

ArtStorefronts.com (Art Storefronts or "The Company") is a division of Discerning Software, LLC and provides a collection of tools and resources to manage an online website for business use (the "Services"). The following are the terms and conditions for use of the Services, along with any amendments thereto and any operating rules or policies that may be published from time to time by Art Storefronts. By using our Services, you are agreeing to the Terms set forth on this document.

IF YOU, FOR YOURSELF OR ON BEHALF OF ONE OR MORE PERSONS YOU ARE REPRESENTING WITH RESPECT TO ART STOREFRONTS SERVICES, DO NOT AGREE TO ANY OF THE FOREGOING TERMS, YOU MUST, FOR YOURSELF AND ON BEHALF ANY SUCH PERSON(S), DISCONTINUE THE REGISTRATION PROCESS, DISCONTINUE YOUR USE OF THE SERVICES, AND, IF YOU ARE ALREADY A MEMBER, CANCEL YOUR ACCOUNT. BEGINNING NOW, ANY CONTINUATION BY YOU IN USING THE SERVICES CONSTITUTES FOR YOU AND THOSE REPRESENTED BY YOU AN EXPRESS AFFIRMATION AND COMMITMENT TO BE (OR TO CONTINUE TO BE, AS APPLICABLE) LEGALLY BOUND BY AND TO COMPLY WITH ALL OF THESE TERMS.

## **1. Services and Support**

1.1 The Services are provided subject to the following terms and conditions and any operating policies that Art Storefronts may establish (the "Agreement"). Art Storefronts may make changes to this Agreement, and continued use of the Service constitutes Customer's acceptance of any such changes. In addition, when using particular Art Storefronts services, Customer and Art Storefronts shall be subject to any posted guidelines or rules applicable to such Services that may be posted from time to time.

1.2 The Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to individuals under the age of 18. If you do not qualify, please do not use the Services.

1.3 The Services provides a collection of tools and resources to manage an online eCommerce website for business use.

1.4 Upon registration of a new account, customer will provide their information to use the Services. Customer will provide true, accurate, current, and complete information about Customer, and will update the information to keep it current. As part of the registration process, Customer will identify an e-mail address and choose a password, or modify a default password, for Customer's Art Storefronts account. Customer is responsible for maintaining the security of the Customer account, passwords, and files, and for all uses of Customer's account and of the Services in Customer's name. Art Storefronts reserves the right to refuse registration of, or cancel, accounts it deems inappropriate.

## **2. Restrictions and Responsibilities**

2.1 This is an Agreement for Services, and Customer is not granted a license to any software by this Agreement. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services or any software, documentation, or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software; or copy (except for archival purposes), distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software; use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2a This is an Agreement for Services, and Customer is not granted any ownership to any Art Storefronts design, code, or any other elements provided by Art Storefronts per this Agreement. Customer is also not granted a license to any Art Storefronts Website Design by this Agreement. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services or any software, documentation, or data related to the Services ("Designs"); modify, translate, or create derivative works based on the Services or any Designs; or copy (except for archival purposes), distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Designs; use the Services or any Designs for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2b In certain cases, Customer may decide to purchase custom development services from Art Storefronts or from an Art Storefronts Preferred Partner ("Preferred Partner") that requires the Preferred Partner to modify the Company's code base ("Custom Code"). A "Preferred Partner" is defined as any business or individual who The Company has authorized to make direct modifications to the Art Storefronts code base on behalf of a Customer. Customer understands and agrees that any and all modifications made to the Art Storefronts code base, whether as a result of a Customer project or not, will always and immediately remain under the sole ownership of the Company, under the terms specified in Section 2.2a above. Customer will not, under any circumstances, own any Custom Code nor any modifications to the Art Storefronts code base. Furthermore, Customer understands and acknowledges that Preferred Partners cannot, under any circumstances, grant any ownership rights of "Custom Code" to Customer. If a Preferred Partner offers to grant rights for Custom Code, Customer should immediately stop working with this Preferred Partner, and report the occurrence to the Company immediately. Customer also understands and acknowledges that even if a Preferred Partner offers to grant ownership rights to any Custom Code they produce and deliver, they are doing so without the authority of the Company, and such Custom Code will still abide by the terms of this Agreement and will remain solely owned by The Company. Customer hereby understands and acknowledges that this agreement

