

NIGHTHUB VENUE PARTNER TERMS AND CONDITIONS

Date of Last Revision: January 31, 2015

BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OF THESE VENUE PARTNER TERMS AND CONDITIONS (THE “ACCEPTANCE”), YOU AGREE YOU HAVE READ AND ARE BOUND BY THE TERMS OF THESE VENUE PARTNER TERMS AND CONDITIONS (THIS “AGREEMENT”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON AN INDIVIDUAL BASIS AS A PROMOTER OR ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND/OR BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM “VENUE” WILL REFER TO YOU OR SUCH ENTITY, AS APPLICABLE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT (OR ANY FUTURE VERSIONS OF THE AGREEMENT), DO NOT USE OR ACCESS (OR CONTINUE TO USE OR ACCESS) THE NIGHTHUB PLATFORM (AS DEFINED BELOW).

This Agreement, by and between Venue and NightHub, Inc. (“NightHub”), is effective as of the date of the Acceptance (the “Effective Date”) and governs Venue’s use of NightHub’s proprietary software-as-a-service platform (the “NightHub Platform”). The NightHub Platform enables bars, clubs and other nightlife venues to post information about such venues, including information related to special events, admission and bottle service, and facilitates reservations between such venues and end users of NightHub’s website and/or mobile applications (“Users”). NightHub reserves the right, at its sole discretion, to change or modify portions of this Agreement at any time . Venue should periodically visit this page to review the current Agreement so you are aware of any revision to which Venue is bound. If NightHub makes any material changes or modifications to this Agreement, NightHub will notify Venue through a pop-up notice, e-mail or other reasonable means thirty (30) days before such changes or modifications go into effect and will indicate at the top of this page the date this Agreement was last revised. Venue’s continued use of the NightHub Platform after any such changes or modifications constitutes acceptance of such changes or modifications. Each of NightHub and Venue may be referred to herein individually as a “Party” or collectively as the “Parties”.

In addition, Venue’s use of the NightHub Platform and information made available to Venue through the NightHub Platform is subject to the Privacy Policy located at www.nighthub.com/privacypolicy, the terms of which are hereby incorporated by reference into this Agreement.

1 ACCESS TO PLATFORM

1.1 Access to Platform. NightHub will make the NightHub Platform available to Venue through its website located at [www.nighthub.com] and through its mobile applications and related services. Subject to the terms and conditions of this Agreement, NightHub hereby grants Venue the limited, non-exclusive, non-transferable (except as set forth in Section 12), non-sublicenseable right, during the term of this Agreement, to access and use the NightHub Platform solely for Venue's internal business purposes, which includes using the NightHub Platform to market Venue and to accept and facilitate payment of reservations for admission, bottle service and related services by Users ("Reservations"). NightHub will make Venue profile and Reservation-related information available to Users through NightHub's website and mobile applications. Venue may access the NightHub Platform by providing NightHub with an email address and password for Venue's use of the NightHub Platform and establishing a user account with NightHub, subject to NightHub's approval. Venue will be responsible for any actions taken by parties with access to such passwords, and Venue agrees not to disclose such passwords to any third parties (other than employees of Venue). Venue will inform NightHub immediately if it discovers that any such password has been disclosed or made available to a third party. NightHub will not be liable for any loss or damage arising from Venue's failure to comply with this Section.

1.2 Platform Access Restrictions and Responsibilities. Venue will fully honor and deliver upon all Reservations and will be solely and fully responsible for any and all injuries, damages, claims, liabilities, losses and costs suffered by or related to any individual admitted into the Venue as a result of a Reservation. Venue will not use the NightHub Platform for any unlawful purpose or any purpose other than the purposes expressly set forth herein. Venue may not, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the NightHub Platform or any software, documentation or data related to the NightHub Platform; (b) modify, copy, frame, translate or create derivative works based on the NightHub Platform (except to the extent expressly permitted by NightHub); (c) engage in any data mining, robots, scraping or similar data gathering or extraction methods; (d) use the NightHub Platform for timesharing or service bureau purposes or otherwise for the benefit of a third party; (e) remove any proprietary notices or labels, (f) upload any code, images, information, data, text, software, photographs, graphics, messages or other materials to the NightHub Platform ("Venue Content") that (i) infringes any intellectual property or other proprietary or privacy rights of any third party, (ii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or (iii) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful racially, ethnically or otherwise objectionable, or (g) harvest or collect contact information of Users for the purposes of sending unsolicited emails or other unsolicited communications. Venue will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the NightHub Platform, including, without limitation, modems, hardware, software, operating systems, networks and the like. NightHub reserves the right to immediately remove from the NightHub Platform any Venue Content in violation of this Section 1.2, in NightHub's sole discretion.

