

# CUSTOMER AGREEMENT

## Version 1.2 Effective 1 August 2020

Please read carefully the following legally binding Customer Agreement between Playable and Customer for the Services. By clicking the "I Accept" button (or any button or check box having similar wording or meaning), submitting an Order or using the Services, Customer acknowledges that Customer has read, understands, and agrees to be bound by the terms of this Customer Agreement. If Customer does not agree with the terms of this Customer Agreement, Customer should not register for the Services, submit an Order or use the Services. Certain capitalised terms in this Customer Agreement are defined in clause 11 below.

For purposes of this Customer Agreement, **Playable** means (i) with respect to any Services provided to a Customer resident in the territory of the United States (as set forth in an Order), Playable, Inc, a California corporation, and (ii) with respect to any Services provided to a Customer resident in any other territory, including the territory of Australia, Playable Pty Limited (ACN 143 900 458), a company formed under the laws of Australia.

The following provisions may be subject to consumer protection laws, including the Australian Consumer Law, which may limit the ability to exclude liability or may imply warranties or conditions or impose obligations which cannot be modified, restricted or excluded (except to a limited extent). Any disclaimer of warranties and liability limitations applies subject to any rights you may have under such laws.

This Customer Agreement incorporates Playable's [Privacy Policy](#) and [Acceptable Use Policy](#), any Orders, and any other referenced policies and attachments. Playable may amend this Customer Agreement from time to time, subject to the terms in clause 10.7 below.

## 1. Registration and Ordering

- 1.1. Customer must complete the registration form on the signup page of the Website in order to use the Services. Customer will provide true, accurate, current, and complete information as requested in the registration form. As part of the registration process, Customer will provide an email address and password for its account. Customer is responsible for maintaining the security of its account, passwords, and for all uses of Customer's account and the use of the Services. Playable reserves the right to refuse registration of, or cancel, accounts it deems inappropriate. The Services are available only to persons who can form legally binding contracts under applicable law.
- 1.2. As part of the registration process, Customer must complete an Order by selecting a Subscription Level. Customer acknowledges and agrees that each Subscription Level only entitles Customer to such functionality, and is subject to such limitations and restrictions, as applicable to that Subscription Level as described in the Service Description and in this Customer Agreement.

## 2. Services

- 2.1. During the Term, Playable will use its reasonable endeavors to provide the Services to Customer applicable to Customer's Subscription Level and in accordance with the Service Description.
- 2.2. In consideration of the terms set out in this Customer Agreement, Playable grants Customer a non-exclusive, non-transferable, revocable right to use the Services during the Term in accordance with (a) the terms of this Customer Agreement; (b) the restrictions and limitations of the Subscription Level subscribed by the Customer; and (c) other applicable limitations set forth in the Order.
- 2.3. Customer may use the Services only in and for its own internal purposes and business operations. Customer may not use the Services as a service for any third party, unless Customer is a Reseller and Playable has expressly authorised Customer to do so. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of the Services accessed by Customer hereunder, in whole or in part, is granted except as expressly provided by this Customer Agreement.

- 2.4. Customer acknowledges and agrees that video content will not play out inline for certain legacy email clients such as Microsoft Outlook for Windows 2013, 2016 and 2019. For these email clients, the Service will present a still image with a play watermark indicating that a click is required to watch the video. These impressions are not included in any calculation of Excess Play Fees.
- 2.5. Playable may immediately suspend or restrict Customer's use of all or any of the Service (i) where reasonably necessary for technical or operational reasons; (ii) if any payments owed by Customer have not been paid within 7 days of their due date; (iii) if Customer breaches any other terms of this Customer Agreement; or (iv) if Playable considers that Customer has committed or may be committing any illegal or fraudulent activity through its use of the Service.
- 2.6. If included in Customer's Subscription Level, Customer is entitled to email and / or telephone support. Such support is limited to technical questions only. Non-technical questions including, but not limited to, questions relating to design, deliverability rules or issues, marketing planning or similar services, shall not be included in the support services. Applicable contact information and hours of operation for customer support are available on request from Playable.