will always supersede any agreement executed between Customer and a Preferred Partner. Customer is able to use Custom Code made available to them so long as they are a Customer and are using the Services, and are paying the Company for the ongoing use of such Custom Code, if such an ongoing payment is required for the Custom Code. If or when a Customer terminates their account and is no longer using the Services, Customer will no longer have access to use any Custom Code that was created by a Preferred Partner.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Art Storefronts's privacy policies as published below or otherwise furnished to Customer (the "Policy") and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). Customer may not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited e-mail to any third party. Customer hereby agrees to indemnify and hold harmless Art Storefronts against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys fees) in connection with any claim or action that arises from an alleged violation of the foregoing. Although Art Storefronts has no obligation to monitor the content provided by Customer or Customer's use of the Services, Art Storefronts may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 For every e-mail message sent in connection with the Services, Customer acknowledges and agrees that the recipient has agreed to receive such communication and that Customer shall not engage in the act of sending unsolicited emails.

2.5 In using the varied features of the Services, Customer may provide information (such as name, contact information, or other registration information) to Art Storefronts. Art Storefronts may use this information and any technical information about Customer's use of this web site to tailor its presentations to Customer, facilitate Customer's movement through this web site, or communicate separately with Customer. Art Storefronts will not provide information to companies Customer has not authorized, and Art Storefronts will not permit the companies that get such information to sell and redistribute it without Customer's prior consent.

2.6 In using the varied features of the Services, Customer may upload artistic images for sale on its website. Art Storefronts may, from time to time, post such images to its social media accounts in effort to provide exposure for the images and/or utilize such images in other marketing collateral. If Customer wishes to not participate in this, Customer may opt out by specifying so in the settings of their account.

### **3. Your License**

Your subscription to the Services will commence on the day that you have made payment for the Services or when you first use the Services. Licenses last for a fixed

period of time, for example, 1 year. (the “License Period”). A license is associated with the plan you selected at the time of purchase (i.e. “Artisan”) and not any other plan or license.

In order to purchase and activate a License, Customer must first purchase the appropriate Membership Fee associated with the License they are purchasing. Membership Fee amounts will be specific to the License plan being purchased.

If you decide to change your plan, you will be purchasing a new license. The start date for the new license will commence on the day you purchased this new license, and the old license will be canceled. If the new plan requires a higher Membership Fee, you will be required to pay the difference between the Membership Fee of the plan you are currently on and the Membership Fee of the plan you desire to move onto, before you can purchase the License for the new plan.

Licenses and Memberships cannot be exchanged or transferred in any way whatsoever. Furthermore, the specific features or allotments of any given license cannot be transferred to another license nor to another Member.

All licenses come with a storage space limit, which is either based on a Visitor Upload count (if your license began before March 13, 2015) or a storage space value (such as 100 GB). If you exceed the amount on your current plan, and are not on a plan with the maximum storage space we offer, you will need to upgrade to the next tier plan that allows for more storage space, or you will need to delete files on your account to stay within your storage limit. We will allow an additional 5% storage grace period, but after that point your website will not be able to accept any more files until you upgrade to the next plan. If you exceed the amount of storage space on your current plan at the end of any given month, and are also on a plan with the maximum storage space we offer, you then will be billed at a rate of \$.09 per GB of overage at the end of said month.

For the current month, you can see the status of your account within the billing section of your site manager so that you are fully aware of where you stand.

Unless You designate otherwise in Your Account preferences, Your License will automatically renew at the end of the License Period and Art Storefronts will automatically charge the credit card associated with Your Account.

