

## TERMS OF USE

Please Read Carefully.

February 10, 2021

The services that Produce Desk LLC and its parents, subsidiaries, representatives, affiliates, officers and directors (collectively, hereinafter "ProduceDesk," "we," "our," and "us") provides to you are subject to the terms and conditions set forth herein ("Terms of Use"), which govern your access to and/or use of the website, software-as-a-service platform and/or use of any software downloads, content, products, services and any sites ProduceDesk may have now and/or in the future (collectively, the "Services"). If you are entering into this Terms of Use on behalf of a company, organization or other legal entity, "you" or "your" shall refer to such entity.

In order to use the Services, you must accept this Terms of Use and ProduceDesk's Privacy Notice (link below), which are presented to you when you first create an account through the Services, and may be updated from time to time thereafter by ProduceDesk in its sole and absolute discretion as described herein. By registering for and/or using the Services in any manner, you signify your agreement with this Terms of Use, and are entering into a legally binding agreement with ProduceDesk. **If you are an individual agreeing to the terms of this Terms of Use on behalf of your legal entity and/or employer, you represent that the individual agreeing to this Terms of Use has the legal authority to bind such entity.**

Please read this Terms of Use carefully. If you do not accept this Terms of Use, now or in the future, please stop your use of the Services immediately, in which case any continuing access and/or use of the Services is unauthorized. This Terms of Use expressly supersedes prior agreements and/or arrangements between you and ProduceDesk.

### PRIVACY NOTICE

You also agree to ProduceDesk's privacy notice, located at <https://www.producedesk.com/> ("Privacy Notice") and consent to any personal information we may obtain about you being collected, stored, and/or otherwise processed in accordance with the Privacy Notice and this Terms of Use.

**ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION CLAUSE BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND PRODUCE DESK WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT AND/OR CLASS-WIDE ARBITRATION.**

### CHANGES TO TERMS

Subject to the terms and conditions set forth herein, ProduceDesk may, at any time, for any reason, in its sole and absolute discretion, make changes to the Services and/or modify this Terms of Use. If ProduceDesk makes changes and/or modifications that affect your access to and/or use of the Services, ProduceDesk will provide a notice of such changes only by posting the updated Terms of Use on the Services and ProduceDesk will change the "last updated" date listed above. We may also provide you with additional forms of notice of modifications and/or updates as appropriate under the circumstances. Your use of the Services following any changes and/or modifications will constitute your acceptance of such changes and/or modifications. If you do not agree with the changes and/or modifications, you shall not use the Services after the effective date of the changes. Please revisit this Terms of Use regularly to ensure that you stay informed of any changes.

## **DESCRIPTION OF SERVICES**

**General.** The Services are intended to provide buyers and sellers of produce with access to (i) a dynamic database of produce providers that indicates when farms are in season, (ii) an exclusive marketplace that connects buyers and sellers of produce across the country, and (iii) information about distressed produce recovery salvage opportunities.

## **SCOPE OF USE**

**Eligibility.** The Children's Online Privacy Protection Act ("COPPA") requires that online service providers get parental consent before they knowingly collect personally identifiable information online from children under the age of thirteen (13). ProduceDesk does not knowingly collect or solicit information from children under the age of thirteen (13). You represent and warrant that you are at least eighteen (18) years of age. If you are under eighteen (18), you may not, under any circumstances or for any reason, use the Services. We may, in our sole discretion, refuse to offer the Services to any person and/or entity and change its eligibility criteria at any time. If we learn we have collected personal information from a child under the age of thirteen (13), we will delete the information, so please contact us at [privacy@producedesk.com](mailto:privacy@producedesk.com) if you think a child has provided us personal information.

**Use of Services and Availability.** Use of the Services is at your own risk, including without limitation the risk that you might be exposed to content that is offensive, indecent, inaccurate, or objectionable. ProduceDesk retains the right, in our sole and absolute discretion, to deny service and/or access to and/or use of the Services to anyone at any time and for any reason without liability. While we use reasonable efforts to keep the Services accessible, the Services may be unavailable from time to time. You understand and agree that there may be interruptions to the Services and/or access to your User Account (defined below) due to circumstances both within our control (e.g., routine maintenance) and outside of ProduceDesk's control, for which ProduceDesk will bear no responsibility. The Services may be modified, updated, suspended and/or discontinued at any time without notice and/or liability.

