

# Terms of Use

Last Updated: Sept. 01, 2017

## 1. AGREEMENT

Welcome to Sprocket! The developer, doing business as Retrographic LLC (“Retrographic LLC”) recommends that you read the following contractual terms and conditions carefully. By using the Sprocket mobile application (the “App”) and its accompanying data service (the “Service”), however accessed or used, You agree to be bound by these Terms of Use (the “Terms” or “Agreement”). By clicking “Get Started” or using the App or the Service, You agree to be bound by the Terms, constituting a legally binding agreement by and between Retrographic LLC and you (in either case, “You” or “Your”) concerning Your use of the Service. We encourage you to print the Agreement or copy it to your computer’s hard drive for your reference. By using the Service, You represent and warrant that You have read and understood, and agree to be bound by, this Agreement and Retrographic LLC’s Privacy Policy (the “Privacy Policy”), which is incorporated herein by reference and made part of these Terms.

IF YOU DO NOT UNDERSTAND THIS AGREEMENT, OR DO NOT AGREE TO BE BOUND BY IT OR THE PRIVACY POLICY, YOU MAY NOT ACCESS OR USE THE SERVICE AND YOU MUST IMMEDIATELY CEASE ACCESSING OR USING THE SERVICE.

## 2. PRIVACY POLICY

By using the Service, You consent to the collection and use of certain information about You, as specified in the Privacy Policy. Retrographic LLC encourages users of the Service to frequently check Retrographic LLC’s Privacy Policy for changes.

## 3. CHANGES TO AGREEMENT AND PRIVACY POLICY

Internet technology and the applicable laws, rules, and regulations change frequently. ACCORDINGLY, RETROGRAPHIC LLC RESERVES THE RIGHT TO CHANGE THIS AGREEMENT AND ITS PRIVACY POLICY AT ANY TIME UPON NOTICE TO YOU, TO BE GIVEN BY THE POSTING OF A NEW VERSION OR A CHANGE NOTICE. IT IS YOUR RESPONSIBILITY TO REVIEW THIS AGREEMENT AND THE PRIVACY POLICY PERIODICALLY. IF AT ANY TIME YOU FIND EITHER THIS AGREEMENT OR THE PRIVACY POLICY UNACCEPTABLE, YOU MUST IMMEDIATELY CEASE ACCESSING AND/OR USING THE SERVICE. Unless Retrographic LLC obtains Your express

consent, any revised Privacy Policy will apply only to information collected by Retrographic LLC after such time as the revised Privacy Policy takes effect, and not to information collected under any earlier Privacy Policies. We may provide you additional forms of notice of modifications or updates as appropriate under the circumstances.

Your continued use of Sprocket or the Service after any modification to this Agreement or Privacy Policy will constitute your acceptance of such modification.

#### **4. ELIGIBILITY**

BY ACCESSING AND/OR USING THE SERVICE, INCLUDING BY DOING SO AFTER ACCESSING THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST 18 YEARS OLD AND ARE OTHERWISE LEGALLY QUALIFIED TO ENTER INTO AND FORM CONTRACTS UNDER APPLICABLE LAW. Any individual using the Service on behalf of a company further represents and warrants that they are authorized to act and enter into contracts on behalf of that company. This Agreement is void where prohibited.

#### **5. MARKETPLACE**

##### **Retrographic LLC's Role as Marketplace Provider**

Without limitation, You agree that Retrographic LLC is merely a third-party platform and You use the Service at Your own risk, without limitation and pursuant to Section Assumption Of Risk; Release (Assumption Of Risk; Release).

Retrographic LLC serves as a platform for users who comply with the Agreement and list, sell, and buy certain items.

Retrographic LLC's role is limited because Retrographic LLC is not directly involved in transactions between buyers and sellers. Without limitation, Retrographic LLC does not guarantee that it will pre-screen sellers or buyers. Nor does Retrographic LLC guarantee the identity of any user. Retrographic LLC does not necessarily prescreen the content and/or information provided by users. Retrographic LLC does not directly control the quality of any aspect of the items listed or the seller services and logistics associated with the sale, including the accuracy of any content related to any item listing. Retrographic LLC does not guarantee that any user, buyer or seller, will complete transactions. Unless stated otherwise in this Agreement, sellers are responsible for product warranties and customer service, and buyers are responsible for conducting their own due diligence. Retrographic LLC does not take or transfer ownership of items or liability attaching thereto. For additional information, please

carefully review Section Disclaimers; Limitation Of Liability (Disclaimers; Limitation of Liability).