If You cancel a License, Art Storefronts is not obligated to refund any subscription charges already paid, regardless of whether Customer utilized the Services during the License Period. Art Storefronts incurs significant cost when activating any new Licenses and when it brings a new Customer onboard. Therefore, no refunds will be provided.

If You cancel a License, cancellation will take effect at the end of the current License Period. After cancellation, You will no longer be able to access or use any Services.

Upon canceling a License, if Customer has no further active Licenses on the platform, then the Customer's Membership will be canceled after a 30-day grace period from the date that the License was canceled. After 30-days, should Customer wish to purchase a new License, Customer will also need to purchase a new Membership with the Company at current prices.

Your License will automatically terminate or expire upon the earlier of (1) non-renewal, cancellation or expiration of a subscription or failure to pay subscription fees when due, if applicable, (2) Art Storefronts' discontinuation of the Services, or (3) failure to comply with these Terms. You acknowledge and agree that Art Storefronts' policy is to automatically terminate Your Account and access to the Services, and automatically purge all backed up files in Your Account after non-renewal, termination or expiration of Your Subscription Period to the Services and that it is solely Your responsibility to secure another source for Your website needs.

### **3a. Transaction Fees for all Licenses**

All Licenses are subject to bandwidth/transaction fees ("Transaction Fees"). The Transaction Fees for your license will have been specified at the time of sale and can be viewed in the billing section of your account at any time, for the specific plan you are on.

Some licenses contain a revenue minimum that must be reached until the Transaction fees begin to be applied. This revenue minimum is the sum of all orders received within the website's Orders section. In such cases, there is a "trigger order", which is the order that surpasses the revenue minimum. This entire order will be charged the full rate of the Transaction Fee, and every order subsequent to it, where Transaction Fees apply.

Any and all fees will be charged at the time when an order (i.e. Direct Order) is placed by one of your customers through your specific website, or after each calendar month, at the sole discretion of The Company. The credit card you have on file will be used to automatically charge for these transaction fees. The details of all charges will be visible in the billing section of your website account. You can also see a breakdown of the fees for any order, when viewing an order within the Orders section of your website account.

Transaction Fees cannot and will not be refunded under any circumstances, even if the fee is a Transaction Fee on an order that was canceled or refunded by Customer and his/her own client.

Transaction Fees can be calculated in one of two ways, as specified in your plan.

The first way Transaction Fees can be calculated based on the “Product Type” within an order. For example, an “Art Print Product”, an “Original Art Product”, or a “Standard Product”.

The appropriate transaction fee for a given Product Type will be applied to the total amount of each product (the “Eligible Amount”).

For example:

If you have an order that contains an Art Print Product with a total amount of \$100, and the Transaction Fee is 10% for an Art Print Product, the total transaction fee will be \$10.

If a discount coupon is used on a given order, and the discount coupon applies to products within the order (and is not a discount coupon that applies to shipping), a portion of the discount (the “Weighted Discount”) will be subtracted from the Eligible Amount. In such cases, the Transaction Fee will be applied to the difference between the Eligible Amount and the Weighted Discount.

For example:

Assume you have an order that contains an Art Print Product with a total amount of \$100 and a Standard Product with a total amount of \$100. Let’s assume the Transaction fee for Art Print Product’s is 10% and the Transaction Fee for Standard Products is 0%. Let’s also say the order has a discount coupon for \$50 off. In this case, the Weighted Discount of the Art Print Product will be calculated as follows:

$\$100$  (the total amount of Art Print Products) /  $\$200$  (the total amount of all products) = 50%.

This means that Art Print Products represent 50% of the order total. Therefore, we will use this 50% to calculate the percentage of the discount.

$50\%$  (the percentage of Art Print Product as a % of total products) x  $\$50$  (the total amount of the coupon) =  $\$25$ .

