



SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (“AGREEMENT”) GOVERNS YOUR PURCHASE AND ONGOING USE OF SOFTWARE FROM EMMA, INC. (“EMMA”).

Emma is Web-based software as a service that enables organizations to upload, store and manage customer and member lists, create and send email campaigns to those lists, and track and archive the results of those campaigns. For the purposes of this Agreement, we will refer to ourselves as “Emma” and to such legal entity as the “Customer.” Any use of the pronoun “you” or “your” in this Agreement refers to such legal entity as Customer, and any uses of the pronouns “we” or “us” refer to Emma.

You may not access the Emma Software if you are a direct competitor of Emma, except with our prior written consent. In addition, you may not access the Emma Software for purposes of monitoring the availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between you and us as of the date you accept this Agreement (the “Effective Date”) and continues as long as there is a current Order between the parties. The parties agree as follows:

1. DEFINITIONS.

1.1 “Customer Content” means the Customer content, information and data that you enter into the Software in connection with your use of the Emma Subscription.

1.2 “Emma Account” means the Web-based email-marketing account provided by Emma to you for use by your Users and which is accessible to your Users via usernames and passwords created and assigned by you.

1.3 “Emma Subscription” or “Emma Service” means software as described in the Order for which you have paid the applicable fees, which include our provision of access to the Emma Software over a computer network.

1.4 “Documentation” means any manuals, documentation and supporting materials as may be made available to you by us for the Emma Subscription.

1.5 “Order” means the agreed upon order identifying the Emma Subscription and setting forth any additional terms and conditions relating to the Emma Services. Each agreed upon Order will (a) reference this Agreement, (b) be incorporated by reference into this Agreement, and (c) be subject to the terms and conditions of this Agreement.

1.6 “Software” means the machine-readable object code only version of the software program that Emma makes available to its customers via the Internet as part of the Emma Subscription.

1.7 “User” means any of your employees, representatives, partners and customers for whom access to the Emma Subscription is authorized by you.

1.8 “Third Party Services” means third party products, applications, services, software, networks, systems, directories, websites, databases and information obtained separately by Customer to which Emma Software links, or which Customer may connect to or enable in conjunction with Emma Software, including, without limitation, Third Party Services which may be integrated directly into Customer’s Emma Account by Emma or at Customer’s direction.

2. EMMA SERVICES.

2.1 Provision of Subscription by Emma. You hereby engage Emma to provide the Emma Subscription for you. Subject to the terms and conditions of this Agreement, Emma shall provide the Emma Subscription as described in the applicable Order and this Agreement.

2.2 Rights. Emma hereby grants you a non-exclusive right to access and use the Emma Software through the Emma Account solely for your internal business purposes and in accordance with the Order, Documentation and the terms and conditions in this Agreement. You shall not, and shall not permit any User to, use the Emma Subscription, Software, or Documentation except as expressly permitted in this Agreement.

2.3 Restrictions. Except as expressly permitted in this Agreement, you shall not provide or permit use of or access to the Emma Subscription to any third party without the prior written approval of Emma in each instance. You shall not use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of the Software. You shall not

reverse engineer, decompile or disassemble the Software. Nothing in this Agreement entitles Customer to access or use the source code of the Software.

2.4 Customer Content License Grant. Subject to the terms and conditions of this Agreement, you hereby grant to Emma, during the Term, a non-exclusive, non-transferable (except as permitted by Section 13.1), non-sublicensable license to use the Customer Content solely for the limited purpose of performing the Emma Subscription for you under this Agreement.

3. PRICING AND PAYMENT FOR SERVICES.

3.1 Fees. The fees for the Emma Subscription are charged according to the pricing specified for your Emma Account and set forth in the applicable Order ("Fees"). You shall pay the Fees in accordance with the terms of this Agreement and the applicable Order. Fees do not include any taxes, fees, duties, and other governmental charges arising from the payment of any fees or any amounts owed to Emma under this Agreement (excluding any taxes arising from Emma's income or any employment taxes). Unless otherwise expressly provided herein, all payment obligations are non-cancelable and all amounts paid are non-refundable.