### **3. Email Campaigns**

- 3.1. Customer will be responsible for creative and production for both the video and email template, the landing page for each Email Campaign and the management and delivery of the Email Campaign.
- 3.2. Customer must procure that each email delivered as part of an Email Campaign will include a Recipient ID Token that is unique to each Recipient. The Recipient ID Token must not be of a form that can be used to identify recipients. Playable must not collect any information that personally identifies any Recipients and will only associate anonymous data with Recipient ID Tokens.
- 3.3. Subject to the Subscription Level applicable to Customer, Playable will be responsible for (a) preparation and transcoding of the video based on source assets supplied by Customer; (b) provision of the HTML code for inclusion in the HTML email template (**HTML Snippet**); (c) hosting and delivery of video content via its content delivery network during the Email Campaign; and (d) providing performance analytics for the Email Campaign, including provision of the number of Plays for the video, A/B split testing analytics and aggregate CTOR (click-to-open-rate), interactivity and engagement data.
- 3.4. Customer may only use the HTML Snippet to enable the presentation of video content within the Customer's Email Campaign and the HTML Snippet must not be used for any other purpose without the prior written consent of Playable. Customer must not modify, adapt, reverse disassemble, decompile or reverse engineer the whole or any part of the HTML Snippet or otherwise attempt or allow any other party to attempt to circumvent the ability of Playable to count the number of Plays.
- 3.5. For each Email Campaign or email message distributed or sent by Customer using the "Free" Subscription Level of the Service, Customer acknowledges and agrees that "Playable", "Powered by Playable", or other branding may be displayed: (i) at the end of the video; (ii) upon clicking the video; and (iii) once the quota of Plays has been exceeded, at the start of the video.
- 3.6. For each Email Campaign or email message distributed or sent by Customer using a "Lifetime" Subscription Level of the Service, Customer acknowledges and agrees that: (i) "Playable", "Powered by Playable", or other branding may be displayed at the end of the video; and (ii) once the monthly quota of Plays has been exceeded, Playable will deliver a static image from the video, instead of the full video, to email recipients.

### **4. Fees**

- 4.1. Customer must pay the Subscription Fee to Playable in advance of each Subscription Period. The Subscription Fee will depend on the Subscription Level chosen by Customer. The Subscription Fees exclude GST or any other applicable taxes. The first Subscription Period starts when Customer registers for the

Service and pays the first Subscription Fee from the credit card assigned to its account. If Customer is eligible to a trial period, then the first Subscription Period starts the day after the trial period ends.

- 4.2. At the end of the first Subscription Period, Customer's subscription will automatically renew for the following monthly Subscription Period and Playable will deduct the Subscription Fee from the credit card assigned to the account. This process will continue for each of the following Subscription Periods until this Customer Agreement terminates.
- 4.3. Customer may cancel the Service at any time via the Website and this Customer Agreement and the Service will terminate at the end of the then current Subscription Period. Customer will not be entitled to a refund of any Subscription Fees and Play Packs Fees that have been paid in advance if Customer terminates this Customer Agreement in accordance with this clause 4.3.
- 4.4. Customer must pay any Excess Play Fees monthly in arrears during the Term and at the end of the calendar month in which the Customer Agreement is terminated. Playable will deduct the Excess Play Fees from the credit card assigned to the account in arrears at the same time as it deducts the Subscription Fee in advance. The Excess Play Fees exclude GST or any other applicable taxes.
- 4.5. In calculating Excess Play Fees, Customer agrees that the number of Plays recorded by Playable's server will be conclusive evidence of the number of Plays as part of an Email Campaign. Customer acknowledges that Recipients may Play a video multiple times, on multiple devices or may forward a video email to other persons (who may on-forward the email to others) who may also Play the video and that all such Plays will be counted for the purposes of determining the number of Plays, whether any Excess Play Fees are payable and the amount of any Excess Play Fee payable.
- 4.6. Customer may change the Subscription Level for the Service at any time via the Website. If Customer upgrades during a Subscription Period then the change will take effect immediately and any extra charges for that period will be added to the next Subscription Fee on a pro-rata basis and thereafter in advance like all other Subscription Fees. If Customer downgrades during a Subscription Period then the change will take effect at the commencement of the next Subscription Period.
- 4.7. Playable may increase the Subscription Fees or the Excess Play Fees at any time by giving at least 30 days written notice to Customer. Playable may alter the amount deducted from Customer's account if the Subscription Fees or Excess Play Fees change in accordance with this Customer Agreement.
- 4.8. Customer must provide Playable with accurate and complete billing and credit card information and Customer must keep this information up to date.
- 4.9. Playable will not deliver or send invoices for the Fees to Customer but such invoices will be available to view or download from the Website.
- 4.10. All amounts due with respect to any Services provided to Customers will be in the currency selected by Customer in the Order or, if no currency is selected, all amounts due with respect to the Services shall be in Australian dollars.
- 4.11. If Playable is unable to effect automatic payment via your credit card or otherwise unable to collect any Fees or other charges due from Customer, Playable may suspend provision of the Service to you without giving you notice. This does not affect any termination right under clause 5.4.
- 4.12. In the event Customer is more than 30 days late paying any Fees hereunder, Playable may charge interest on such overdue sum at the monthly rate of 1.5%, or the maximum rate permitted by applicable law, accruing on a daily basis and being compounded monthly until payment is made.
- 4.13. Customer is responsible for paying all taxes associated with the Services, excluding taxes based on Playable's net income or property. If Playable has the legal obligation to pay or collect taxes for which Customer is responsible under this clause, the appropriate amount shall be invoiced to and paid by Customer in accordance with this Customer Agreement.