Then, \$25 will be subtracted from the total amount of Art Print Products in order to give us a new “Discounted Eligible Amount”.  $\$100 - \$25 = \$75$ . Therefore, \$75 is the amount that will be used to calculate Transaction Fees.

Now, given that in this example Art Print Products have a 10% Transaction Fee, the Transaction Fee will be calculated as follows:

$10\% * \$75 = \$7.50$ .

The second way that Transaction Fees can be calculated is based on the “Order Total”. The Order Total is the final order amount, AFTER shipping, taxes, and discounts.

Any and all Transaction Fees charged by The Company have no affiliation with any fees charged by your merchant account provider (i.e. “Merchant Fees”). You will still be charged Merchant Fees separately by your merchant provider, according to the fees they charge. Please contact your merchant provider if you would like more information about Merchant Fees.

### **3b. Transaction Fees for Fulfillment Vendors**

Fulfillment Vendors are printing companies that have agreed to the terms of being an official Art Storefronts Fulfillment Vendor Program.

Transaction Fees for Fulfillment Vendors apply to orders that are not directly made through the Fulfillment Vendor’s website (“Direct Orders”). Transaction Fees for Fulfillment Vendors only apply to orders that are made between another Art Storefronts customer and the Fulfillment Vendor. This is called a “Fulfillment Order”.

Fulfillment Orders will be charged Transaction Fees according to the terms set forth in your Art Storefronts Fulfillment Vendor Program Agreement. It will NOT be charged additional Transaction Fees on top of this, such as those set forth in section 3a “Transaction Fees for all Licenses”.

### **3c. Beta Services**

Art Storefronts may designate certain enhancements and new releases of the Art Storefronts Services as “Beta Services.” Beta Services are not intended for use in a production environment. You acknowledge and agree that (1) Beta Services are experimental in nature, have not been fully tested and may be discontinued at any time, (2) Beta Services may not meet Your requirements or perform as intended, (3) use of Beta Services may not be uninterrupted, error free or free of faults, (4) Your use of Beta Services are for the sole purpose of evaluating and testing the service and providing feedback to Art Storefronts, and (5) You shall inform Your employees, staff members and other users regarding the nature of Beta Services. By using Beta Services You acknowledge the above conditions and expectations of performance and reliability. Your use of Beta Services is and shall be subject to these Terms.

## **4. Termination**

4.1 Customer may terminate this Agreement at any time by cancelling their account within their control panel or by calling or emailing customer service. If cancelling by calling or emailing, Customer must receive some form of written confirmation that explicitly states that the Customer account has been cancelled.

4.2 Art Storefronts may terminate this Agreement or the Services at any time with or without cause, and with or without notice. Art Storefronts shall have no liability to Customer or any third party because of such termination.

4.3 Upon termination for any reason, Art Storefronts may delete any Customer archived data within 30 days after the date of termination. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, warranty disclaimers and limitations of liability.

4.4 Upon termination by Customer, Customer will not be entitled to any pro-rated refunds on any payments made prior to termination. The Services will still be available for Customer to use until the end of the Subscription period.

4.5 Chargebacks – If Customer attempts to circumvent the Terms of this Agreement by filing a chargeback or dispute with their credit card company (“Chargeback”), The Company will immediately cancel any and all Licenses and Memberships associated with Customer. Due to the destructive nature of performing a chargeback, and the negative impact it has on a company’s good merchant status with its bank, the Company will hereby ban any Customer who initiates a chargeback from using the Services hereafter. The Company will use any and all means to enforce its legal right to collect any funds owed to the Company as per the Terms of this Agreement and will do so in a court of law in the State of Texas. In addition, the Company will pursue additional damages from Customer for damaging the reputation of the Company’s merchant status with the Company’s merchant provider, for all legal fees and court costs incurred, and for any other costs incurred related to defending a Chargeback and collecting any monies owed to the Company under the Terms of this Agreement. Should a Customer have initiated a chargeback on accident, they will need to remove the chargeback, and Company will need confirmation from our own bank that the chargeback has been removed before an account will be reinstated. This can take up to 60 days. There will also be a \$200 fee to reinstate the account after the Company has received the required confirmation that that chargeback has been removed.