To the extent that Venue accesses the NightHub Platform through a mobile device, Venue's wireless service carrier's standard charges, data rates and other fees may apply. In addition, downloading, installing, or using certain NightHub Platform features may be prohibited or restricted by Venue's carrier, and not all NightHub Platform features may work with all carriers or devices. By using the NightHub Platform through a mobile device, Venue agrees that NightHub may communicate with Venue by SMS, MMS, text message or other electronic means to Venue's mobile device, and that certain information about Venue's device may be communicated to NightHub.

1.3 Feedback. Venue may from time to time provide suggestions, comments for enhancements or functionality or other feedback (“Feedback”) to NightHub with respect to the NightHub Platform or Evaluation Services (as defined below). NightHub will have full discretion to determine whether or not to proceed with the development of the requested enhancements, new features or functionality. Venue hereby grants to NightHub a royalty-free, fully paid up, worldwide, transferable, sublicenseable, irrevocable, perpetual, non-exclusive license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback, and (b) use the Feedback and/or any subject matter thereof, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback and/or any subject matter of the Feedback.

1.4 Evaluation Services. From time to time, Venue may be invited to try certain services at no charge for a free trial or evaluation period or when such services are not generally available to venue partners (collectively, “Evaluation Services”). Evaluation Services will be designated as beta, pilot, evaluation, trial, limited release or the like. Evaluation Services are for Venue’s internal evaluation purposes only and are provided “as is” without warranty or indemnity of any kind, and may be subject to additional terms or conditions. Unless otherwise stated, any Evaluation Services trial period will automatically and without any further action expire sixty (60) days from the trial start date. NightHub may discontinue Evaluation Services at any time in its sole discretion and may never make them generally available. NIGHTHUB WILL HAVE NO AND HEREBY DISCLAIMS ANY AND ALL LIABILITY OR DAMAGES FOR ANY HARM, LOSS, EXPENSES OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH ANY EVALUATION SERVICES.

2 CONTENT, DATA AND TRADEMARKS

2.1 User Data. NightHub may provide Venue access to personally and non-personally identifiable data about Users (collectively, “User Data”), individually and in aggregate, via the NightHub Platform. In addition to information identifying a User as an individual who booked a Reservation with Venue, User Data may include individual User profile information, Reservation history and preferences and information provided by other Venues regarding such User. Subject to the terms and conditions of this Agreement, NightHub hereby grants Venue (a) a non-exclusive, worldwide, non-transferable (except as set forth in Section 12), non-sublicenseable license, during the term of this Agreement, to use User Data through the NightHub Platform solely for assessing and processing Reservation requests and maintaining and managing its internal customer list and (b) a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid up, non-transferable (except as set forth in Section 12), non-sublicenseable license to use User Data to manage its internal contact list. For clarity, Venue may not sell or otherwise disclose or make available User Data.

2.2 Venue Content. Venue hereby grants NightHub (a) a non-exclusive, worldwide, royalty-free, fully paid up, non-transferable (except as set forth in Section 12), sublicenseable (through multiple tiers) license, during the term of this Agreement, to copy, display, perform, distribute and otherwise use Venue Content (excluding User Ratings, as defined below) in connection with the operation and promotion of the NightHub Platform, including displaying such Venue Content to Users via NightHub’s website and mobile applications and using such Venue Content for NightHub’s marketing purposes; and (b) a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid up, transferable, sublicenseable (through multiple tiers) license to copy, display, perform, distribute, modify, create derivative works of and otherwise use Venue Content (excluding User Ratings) (i) to provide general information about Venue to Users and (ii) for NightHub’s business purposes, to the extent such Venue Content is aggregated and/or anonymized such that the identity of Venue and/or its individual clients cannot be determined.