**Creating an Account.** You may establish an account through the Services. Without creating an account, you will only be able to browse ProduceDesk's website, and view the products and/or Services we offer. In order to fully access and/or use the Services, and gain access to the functionality of the software and/or data we provide, you must register and create an account by selecting a login identification ("Username") and a unique user password ("Password") (collectively, a "User Account"). When setting up a User Account, you are required to (i) abide by all applicable laws, rules, and regulations, as well as indicate agreement to this Terms of Use, (ii) provide contact information, and (iii) submit any other form of authentication required during the enrollment process, as determined by ProduceDesk in its sole and absolute discretion. If you establish a User Account with ProduceDesk, you agree to provide true, accurate and current information in connection with your User Account. You are responsible for updating and correcting information you have submitted to create and/or maintain your User Account. You may only create and hold one (1) User Account that you are solely responsible for managing and are prohibited from using other disguised identities when using the Services. You may add authorized users under your User Account, but are solely responsible for any Username and Password used for the Services. We may refuse to grant you an account with a name that impersonates someone else, if it may be illegal, vulgar, offensive, and/or if it may be protected by trademark and/or other proprietary rights, as determined by ProduceDesk in its sole and absolute discretion. You are solely responsible for maintaining the security and confidentiality of the password you use to access your User Account. You understand and agree that ProduceDesk shall have no responsibility for any incident arising out of, or related to, your account settings and/or authorized users within your User Account. You will determine the access controls for

your authorized users and will be liable for activity occurring under your User Account, including without limitation compliance with the terms and conditions of this Terms of Use. You agree to (i) maintain the accuracy and completeness of information provided to ProduceDesk and agree to provide any changes to ProduceDesk as promptly as possible after any such change and (ii) use commercially reasonable efforts to prevent unauthorized access to, and/or use of the Services, and notify ProduceDesk immediately of any such unauthorized access to and/or use of the Services.

Your User Account is non-transferable and may not be sold, combined and/or otherwise shared with any other person. If you violate any of these limitations and/or this Terms of Use, we may terminate your User Account immediately. Upon termination, the provisions of this Terms of Use that are by their nature intended to survive termination (including without limitation any disclaimers, limitations of liability, and indemnities) shall survive such termination. If we terminate your User Account, you may not subscribe under a new account unless we formally invite you. If you commit fraud and/or falsify information in connection with your access and/or use of the Services, or in connection with your User Account, your account will be terminated immediately and we reserve the right to: (i) hold you liable for any and all damages that we suffer, (ii) pursue legal action through relevant local and national law enforcement authorities, and/or (iii) notify your Internet Service Provider of any fraudulent activity we associate with you and/or your access to and/or your use of the Services.

**Records of Compliance; Duties.** We undertake to perform only such duties as are expressly set forth in this Terms of Use, and no other duties will be implied. We have no liability under, and no duty to inquire as to, the provisions of any agreement, other than this Terms of Use. We will be under no duty to inquire about or investigate any agreement or communication between buyers and sellers, even if posted to the Service. We have the right to rely upon, and will not be liable for acting or refraining from acting upon, any written notice, instruction, or request furnished to us by a buyer or seller in accordance with this Terms of Use, if we reasonably believe that such notice, instruction, or request is genuine and that it is signed or presented by the proper party or parties. We have no duty to inquire about or investigate the validity, accuracy, or content of any such notice, instruction, or request. We have no duty to solicit any payments or releases that may be due to or from any User Account. All users will each (a) create and maintain records to document satisfaction of their respective obligations under this Terms of Use, including, without limitation, their respective payment obligations, orders, and compliance with tax and employment laws, and (b) provide copies of such records to ProduceDesk upon request. Nothing in this subsection requires or will be construed as requiring ProduceDesk to supervise or monitor a user's compliance with this Terms of Use. You are solely responsible for creation, storage, and backup of your business records. This Terms of Use and any registration for or subsequent use of the Services will not be construed as creating any responsibility on ProduceDesk's part to store, backup, retain, or grant access to any information or data for any period.

**Service Orders.** Users may facilitate orders between buyers and sellers through contact mechanisms provided through the Services or such parties may agree to different terms for their orders. Users may not, by agreement amongst themselves, alter the rights or responsibilities of ProduceDesk, or agree to any terms that would violate the Terms of Use. Neither ProduceDesk, nor any affiliate of ProduceDesk is a party to any service agreement or order by or between users. You acknowledge and agree that users have discretion whether to contract with each other and will negotiate and determine the specific terms of their orders or service agreements with each other.