3.2 Payment. Unless the applicable Order provides otherwise, you shall pay correctly invoiced Fees and expenses within 30 days after the invoice date for the applicable invoice for such Emma Subscription. All payments will be made in United States dollars. By entering credit card and billing information into the Emma system, you are authorizing us to charge that card for all Fees. All credit card transactions are handled through a secure HTTPS connection with a trusted third-party credit card processor. Emma may suspend your Emma Account in the event you fail to pay the appropriate account Fees on time, until such time as proper payment is received. In the event that your Emma Account is frozen for improper usage or non-payment, Emma may continue to charge you for the usage of the Emma Account, such usage includes storage of information, monthly activities and automatic updates that occur inside the Emma Account. If Customer's account is delinquent in payment 30 days or more from notice of non-payment, Emma reserves the right to not grant Customer access to the Customer Content stored inside the Emma Account. Any dispute to a charge on your invoice must be made within 60 days after the date of the invoice that initially contained the disputed charge.

3.3 Overdue Payments. In addition to any other remedies available to Emma hereunder, if Customer fails to pay any amounts when due, Customer shall pay Emma a late payment charge equal to 1.5% per month (or the highest rate permitted by law, if lower), together with all costs and expenses.

4. ORDER TERM AND TERMINATION.

4.1 Order Term. The initial Order term begins on the start date listed in an Order and continues for 12 months from the start date unless otherwise set forth in the Order ("Initial Term").

4.2 Renewal Term. This Agreement shall automatically renew for additional terms equal to the Initial Term, unless otherwise set forth in the Order (each, a "Renewal Term"), unless a party has given the other party written notice of its intent to not renew at least 30 days prior to the end of the Initial Term or the then-current Renewal Term. The Initial Term and each Renewal Term are collectively referred to as the "Term." The pricing during any Renewal Term may increase to the current list price at the time of Renewal.

4.3 Suspension and Termination. We may suspend the Emma Subscription and your right to send emails upon notification if you violate a material provision of this Agreement; however, should there be any such violation, Emma shall provide you with 15 days' notice of our intent to terminate this Agreement and give you an opportunity to cure such material breach within such 15-day period. Emma may, in its sole discretion immediately terminate this Agreement upon notice, without an opportunity to cure, if you breach Section 6. You may terminate this Agreement if Emma violates a material provision of this Agreement; however, should there be any such violation, you shall provide Emma with 15 days' notice of your intent to terminate this Agreement and give Emma an opportunity to cure such material breach within such 15-day period. If you terminate this Agreement for Emma's uncured breach in accordance with the terms of this Section 4.3, promptly after the effective date of such termination, Emma shall refund a pro-rata portion of the Fees prepaid by you under the applicable Order for the period of time after the effective date of such termination.

4.4 Termination Without Cause. For any termination by you for any reason other than Emma's uncured breach, such termination shall not terminate or affect your obligation to pay Emma the Fees you agreed to under the applicable Order and you shall not be entitled any refund of any prepaid Fees. This Agreement cannot be terminated by you without providing written notice to Emma and your inactivity does not constitute termination of this Agreement.

4.5 Effect of Termination. Upon termination of this Agreement by you or Emma, you shall be responsible for paying all outstanding amounts owed to Emma and you shall not be refunded any payments already made to Emma, unless you terminate this Agreement for our uncured material breach in accordance with Section 4.3. Except for termination for non-payment, if this Agreement or your Emma Account is terminated, Emma shall allow you to obtain a copy of all Customer Content stored on Emma's servers within 30 days of termination. After such 30 days, Emma makes no guarantees regarding the availability of your data, and Emma shall not be liable for the availability of your data for more than 30 days following the date of termination by either party.

5. OWNERSHIP.

5.1 Customer. As between the parties, you own all right, title and interest in the Customer Content and any reports produced by the Emma Software with respect thereto, including all intellectual property rights therein. Any rights not expressly granted to Emma hereunder are reserved by Customer, its licensors and suppliers.

5.2 Emma. The Software, Documentation, Emma Subscription, and all intellectual property and proprietary technology utilized by Emma to perform its obligations under this Agreement, and all intellectual property rights in and to the foregoing, are the exclusive property of Emma, its licensors and suppliers. Any rights not expressly granted to you hereunder are reserved by Emma, its licensors and suppliers. Your access and use of the Emma Subscription is non-exclusive.