## **5. Warranty Disclaimer**

CUSTOMER USES THE SERVICES AT ITS OWN RISK. Art Storefronts DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND Art Storefronts DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **6. Limitation of Liability**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR PERSONAL INJURY OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY Art Storefronts, Art Storefronts AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND PROPERTY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES SHALL NOT BE



LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF Art Storefronts HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **7. Export of Services or Technical Data**

Customer may not remove or export from the United States of America or allow the export or re-export of the Services, or any direct product thereof, including technical data, in violation of any restrictions, laws, or regulations of the United States or any other applicable country.

## **8. Miscellaneous**

8.1 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.

8.2 Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels 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.

8.3 No agency, partnership, joint venture, or employment is created as a result of this Agreement, and Customer does not have any authority of any kind to bind Art Storefronts in any respect whatsoever.

8.4 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its costs and attorneys fees.

8.5 This Agreement shall be governed by the laws of the State of Texas in the United States of America without regard to its conflict of laws provisions.

8.6 Company reserves the right to modify its pricing and we will notify Customer by email when this occurs. Company will do its best to provide as much notice as possible; but never less than at least 30 days advance notice.

8.7 Profanity. Profanity or profane subject matter in the site content and in the domain name are prohibited.

8.8 Private Information and Images. Customers may not post or disclose any personal or private information about or images of children or any third party without the consent of said party (or a parent's consent in the case of a minor).

8.9 Violations of Intellectual Property Rights. Any violation of any person's or entity's intellectual property rights, rights of privacy, rights of publicity or other personal rights is prohibited. Art Storefronts is required by law to remove or block

access to content appearing on or through the Services upon receipt of proper notice of copyright infringement (see "Copyright Infringement Notice Information" below).

8.10 Misrepresentation of Transmission Information. Forging, misrepresenting, omitting, or deleting message headers, return mailing information and/or Internet protocol addresses to conceal or misidentify the origin of a message is prohibited.

8.11 Viruses and Other Destructive Activities. Use of the Services for creating or sending Internet viruses, worms or Trojan horses, or for ping, flooding or mail bombing, or engaging in denial of service attacks is prohibited. It is also prohibited for any Customer to engage in other activity that is intended to disrupt or interfere with, or that results in the disruption of or interference with, the ability of others to effectively use the Services (or any connected network, system, service or equipment) or conduct their business over the Internet.

8.12 Hacking. "Hacking" and related activities are prohibited. "Hacking" includes, but is not limited to, the following activities: illegally or without authorization, accessing computers, accounts or networks, penetrating or attempting to penetrate security measures, port scans, stealth scans, and other activities designed to assist in hacking.

8.13 Anonymous Proxies. Art Storefronts does not allow the use of anonymous proxy scripts on its servers. They can be very abusive to the server resources, affecting all users on that server.

8.14 Export Control Violations. The exportation of encryption software outside of the United States of America and/or violations of American law relating to the exportation of software is prohibited. Customer may not export or transfer, directly or indirectly, any regulated product or information to anyone outside the United States of America without complying with all applicable statutes, codes, ordinances, regulations, and rules imposed by American federal, state or local law, or by any other applicable law.

8.15 Child Pornography. The use of the Services to store, post, display, transmit, sell, advertise or otherwise make available child pornography is prohibited. Art Storefronts is required by law to, and will, notify law enforcement agencies when it becomes aware of the presence of child pornography on, or being transmitted through, the Services.

8.16 Other Illegal Activities. The use of the Services to engage in any activity that is determined by Art Storefronts, in its sole and absolute discretion, to be illegal is prohibited. Such illegal activities include, but are not limited to, storing, posting, displaying, transmitting, selling or otherwise making available ponzi or pyramid schemes, fraudulently charging credit cards or displaying credit card information of third parties without their consent, and failure to comply with applicable on-line

privacy laws. Art Storefronts will cooperate fully with appropriate law enforcement agencies in connection with any and all illegal activities occurring on or through the Services.