2.3 User Ratings. Venue may provide via the NightHub Platform certain Venue Content that consists of ratings of and information about Users who book Reservations with Venue (the “User Ratings”). Venue understands and agrees that such User Ratings may be shared with NightHub’s other venue partners, and that Venue may similarly have access to User Ratings from NightHub’s other venue partners. Venue hereby grants to NightHub a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid up, transferable, sublicenseable (through multiple tiers) license to copy, display, perform, distribute, modify, create derivative works of and otherwise use the User Ratings in connection with the operation of the NightHub Platform; provided, that such shared User Ratings will not identify Venue and will only be shared with third party venues that subscribe to the NightHub Platform.

2.4 Venue Marks. Venue hereby grants NightHub a nonexclusive, worldwide, royalty-free, fully paid up, non-transferable (except as set forth in Section 12), sublicenseable (through multiple tiers) license to copy, display and distribute Venue’s name, logo and trademarks (the “Venue Marks”) on NightHub’s Venue list, the NightHub Platform and NightHub’s website and mobile applications. NightHub acknowledges that use of any of the Venue Marks by NightHub, including any resulting goodwill, will inure to the sole benefit of Venue. NightHub will not do or suffer to be done any act or thing inconsistent with such ownership and will not acquire or claim or assist third parties in acquiring or claiming any title in or to any of the Venue Marks, including by virtue of this Agreement or through NightHub’s use of the Venue Marks. In addition, NightHub hereby covenants that it will not undertake any action that might question, contest, challenge, infringe or impair the validity, enforceability, scope of rights or title of Venue in any of the Venue Marks at any time during the term of this Agreement.

3 OWNERSHIP; RESERVATION OF RIGHTS

3.1 NightHub Platform; User Data. Venue acknowledges and agrees that, as between the Parties, NightHub retains all right, title and interest in and to the User Data and NightHub Platform and all intellectual property rights therein and thereto. NightHub grants no, and reserves any and all, rights other than the rights expressly granted to Venue under this Agreement with respect to the User Data and NightHub Platform. Venue will acquire no right, title, or interest in and to the User Data or NightHub Platform other than the limited rights expressly granted under this Agreement. For clarity, Venue will retain all rights in and to its internal contact list, except to the extent that such list includes User Data.

3.2 Venue Content; Venue Marks. NightHub acknowledges and agrees that, as between the Parties, Venue retains all right, title and interest in and to Venue Content and the Venue Marks, and all intellectual property rights therein and thereto. Venue grants no, and reserves any and all, rights other than the rights expressly granted to NightHub under this Agreement with respect to Venue Content and the Venue Marks. NightHub will acquire no right, title, or interest in and to the Venue Content or the Venue Marks other than the limited rights expressly granted under this Agreement.

4 RESERVATION POLICIES

4.1 Reservation-Related Content. Venue hereby represents, warrants and covenants that all information provided by Venue to the NightHub Platform about pricing (inclusive of sales, alcohol and any other applicable taxes) and available services will be true, accurate and complete. Venue will be solely responsible for any errors or omissions in such information. Subject to Section 1.2, NightHub may post such Venue Content on the NightHub website and mobile applications, such that Users may view such Venue Content and enter into Reservations directly with Venue. In connection with Reservations, Venue will present to Users all requirements for admission, including without limitation, payment and sales terms and any rules and regulations related to dress code, age limit, required minimum or maximum number of guests or time limit on reservations (“Venue Rules”).