6. GENERAL USAGE GUIDELINES AND REQUIREMENTS. You shall fully comply with all usage guidelines and requirements made available on our website at <http://myemma.com/legal/terms-of-use> which may be modified by Emma from time to time at our discretion ("Emma Terms of Use"). A breach by you of any of the Emma Terms of Use is considered a material breach of this Agreement and Emma reserves the right to immediately terminate this Agreement upon notice.

7. THIRD PARTY SERVICES. If Customer decides to enable, access or use Third Party Services, be advised that Customer's access and use of such Third Party Services are governed solely by the terms and conditions of such Third Party Services, and Emma does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data (including Customer Content) or any interaction between Customer and the provider of such Third Party Services. We cannot guarantee the continued availability of such Third Party Service features, and may cease enabling access to them without entitling Customer to any refund, credit, or other compensation, if, for example and without limitation, the provider of a Third Party Service ceases to make the Third Party Service available for interoperation with the corresponding Emma Subscription in a manner acceptable to Emma. Customer irrevocably waives any claim against Emma with respect to such Third Party Services. Emma is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Third Party Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Services. Customer may be required to register for or log into such Third Party Services on their respective websites. By enabling any Third Party Services, Customer is expressly permitting Emma to disclose Customer's Login, as well as Customer Content as necessary to facilitate the use or enablement of such Third Party Services.

8. CONFIDENTIALITY.

8.1 Definition. "Confidential Information" means all information disclosed by one party ("Discloser") to the other party ("Recipient") relating to or disclosed in the course of the performance of this Agreement. Confidential Information includes information that is marked or identified as confidential and, if not marked or identified as confidential, information that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. The Emma Software and Documentation shall be considered Emma's Confidential Information, notwithstanding any failure to mark or identify it as such. All Customer Content shall be considered your Confidential Information, notwithstanding any failure to mark or identify it as such.

8.2 Protection. Recipient will not use any Confidential Information of the Discloser for any purpose not expressly permitted by this Agreement, and will disclose Confidential Information only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

8.3 Exceptions. Recipient's obligations under Section 8.2 above with respect to any Confidential Information of Discloser will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by Discloser; (b) is disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) is independently developed by Recipient without access to or use of the Confidential Information. In addition, Recipient may disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure in writing prior to making such disclosure and cooperates with Discloser, at Discloser's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

8.4 Protection of Customer Content. Without limiting the above, Emma will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Content. Emma will not (a) modify the Customer Content, (b) disclose the Customer Content except as compelled by law in accordance with Section 8.3 or as expressly permitted in writing by you, or (c) access the Customer Content except to provide the Emma Subscription or prevent or address service or technical problems, or at your request in connection with support matters.

9. RIGHT TO INSPECT. For the purposes of providing you service and support, and to ensure that the terms of this Agreement are being followed, we reserve the right to inspect and monitor your Emma Account and data at any time, without notice, and to limit access to your Emma Account at any time should we have reason to believe that you have already, or may at some point in the future, violate any terms set forth in this Agreement.

10. WARRANTIES AND DISCLAIMERS

10.1 Mutual Warranties. Each party represents and warrants that: (a) it has the full right, power and authority to enter into, execute, and perform its obligations under this Agreement; (b) it shall comply with those local, state, federal and international laws and regulations applicable to such party; and (c) it will not transmit to the other party any Malicious Code. "Malicious Code" means software viruses, worms, Trojan horses, time bombs, cancelbots or other harmful computer code, files, scripts, agents, programs or programming routines.

10.2 Right to Customer Content. You represent and warrant that you have all right to use the Customer Content as contemplated by this Agreement, and/or direct Emma to use the Customer Content as part of the Emma Subscription provided to you under this Agreement.

10.3 Subscription Access. During the Term, Emma warrants that the Emma Software will perform in accordance with the Order and the Documentation. Emma does not warrant that the Software will be completely error-free or uninterrupted. Emma will, at its own expense and as its sole obligation and your exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct or provide a workaround for any reproducible error in the Emma Software reported to Emma by you in writing within 15 days after the Emma Subscription services were performed ("Error"). If, however, Emma is unable to provide a correction or workaround for any such Error within 15 days after receiving notice of an Error from you, you may terminate this Agreement upon notice to Emma. The warranties set forth in this Section 10.3 do not cover or apply to (a) any Error caused by you or any of your Users, or (b) any Error or unavailability of the Emma Software caused by use of the Emma Software in any manner inconsistent with its intended purpose.

