

Terms of Service

MartzSocial, LLC ("MartzSocial") grants you ("Customer") a worldwide, non-exclusive, non-transferable, non-perpetual, non-sublicense-able, license to use subscription services, services and technologies as provided by MartzSocial ("Content") according to the terms of this Subscription License Agreement ("Agreement").

This Agreement will be subject to one or more written and separate quotes, sales orders, service orders, purchase orders, etc. (collectively, "Order") as provided by MartzSocial to Customer. To the extent that such Order contains legal and/or pricing terms that differ from this Agreement, such terms of the Order shall prevail. The parties agree to the following terms:

Subscription Term and Fees

Customer acknowledges that the Subscription Term ("Subscription Term") and corresponding subscription fees ("Subscription Fees") for platform access, services and Content will be specified within the Order under which such Content is acquired by Customer.

Customer's Responsibilities

Customer agrees to following with regards to Customer's responsibilities in using the Content and corresponding technologies and services used to deliver the Content, of which the violation of any is grounds for suspension of delivery of Content or termination of this Agreement, at MartzSocial's sole discretion:

- 1.Unauthorized Use – Customer shall use commercially reasonable efforts to prevent unauthorized, unlicensed access to or use of the technology and services used to deliver Content.
- 2.Reverse Engineering – Customer shall not reverse engineer or otherwise attempt to gain unauthorized access to any portion of the technology used to deliver Content.
- 3.Interference – Customer shall not interfere with MartzSocial's delivery of its platform, services or content to its other Customers.
- 4.Legal Compliance – Customer shall use the Content in strict accordance with applicable laws and government regulations, including, but not limited to, employment laws, intellectual property laws, and laws governing contracts.

Intellectual Property Rights

Unless otherwise specified within an Order, Customer shall have rights of ownership with regards to only the Content created explicitly for the Customer. However, Customer shall have no such rights with regards to the technologies provided by MartzSocial to deliver such Content to Customer. Any trademarks appearing in Content and within the technologies used to deliver such Content belong to their respective owners and this Agreement does not confer any rights under United State Trademark Law for Customer to use such trademarks other than as contained with the Content.

Automatic renewal

Customer understands and agrees that unless Customer provides at least thirty (30) days' notice prior to the end of the current Subscription Term of its intent to not renew, the subscription will automatically renew for the same Subscription Term. Licensee acknowledges that failure to provide such notice will subject Customer to responsibility of payment in full of Customer Fees for the new Subscription Term.

Payment Terms and Taxes

Customer agrees to the following with regards to Payment Terms for the Content:

1. Terms and Method of Payment – Customer shall pay Subscription Fees for its use of the Content according to the terms of the applicable Order. Customer shall pay all Subscription Fees by credit card or ACH, unless otherwise agreed upon.
2. Pre-Payment – All Subscriptions require pre-payment at or before the beginning of each Monthly Subscription Term, so specified in the applicable Order unless customer is granted credit by MartzSocial.
3. Billing Cycle and Overages – Subscription Fees are billed up to thirty (30) days prior to the Subscription Term's renewal. One-Time Content Usage Credits are prepaid by the customer, before being released for usage. Any overage charges from Customer's consumption of Content are billed in the following month.
4. Disputes – Customer may dispute Subscription Fees within thirty (30) days of their due date by submitting a written dispute to MartzSocial. Customer waives any further claim of dispute for Subscription Fees unless this process is followed. Customer shall not withhold payment of the disputed charges and shall remain liable for all Subscription Fees until the

parties resolve the dispute. If the parties cannot reach resolution, the dispute shall be resolved by arbitration according to the terms of this Agreement. Once the dispute is resolved, MartzSocial will provide a refund to Customer in the agreed amount. Acceptance of such refund by Customer constitutes full satisfaction of the dispute and Customer waives any further claims with regard to the dispute.

5. Payment Decline – If Customer’s payment method is rejected, Customer agrees to pay a pro-rated interest of one-point five percent (1.5%) on any outstanding balance.

6. Suspension for Lack of Payment – If Customer fails to pay Subscription Fees by their due date, MartzSocial may suspend Customer’s access to the Content. Customer acknowledges that it remains liable for payment in full of Subscription Fees due, even if Customer’s access to the Content is suspended.

7. Termination for Lack of Payment – If Customer fails to pay Subscription Fees within thirty (30) days of their due date; MartzSocial may assess an additional \$50 late fee and reserves the right to terminate this Agreement. Customer acknowledges that it remains liable for payment in full of Subscription Fees due, late fees, accrued interest and all costs associated with collection, even if Customer’s access to the Content is terminated for non-payment.