4.2 Reservation Fulfillment. All sales of alcoholic beverages and other services provided at a venue at the time of Reservation fulfillment are solely transacted between the User and Venue. Venue acknowledges and understands that NightHub does not conduct identification or age verification of Users on the NightHub website or mobile applications. Venue will be solely responsible for conducting such verification as required under applicable law. Venue agrees to honor Reservations unless Users (a) lack proper identification; (b) are visibly intoxicated; or (c) otherwise fail to follow Venue Rules presented in connection with Reservations. If Venue refuses admission to a User who booked a valid Reservation through the NightHub website or mobile application, Venue will not receive any payment for the unfulfilled Reservation. Venue will promptly report any refused admission or otherwise unfulfilled Reservation (in part or in whole) to NightHub and indicate a reason for such refused admission or unfulfilled Reservation. Venue acknowledges and agrees that NightHub merely facilitates Reservations and that any disputes with Users regarding refused admission, unfulfilled Reservations or refunds are solely between Venue and such Users. NightHub reserves the right, but has no obligation, to become involved in any way in disputes between Venue and any User.

4.3 Reservation Cancellation Policy for Users. Venue hereby acknowledges and agrees to the Cancellation Policy set forth in NightHub’s Terms of Service located at www.nighthub.com/termservice (the “User Cancellation Policy”) and agrees to the payment-related terms for cancelled Reservations described therein. NightHub will transmit any cancellation fees described in the User Cancellation Policy to Venue through the Payment Processor (as defined below) within ten (10) days of the date on which the Reservation was cancelled by the applicable User. Users may contact Venue regarding cancellation fees paid to Venue for cancelled Reservations pursuant to the User Cancellation Policy. Venue understands that communication and disputes related to cancelled Reservations and cancellation fees are solely between Venue and Users.

4.4 Refunds and Chargebacks. Venue is solely responsible for any refunds and chargebacks for fulfilled or unfulfilled Reservations during the term of this Agreement, whether Venue or NightHub receives notice of such refunds or chargebacks during or after the term of this Agreement. NightHub may (a) charge Venue’s payment card on file with NightHub and provided by Venue for this purpose, (b) deduct such amounts from future disbursements to Venue through the Payment Processor, or (c) invoice Venue for any such amounts, and Venue will pay NightHub within thirty (30) days of receipt of such invoice.

5 PRICING; PAYMENT TERMS

5.1 Pricing. Venue will pay to NightHub any amounts set forth on the NightHub Standard Pricing page located at www.nighthub.com/pricing in accordance with the terms and conditions set forth herein or therein (the “NightHub Standard Pricing Amount”). NightHub may change the NightHub Standard Pricing Amount from time to time by posting the change on the NightHub Standard Pricing page thirty (30) calendar days in advance of such change. Payment obligations are non-cancelable and fees paid are non-refundable.

5.2 Payment Terms. NightHub's third-party payment processor, Braintree, a division of PayPal, Inc. (the "Payment Processor") will transmit payment for each fulfilled Reservation to Venue, minus any applicable NightHub Standard Pricing Amount, within ten (10) days of the date of such Reservation, subject to the terms of this Section 5. Venue acknowledges and agrees to the terms of the Payment Processor's Commercial Entity User Agreement, available at www.braintreepayments.com/agreements/merchant.

5.3 Holds. NightHub may, from time to time, request that the Payment Processor postpone disbursement of funds to Venue in NightHub's reasonable discretion to prevent fraud or otherwise mitigate risk to NightHub and/or Venue. NightHub's Payment Processor will hold any amounts related to disputes between Venue and Users or NightHub until such disputes are resolved.

5.4 Net of Taxes. Venue will post pricing information (including any applicable sales, alcohol or other taxes) on the NightHub website and mobile applications via the NightHub Platform. NightHub, through its Payment Processor, will charge Users according to such pricing information provided by Venue. Venue will be solely responsible for payment of any taxes, royalties, knowhow payments, customs, privilege, excise, sales, use, valueadded and service taxes and will remit such taxes or payments directly to the appropriate authorities, except for those taxes based on the income of NightHub.

6 TERM; TERMINATION

6.1 Term; Termination. The term of this Agreement will commence on the Effective Date and continue until terminated as set forth herein. Either Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party. In addition, a Party may terminate this Agreement immediately if the other Party breaches any material provision of this Agreement and does not cure such breach within fifteen (15) days after receiving written notice thereof.