10.4 Outage Policy. You acknowledge and understand that Emma does not warrant that the Emma Software or Emma Subscription will be uninterrupted or error free and that Emma may occasionally experience "hard outages" due to disruptions that are not within Emma's control. Any such hard outage shall not be considered a breach of this Agreement by Emma. In the case of anticipated or planned outages or system-wide issues affecting the basic use of the Emma Software, Emma will provide you with reasonable advance notice. In the case of unexpected outages, Emma will provide updates and information in a timely and thorough manner as such information is made available to Emma which is available to you at <http://myemma.com/status>.

10.5 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, THE EMMA SERVICE IS PROVIDED "AS IS," AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY), INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN SHORT, WE CAN NOT AND DO NOT GUARANTEE THAT THE EMMA SERVICE WILL WORK IN ANY PARTICULAR WAY, NOR CAN WE GUARANTEE THAT IT WILL PROVIDE YOU WITH ANY PARTICULAR RESULT. YOU AGREE NOT TO HOLD US LIABLE, FINANCIALLY OR OTHERWISE, SHOULD THE EMMA SERVICE FAIL TO PERFORM THESE THINGS.

11. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY AMOUNT GREATER THAN THE FEES YOU HAVE PAID TO US FOR YOUR USE OF THE EMMA SERVICE OVER THE PREVIOUS TWELVE MONTHS.

12. INDEMNIFICATION.

12.1 Claims Against Customer. Emma shall defend Customer against any claim, suit or action brought by a third party to the extent that such claim, suit or action is based upon any allegation that the Software infringes any intellectual property rights of such third party ("Customer Claim"), and Emma shall indemnify and hold Customer harmless from and against those losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) attributable to such Customer Claim or those costs and damages agreed to in a monetary settlement of such Customer Claim. The foregoing obligations are conditioned on Customer: (a) promptly notifying Emma in writing of such Customer Claim; (b) giving Emma sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Emma's request and expense, assisting in such defense. Notwithstanding the foregoing, Emma will have no obligation under this Section 12.1 or otherwise with respect to any Customer Claim to the extent based upon any use of the Emma Software by Customer in violation of this Agreement. This Section 12.1 states Emma's entire liability and Customer's sole and exclusive remedy for infringement claims or actions.

12.2 Claims Against Emma. Customer shall defend Emma against any claim, suit or action brought by a third party to the extent that such claim, suit or action is based upon any allegation regarding Customer's use of the Emma Software that, if true, would be a

violation by Customer of this Agreement (“Emma Claim”), and Customer shall, indemnify and hold Emma harmless from and against those losses, liabilities, costs and expenses (including reasonable attorneys’ fees and costs) attributable to such Emma Claim or those costs and damages agreed to in a monetary settlement of such Emma Claim. The foregoing obligations are conditioned on Emma: (a) promptly notifying Customer in writing of such Emma Claim; (b) giving Customer sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Customer’s request and expense, assisting in such defense. Notwithstanding the foregoing, Customer will have no obligation under this Section 12.2 or otherwise with respect to any Emma Claim to the extent based upon any use of the Customer Content by Emma in violation of this Agreement.

13. MISCELLANEOUS

13.1 Assignment. Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement to any third party without the other party’s prior written consent, such consent shall not be unreasonably withheld or delayed; except that a party may assign this Agreement without consent to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not confer any rights or remedies upon any person or entity not a party hereto.

13.2 Force Majeure. A party’s performance of any part of this Agreement will be excused to the extent that it is unable to perform due to natural disasters, terrorism, riots, insurrection, war, extraordinary governmental action, material labor strikes (excluding strikes by the party’s own workforce), or any other cause which is beyond the reasonable control of such party (the “Affected Party”), not avoidable by reasonable due diligence, and not caused by the Affected Party (a “Force Majeure Event”). Upon the occurrence of a Force Majeure Event, the Affected Party will promptly notify the other party of the Force Majeure Event, including an estimate of its expected duration and probable impact on the performance of the Affected Party’s obligations under this Agreement. In addition, the Affected Party will (i) exercise commercially reasonable efforts to mitigate damages to the other party and to overcome the Force Majeure Event and (ii) continue to perform its obligations under this Agreement to the extent it is able. If a Force Majeure Event lasts 30 days or more either party may terminate this Agreement pursuant to Section 4.