**Communications from ProduceDesk.** By using the Services, you agree to receive certain communications in connection with the Services. When you access and/or use the Services, you are communicating with

us electronically, and you consent to receive communications from us electronically including but not limited to notices related to the Services provided to you via email. You agree that all agreements, notices, disclosures and/or other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Your consent to receive records and notices electronically will remain in effect until you withdraw it. You may withdraw your consent to receive further records and notices electronically at any time by contacting us. If you withdraw your consent to receive such records and notices electronically, we will revoke your access to the Services. Any withdrawal of your consent to receive records and notices electronically will be effective only after we have a reasonable period of time to process your request for withdrawal.

**Your Responsibilities.** ProduceDesk grants you the rights set forth herein, subject to the following conditions:

- (a) You shall not modify, disassemble, create derivative works, publicly display, reverse engineer and/or otherwise reduce to human-perceivable form all or any part of the Services;
- (b) You agree not to submit and/or transmit any emails, User Content (defined in the User Content Section below), or other materials through the Services that contain a virus, worm, Trojan horse and/or any other harmful component designed to interrupt, destroy and/or limit the functionality of any computer software and/or hardware and/or telecommunications equipment, and/or that is designed to obtain unauthorized access to any information;
- (c) You may not access all or any part of the Services in order to build a product or service which competes with the Services;
- (d) You shall not copy, store, reproduce, duplicate, transmit or distribute a significant portion of the content on the Services;
- (e) You shall not obtain or attempt to obtain any data through any means from the Services, except if we intend to provide and/or make it available to you; provided that you leave all copyright and other proprietary notices intact;
- (f) You shall not pretend to be someone else, use someone else's identify or misrepresent your affiliation with a person or entity;
- (g) You are responsible for the accuracy and quality of the data and content that you submit;
- (h) You agree to act in accordance with all applicable laws, rules and regulations;
- (i) You represent that you have the necessary permissions to use and authorize the use of User Content as described herein;
- (j) You shall not submit User Content (defined below), in any form, that is harmful, offensive, inaccurate or otherwise inappropriate including without limitation libelous, defamatory, discriminatory, harassing, racially, ethnically, hateful, profanatory and/or otherwise objectionable;
- (k) You shall not imply that User Content is in any way sponsored or endorsed by ProduceDesk;
- (l) You agree not to intentionally hold ProduceDesk and/or our employees and/or directors up to public scorn, ridicule or defamation;
- (m) You will not promote and/or provide information about illegal activities and/or physical harm and/or injury to any group, individual, institution and/or property;
- (n) You will use commercially reasonable efforts to prevent unauthorized access to and/or use of the services and content provided on the Services, and to notify ProduceDesk promptly of any such unauthorized access and/or use;
- (o) You shall not use the Services for any unlawful purpose and/or to violate any federal, state, international law, code of conduct and/or other guidelines which may be applicable to the Services provided; and

- (p) You will not submit User Content that violates, plagiarizes and/or infringes the rights of third parties including, without limitation, copyright rights, trademarks, rights of privacy or publicity and/or any other proprietary right; and/or that is designed to obtain unauthorized access to any information.

ProduceDesk shall not be subject to any obligations of confidentiality regarding any information or materials provided by you unless required by law. The commercial use, reproduction, transmission or distribution of any information, software or other material available through the Services without the prior written consent of ProduceDesk is strictly prohibited.

#### **USE OUTSIDE DEFINED AREA**

Please be aware that our Services are directed primarily to those individuals and entities located in the United States, and are subject to United States laws, including laws governing privacy and security of your information. The Services are not directed to any person or entity in any jurisdiction where (by reason of nationality, residence, citizenship or otherwise) the publication or availability of the Services and their content, including their products and services, are unavailable or otherwise contrary to local laws or regulations. If this applies to you, you are not authorized to access or use any of the information on the Services. Those who choose to access the Services from such locations do so at their own risk and are responsible for compliance with applicable local laws. This Terms of Use is written in English. To the extent any translated version of this Terms of Use conflicts with the English version, the English version controls. In the event you are using the Services outside of the United States, you agree as follows: (i) you consent to having your personal data transferred to and processed in the United States; (ii) if you are located in a country embargoed by the United States, or are on the U.S. Treasury Department's list of 'Specially Designated Nationals,' you will not engage in commercial activities on the Services (such as advertising or payments); and/or (iii) you will not use the Services if you are prohibited from receiving products, services or software originating from the United States.