## **6. LICENSE**

### **6.1. Retrographic LLC's License to You**

Subject to Your compliance with the terms and conditions of this Agreement, Retrographic LLC grants You a non-exclusive, non-sublicensable, revocable as stated in this Agreement, non-transferable license to use the Sprocket app and accompanying Retrographic LLC-provided Service. The Service, including any portion of any Retrographic LLC Website and the Sprocket mobile App, may not be reproduced, duplicated, copied, modified, sold, resold, distributed, transmitted, or otherwise exploited for any commercial purpose without the prior, express written consent of Retrographic LLC. All rights not expressly granted herein are reserved by Retrographic LLC. Without limitation, this Agreement grants You no rights in or to the intellectual property of Retrographic LLC or any other party, except as expressly set forth herein. The license granted in this section is conditioned on Your compliance with the terms and conditions of this Agreement. Your rights under this section will immediately terminate in the event that You breach, actually or potentially, in the sole judgment of Retrographic LLC, any provision of this Agreement.

### **6.2. Your License to Retrographic LLC**

You retain all of your **ownership** rights in your own content.

To operate the Service, you must **license** certain rights in your content to Retrographic LLC. That license is specified in Section User Content of these Terms.

## **7. NO RELIANCE ON THIRD-PARTY CONTENT**

The Service is provided only as a technology solution. Opinions, advice, statements, or other information made available by means of the Service by third parties are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. Retrographic LLC does not: (i) guarantee the accuracy, completeness, or usefulness of any third-party information accessible on or through the Service; or (ii) adopt, endorse, or accept responsibility for the accuracy or reliability of any opinion, advice, or statement made by a third party by means of the Service. Under no circumstances will Retrographic LLC be

responsible for any loss or damage resulting from your reliance on information or other content posted through the Service transmitted to or by any third party.

#### **8. ASSUMPTION OF RISK; RELEASE**

YOU KNOWINGLY AND FREELY ASSUME ALL RISK WHEN USING THE SERVICE. YOU, ON BEHALF OF YOURSELF, YOUR PERSONAL REPRESENTATIVES, AND YOUR HEIRS, HEREBY VOLUNTARILY AGREE TO RELEASE, WAIVE, DISCHARGE, HOLD HARMLESS, DEFEND, AND INDEMNIFY RETROGRAPHIC LLC AND ITS STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, CONSULTANTS, REPRESENTATIVES, SUBLICENSEES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "RETROGRAPHIC LLC PARTIES") FROM ANY AND ALL CLAIMS, ACTIONS, OR LOSSES FOR BODILY INJURY, PROPERTY DAMAGE, WRONGFUL DEATH, EMOTIONAL DISTRESS, LOSS OF PRIVACY, OR OTHER DAMAGES OR HARM, WHETHER TO YOU OR TO THIRD PARTIES, THAT MAY RESULT FROM YOUR USE OF THE SERVICE.

#### **9. MECHANICAL FAILURE AND INJURY**

Bicycling can be dangerous! By using Sprocket, You acknowledge that physical injury may result from bicycling, and that mechanical failures are possible. You agree that Retrographic LLC is **not responsible** for any such mechanical failures or physical injuries, including mechanical failures of parts purchased through the Sprocket marketplace. Sprocket connects buyers and sellers, but Retrographic LLC does not itself sell parts, and does not guarantee the quality or fitness of any parts sold by third parties through Sprocket. See Section Marketplace for more details on the Sprocket marketplace and Retrographic LLC's role and responsibilities as a marketplace provider.

You further agree that Retrographic does not, and cannot due to the volume of information, warrant in any way the accuracy of the bicycle information listed through its Service. You acknowledge that Retrographic has warned you about the dangers of bicycling and mechanical failures, and that you must exercise your own judgment before using any parts located or purchased through the Service. If you do use information or parts obtained through the Service, you do so on your own accord, mindful of these warnings, and in conjunction with your own knowledge and experience in bicycling and bicycle repair. If you lack sufficient knowledge and experience, you should not attempt to modify, upgrade, or repair any bicycle yourself, and should instead rely on the services of a qualified service professional.

