

clear digital media

Clear Digital Media Master Subscription Agreement

This Clear Digital Media Master Subscription Agreement, is made and effective as of the date identified on the Order Form as the “Date Signed” and is by and between Clear Digital Media, LLC, a Texas limited liability company with its principal address at 4909 Bell Springs Rd, Dripping Springs, TX 78620 (“Clear Digital Media”), and the entity listed as “Customer” on the Order Form. This Agreement, including the Terms and Conditions below govern the terms upon which Clear Digital Media will provide Customer access to Clear Digital Media’s Technology Service in accordance with the Order Form.

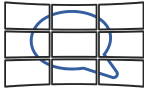
TERMS AND CONDITIONS

1) Service.

- a) Provision of Service. Subject to the terms and conditions of this Agreement, Clear Digital Media will make the Service available to Customer pursuant to this Agreement and all Order Forms during a Subscription Term. Customer agrees that Customer’s purchase of subscriptions is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Clear Digital Media with respect to future functionality or features. Clear Digital Media shall: (i) use commercially reasonable efforts to provide to Customer support for the Service as described on each Order Form, (ii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for:
 - i) planned downtime (of which Clear Digital Media shall give at least 8 hours of notice via the Services and by email to Users, and which Clear Digital Media shall schedule to the extent practicable on Friday evenings between 6:00 p.m. Central time Friday to 9:00 p.m. Central time Friday)), or
 - ii) any unavailability caused by circumstances beyond Clear Digital Media’s reasonable control, including without limitation, acts of God, acts of government, natural disasters, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Clear Digital Media’s employees), or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.

2) Customer’s Responsibilities.

- a) User Accounts. Customer is responsible for all Users’ compliance with this Agreement and shall maintain user access protocols reasonably designed to prevent unauthorized access to the Service. Customer is responsible for all activity occurring under Customer’s accounts (including use by all users) and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer’s use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify Clear Digital Media promptly of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Clear Digital Media promptly and use reasonable efforts to stop promptly any use, copying, or distribution of the Service that is known or suspected by Customer or Customer’s Users.
- b) Restrictions. Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, disclose, or otherwise commercially exploit or make available to any third party in any manner the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet “links” to the Service or “frame” or “mirror” the Service on any other server or wireless or Internet-based device; (iv) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, or (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Service (except to the extent that applicable law prohibits reverse engineering restrictions), or (except as expressly permitted herein) access the Service, or copy any ideas, features, functions or graphics of the Service (vi) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (vii) interfere with or disrupt the integrity or performance of the Service (including the data contained therein); or (x) attempt to gain or permit unauthorized access to the Service or its related systems or networks.



clear digital media

3) *Account Information and Data.*

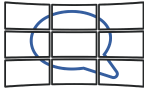
- a) From time to time, Customer may deliver Customer Data to Clear Digital Media. To the extent Customer is a Covered Entity (as defined in HIPAA), by their signature to the Agreement, Clear Digital Media and Customer agree to be bound by the provisions of the Business Associate Agreement attached hereto as Exhibit C.
- b) Customer acknowledges that Clear Digital Media may or may not prescreen the Customer Data, but that Clear Digital Media shall have the right (but not the obligation) in its sole discretion to pre-screen, refuse or move the Customer Data that is available through the Service. CLEAR DIGITAL MEDIA SHALL NOT BE LIABLE FOR THE DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STATE ANY OF CUSTOMER'S DATA.
- c) Customer agrees and acknowledges that Clear Digital Media may access Customer's password-protected account(s), if any, to respond to service or technical problems or to ensure compliance with the Agreement.
- d) Clear Digital Media agrees that the Customer Data remains the property of Customer and Clear Digital Media will furnish such Customer Data without additional charge at Customer's request within thirty (30) days following the expiration of this Agreement for any reason. Customer however acknowledges and agrees, that subject to Clear Digital Media's obligations under the Business Association Agreement and to the extent authorized under the HIPAA Privacy Rule, Clear Digital Media may prepare, use, sell and distribute aggregated de-identified information collected and stored via the Services provided that Clear Digital Media shall take appropriate steps required under 45 C.F.R. § 164.514 to ensure that the information has been appropriately de-identified. Such de-identified information will not be deemed to be Confidential Information of Customer. In addition, Clear Digital Media may share Customer's Service usage statistics but not Customer Data to its third party marketing partners and such usage statistics will not be deemed Confidential Information of Customer.

4) *Ownership.*

- a) Clear Digital Media (and its licensors, where applicable) shall own all right, title and interest in and to the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in, or related to, the Service. The Clear Digital Media name, the Clear Digital Media logo, and the product names associated with the Service are trademarks of Clear Digital Media or third parties, and no right or license is granted to Customer to use them. All rights not expressly granted to Customer herein is reserved by Clear Digital Media and its licensors.