8. Termination by Customer – If Customer cancels their Subscription, their account access will be suspended at the end of their current Subscription Term. If Customer wishes to reinstate their Subscription, they must do so within sixty (60) days of the Termination Date. Failure to do so will result in deletion of the Customer’s Subscription Account.

9. Refunds –Subscription Fees are non-refundable

10. Taxes – Customer acknowledges that it is solely responsible for the payment of any taxes imposed by local, state, or federal governments in Customer’s acquisition and use of the Content.

Digital Millennium Copyright Act Compliance

MartzSocial adheres to the terms of the United States’ Digital Millennium Copyright Act of 1998 (DMCA) as found under United States law (17 USC. B§ 512). If any party believes that their copyrights are infringed by Content as provided by MartzSocial, such party should provide MartzSocial with a written notice via mail, fax, or email that contains the following information:

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that claimed to have been infringed;
- A description of where the infringing material is located with Content;
- A contact address, telephone number, and email address;
- A statement that such claim is under the good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; AND
- A declaration signed by the party, made under penalty of perjury, that the above information in such notice is accurate and that the party is either the copyright owner or authorized to act on the copyright owner's behalf.
- MartzSocial will only respond to such notices that substantially comply with the above requirements. MartzSocial will investigate claims and then notify such parties by the method of contact provided.

Limitations of Warranty and Liability

Customer agrees to following with regards to MartzSocial's warranties and limits of liability as related to Customer's use of the Content:

1. No Warranties – MartzSocial disclaims all warranties, express or implied, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose.
2. No Guarantees – MartzSocial makes no guarantees with regards to the effect of the Content on Customer or its business.
3. No Liability – Customer is solely liable for Customer's use of the Content. MartzSocial is not liable under any legal theory for damages of any type that Customer may suffer due to Customer's use of the Content as well as from Customer's inability to use the Content, including, but not limited to, loss of revenue or loss of opportunity.

Indemnity

Customer shall indemnify and hold harmless MartzSocial, MartzSocial's officers, and affiliates as necessary with regard to any legal action or damage claims that are a result of Customer's use of the Content.

Disclaimer of Damages

FOR ALL EVENTS AND CIRCUMSTANCES, MARTZSOCIAL AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE USE OF MARTZSOCIAL'S CONTENT, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO CANCELLATION OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL MARTZSOCIAL OR ITS AFFILIATES BE LIABLE TO CUSTOMER FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF MARTZSOCIAL OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AT ALL TIMES THE SOLE EXTENT OF MARTZSOCIAL'S LIABILITY WILL BE LIMITED TO THE AMOUNTS CUSTOMER HAVE PAID TO MARTZSOCIAL WITHIN THE MONTH PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

MartzSocial's Responsibilities

The parties agree to following with regards to MartzSocial's responsibilities in providing the Content:

1. Plagiarism Screening – As part of its platform, all content created by MartzSocial's contracted writers, are screened for potential plagiarism using both 3rd party plagiarism technology and MartzSocial's proprietary technology. Screening is performed, prior to deliver of content to Customers for their review and acceptance. Content that fails screening is rejected and not sent to the Customer. Within five (5) days from the date of content acceptance by the Customer, if the content is found by either party to be partially or wholly plagiarized, or cited without proper attribution; MartzSocial agrees to re-write said content solely at its own expense for the Customer.

2. Distribution Format – MartzSocial will supply Content in rich-text format (RTF files) and HTML format (HTML files) through electronic download or delivery, unless otherwise requested by Customer.

3. Reasonable Efforts – MartzSocial will use commercially reasonable efforts to make sure that the technology used to deliver the Content is available for download 24 hours a day, 7 days a week, except for (a) planned downtimes for system maintenance, which we will try to schedule during non-peak hours; AND (b) any unavailability caused by circumstances beyond MartzSocial's reasonable control, including but not limited to, acts of God or government; natural disasters such as flood, fire, earthquakes; civil unrest or terrorism; labor problems such as strikes; or Internet communication issues such as service provider failures or delays.

4. Support – MartzSocial will provide support to paid subscription customers via telephone and email by a designated account representative between the hours of 9am to 5pm, Pacific Standard Time, Monday through Friday, except on designated U.S. national holidays. Outside of these hours, MartzSocial provides email support.

Price Increases

With thirty (30) days written notice to Customer, MartzSocial reserves the right to increase Subscription Fees by no more than twenty percent (20%) of their prior amount. During this period, Licensee may terminate this Agreement with no additional obligation if they do not wish to pay such increase.

Termination/Expiration

The parties agree to following with regards to termination/expiration of this Agreement:

1. Termination by Customer – Prior to Customer's Subscription License renewal or within the period of notice for a Price Increase, Customer may terminate this Agreement with written notice to MartzSocial at no further obligation or penalty. Customer remains fully liable for payment of any Subscription Fees due through the end of the current Subscription Term.