6.2 Effect of Termination. In the event that this Agreement is terminated for any reason, all rights with respect to the NightHub Platform will immediately terminate, and Venue will (a) cease use of the NightHub Platform; (b) return to NightHub or destroy, in NightHub's sole discretion, all copies or other embodiments of NightHub's Confidential Information, provided that Venue may continue to use User Data in accordance with Section 2.1(b) above; and (c) pay to NightHub any amounts due and owing under this Agreement. NightHub will (a) cease use of Venue Content and the Venue Marks, provided that NightHub may continue to use Venue Content in accordance with Section 2.2(b) above; (b) return to Venue or destroy, in Venue's sole discretion, all copies or other embodiments of Venue's Confidential Information; and (c) pay to Venue any amounts due and owing under this Agreement. Notwithstanding the foregoing, nothing in this Section 6 will limit NightHub's ability to display basic directory information about and photographs and images provided by Venue on the NightHub website and mobile applications.

6.3 Survival. Upon termination of this Agreement, all obligations in this Agreement will terminate, provided that Sections 1.2 (Platform Access Restrictions and Responsibilities), 1.3 (Feedback), 2.1(b) (User Data), 2.2(b) (Venue Content), 2.3 (User Ratings), 3 (Ownership; Reservation of Rights), 5 (Fees; Payment Terms), 6 (Term; Termination), 7 (Confidentiality), 8.2 (Disclaimer), 9 (Limitations of Liability; Indemnification), and 11 (Dispute Resolution) and 12 (General) will survive.

7 CONFIDENTIALITY

7.1 Definition of Confidential information. “Confidential Information” means, subject to the exceptions set forth in Section 7.2 hereof, any information or data or materials, regardless of whether it is in tangible form, that is disclosed or otherwise made available by a Party (the “Discloser”) to the other Party (the “Recipient”) and that (a) the Discloser has marked as confidential or proprietary, or (b) the Discloser identifies as confidential at the time of disclosure with written confirmation within fifteen (15) days of disclosure to the Recipient; provided, however, that reports and/or information related to or regarding the Discloser’s business plans, business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, partners, suppliers billing records, and products or services will be deemed Confidential Information of the Discloser even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 7.2 hereof. For the avoidance of doubt, the NightHub Platform and the User Data is Confidential Information of NightHub.

7.2 Exceptions to Confidential Information. Confidential Information will not include any information which: (a) the Recipient can show by written record was in its possession prior to disclosure by the Discloser hereunder, provided that the Recipient must promptly notify the Discloser of any prior knowledge; (b) appears in issued patents or printed publications in integrated form or which otherwise is or becomes generally known in the trade other than through the Recipient’s failure to observe any or all terms and conditions hereof; or (c) subsequent to disclosure to the Recipient by the Discloser, is obtained by the Recipient from a third person who is not subject to any confidentiality obligation in favor of Discloser.

7.3 Use and Disclosure of Confidential Information. The Recipient may only use the Confidential Information for the purpose of performing its obligations and exercising its rights hereunder. The Recipient must keep secret and will never disclose, publish, divulge, furnish or make accessible to anyone any of the Confidential Information of the Discloser, directly or indirectly, other than furnishing such Confidential Information to (a) the Recipient’s employees who are required to have access to such Confidential Information in connection with the Permitted Purpose, and (b) professional advisers (e.g., lawyers and accountants), in each case, during the time that the Recipient is permitted to retain such Confidential Information hereunder; provided that any and all such employees are bound by written agreements or, in the case of professional advisers, ethical duties, respecting the Confidential Information in the manner set forth in this Agreement. The Recipient will use at least reasonable care and adequate measures to protect the security of the Confidential Information of the Discloser and to ensure that any Confidential Information of the Discloser is not disclosed or otherwise made available to other persons or used in violation of this Agreement.

7.4 Disclosures Required by Law. In the event that the Recipient is required by law to make any disclosure of any of the Confidential Information of the Discloser, by subpoena, judicial or administrative order or otherwise, the Recipient will first give written notice of such requirement to the Discloser, and will permit the Discloser to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Discloser in seeking to obtain such protection.