## 5. Term and Termination

- 5.1. This Customer Agreement is effective from the moment of acceptance as described in the first paragraph of this Customer Agreement or from the Start Date, whichever date is earlier.
- 5.2. This Customer Agreement shall remain in force either until the earlier of (i) termination by Customer under clause 4.3; (ii) termination by Playable under clause 5.3; or (iii) termination by Playable under clause 5.4.
- 5.3. Playable may terminate this Customer Agreement at any time by giving Customer written notice of termination. If Playable terminates this Customer Agreement under this clause 5.3, Playable will refund to Customer (or credit against Fees payable by Customer to Playable) a pro-rata amount of Subscriptions Fees paid in advance for the period after the date of termination.
- 5.4. Without prejudice to any other rights, Playable may terminate this Customer Agreement if Customer breaches any term of the Customer Agreement including without limitation, the warranties in clause 7.1, by giving Customer written notice of Customer's breach and Playable's decision to terminate this Customer Agreement.
- 5.5. Upon termination of this Customer Agreement by Playable, Customer must immediately pay all Fees outstanding or otherwise payable under this Customer Agreement and cease to use the Services.
- 5.6. Customer's obligations and Playable's rights under this Customer Agreement with respect to clauses 4, 5.5, 6, 7, 8, 9 and 10 shall survive any expiration or termination of this Customer Agreement.

## 6. Intellectual Property

- 6.1. The Services utilise proprietary and confidential information of Playable and its licensors, including copyrights which are protected by international copyright laws, inventions which are protected by patents or patents pending, trade secrets and trademarks (**Playable IP**). Title to and ownership of the Playable IP, including, without limitation, all Intellectual Property Rights in and to the Playable IP, are and shall remain the exclusive property of Playable and its licensors, and except for the limited license granted to Customer by Playable, Playable reserves all right, title and interest in and to the Playable IP. Customer shall not take any action to jeopardise, limit or interfere with Playable and its licensors' ownership of and rights with respect to the Playable IP. Customer acknowledges that any unauthorised copying or unauthorised use of the Playable IP is a violation of this Customer Agreement and is strictly prohibited. Any bug reports, usability reports, test results, feedback made by Customer in relation to the Services shall be the sole property of Playable and its licensors and may be used by Playable and its licensors for any purpose.
- 6.2. Playable acknowledges that Customer will provide Playable with videos, HTML, email text, website links and other content to Playable in order to allow Playable to perform the Services (**Customer Content**). During the Term, Customer grants Playable a license to use the Customer Content for the purposes of performing the Services.
- 6.3. Playable acknowledges that all data collected by Playable from Recipients as part of an Email Campaign (**Recipient Data**) will be owned by Customer. Customer grants Playable an irrevocable and perpetual license to use the Recipient Data for the purposes of performing the Services, improving the Services offered by Playable to all customers and developing new features, products and services.

## 7. Warranties and Indemnities

- 7.1. Customer represents, covenants, and warrants to Playable that (i) it will use the Services only in compliance with this Customer Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, and defamation); (ii) it will not use the Services for any unlawful or discriminatory activities; (iii) it will comply with the Acceptable Use Policy; (iv) it owns, or is otherwise authorised to use, and permit Playable to use, all Intellectual Property Rights in the Customer Content; (v) it will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited email to any third party in connection with the Services; (vi) all personal information that Customer provides to Playable (including, without limitation, that of the Recipients) has been collected with the relevant Recipient's

consent and that Customer is authorised to provide this information to Playable for the purposes of use in relation to the Services; and (vii) it will not use the Services for the sending of unsolicited email (sometimes called "spam").