#### **PAYMENT AND FEES**

**General.** By setting up a User Account and using and/or accessing the Services, you agree to pay ProduceDesk all fees in accordance with your applicable order or otherwise stated on the Services. You are responsible for all fees, including, without limitation, taxes associated with your use of the Services. All fees shall be payable in U.S. dollars within the United States. By agreeing to this Terms of Use, you hereby give ProduceDesk permission to charge the credit card, bank account, and/or other approved method of payment associated with your User Account for fees associated with your use of the Services. All fees due and payable by you to ProduceDesk under this Terms of Use must be paid in full without any deduction, set-off, counterclaim or withholding of any kind, unless required by law.

**Payment Account.** You authorize ProduceDesk to keep your information on file through our payment facilitator and to charge your account for outstanding charges. Any authorization you provide to make automatic payments using the Services will remain in effect until cancelled. If your information on file with us is closed or the account is changed, or if, for any reason, a charge is rejected by your card and/or bank issuer, you must update your information or supply a new account number, as appropriate, in your User Account. If you are unable to update your User Account with appropriate information, then ProduceDesk will send an invoice to your email address on file detailing the amount due. You must pay the amount due in full within fifteen (15) days from the date of the invoice, or your User Account will be considered past due and ProduceDesk may suspend and/or terminate your User Account, and/or any Services provided, without liability and may seek all available remedies at law and in equity. You acknowledge and agree that you will be liable for all fines, chargebacks, refunds and other expenses

incurred in the enforcement of any third-party provider agreements and further agree to reimburse ProduceDesk for any and all such fines, chargebacks, refunds and other expenses incurred related thereto. ProduceDesk may partner with other third parties to facilitate transactions for the Services on your behalf. Should we do so, you authorize us to share your identity and account data with those third parties for the purposes of opening and supporting your User Account, and you are responsible for the accuracy and completeness of that data.

**Refunds.** All fees are nonrefundable unless otherwise agreed to by ProduceDesk in its sole and absolute discretion. For any questions regarding payments and/or our refund policy, please contact us at [privacy@producedesk.com](mailto:privacy@producedesk.com).

#### **ERRORS, INACCURACIES, OMISSIONS AND PERFORMANCE**

Occasionally there may be information on the Services that contain typographical errors, inaccuracies, and/or omissions that may relate to services, contact information, address, and events. We reserve the right to: (i) correct any errors, inaccuracies, and/or omissions; and/or (ii) make changes to content, descriptions, Services and/or other information without obligation to issue any notice of such changes, except as prohibited by law. We also reserve the right to revise, suspend and/or terminate an event, content and/or promotion at any time without notice and without liability.

#### **PROPRIETARY RIGHTS AND LICENSES**

**Ownership.** The Services, any content and/or products on the Services and the infrastructure used to provide the Services are proprietary to ProduceDesk, our affiliates, and/or other content providers. By using the Services and accepting this Terms of Use, ProduceDesk grants you a limited, personal, nontransferable, nonexclusive, revocable right to access and/or use the Services pursuant to this Terms of Use and to any additional terms and policies set forth by ProduceDesk. Neither this Terms of Use nor your use of the Services convey and/or grant to you any rights: (i) in or related to the Services except for as expressly set forth herein; and (ii) to use or reference in any manner ProduceDesk's names, logos, product and service names, trademarks or services marks or those of ProduceDesk's licensors.

**Reservation of Rights.** The materials, headers, videos, illustrations, photographs, graphics and/or any other content on the Services, as well as the organization and layout of the Services, are copyrighted and are protected by United States and international copyright laws and treaty provisions. Subject to the limited rights expressly granted hereunder, ProduceDesk and/or its third-party providers reserve all right, title and interest in and to the Services and content, including all related worldwide intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

**User Content.** Please carefully choose the information that you post on, through and/or in connection with the Services. You acknowledge and agree that you have no expectation of privacy with regard to any information, content, advice, discussions, images, photographs, video, audio, sounds, descriptions, comments, reviews, responses, posts, messages, receipts, warranties and/or any other material ("User Content") submitted or transmitted through the Services and/or communication facilities that may be offered on, through, and/or in connection with the Services from time to time. You assume all risks associated with User Content, including anyone's reliance on its quality, accuracy, and/or reliability by you. You also represent that you own, and/or have the necessary permissions to use and authorize use of User Content as described in this Terms of Use. You hereby grant ProduceDesk a worldwide, perpetual, non-exclusive, royalty-free, irrevocable, assignable, sub-licensable, transferable license to use the User Content for any purpose, including after termination of your User Account. You further hereby irrevocably grant the other users of the Services, the right to access and/or use User Content in connection with their

use of the Services in accordance with this Terms of Use. You shall not imply that User Content is in any way sponsored and/or endorsed by ProduceDesk.

