract (a "Claim Against PL"), and shall indemnify PL for any damages, attorney fees and costs finally awarded against PL as a result of, or for any amounts paid by PL under a court-approved settlement of, a Claim Against PL; provided that PL (a) promptly gives Customer written notice of the Claim Against PL; (b) gives Customers sole control of the defense and settlement of the Claim Against PL (provided that Customer may not settle any Claim Against PL unless the settlement unconditionally releases PL of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

**7.5 Exclusive Remedy.** This Section 7 states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of claim described in this Section.

## **VIII. General**

**8.1 Compliance with Laws.** Each Party will comply with all applicable laws, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction.

**8.2 Excused Performance.** Neither Party will be liable for, or be considered to be in breach or default under the Contract on account of any delay or failure to perform as required by the Contract as a result of any cause or condition beyond such Party's reasonable control. This Section 8.2 will not apply to a monetary obligation of any Party.

**8.3 Notices.** Any notice provided under the Contract must be in writing and delivered by personal delivery, postal mail, facsimile, or email to the address specified on the Sales Order. Either Party may from time to time change its address by giving the other Party notice of the change in accordance with this Section 8.3.

**8.4 Assignment.** Customer may not assign or sublicense (voluntarily, involuntarily, by operation of law or otherwise) the Contract without the prior written consent of PL. Subject to the foregoing, the Contract will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**8.5 Non-Waiver.** Any failure by either Party to insist upon or enforce performance by the other Party of any of the provisions of the Contract or to exercise any rights or remedies under the Contract or otherwise by law will not be construed as a waiver or relinquishment of such Party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather, the provision, right or remedy will be and remain in full force and effect.

**8.6 Governing Law.** THE CONTRACT WILL BE INTERPRETED, CONSTRUED AND ENFORCED IN ALL RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

Except as otherwise provided in the Contract, any claim, controversy or dispute of whatever nature between or among any of the Parties arising out of or relating to the Contract shall be resolved by final and binding arbitration administered by the American Arbitration Association ("AAA") according to the Commercial Arbitration Rules. The arbitration shall be conducted by a single arbitrator mutually selected by the Parties. If the Parties cannot agree on an arbitrator within thirty (30) days from the filing of a demand for arbitration with the AAA, the arbitrator shall be chosen pursuant to the Commercial Rules.

**8.7 Entire Agreement.** The Contract constitutes the entire agreement, and supersedes any and all prior agreements, between the Parties with respect to the Software, Documentation, and any other items provided or to be provided under the Contract.

**8.8 Amendments.** PL has the right, in its sole discretion, to amend these Customer Terms of Service from time to time, and amended terms become effective on posting. Notwithstanding Section 8.3, PL may notify Customer of amendments to these Customer Terms of Service by posting a notification to the following webpage: <https://help.playerlync.com/pl-data-security-privacy> Customer is responsible for reviewing any such amendments. Customer's continued use of the Software after the effective date of the amendments will be deemed acceptance of the amended terms.