**8.17 Backup Storage.** Art Storefronts offers its Services to host business web sites, not to store data. Using an account as an online storage space for archiving electronic files is prohibited and will result in termination of services without prior notice.

**8.18 Other Activities.** Engaging in any activity that, in Art Storefronts's sole and absolute discretion, disrupts, interferes with or is harmful to (or threatens to disrupt, interfere with, or be harmful to) the Services, Art Storefronts's business, operations, reputation, goodwill, Customers and/or Customer relations, or the ability of Art Storefronts's Customers to effectively use the Services is prohibited. Such prohibited activities include making available any program, product or service that is designed to or could be used to violate these Terms. In addition, the failure of Customer to cooperate with Art Storefronts in correcting or preventing violations of these Terms by, or that result from the activity of, a customer, patron, subscriber, invitee, visitor, or guest of the Customer constitutes a violation of these Terms by Customer.

**8.19 COPYRIGHT NOTICE INFRINGEMENT INFORMATION.** In accordance with the Digital Millennium Copyright Act, Art Storefronts has adopted a policy that provides for termination of websites hosted by Art Storefronts that are found to infringe on copyrights of third parties. If a copyright holder believes that there has been a violation of his or her copyright on a website that is hosted by Art Storefronts or an Art Storefronts subsidiary, and the copyright holder wants Art Storefronts to remove the website or disable the material in question, Art Storefronts will remove the website or disable the material if the copyright holder provides us with all of the following information.

**8.20 Prohibited Offerings.** No Customer may utilize the Services to provide, sell or offer to sell the following: replica or products; controlled substances; illegal drugs and drug contraband; weapons; pirated materials; instructions on making, assembling or obtaining illegal goods or weapons to attack others; information used to violate the copyright(s) of, violate the trademark(s) of or to destroy others' intellectual property or information; information used to illegally harm any people or animals; pornography, nudity, sexual products, programs or services; escort services or other content deemed adult related.

A signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed. Identification of the copyrighted work that is claimed is being infringed, or, in the case of claimed infringement of multiple copyrighted works, a representative list of such works.

Identification of the material that is claimed to be infringing or is the subject of infringing activity and that should be removed or access to which should be disabled, with information reasonably sufficient to permit us to locate the material.

Information reasonably sufficient to permit us to contact the person giving the notification, such as an address and telephone, and, if available, an electronic mail address at which such person may be contacted.

A statement that the person giving the notification 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.

A statement that the information in the notification is accurate, and under penalty of perjury, that the person giving the notification is authorized to act on behalf of the owner of the exclusive right that is allegedly infringed.

8.20 Backups. For its own operational efficiencies and purposes, Art Storefronts from time to time backs up data on its servers, but is under no obligation or duty to Customer to do so under these Terms. IT IS SOLELY CUSTOMER'S DUTY AND RESPONSIBILITY TO BACKUP CUSTOMER'S FILES AND DATA ON Art Storefronts SERVERS, AND under no circumstance will Art Storefronts be liable to anyone FOR DAMAGES OF ANY KIND under any legal theory for loss of Customer's FILES AND/or data on any Art Storefronts server. To prevent loss of content, Art Storefronts users must only upload copies of their content such as all text, images, videos, and other content and NOT their original and/or only copy. Should any data loss occur, customer is fully responsible for reposting all of their own content.