**Feedback.** If you provide us (in a direct mail, email and/or otherwise) with any feedback, suggestions, improvements, enhancement requests, corrections, ratings and reviews, recommendations, feature requests and/or other feedback provided by you or others relating to the Services (“Feedback”), then you will own this material; however, you grant to ProduceDesk a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate any such Feedback and material. ProduceDesk has no obligation to review any Feedback and may use and/or redistribute Feedback for any purpose without restriction in its sole and absolute discretion.

#### **SPAMMING**

Gathering email addresses from ProduceDesk through harvesting or automated means is prohibited. Posting and/or transmitting unauthorized and/or unsolicited advertising, promotional materials, and/or any other forms of solicitation to other users is prohibited. We also prohibit crawling, scraping, caching, and/or otherwise accessing any content on the Services via automated means (except as may be the result of standard search engine protocols and/or technologies used with ProduceDesk’s express written consent).

#### **NO UNLAWFUL OR PROHIBITED USE**

As a condition of your use of the Services, you warrant to ProduceDesk that you will not use the Services for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the Services in any manner that could damage, disable, overburden, and/or impair the Services and/or interfere with any other party’s use and/or enjoyment of the Services. You may not obtain and/or attempt to obtain any materials and/or information through any means not intentionally made available and/or provided for through the Services.

#### **USER VERIFICATION**

ProduceDesk may, in its sole discretion, verify a user’s identity prior to allowing such user to access and/or use the Services. ProduceDesk may, without liability, refuse to process, and/or may cancel any services, as reasonably deemed necessary, to comply with applicable law and/or to respond to a case of misrepresentation, fraud and/or known and/or potential violations of the law and/or this Terms of Use. You understand that the Services act only as a platform that provides users with information relating to produce. ProduceDesk does not itself verify the information and/or the qualifications of organizations, customers, and/or other users of the Services, nor does it evaluate or control in any ongoing manner exchanges between users. Any reviews, opinions or statements expressed by a user are of those of the user alone, and are not to be attributed to ProduceDesk and ProduceDesk does not take on any liability related thereto. ProduceDesk cannot and does not assume responsibility for the accuracy, completeness, safety, reliability, timeliness, legality and/or applicability of anything said, written, posted, displayed and/or otherwise made available by any user on and/or in relation to the Services. Please use caution and common sense when using the Services.

#### **TERM; TERMINATION**

This Terms of Use will remain in full force and effect until either party requests to terminate the relationship. The rights granted by ProduceDesk to use the Services is predicated upon your (a) acknowledgment and acceptance of this Terms of Use; (b) payment for the access granted; and (c) agreement to not share the access granted with any other person or entity, except for authorized users within your User Account. You will have the ability to terminate your access to and/or use of the Services

at any time, for any reason. In the event you request that your User Account be deleted and/or fully terminated or in the event we terminate your User Account, you agree to immediately discontinue use of the Services and/or related services that were promoted through the Services, and must provide a certified statement indicating compliance with this provision upon ProduceDesk's request, and pay ProduceDesk all fees due and owing. If you violate, or if we have grounds to suspect that you violated, this Terms of Use and/or other use parameters included on the Services, we reserve the right to suspend and/or terminate your User Account, and/or refuse your use of the Services (or any portion thereof) at any time. ProduceDesk also reserves the right, in its sole discretion, to terminate your access to the Services or any portion thereof at any time, without cause and/or without notice and without liability. In the event you fail to pay for the access granted, and/or misuse the system by any means actionable under a federal, state, and/or local statute, code, regulation, law, and/or civil action, ProduceDesk will consider your and/or the unauthorized user's access as having been acquired by fraud and/or misrepresentation and will terminate your access and/or use of the Services immediately. In such a case, ProduceDesk retains the right to seek civil and/or criminal redress, the entire cost of which shall be borne solely by the you.

#### **RELEASE**

In addition to the recognition that ProduceDesk is not a party to any contract between users, you hereby release ProduceDesk, our affiliates, and our respective officers, directors, agents, subsidiaries, joint ventures, employees and service providers from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any dispute you have with another user, whether it be at law or in equity that exist as of the time you enter into this Terms of Use. This release includes, for example and without limitation, any disputes regarding the performance, functions, and quality of the products and/or services provided to a buyer and requests for refunds based upon disputes. Procedures regarding the handling of certain disputes between users are set forth in this Terms of Use.