2. Termination by MartzSocial Due to Customer's Breach – Customer understands and agrees that MartzSocial may terminate this Agreement immediately without prior notice should Customer breach the terms of this Agreement. Customer shall remain liable for payment of all Subscription Fees until the end of the current Subscription Term.

3. Termination by MartzSocial Due for Convenience – Customer understands and agrees that MartzSocial may terminate this Agreement with five (5) days written notice to Customer. Customer shall remain liable for payment of all Subscription Fees up through the date of actual termination.

4. Effect of Termination/Expiration – Customer understands and agrees that once this Agreement ends, Customer will no longer be able to access the Content and that further use of Content provided by Customer. It is the Customer's obligation to download any Customer-owned content, prior to termination.

Anti-Solicitation

For a period of eighteen (18) months after the expiration or termination of this Agreement, Customer shall not hire, solicit, or induce or assist any third party in soliciting or inducing any employee or contractor of MartzSocial that Customer learned about through the performance of this Agreement, to leave his or her employment with MartzSocial. In the event Customer breaches its obligations, Customer shall pay MartzSocial, as liquidated damages and not as a penalty, an amount equal to one hundred percent of such employee's first year salary with the Customer or third party (including bonuses and deferred income of any kind) within thirty (30) days of each such breach. For the purposes of determining "solicitation," the advertisement of employment opportunities by Customer in any public forum (including magazines, trade journals, publicly accessible internet sites, classified advertisements, or job fairs open to the public) shall not be considered "solicitation", and the hiring of an individual as a result of his or her response to such a general employment advertisement or in response to his or her unsolicited employment inquiry shall not constitute a breach of this Agreement or result in any liquidated damages.

Publicity

Customer grants MartzSocial the right to display Customer's logo and/or trade name in MartzSocial's advertising, including display on MartzSocial's website, signifying that Customer is a customer of MartzSocial.

Notices

Customer understands and agrees that Customer will receive all notices regarding this Agreement in written form, either by standard mail or email delivery.

No Other Relationship or Legal Interest

The Parties agree that this Agreement does not create any other relationship or legal interest between Customer and MartzSocial, including, but not limited to, any sales contract, license, title, partnership, or other legal right, except as specified by this Agreement.

Invalidity of Provision

The Parties agree that even if a court invalidates a provision of this Agreement, the remaining Agreement provisions are still valid and remain in full effect.

Choice of Law

The Parties agree that the laws of Franklin County and the State of New York, without regard to its conflict of law principles, are to be used with regards to any interactions with the Content as well as with MartzSocial.

Arbitration of Disputes

The Parties agree that if the Parties cannot amicably resolve any legal dispute or damage claim that should arise from Customer's interactions with the Content Customer agree to resolve any such dispute or damage claim by arbitration. The arbitration proceeding shall be conducted in Los Angeles, California in accordance with the Commercial Arbitration rules of the American Arbitration Association then in effect with one (1) arbitrator to be selected by mutual agreement of both Customer and us. If the parties cannot agree on an arbitrator, then the American Arbitration Association shall select an arbitrator from the National Panel of Arbitrators. The laws of the State of California shall apply to the arbitration proceedings. The Parties agree that the arbitrator cannot award punitive damages to either of MartzSocial and agree to be bound by the arbitrator's findings. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

Impossibility

The Parties agree that to the extent either Customer or MartzSocial cannot adhere to the terms of this Agreement due to circumstances outside either party's control, such responsibility is excused until the circumstances preventing fulfillment of such responsibility are removed.

Waiver

Customer understands and agrees that any waiver of Customer's adherence to the terms of this Agreement is not considered a waiver of Customer's future adherence to the terms of this Agreement.

Assignment

Customer may not assign this Agreement to any other party without the express written permission of MartzSocial, which shall not be unreasonably withheld.

Transfer of Ownership

Customer agrees that even if MartzSocial is merged with or is acquired by another company that assumes control of MartzSocial, this Agreement still continues in full force and effect.

Modification

The Parties agree that no modification can be made to this Agreement without the written consent of both Parties.

Headings

The Parties understand and agree that the headings in this Agreement are included only as a matter of convenience and in no way define, limit or extend the scope of this Agreement or any of its provision.

Entire Agreement

This Agreement, and any corresponding Order, constitute the entire agreement between the parties in connection with the subject matter hereof and supersedes all agreements, proposals, representations and other understandings, oral or written, of the parties and any current or subsequent purchase order(s) provided by Customer.

Digital Signature

By using the service, Customer acknowledges that it agrees to these terms and conditions, and that it waives any and all defenses with regards to physical signature of this Agreement.