#### **10. ACCURATE USER INFORMATION; PASSWORD PROTECTION**

*As of the date this version of these Terms of Service, Sprocket does not yet include user account functionality, which is planned for a future release. When Retrographic LLC adds user account functionality to Sprocket, the terms of this Section Accurate User Information; Password Protection will govern it.*

To access and use the Service, You may be asked to provide certain registration details or other information that personally identifies You (“Personal Information”). You represent and warrant that all user information You provide in connection with Your use of the Service is current, complete, and accurate, and that You agree that you will update that information as necessary to maintain its completeness and accuracy by visiting your personal profile. You agree that You will not submit any fake content (including without limitation any account, username, likeness, or profile) to willfully and credibly impersonate another person, whether actual or fictitious. If Retrographic LLC believes in its sole discretion that the information You provide is not current, complete, or accurate, Retrographic LLC has the right to refuse You access to the Service and/or to terminate or suspend Your access at any time. For additional information, see the Section concerning “User Ability to Access, Update, and Correct Personal Information” in Retrographic LLC’s Privacy Policy.

You may also be asked to provide a username and password in connection with Your use of certain features of the Service. You are entirely responsible for maintaining the confidentiality of Your password. You may not use the username or password of any other user at any time, nor may You circumvent any authentication mechanism requiring the entry of usernames or passwords to gain unauthorized access to the Service. You agree to notify Retrographic LLC immediately of any unauthorized use of Your user name or password. Retrographic LLC shall not be liable for any loss that You incur as a result of someone else using Your username or password, either with or without Your knowledge. You may be held liable for any losses incurred by Retrographic LLC, its affiliates, officers, directors, employees, consultants, agents, and representatives due to someone else’s use of Your username or password.

## **11. YOUR INTERACTIONS WITH OTHER USERS**

*As of the date this version of these Terms of Service, Sprocket does not yet include user account functionality, which is planned for a future release. When Retrographic LLC adds user account functionality to Sprocket, the terms of this Section Your Interactions With Other Users will govern it.*

YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH OTHER RETROGRAPHIC LLC USERS. YOU ACKNOWLEDGE AND UNDERSTAND THAT RETROGRAPHIC LLC HAS NOT, AND DOES NOT, IN ANY WAY GUARANTEE THAT IT

WILL: (A) SCREEN ITS USERS; (B) INQUIRE INTO THE BACKGROUNDS OF ITS USERS; OR (C) REVIEW OR VERIFY THE STATEMENTS OF ITS USERS. YOU HEREBY AGREE TO EXERCISE REASONABLE PRECAUTION IN ALL INTERACTIONS WITH OTHER USERS, PARTICULARLY IF YOU DECIDE TO MEET ANOTHER USER OR USERS IN PERSON. RETROGRAPHIC LLC DOES NOT REPRESENT, WARRANT, ENDORSE OR GUARANTEE THE CONDUCT OF ITS USERS. IN NO EVENT SHALL RETROGRAPHIC LLC BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO ANY USER'S CONDUCT IN CONNECTION WITH SUCH USER'S USE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, BODILY INJURY, PROPERTY DAMAGE, WRONGFUL DEATH, EMOTIONAL DISTRESS, LOSS OF PRIVACY, OR ANY OTHER DAMAGES RESULTING FROM COMMUNICATIONS OR MEETINGS BETWEEN USERS.

## **12. CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS FROM RETROGRAPHIC LLC**

Without limitation, by registering for the Service and providing Your name, email, postal or residential address, and/or phone number through the Service, You hereby expressly consent to receive electronic and other communications from Retrographic LLC, over the short term and periodically, including email and mobile push notifications, regarding the Service, new product offers, promotions, and other matters. You may opt out of receiving electronic communications at any time by (a) following the unsubscribe instructions contained in each communication; (b) changing your mobile device settings to disable push notifications; or (c) sending an email to [retrographic.developer@gmail.com](mailto:retrographic.developer@gmail.com).

## **13. CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS FROM RETROGRAPHIC LLC USERS**

*As of the date this version of these Terms of Service, Sprocket does not yet include user-to-user messaging functionality, which is planned for a future release. When Retrographic LLC user-to-user messaging functionality to Sprocket, the terms of this Section Consent To Receive Electronic Communications From Retrographic LLC Users will govern it.*

Without limitation, by registering for the Service and providing Your name, email, postal or residential address, and/or phone number through the Service, You hereby consent to receive electronic communications, including email, short-message service ("SMS") messages, instant messages, video conferencing, and other personal messages from other users of the Service.