**TO THE EXTENT APPLICABLE, YOU HEREBY WAIVE THE PROTECTIONS OF CALIFORNIA CIVIL CODE § 1542 (AND ANY ANALOGOUS LAW IN ANY OTHER APPLICABLE JURISDICTION) WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

This release will not apply to a claim that ProduceDesk failed to meet our obligations under this Terms of Use.

#### **INDEMNIFICATION AND WAIVER**

You shall indemnify, defend and hold harmless ProduceDesk, its officers, agents, employees, contractors, subcontractors, suppliers and representatives from and against any and all claims, demands, proceedings, losses, costs, damages, awards, fees, expenses, and/or liabilities of any nature ("Claim") arising out of and/or in the relation to (i) your violation of any law and/or the rights of a third party, (ii) any breach of this Terms of Use by you, your users, officers, agents, employees, contractors and/or representatives, (iii) your use of ProduceDesk's Services, (iv) use of User Content that constitutes an infringement, violation, trespass, contravention and/or breach of any third party, and/or constitutes the unauthorized use and/or misappropriation of any trade secret of any third party, and/or (v) fraud you commit and/or your intentional misconduct and/or negligence. You shall give prompt notice to ProduceDesk upon your receipt of notice of any Claim against you which might give rise to a Claim against ProduceDesk.



## **DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

THE SERVICES, AND ANY CONTENT, ARE PROVIDED BY PRODUCEDESK TO YOU ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS AND/OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, STATUTORY AND/OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, ACCURACY, AND FROM COURSE OF DEALING, USAGE AND/OR TRADE PRACTICE, ALL OF WHICH PRODUCEDESK EXPRESSLY DISCLAIMS. WITHOUT LIMITING THE FOREGOING, PRODUCEDESK AND/OR ITS LICENSORS MAKE NO WARRANTY THAT (A) THE SERVICES, CONTENT, AND/OR MATERIALS WILL MEET YOUR REQUIREMENTS AND/OR WILL BE CONSTANTLY AVAILABLE, UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (B) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, CONTENT AND/OR MATERIALS WILL BE EFFECTIVE, ACCURATE AND/OR RELIABLE; AND/OR (C) PRODUCEDESK WILL NOT BE LIABLE AND/OR OTHERWISE RESPONSIBLE FOR ANY FAILURE AND/OR DELAY IN UPDATING THE SERVICES AND/OR ANY CONTENT. NO ADVICE AND/OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PRODUCEDESK AND/OR THROUGH AND/OR FROM USE OF THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TERMS OF USE. YOU ASSUME TOTAL RESPONSIBILITY AND THE ENTIRE RISK FOR YOUR USE OF THE SERVICES.

## **LIMITATION OF LIABILITY**

YOUR USE OF THE SERVICES AND CONTENT IS AT YOUR OWN RISK. IN NO EVENT SHALL PRODUCEDESK, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, LICENSORS, AND/OR SUPPLIERS BE LIABLE TO YOU AND/OR ANYONE ELSE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION, ATTORNEY'S FEES, THOSE RESULTING FROM LOSS OF USE, DATA AND/OR PROFITS, WHETHER OR NOT FORESEEABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, AND/OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF PRODUCEDESK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THE FOREGOING SHALL APPLY DESPITE ANY NEGLIGENCE, MISCONDUCT, ERRORS AND/OR OMISSIONS BY PRODUCEDESK, ITS EMPLOYEES, REPRESENTATIVES AND/OR AGENTS. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, PRODUCEDESK'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

IN THE EVENT YOU ARE DISSATISFIED WITH THE SERVICES, RELATED SERVICES OR ANY OTHER GRIEVANCE, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE THE RIGHT TO DISCONTINUE ACCESS TO, AND/OR USE OF THE SERVICES. PRODUCEDESK'S MAXIMUM AGGREGATE LIABILITY, AND THE AGGREGATE LIABILITY OF ITS PARTNERS AND LICENSORS, TO YOU IN ANY CIRCUMSTANCE ARISING OUT OF AND/OR RELATING TO THE SERVICES IS LIMITED TO ONE HUNDRED DOLLARS (US\$100.00).