8.21 Governing Law. These Terms shall be governed by the laws of the State of Texas in the United States of America without reference to conflict of law principles. The United Nations Convention on the International Sale of Goods shall not apply and is hereby expressly excluded. By subscribing to or using any of the Services of Art Storefronts, Customer agrees that all disputes, if any, involving Art Storefronts shall be subject exclusively to the jurisdiction of the State and Federal Courts within the County of Travis in Texas; provided, further, that all action brought against Art Storefronts in State Court must be brought within the County of Travis in Texas. Customer hereby agrees that it is subject to the in personam jurisdiction of said courts for all purposes in connection with these Terms and/or in connection with any claim or dispute involving Art Storefronts. Customer hereby waives any and all objections that it has or might have, known or unknown, whether under Texas long arm statute or otherwise, to the existence of said in personam jurisdiction. Customer agrees that it has no right to and shall not file or otherwise bring a lawsuit against Art Storefronts outside the County of Travis in Texas; and, that Customer, if involved before a court in a lawsuit outside of the County of Travis in Texas, shall be deemed to support and to stipulate to a motion made by Art Storefronts to dismiss said lawsuit with respect to Art Storefronts.

8.22 Warranty Disclaimer. YOU, THE CUSTOMER, ACKNOWLEDGE THAT THE SERVICES AND THE SOFTWARE ARE PROVIDED "AS IS, AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND. Art Storefronts HEREBY DISCLAIMS ANY WARRANTY OR CONDITION WITH RESPECT TO THE QUALITY, PERFORMANCE OR

FUNCTIONALITY OF THE SERVICES AND SOFTWARE, OR WITH RESPECT TO THE QUALITY OR ACCURACY OF ANY INFORMATION OBTAINED FROM OR AVAILABLE THROUGH USE OF THE SERVICES AND SOFTWARE, OR THAT THE SERVICES AND SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES AND SOFTWARE MAY CONTAIN ERRORS. NO ADVICE OR INFORMATION GIVEN BY Art Storefronts OR Art Storefronts'S REPRESENTATIVES INCLUDING, WITHOUT LIMITATION, CUSTOMER SUPPORT REPRESENTATIVES, SHALL CREATE A WARRANTY. Art Storefronts DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF QUIET ENJOYMENT AND NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OF COMPUTER PROGRAMS AND CONTENT. Art Storefronts DOES NOT GUARANTEE THAT USERS WILL BE ABLE TO USE THE SERVICES AT TIMES OR LOCATIONS OF THEIR CHOOSING. Art Storefronts DOES NOT WARRANT THAT THE SERVICES ARE COMPATIBLE WITH ANY THIRD PARTY SERVICE OR SOFTWARE, EVEN IF SUCH THIRD PARTY CLAIMS, REPRESENTS OR WARRANTS THAT SUCH SERVICE OR SOFTWARE IS COMPATIBLE WITH ANY SERVICE OR Art Storefronts IN PARTICULAR.

8.23 Limitations on Art Storefronts's Liability. Art Storefronts SHALL NOT BE LIABLE FOR NONPERFORMANCE OR DELAY IN PERFORMANCE CAUSED BY ANY REASON, WHETHER WITHIN OR OUTSIDE OF ITS CONTROL. IN NO EVENT SHALL Art Storefronts BE LIABLE UNDER CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOST PROFITS, LOSS OF DATA OR INFORMATION OF ANY KIND OR LOSS OF BUSINESS GOODWILL OR OPPORTUNITY) WHETHER OR NOT Art Storefronts HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. Art Storefronts SHALL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY. Art Storefronts'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY USE OF THE SERVICES IS THE CANCELLATION OF CUSTOMER'S ACCOUNT AS SET FORTH HEREIN. IN NO EVENT SHALL Art Storefronts'S LIABILITY TO YOU, THE CUSTOMER, EXCEED THE GREATER OF ONE DOLLAR (\$1.00) OR ANY AMOUNTS ACTUALLY PAID IN CASH BY YOU, THE CUSTOMER, TO Art Storefronts FOR THE PRIOR ONE MONTH PERIOD. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THESE TERMS OR OUT OF THE SERVICES MAY BE BROUGHT BY YOU, THE CUSTOMER, MORE THAN ONE YEAR AFTER THE EVENT WHICH GAVE RISE TO THE CAUSE OF ACTION . SOME JURISDICTIONS DO NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY AND, IN SUCH JURISDICTIONS, Art Storefronts'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