- 7.2. If Playable has reasonable grounds to suspect that Customer's representations, covenants and warranties given under clause 7.1 are inaccurate or breached, Playable may terminate this Customer Agreement, deny any or all use of the Services, and pursue any appropriate legal remedies.
- 7.3. Customer agrees to indemnify, hold harmless and defend Playable and its affiliates, parent companies, subsidiaries, officers, directors, employees, agents, business partners and licensors at Customer's expense, against any and all third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and other dispute resolution expenses) incurred by Playable arising out of or relating to Customer's (i) violation or breach of any term of this Customer Agreement, including without limitation, any breach of Customer's representations, covenants and warranties given under clause 7.1; or (ii) use or misuse of the Services. Playable reserves the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by Customer and Customer shall not, in any event, settle any matter without the written consent of Playable.

## **8. Confidentiality**

- 8.1. Customer acknowledges that in connection with Customer's use of the Services and this Customer Agreement, Customer will be provided with confidential and proprietary data and information from time to time (**Confidential Information**). Such Confidential Information shall be owned by Playable and its licensors.
- 8.2. Customer will keep all Confidential Information provided to Customer by Playable, or otherwise, strictly confidential. Customer may disclose any such Confidential Information only to Customer's employees, officers and directors who need to know such information in order to perform their respective duties; provided that each such person has a legal or contractual obligation to maintain the confidentiality of such Confidential Information. Without Playable's prior written consent, Customer will not disclose any such Confidential Information to any third party (except Customer's employees, officers and directors as set forth above) or use any such Confidential Information other than solely as and to the extent required for Customer to use the Services and otherwise perform its obligations under this Customer Agreement.
- 8.3. If Customer receives any document request, interrogatory, subpoena or other legal process (**Request**) that would, by its terms, require the disclosure of any Confidential Information protected by this Customer Agreement, then promptly upon receipt thereof, and prior to making any response thereto, to the extent permitted by applicable law, Customer will notify Playable in writing of Customer's receipt of such Request, and shall provide a copy thereof.
- 8.4. Upon Playable's request or expiration or early termination of this Customer Agreement, Customer must immediately return or destroy any and all Confidential Information in Customer's possession or under Customer's control. If requested, Customer will certify in a writing signed by an authorised officer as to the return or destruction of all such Confidential Information.

## **9. Disclaimer of Warranties and Limitation of Liability.**

- 9.1. NO WARRANTY: CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SERVICES IS AT ITS SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES PERFORMED OR PROVIDED ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND PLAYABLE HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. NO

ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PLAYABLE OR ITS AUTHORISED REPRESENTATIVES SHALL CREATE A WARRANTY. SHOULD THE SERVICES PROVE DEFECTIVE, CUSTOMER ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY. CERTAIN LEGISLATION, INCLUDING THE AUSTRALIAN COMPETITION AND CONSUMER ACT 2010 (CTH), MAY GIVE GUARANTEES OR IMPLY WARRANTIES OR CONDITIONS OR IMPOSE OBLIGATIONS WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED EXCEPT TO A LIMITED EXTENT. THESE TERMS MUST IN ALL CASES BE READ SUBJECT TO THESE STATUTORY PROVISIONS. IF PLAYABLE IS LIABLE TO CUSTOMER UNDER THE AUSTRALIAN COMPETITION AND CONSUMER ACT 2010 (CTH) OR SIMILAR LEGISLATION, TO THE EXTENT TO WHICH PLAYABLE IS ENTITLED TO DO SO, PLAYABLE LIMITS ITS LIABILITY IN RESPECT OF ANY CLAIM UNDER THOSE PROVISIONS TO: IN THE CASE OF GOODS, AT PLAYABLE'S OPTION: THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; THE REPAIR OF THE GOODS; THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND, IN THE CASE OF SERVICES, AT PLAYABLE'S OPTION: THE SUPPLYING OF THE SERVICES AGAIN; OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