13.3 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, or certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address for each party set forth below or in the Order, and will be effective upon receipt. Notices to Emma shall be mailed to: 9 Lea Avenue, Nashville, Tennessee 37210, Attn: Legal, or legal@myemma.com.

13.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to any jurisdiction's conflict of laws principles.

13.5 Remedies. Except as otherwise expressly provided in this Agreement, the parties’ rights and remedies under this Agreement are cumulative. Each party acknowledges and agrees that any actual or threatened breach of Section 8 will constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy, that injunctive relief is an appropriate remedy for such breach, and that if granted, the breaching party agrees to waive any bond that would otherwise be required. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive from the non-prevailing party.

13.6 Relationship of the Parties. The parties acknowledge that Emma is an independent contractor of Customer, and its employees are not employees of Customer. Nothing in this Agreement or any Order will be construed as creating a partnership, joint venture, or agency relationship between the parties, or as authorizing either party to act as an agent for the other or to enter contracts on behalf of the other. Nothing in this Agreement is intended to confer any rights or remedies on any other person or entity, which is not a party to this Agreement.

13.7 Anti-Corruption. Customer agrees that Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Emma’s employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer hears of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Emma’s Legal Department at legal@myemma.com.

13.8 Non-Solicitation. During the Term, and for a period of one year thereafter, neither party shall solicit for hire, on behalf of Customer or any other organization, any personnel of the other party with whom such party has had any contact pursuant to the relationship established under this Agreement except for any person responding to a general solicitation of employment. If a party violates this Section, it shall pay to the other party the higher of six months’ compensation last paid or proposed to be paid to the hired personnel as such party’s sole and exclusive remedy for the such party’s hiring any such personnel in breach of this Section.

13.9 Waivers. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Any waiver must be in writing and signed by the party entitled to the

benefit of the right being waived. Unless otherwise stated in the waiver, any waiver applies only to the specific circumstance for which the waiver is given and not to any subsequent circumstance involving the same or any other right.

13.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

13.11 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

13.12 Electronic Signatures. Each party agrees that the electronic "signatures", whether digital or encrypted, of the parties included in this Agreement, including secured through the Emma electronic acceptance process, are intended to authenticate this writing and to have the same force and effect as manual signatures.

13.13 Purchase Orders. Emma may receive and sign or otherwise execute purchase orders or similar documents from Customer contemporaneously with or after the execution of this Agreement (including subsequent such documents provided in connection with accepting a Renewal Term), and the parties agree that the sole purpose of such documents is for Customer's internal payment processes and that such execution by Emma does not constitute an acceptance of any of the terms or conditions of such document. Customer further represents, warrants and agrees that (i) such documents are solely for compliance with its internal purchasing policies, (ii) such document is not intended to and shall not add any new terms or conditions or supersede any conflicting terms and conditions in this Agreement, and (iii) Customer shall not assert any terms or conditions contained in such documents against Emma.

13.14 Entire Agreement. This Agreement, including any Order and any exhibits or attachments thereto, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement sets forth the general terms and conditions applicable to all services provided by Emma to Customer under the specific terms and conditions set forth in the applicable Order. By executing this Agreement, the parties agree that the provision and receipt of Emma Services are expressly conditioned on the acceptance of the agreed upon terms in this Agreement. No other terms apply. No terms and conditions proposed by either party shall be binding on the other party unless accepted in writing by both parties, and each party hereby objects to and rejects all terms and conditions not so accepted. To the extent of any conflict between the provisions of this Agreement and the provisions of any Order, the provisions of the Order shall govern. In addition, to the extent of any conflict or inconsistency between the terms and conditions of this Agreement and Customer's purchase order, the terms and conditions of this Agreement and its Order will control. This Agreement will not be modified except by a subsequently dated written amendment signed on behalf of Emma and Customer by their duly authorized representatives.

BY ACCEPTING THIS AGREEMENT, EITHER BY REPLYING WITH "Yes, I Agree" TO OR OTHERWISE EXECUTING AN ORDER, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND YOU AND SUCH LEGAL ENTITY MAY NOT USE THE SERVICES.