8 REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 Representations and Warranties. Each Party represents and warrants to the other Party that (a) such Party has the required power and authority to enter into this Agreement and to perform its obligations hereunder, (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party, and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both Parties. Venue further represents and warrants that Venue owns all right, title and interest in and to the Venue Content, including, without limitation, all copyrights and rights of publicity contained therein. NightHub will use reasonable efforts consistent with prevailing industry standards to maintain the NightHub Platform in a manner which minimizes errors and interruptions. Notwithstanding the foregoing, the NightHub Platform may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by NightHub or by third-party providers, or because of other causes beyond NightHub's reasonable control.

8.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE NIGHTHUB PLATFORM IS PROVIDED ON AN "AS-IS" BASIS AND NIGHTHUB DISCLAIMS ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. NIGHTHUB EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NIGHTHUB DOES NOT WARRANT THAT THE NIGHTHUB PLATFORM IS ERROR-FREE OR THAT OPERATION OF THE NIGHTHUB PLATFORM WILL BE SECURE OR UNINTERRUPTED.

9 LIMITATIONS OF LIABILITY; INDEMNIFICATION

9.1 NightHub's Disclaimer of Damages for Third-Party Materials. IN NO EVENT WILL NIGHTHUB BE LIABLE IN ANY WAY FOR ANY CONTENT OR MATERIALS OF ANY THIRD PARTIES (INCLUDING VENUES) UPLOADED TO OR TRANSMITTED THROUGH THE NIGHTHUB PLATFORM, INCLUDING, BUT NOT LIMITED TO, FOR ANY ERRORS OR OMISSIONS IN ANY CONTENT, OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY SUCH CONTENT.

9.2 Disclaimer of Consequential Damages. EXCEPT FOR LIABILITY ARISING FROM OR RELATED TO A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 9.5 AND 9.6 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.

9.3 General Cap on Liability. EXCEPT FOR LIABILITY ARISING FROM OR RELATED TO (A) VENUE'S BREACH OF SECTION 1 (ACCESS TO PLATFORM) ABOVE, (B) EITHER PARTY'S BREACH OF SECTION 7 (CONFIDENTIALITY) ABOVE, AND (C) A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 9.5 AND 9.6 BELOW, AS APPLICABLE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO NIGHTHUB UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

9.4 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

9.5 Indemnification by NightHub. NightHub will indemnify, defend and hold Venue and the officers, directors, agents, and employees of Venue ("Venue Indemnified Parties") harmless from settlement amounts and damages, liabilities, penalties, costs and expenses ("Liabilities") that are payable to any third party or incurred by the Venue Indemnified Parties (including reasonable attorneys' fees) arising from any claim, demand or allegation by a third party that arises out of any United States copyright infringement claim that involves, relates to or concerns the NightHub Platform (except for claims for which NightHub is entitled to indemnification under Section 9.6, in which case NightHub will have no indemnification obligations with respect to such claim). NightHub will have no liability or obligation under this Section 9.5 with respect to any Liability if such Liability is caused in whole or in part by: (a) modification of the NightHub Platform by any party other than NightHub without NightHub's express consent; (b) the combination, operation, or use of the NightHub Platform with other product(s), data or services where the NightHub Platform would not by itself be infringing; or (c) unauthorized or improper use of the NightHub Platform. This Section 9.5 states NightHub's entire obligation and Venue's sole remedies in connection with any claim regarding the intellectual property rights of any third party.

9.6 Indemnification by Venue. Venue will indemnify, defend and hold NightHub and the officers, directors, agents, and employees of NightHub ("NightHub Indemnified Parties") harmless from Liabilities that are payable to any third party or incurred by the NightHub Indemnified Parties (including reasonable attorneys' fees) arising from, directly or indirectly, any claim, demand or allegation by a third party that arises out of or is in connection with (a) any use by Venue of the NightHub Platform in violation of this Agreement;(b) the Venue Content; or (c) any interaction between Venue and any User or any individual who attempts to enter or who enters the Venue as a result of any Reservation with Venue.