- 9.2. LIMITATION OF LIABILITY. TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL PLAYABLE BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF OR INABILITY TO USE THE SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF PLAYABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY. CERTAIN LEGISLATION, INCLUDING THE AUSTRALIAN COMPETITION AND CONSUMER ACT 2010 (CTH), MAY LIMIT THE ABILITY TO EXCLUDE LIABILITY. IF PLAYABLE IS LIABLE UNDER THE AUSTRALIAN COMPETITION AND CONSUMER ACT 2010 (CTH) OR SIMILAR LEGISLATION, TO THE EXTENT TO WHICH PLAYABLE IS ENTITLED TO DO SO, PLAYABLE LIMITS ITS LIABILITY IN RESPECT OF ANY CLAIM UNDER THOSE PROVISIONS TO: IN THE CASE OF GOODS, AT PLAYABLE'S OPTION: THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; THE REPAIR OF THE GOODS; THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND, IN THE CASE OF SERVICES, AT PLAYABLE'S OPTION: THE SUPPLYING OF THE SERVICES AGAIN; OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.
- 9.3. In no event shall Playable's total liability to Customer for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount Subscription Fees paid by Customer to Playable in the 6 month period prior to the date that the cause of action entitling Customer to damages accrued. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.
- 9.4. No oral or written information or advice given by Playable, its Resellers, agents or employees shall create a warranty or in any way increase the scope of any warranty provided herein.
- 9.5. Unless the law says otherwise, neither Playable nor any of our Resellers, suppliers, agents or contractors will be responsible to Customer or any other person in connection with: (i) the suspension of or restriction to the Services in accordance with this Customer Agreement or any interruption or delay to the Services caused by matters outside our reasonable control; (ii) any errors, viruses or bugs present in or arising from the use of the Services that are not directly caused by or attributable to Playable; (iii) any incompatibility of the Services with any other software, hardware or material; (iv) any misuse or failure of the Services; (iv) any loss caused by Customer or any other person suffered as a result of: (A) any misuse or unauthorised use of the login details

for your account; (B) any other cause where the cause is outside our reasonable control; or (C) Customer's own negligence or failure to follow Playable's reasonable instructions.

## 10. General

- 10.1. Customer hereby agrees that Playable would be irreparably damaged if the terms of this Customer Agreement were not specifically enforced, and therefore Customer agrees that Playable shall be entitled to appropriate equitable remedies in any court of competent jurisdiction with respect to breaches of this Customer Agreement, in addition to such other remedies as Playable may otherwise have available to it under applicable laws.
- 10.2. This Customer Agreement, including accepted Orders and any amendments hereto, contain the entire agreement of the parties with respect to the subject matter of this Customer Agreement and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof.
- 10.3. Any notice under this Customer Agreement must be given in writing. Playable may provide notice to Customer via email, to the email address provided by you at registration or as updated by you through the Website from time to time, or through your account. A notice given by Playable will be deemed given upon the first business day after it is sent. Customer may provide notice to Playable by email to support@playable.video or via the Website. A notice given by Customer is deemed given upon receipt by Playable.
- 10.4. Nothing in this Customer Agreement shall constitute a partnership, agency or joint venture between Customer and Playable.
- 10.5. The failure of Playable at any time or times to require performance of any provision of this Customer Agreement shall in no manner affect its right at a later time to enforce the same unless the same is waived in writing.
- 10.6. Customer may not assign this Customer Agreement or any rights hereunder. Playable may assign this Customer Agreement, at Playable's discretion, without consent of or notification to Customer.
- 10.7. Playable may amend the terms and conditions of this Customer Agreement from time to time, including any documents incorporated by reference. If an amendment meaningfully reduces Customer's rights, Playable will use reasonable endeavours to notify Customer (by, for example, sending an email to the billing or technical contact you designate in an Order or through Customer's account). If Playable amends this Customer Agreement during a Subscription Period, the amended version will be effective upon the next renewal of a Subscription Period. In this case, if Customer objects to the amended Customer Agreement, as its exclusive remedy, Customer may choose to cancel the Services under clause 4.3. In relation to the "Free" Subscription Level of the Service, accepting the amended Customer Agreement is required to continue to use the Services.
- 10.8. If any provision of this Customer Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to that provision or part and the rest of such provision, and all other provisions of this Customer Agreement will continue in full force and effect.
- 10.9. (i) With respect to any Customer resident in the territory of the United States (as set forth in an Order), (A) this Customer Agreement is governed by the laws of the State of California, United States of America, without regard to choice of law principles, and (b) all disputes arising out of or related to Customer's use of the Services and/or this Customer Agreement shall be subject to the exclusive jurisdiction of the courts located in San Francisco and Customer agrees to submit to the personal jurisdiction and venue of such courts. (ii) With respect to any Customer resident in any other territory (as set forth in an Order), (a) this Customer Agreement is governed by the laws of the State of New South Wales, Australia, without regard to choice of law principles; and (b) all disputes arising out of or related to Customer's use of the Service and/or this Customer Agreement shall be subject to the exclusive jurisdiction of the courts located in Sydney, Australia, and Customer agrees to submit to the personal jurisdiction and venue of such courts. (iii) The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Customer is responsible for compliance with all local laws if and to the extent local laws are applicable.