## **14. CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS FROM RETROGRAPHIC LLC PARTNER MARKETERS**

Without limitation, by registering for the Service and/or by providing Your name, email, postal or residential address, and/or phone number through the Service, You hereby consent to receive, and openly and knowingly solicit, electronic communications, including email communications, from Retrographic LLC partner firms which may include third party marketing companies, affiliates, advertising agencies, and data aggregation companies regarding their services, including offers, promotions, and other related matters. You may opt-out of receiving electronic communications at any time by (a) following the unsubscribe instructions contained in each communication; or (b) sending an email to [Retrographic.LLC.developer@gmail.com](mailto:Retrographic.LLC.developer@gmail.com).

## **15. RESERVED RIGHTS FOR RETROGRAPHIC LLC FEES**

### **15.1. Reserved Rights for Retrographic LLC's Fees**

You acknowledge and agree that Retrographic LLC reserves the right to charge for access to the Service, in accordance with the Retrographic LLC Fee Policy specified in Subsection (b) of this Section and subject to Retrographic LLC's amendment as specified in this Agreement.

RETROGRAPHIC LLC RESERVES THE RIGHT, IN RETROGRAPHIC LLC'S SOLE DISCRETION, TO CHANGE THE FEES AND CHARGES IN EFFECT, OR TO ADD NEW FEES AND CHARGES, BY POSTING SUCH CHANGES OR PROVIDING NOTICE TO YOU. ALL FEES AND CHARGES ARE NONREFUNDABLE, AND THERE ARE NO REFUNDS, AND THERE ARE NO CREDITS FOR PARTIALLY USED MEMBERSHIP PERIODS.

Retrographic LLC's decision not to exercise any specific right or require performance of any specific obligation under this Agreement, including without limitation the collection of regularly recurring fees from You, shall not affect Retrographic LLC's subsequent ability to exercise such right or require such performance at any time thereafter. Nor shall Retrographic LLC's waiver of Your breach constitute Retrographic LLC's waiver of any subsequent breach by You or any other user of the Service. By using the Service, You authorize Retrographic LLC, and/or its payment processor, to charge Retrographic LLC's fees to the credit card, debit card, or other payment method You provide, in addition to applicable sales taxes and other taxes.

### **15.2. Retrographic LLC Fee Policy; Fees Change From Time-to-Time**

The Service is currently provided at no charge to You. Retrographic LLC may, upon at least 30 days prior notice to You, charge fees for Your use of the Service.

Furthermore, any applicable fees for the Service may be changed from time to time by Retrographic LLC at its discretion at any time upon at least 30 days prior notice to You. If You continue to use the Service after any new fees becomes effective, You thereby agree to pay those fees which Retrographic LLC discloses to You.

### **15.3. Limited Period to Challenge Discrepancies**

Payment to You are tracked through Retrographic LLC and visible to You. In the event of a discrepancy pertaining to completed sales or purchases, You have 10 business days from the date of the completed purchase to send notification to Retrographic LLC about the discrepancy, after which all payments or lack of payments are otherwise final and no longer subject to change. You agree to waive, and hereby waive, any claims arising from such discrepancies by failing to provide timely written notification to Retrographic LLC within the ten business day time period. You can notify Retrographic LLC of discrepancies only by sending an email detailing the amount owed to You and the amount tendered to You. Retrographic LLC's email address is [Retrographic.LLC.developer@gmail.com](mailto:Retrographic.LLC.developer@gmail.com).

## **16. THIRD-PARTY WEBSITES**

The Website and Service may be linked with the websites and services of third parties ("Third-Party Websites"), some of whom may have established relationships with Retrographic LLC and some of whom may not. Retrographic LLC does not have control over the content and performance of Third Party Websites. Retrographic LLC has not reviewed, and cannot review or control, all of the material, including computer software or other goods or services, made available on or through Third Party Websites. Accordingly, Retrographic LLC does not represent, warrant, or endorse any Third Party Websites, or the accuracy, currency, content, fitness, lawfulness, or quality of the information, material, goods, or services available through Third-Party Websites. Retrographic LLC disclaims, and You agree to assume, all responsibility and liability for any damages or other harm, whether to You or to third parties, resulting from Your use of Third Party Websites.

## **17. USER CONTENT**

"User Content" is any content, material, or information, not including personally identifiable information (e.g., first and last name, address, phone number, email address, etc.), that You submit, upload, and/or post to, or transmit, display, perform, or distribute by means of, the Service, whether in connection with Your use of the

Service or otherwise. This includes without limitation personal photos and videos. Retrographic LLC does not claim ownership of any User Content. You retain all right, title, and interest, including without limitation all worldwide intellectual property rights, in and to Your User Content.