## **LINKED SITES**

The Services may provide links to various other independent third-party websites ("Linked Sites") that may be of interest to you and are provided for your convenience only. ProduceDesk does not control and/or endorse such Linked Sites and is not responsible for their content nor is it responsible for the accuracy and/or reliability of any information, data, opinions, advice or statements contained within such Linked Sites. You will need to make your own independent judgment regarding your interaction with these Linked Sites at your own risk. We encourage you to be aware when you leave the Services and to

read the terms and conditions and privacy policy of each Linked Site that you visit. ProduceDesk reserves the right to terminate any link and/or linking program at any time. ProduceDesk disclaims all warranties, express and implied, as to the accuracy, validity, and legality and/or otherwise of any materials or information contained on such Linked Sites.

You may not link to the Services without our written permission. If you are interested in linking to the Services, please contact [privacy@producedesk.com](mailto:privacy@producedesk.com).

### **THIRD PARTY SERVICES**

The Services may be made available and/or accessed in connection with third party services and content that ProduceDesk does not control. ProduceDesk may post advertisements of third parties through the Services, including without limitation promotions of advertisers, location based-ads, and/or sponsors showing their goods and services. Your correspondence, participation in, and/or any other dealings with third parties found through the Services are solely between you and such third party. ProduceDesk does not endorse such third-party services and content and in no event shall ProduceDesk be liable for any products and/or services of such third-party providers. You agree that ProduceDesk shall not be responsible for any loss and/or damage of any sort incurred as a result of any such dealings and/or as the result of the presence of such third parties through the Services. Moreover, ProduceDesk shall not be responsible and/or liable for the accuracy, quality, suitability, currency and/or content of the statements and/or conduct of any third party on the Services. You are solely responsible for the costs, expenses and infrastructure required to support your use of the Services. You acknowledge and agree that ProduceDesk utilizes third party providers to provide the Services, and any terms and conditions related to such third party providers products and/or services shall govern the use of such third party providers' products and/or services. You acknowledge and agree that ProduceDesk is not liable for the performance of any third party providers' products and/or services.

### **NO PROFESSIONAL ADVICE**

The information available on the Services is intended to be a general information resource regarding the matters covered, and is not tailored to your specific circumstance. The Services are not a substitute for professional advice. YOU SHOULD EVALUATE ALL INFORMATION, OPINIONS AND ADVICE AVAILABLE ON THE SERVICES IN CONSULTATION WITH YOUR OWN ADVISORS, AS APPROPRIATE. ProduceDesk does not, will not and cannot refer, recommend and/or endorse any specific professional service, product and/or procedures that are advertised on the Services.

### **FORCE MAJEURE**

Notwithstanding any other provision of this Terms of Use, ProduceDesk is not liable for any failure to perform, or delay in performing, any particular obligations under this Terms of Use where the failure or delay arises from any cause or causes beyond its reasonable control, including without limitation fire, flood, earthquake, elements of nature, epidemics, communication line failures, power failures, acts of God, acts of war, terrorism, riots, civil disorders or rebellions ("Force Majeure Event"). In the event of a Force Majeure Event, the parties agree to meet and discuss how to resolve the issue. This Section does not apply to any obligation to pay money, or any obligation that is unaffected by the Force Majeure Event.

### **INDEPENDENT CONTRACTOR**

ProduceDesk is an independent contractor and will determine the method, details and means of performing the Services. No party shall have the authority to bind, represent or commit the other. Nothing in this Terms of Use shall be deemed or construed to create a joint venture or agency relationship between the parties for any purpose.

## **DMCA COPYRIGHT POLICY AND COPYRIGHT AGENT**

ProduceDesk respects the intellectual property rights of others and expects you to do the same. We reserve the right to: (a) terminate your User Account or any other user who infringes third-party copyrights, (b) block access to and/or remove material that we believe in good faith to be copyrighted material that has been illegally distributed by you and/or other third parties, and/or (c) remove and discontinue service to repeat offenders. We will respond to clear notices of copyright infringement when you provide the following:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) Identification of the copyrighted work claimed to have been infringed;
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled;
- (iv) Information sufficient to permit ProduceDesk to contact you, such as your physical address, telephone number, and, if available, an electronic mail address;
- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Contact information for ProduceDesk's DMCA Agent for notice of claims of copyright infringement is: 1871 Chicago Attn: ProduceDesk Inc., Attn: Copyright Agent, 222 W. Merchandise Mart Plaza Floor 12, Suite 1212, Chicago, IL 60654.

The Copyright Agent will not remove content from the Services in response to phone or email notifications regarding allegedly infringing content, since a valid DMCA notice must be signed, under penalty of perjury, by the copyright owner or by a person authorized to act on his or her behalf. Please submit such notifications by fax or ordinary mail only and as further described by this Section. The Copyright Agent should be contacted only if you believe that your work has been used or copied in a way that constitutes copyright infringement and that such infringement is occurring on the Services linked to and/or from the Services. All other inquiries directed to the Copyright Agent will not be responded to.