## 11. Definitions

Unless defined elsewhere in this document, capitalised terms have the following meanings:

- 11.1. **Customer** means the subscriber of the Services under this Customer Agreement as detailed in an Order.
- 11.2. **Customer Agreement** means this Customer Agreement and any associated Orders or other documents incorporated herein by reference.
- 11.3. **Email Campaign** means an email campaign to be conducted by Customer which utilises the Services to send emails with video content to Recipients.
- 11.4. **Excess Play Fee** means the fee payable by Customer for each Play in excess of the Plays included in Customer's Subscription Level for any calendar month during the Term.
- 11.5. **Fees** mean Subscription Fees and Excess Play Fees.
- 11.6. **Intellectual Property Rights** mean any and all present and future intellectual and industrial property rights and includes, without limitation, any registered or unregistered forms of copyright (and rights allied to copyright and any reversions and extensions of copyright), designs, patents, trademarks, service marks, domain names, good will and any commercial information (including know how and confidential information), any application or right to apply for registration of any of these rights, any rights protected or recognized under any laws throughout the world related to the above or any similar laws, and anything copied or derived from such property or rights.
- 11.7. **Order** means an order for the Services given by Customer upon registration under clause 1, a purchase order, enterprise Customer Agreement, or other document issued by Playable to Customer that references and incorporates this Customer Agreement.
- 11.8. **Play** means the commencement of the delivery of a video from or through Playable's server, irrespective of whether the video is played to conclusion. Play does not include static images served to email clients that do not support motion video, as described in clause 2.4.
- 11.9. **Play Pack** means the prepaid bulk purchase of a Play bundle that is added under an existing account Subscription.
- 11.10. **Recipient** means a recipient of an email sent by or on behalf of Customer as part of an Email Campaign.
- 11.11. **Recipient ID Token** means a non-personally identifiable information token that is unique to each Recipient that is capable of being used by Playable to attribute clicks events to open events for the purposes of calculating aggregate analytics reports, including click to open rates.
- 11.12. **Service Description** means the description of the Services, including the functionality of each Subscription Level for the Services, as set out on the Website from time to time.
- 11.13. **Services** means, for each Subscription Level, the services to be supplied by Playable to Customer as subscribed in an Order which may include (i) the supply of video-in-email services which entails the encoding and converting of the Customer's video to the Playable format; (ii) providing the HTML embed code for the Customer's Email Campaign; (iii) hosting and providing a content delivery network to serve the video to Recipients; (iv) the delivery of video content to Recipients on opening their email; (v) providing analytical information in relation to Email Campaigns; (vi) email technical support; and (vii) telephone technical support, in each case, as further described in the Service Description.
- 11.14. **Start Date** means such date as may be set out in the Order that the Term commences hereunder.
- 11.15. **Subscription Fee** means the subscription fee payable by Customer in advance of each Subscription Period in consideration of the provision by Playable of the Services applicable to the Subscription Level, as may be set out in the Order and as may be varied from time to time in accordance with this Customer Agreement.
- 11.16. **Subscription Level** means the subscription level ordered by Customer under an Order as described in the Service Description.

- 11.16. **Subscription Period** means (i) the initial subscription period set out in an Order; and (ii) thereafter, each monthly renewal period under clause 4.2.
- 11.17. **Term** means the period commencing on the Start Date and ending on the date of termination of this Customer Agreement pursuant to the terms of this Customer Agreement.
- 11.18. **Website** means Playable's website at [playable.video](https://playable.video), or such other website or websites notified by Playable to Customer from time to time.