BY SUBMITTING, UPLOADING, OR POSTING USER CONTENT IN ANY FORM WITH, THROUGH, OR TO THE SERVICE, YOU THEREBY GRANT THE RETROGRAPHIC LLC PARTIES A ROYALTY-FREE, PERPETUAL, NON-EXCLUSIVE, UNRESTRICTED, FULLY PAID-UP, WORLDWIDE, SUBLICENSABLE, REVOCABLE (AS SET FORTH IN SECTION License OF THIS AGREEMENT), ASSIGNABLE LICENSE TO COPY OR OTHERWISE REPRODUCE, MODIFY, ADAPT, TRANSLATE, DISTRIBUTE, ENHANCE, TRANSMIT, PUBLICLY DISPLAY OR PERFORM, REFORMAT, AND/OR OTHERWISE USE USER CONTENT IN CONNECTION WITH THE OPERATION OF THE SERVICE, OR ANY OTHER SIMILAR OR RELATED BUSINESS, IN ANY MEDIUM NOW EXISTING OR LATER DEvised, INCLUDING WITHOUT LIMITATION IN ADVERTISING AND PUBLICITY. YOU FURTHER AGREE THAT THE RETROGRAPHIC LLC PARTIES MAY PUBLISH OR OTHERWISE DISCLOSE YOUR PERSONAL INFORMATION IN CONNECTION WITH THEIR EXERCISE OF THE LICENSE GRANTED UNDER THIS SECTION. YOU AGREE TO WAIVE, AND HEREBY WAIVE, ANY CLAIMS ARISING FROM OR RELATING TO THE EXERCISE BY THE RETROGRAPHIC LLC PARTIES OF THE RIGHTS GRANTED UNDER THIS SECTION, INCLUDING WITHOUT LIMITATION ANY CLAIMS RELATING TO YOUR RIGHTS OF PERSONAL PRIVACY AND PUBLICITY. YOU WILL NOT BE COMPENSATED FOR ANY EXERCISE OF THE LICENSE GRANTED UNDER THIS SECTION.

You hereby represent and warrant that You: (a) own all rights, title, and interest in and to any and all User Content You submit, or are otherwise authorized to grant the rights provided the Retrographic LLC Parties under this section, OR (b) have written consent, release, and/or permission of each and every identifiable individual person in any User Content You submit to use the name and likeness of each and every such identifiable person in the User Content. You agree that you will not submit any User Content that does not fully comply with Retrographic LLC's prohibitions against Objectionable Content, as detailed in Section Objectionable Content.

Retrographic LLC reserves the right, in its sole discretion, to reject any User Content for any reason. "Objectionable Content" specified in Section Objectionable Content and "Prohibited Uses" in Section Prohibited Uses are not exhaustive lists of content that Retrographic LLC reserves the right to remove or deny.

## **18. PUBLIC FORUMS**

*As of the date this version of these Terms of Service, Sprocket does not yet include public forum functionality, which is planned for a future release. When Retrographic LLC adds public forum functionality to Sprocket, the terms of this Section Public Forums will govern it.*

“Public Forum” is any area, site, or feature offered as part of the Service (including without limitation marketplaces, blogs, photo and video sharing, and personal messaging features) that enables You (a) to upload, submit, post, display, perform, distribute, and/or view User Content, and/or (b) to communicate, share, or exchange User Content with other users or other visitors. You acknowledge that Public Forums, and features contained therein, are for public and not private communications. You further acknowledge that anything You upload, submit, post, transmit, communicate, share, or exchange by means of any Public Forum may be viewed on the Internet by the general public, and therefore, You have no expectation of privacy with regard to any such submission or posting. You are, and shall remain, solely responsible for the User Content You upload, submit, post, transmit, communicate, share, or exchange by means of any Public Forum and for the consequences of submitting or posting same. Retrographic LLC disclaims any perceived, implied, or actual duty to monitor Public Forums and specifically disclaims any responsibility or liability for information provided thereon.

## **19. YOUR RESPONSIBILITY FOR DEFAMATORY COMMENTS**

You agree and understand that You may be held legally responsible for damages suffered by other users or third parties as the result of Your remarks, information, feedback, or other content posted or made available through the Service that is deemed defamatory or otherwise legally actionable. Under the Federal Communications Decency Act of 1996, Retrographic LLC is not legally responsible, nor can it be held liable for damages of any kind, arising out of or in connection to any defamatory or otherwise legally actionable remarks, information, feedback, or other content posted or made available through the Service.