5) *Third Party Interactions.*

- a) During use of the Service, Customer may enter into correspondence with, agrees to receive phone calls explaining third party goods or services, purchase goods and/or services from, or participate in promotions of suppliers, advertisers or sponsors showing or otherwise making available their goods and/or services on or through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between Customer and the applicable third party. Customer agrees that Clear Digital Media and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer and any such third-party. Clear Digital Media provides the Service to Customer pursuant only to the terms and conditions of this Agreement. The way I read this is that we will place the customer's supplier info on screens but do not take responsibility for any support, warranties, etc of those products. This needs to state that our clients (meaning they are paying subscribers) may request content from their 3rd party suppliers be added to the playlist. I suggest we allow this, however we will charge a placement fee for that content. The placement fee is a \$250 flat fee per video which is billed to the client



clear digital media

6) *Billing and Payment of Fees.*

- a) Clear Digital Media charges and collects in advance for use of the Service. All payment obligations are non-cancellable and all amounts paid are nonrefundable except as otherwise specified in this Agreement. Customer agrees to pay Clear Digital Media in U.S. dollars. Customer agrees to provide Clear Digital Media with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. Customer agrees to update this information promptly upon any change to it. If the contact information Customer has provided is fraudulent, Clear Digital Media reserves the right to terminate Customer's access to the Service in addition to any other legal remedies available to Clear Digital Media. If Customer believes Customer's bill is incorrect, Customer must contact us within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit; otherwise such dispute shall be irrevocably waived.
- b) If a balance due is not paid when due, interest will be charged on the principal balance. Interest will be calculated by multiplying the unpaid balance by the periodic rate of 1.5% per month (18% annual percentage rate). The unpaid balance will bear interest until paid.

7) *Confidentiality.*

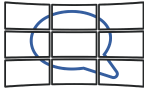
- a) As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without either use of the Confidential Information or breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

8) *Termination.*

- a) User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein. User subscriptions shall automatically renew for additional periods of one (1) year, unless either party gives the other written notice of non-renewal at least 90 days prior to the end of the relevant subscription term. Clear Digital Media has the right to increase fees for the Services during the renewal term to the then-applicable prices being charged for the Services.
- b) A party may terminate this Agreement for cause: (i) upon 60 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

9) *Representations and Warranties.*

- a) Each party represents and warrants that it has the legal power and authority to enter into this Agreement and to bind the entity named below.
- b) During the Term of the Agreement, Clear Digital Media represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) the Service shall perform materially in accordance with the documentation found, and updated, from time to time, at <http://www.ClearDigitalMedia.net>; and (iii) the functionality of the Service will not be materially decreased during a subscription term.



clear digital media

- c) Customer represents and warrants that Customer has not falsely identified itself nor provided any false information to gain access to the Service, that Customer's billing information is correct, that Customer is a business and not a consumer, and that Customer has all necessary rights to provide all information provided hereunder.

10) *Indemnification.*

- a) Subject to this Agreement, Clear Digital Media shall defend, indemnify and hold Customer harmless against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the Service as provided hereunder infringes any issued U.S. patent, U.S. copyright, or other intellectual property right of such third party. Notwithstanding the foregoing if Clear Digital Media reasonably believes that Customer's use of any portion of the Service is likely to be enjoined by reason of any Claims then Clear Digital Media may, at its expense and in its sole discretion: (i) procure for Customer the right to continue using the Service; (ii) replace the same with other services of equivalent functions and efficiency that are not subject to any Claims of infringement; or (iii) modify the applicable Service so that there is no longer any infringement, provided that such modification does not adversely affect the functional capabilities of the Service as set out herein or the applicable Order Form. If, in Clear Digital Media's opinion, (i), (ii), and (iii) above are infeasible or commercially impracticable, Clear Digital Media may, in its reasonable discretion, terminate the applicable Service and refund to Customer the fees paid by Customer for the portion of the Services period that was paid by Customer but not rendered by Clear Digital Media. The foregoing indemnification obligation of Clear Digital Media shall not apply: (1) if the Service is modified by any party other than Clear Digital Media, but solely to the extent the alleged infringement is caused by such modification; (2) the Clear Digital Media Services are combined with other non-Clear Digital Media products, applications, or processes not authorized by Clear Digital Media, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Clear Digital Media Services; (4) to any action arising as a result of the Customer Data. This section sets forth Clear Digital Media's sole liability and customer's sole and exclusive remedy with respect to any claim of intellectual property infringement.
- b) Customer shall defend, indemnify and hold Clear Digital Media harmless against any expense, liability, loss, damage or costs (including reasonable attorneys' fees), each to the extent payable to a third party, incurred in connection with Claims made or brought against Clear Digital Media by a third party arising from or relating to Customer's use of the Customer Data or Customer's use of the Services in violation of this Agreement.
- c) Each party's indemnity obligations are subject to the following: (i) the indemnified party shall promptly notify the indemnifier in writing of any Claims; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to any Claims (provided that the indemnifier may not settle any Claims that requires the indemnified party to admit any civil or criminal liability or incur any financial obligation without the indemnified party's consent, which consent shall not be unreasonably withheld); and (iii) the indemnified party shall cooperate fully to the extent necessary at the indemnifier's cost in such defense and settlement.