9.7 **Indemnification Procedure.** If a Venue Indemnified Party or a NightHub Indemnified Party (each, an “Indemnified Party”) becomes aware of any matter it believes it should be indemnified under Section 9.5 or Section 9.6, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an “Action”), the Indemnified Party will give the other Party (the “Indemnifying Party”) prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.

10 **GOVERNMENT MATTERS.** Venue may not remove or export from the United States or allow the export or re-export of the NightHub Platform, including any software, documentation or data related to the NightHub Platform (the “Software”), or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11 **DISPUTE RESOLUTION.** Any controversy or claim arising out of or relating to the NightHub Platform or this Agreement or the breach thereof will be settled by arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, unless such rules are specifically modified in this Agreement. Unless otherwise agreed by the Parties, arbitration will be held in New York, New York, before a single arbitrator mutually agreed upon by the Parties, or, if the Parties cannot mutually agree, a single arbitrator appointed by the AAA. Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the other Party with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, will be determined by the arbitrator, whose determination will be conclusive.

All discovery will be completed within sixty (60) days following the appointment of the arbitrator. Any Party who intends to offer the testimony of an expert at the hearing will provide to all other Parties, no later than two weeks before the commencement of the hearing, a written report of such expert, which will include: (a) a complete statement of all opinions the witness will express and the basis and reasons for such opinions; (b) the data or other information considered by the witness in forming such opinions; (c) any exhibits that will be used to summarize or support such opinions; (d) the witness's qualifications, including a list of all publications authored in the previous ten years; (e) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial, at an arbitration or by deposition; and (f) a statement of the compensation to be paid for the study and testimony in the case.

The award will be made within six (6) months of the filing of the demand, and the arbitrator will agree to comply with this schedule before accepting appointment. This time limit may be extended by agreement of the Parties or by the arbitrator if necessary.

The arbitrator will not have the power to award damages in excess of the limitation on actual compensatory, direct damages set forth in this Agreement and may not multiply actual damages or award punitive damages or any other damages that are specifically excluded under this Agreement, and each Party hereby irrevocably waives any claim to such damages. The arbitrator may, in his or her discretion, assess costs and expenses (including the reasonable legal fees and expenses) against any Party to a proceeding. The arbitrator may also, in his or her discretion, determine how the costs and expenses of the arbitration will be allocated between the Parties. Any Party refusing to comply with an order of the arbitrator will be liable for costs and expenses, including attorneys' fees, incurred by the other Party in enforcing the award. Notwithstanding the foregoing, in the case of temporary or preliminary injunctive relief, any Party may proceed in court without prior arbitration for the purpose of avoiding immediate and irreparable harm. The provisions of this arbitration section, and any award therefrom, will be enforceable in any court of competent jurisdiction.

12 **GENERAL.** The terms and conditions of this Agreement are severable. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Neither Party may assign this Agreement without the other Party's prior written consent; provided that either Party may assign this Agreement without such consent to an affiliate or to an acquirer of all or substantially all of the business to which this Agreement relates, whether by sale of stock, sale of assets, merger, reorganization or otherwise. Any assignment or attempted assignment by either Party otherwise than in accordance with this Section will be null and void. Subject to the foregoing, this Agreement will be binding on the Parties and their successors and assigns. Both Parties agree that this Agreement and the terms posted on the NightHub Standard Pricing page are the complete and exclusive statements of the mutual understanding of the Parties and supersede and cancel all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a Party does not have any authority of any kind to bind the other Party in any respect whatsoever. All notices under this Agreement will be in writing and sent to the recipient's address set forth above and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Each Party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a Party's financial condition or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "Force Majeure Event"). Delays in performing obligations due to a Force Majeure Event will automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the Parties in writing, in the event such non-performance continues for a period of thirty (30) days or more, either Party may terminate this Agreement by giving written notice thereof to the other Party. This Agreement will be governed by the laws of the State of New York without regard to its conflict of laws provisions. Venue acknowledges that any unauthorized use of the NightHub Platform will cause irreparable harm and injury to NightHub for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, Venue further agrees that NightHub will be entitled to injunctive relief in the event Venue uses the NightHub Platform in violation of the limited license granted herein or uses the NightHub Platform in any way not expressly permitted by this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.