## **DISPUTE RESOLUTION**

**Disputes.** We want to address your concerns without needing a formal legal case. Before filing a claim against ProduceDesk, you agree to try to resolve the dispute informally by contacting us at [privacy@producedesk.com](mailto:privacy@producedesk.com) within fifteen (15) days of the incident that is being reported. We will try to resolve the dispute by contacting you via email, but if we cannot resolve the dispute within thirty (30) days of submission, you and/or ProduceDesk agree to resolve any claims related to this Terms of Use through final and binding arbitration, except as set forth under 'Exceptions to Agreement to Arbitrate' section below and/or your ability to opt out as described below.

**Opt-Out.** You can opt-out and decline this agreement to arbitrate by contacting ProduceDesk within thirty (30) days from the date that you first became subject to this arbitration provision (i.e.: the date you initially accepted this Terms of Use). You must write us at 1871 Chicago Attn: ProduceDesk Inc., Attn: Opt-Out Arbitration, 222 W. Merchandise Mart Plaza Floor 12, Suite 1212, Chicago, IL 60654. If you opt out, neither you nor ProduceDesk can require the other to participate in an arbitration proceeding.

**Arbitration Procedures.** Except as regarding any action seeking equitable relief, including without limitation for the purpose of protecting any ProduceDesk Confidential Information and/or intellectual property rights, or except in the event the claim meets the requirements set forth in the 'Exceptions to Agreement to Arbitrate' section below and/or if you opt-out of arbitration as described above, any and all controversies and/or claims arising out of or relating to this Terms of Use and/or the Services shall be settled by binding arbitration in accordance with the commercial arbitration rules, in effect at the time the proceedings begin, of the American Arbitration Association. Any such controversy and/or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be held in Chicago, Illinois, or any other location we agree to. All information relating to and/or disclosed by any party in connection with the arbitration of any disputes hereunder shall be treated by the parties, their representatives, and the arbitrator as proprietary business information. Such information shall not be disclosed by any party or their respective representatives without the prior written authorization of the party furnishing such information. Such information shall not be disclosed by the arbitrator without the prior written authorization of all parties. Each party shall bear the burden of its own counsel fees incurred in connection with any arbitration proceedings. Judgment upon the award returned by the arbitrator may be entered in any court having jurisdiction over the parties or their assets or application of enforcement, as the case may be. Any award by the arbitrator shall be the sole and exclusive remedy of the parties. The parties hereby waive all rights to judicial review of the arbitrator's decision and any award contained therein.

**Exceptions to Agreement to Arbitrate.** Notwithstanding anything herein to the contrary, either you and/or ProduceDesk may assert claims, if it qualifies, in small claims court in Chicago, Illinois, and ProduceDesk may bring a lawsuit solely for injunctive relief to stop unauthorized use and/or abuse of the Services, breach of ProduceDesk's Confidential Information and/or intellectual property infringement (for example, trademark, trade secret, copyright and/or patent rights) without first engaging in arbitration and/or the information dispute-resolution process described herein.

**Judicial forum for disputes.** In the event that the agreement to arbitrate is found not to apply to you and/or your claim, you and ProduceDesk agree that any judicial proceeding (other than small claims actions) will be brought in the federal or state courts of Chicago, Illinois. Both you and ProduceDesk consent to the foregoing venue and jurisdiction.

#### **MISCELLANEOUS**

If any provision(s) and/or term(s) of this Terms of Use shall become and/or be declared illegal, invalid and/or unenforceable for any reason whatsoever, such term(s) and/or provision(s) shall be divisible from the other terms and conditions and shall be deemed to be deleted from it. This Terms of Use shall be governed in all respects by the laws of the State of Delaware, without reference to its choice of law rules. If an applicable law is in conflict with any part of this Terms of Use, this Terms of Use will be deemed modified to conform to the law and the other provisions will not be affected by any such modification. No waiver by either you and/or ProduceDesk of any breach and/or default and/or failure to exercise any right allowed under this Terms of Use is a waiver of any preceding and/or subsequent breach and/or default and/or waiver and/or forfeiture of any similar and/or future rights under this Terms of Use.

**Contact us:** If you would like to request additional information regarding this Terms of Use or have an inquiry regarding a commercial relationship with ProduceDesk, please contact us at: [privacy@producedesk.com](mailto:privacy@producedesk.com).