8.24 Indemnification of Art Storefronts. You, the Customer, agree to defend, indemnify and hold Art Storefronts, its affiliates and its sponsors, partners, other co-

branders and the respective directors, officers and employees of each harmless from and against any and all claims, losses, damages, liabilities and costs (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to your breach of any of these Terms or use by you or any third party of the Services, except to the extent the foregoing directly result from Art Storefronts's own gross negligence or willful misconduct. Art Storefronts reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, the Customer.

8.25 General. These Terms constitute the entire understanding of the parties and supersede all prior and contemporaneous written and oral agreements with respect to the subject matter hereof. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms. If one or more of the provisions herein shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired. Any inconsistency between these Terms in English and these Terms in any other language shall, to the fullest extent permitted by applicable law, be resolved by reference to the English version. The failure to enforce or the waiver by either party of a default or breach of the other party shall not be considered to be a waiver of any subsequent default or breach. If You or Art Storefronts cannot perform its obligations under these Terms because of any act of God, accident, strike, court order, fire, riot, war, failure of third-party equipment or any other cause not within the affected party's reasonable control and that could not be avoided through the exercise of reasonable care and diligence (a "Force Majeure Event"), then the non-performing party will (1) promptly notify the other party, (2) take reasonable steps to resume performance as soon as possible, and (3) not be considered in breach during the duration of the Force Majeure Event. If a Force Majeure Event continues for 5 or more days, Art Storefronts may terminate Your subscription to the Services and these Terms by providing electronic notice to You. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT. The following provisions shall survive termination or expiration of this Agreement: Your Account, Privacy and Security, Your Subscription, Your Conduct, Art Storefronts Property, Disclaimer of Warranties; Limitation of Liability; and General Legal Terms.

### **Privacy Policy**

This is the web site of ArtStorefronts.com.

For each visitor to our web page, our web server automatically recognizes no information regarding the domain or e-mail address. We collect the e-mail addresses of those who communicate with us via e-mail. The information we collect is used for internal review and is then discarded. We use cookies to and allow Art Storefronts customers to login to their account.

If you do not want to receive e-mail from us in the future, please let us know by sending us e-mail at the above address. If you supply us with your postal address on-line you will only receive the information for which you provided us your address. Persons who supply us with their telephone numbers on-line will only receive telephone contact from us with information about the Services or regarding orders they have placed on-line.

We do not partner with or have special relationships with any ad server companies. Upon request we provide site visitors with access to all information [including proprietary information] that we maintain about them.

We have appropriate security measures in place in our physical facilities to protect against the loss, misuse or alteration of information that we have collected from you at our site.

If you feel that this site is not following its stated information policy, you may contact us.

IF YOU, FOR YOURSELF OR ON BEHALF OF ONE OR MORE PERSONS YOU ARE REPRESENTING WITH RESPECT TO ART STOREFRONTS SERVICES, DO NOT AGREE TO ANY OF THE FOREGOING TERMS, YOU MUST, FOR YOURSELF AND ON BEHALF ANY SUCH PERSON(S), DISCONTINUE THE REGISTRATION PROCESS, DISCONTINUE YOUR USE OF THE SERVICES, AND, IF YOU ARE ALREADY A MEMBER, CANCEL YOUR ACCOUNT. BEGINNING NOW, ANY CONTINUATION BY YOU IN USING THE SERVICES CONSTITUTES FOR YOU AND THOSE REPRESENTED BY YOU AN EXPRESS AFFIRMATION AND COMMITMENT TO BE (OR TO CONTINUE TO BE, AS APPLICABLE) LEGALLY BOUND BY AND TO COMPLY WITH ALL OF THESE TERMS.