In the event that You raise or file any claim against Retrographic LLC for conduct that a Court of Competent Jurisdiction subsequently finds to constitute an “exercise of a publisher’s traditional editorial functions,” or the legal equivalent thereof, you agree to fully and immediately compensate Retrographic LLC for all losses, liability, damages, costs, and expenses, including without limitation all attorneys’ fees and expenses in defending the action and resolving the matter. If You fail to compensate Retrographic LLC for any such claim, you hereby agree and authorize Retrographic

LLC to report Your Personal Information, including without limitation Your unpaid claim, to consumer credit reporting services, collection agencies, and others.

## **20. OBJECTIONABLE CONTENT**

You agree that You shall not use the Service to upload, post, transmit, display, perform, or distribute any content, information, or materials that: (a) are libelous, defamatory, abusive, threatening, excessively violent, harassing, obscene, lewd, lascivious, filthy, or pornographic; (b) constitute child pornography; (c) solicit personal information from or exploit in a sexual or violent manner anyone under the age of 18; (d) incite, encourage, or threaten physical harm against another; (e) promote or glorify racial intolerance, use hateful and/or racist terms, or signify hate towards any person or group of people; (f) glamorize the use of illegal substances and/or drugs; (g) advertise or otherwise solicit funds or constitute a solicitation for goods or services; (h) violate any provision of this Agreement or any other Retrographic LLC agreement or policy, including without limitation Retrographic LLC's Privacy Policy; (i) disclose another's personal, confidential, or proprietary information; (j) are false or fraudulent; (k) contains images or videos of individuals captured or posted without their consent; (l) promote self-destructive behavior (including without limitation eating disorders or suicide); or (m) are generally offensive, rude, mean-spirited, or in bad taste, as determined by Retrographic LLC in its sole discretion (collectively, "**Objectionable Content**"). Retrographic LLC disclaims any perceived, implied, or actual duty to monitor the contents made available through the Service and specifically disclaims any responsibility or liability for information provided thereon. Without limiting any of its other remedies, Retrographic LLC reserves the right to terminate Your use of the Service or Your uploading, posting, transmission, display, performance, or distribution of Objectionable Content. Retrographic LLC, in its sole discretion, may delete any Objectionable Content from its servers. Retrographic LLC intends to cooperate fully with any law enforcement officials or agencies in the investigation of any violation of this Agreement or of any applicable laws.

## **21. PROHIBITED USES**

Retrographic LLC imposes certain restrictions on Your use of the Service. You agree that You will not: (a) "stalk" or otherwise harass any person, or contact any person who has requested not to be contacted; (b) provide false, misleading or inaccurate information to Retrographic LLC or any other member; (c) impersonate, or otherwise misrepresent affiliation, connection, or association with, any person or entity; (d) modify or change the placement and location of any advertisement posted through

the Service; (e) harvest or otherwise collect information about Retrographic LLC users, including email addresses and phone numbers; (f) use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars, or intelligent agents) to harvest or otherwise collect information from the Service for any use, including without limitation use on Third-Party Websites; (g) access content or data not intended for You, or log onto a server or account that You are not authorized to access; (h) attempt to probe, scan, or test the vulnerability of the Service, or any associated system or network, or breach security or authentication measures without proper authorization; (i) interfere or attempt to interfere with the use of the Service by any other user, host, or network, including without limitation by means of submitting a virus, overloading, "flooding," "spamming," "mail bombing," or "crashing"; (j) use the Service to send unsolicited email, including without limitation promotions or advertisements for products or services; (k) forge any TCP/IP packet header or any part of the header information in any email or in any uploading or posting to, or transmission, display, performance or distribution by means of, the Service; or (l) attempt to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by the Retrographic LLC Parties in providing the Service, including without limitation any fraudulent effort to modify software or any other technological mechanism the use to measure the number of impressions generated by individual videos and/or the Service to determine and/or audit Net Advertising Revenues and Net Advertising Revenue Payments. Any violation of this section may subject You to civil and/or criminal liability.

## **22. INTELLECTUAL PROPERTY**

### **22.1. Compliance with Law**

You represent and warrant that, when using the Service, You will obey all applicable laws and respect the intellectual property rights of others. Your use of the Service is at all times governed by and subject to laws regarding copyright ownership and use of intellectual property generally. You agree not to upload, post, transmit, display, perform, or distribute any content, information or other materials in violation of any third party's copyrights, trademarks, or other intellectual property or proprietary rights.

YOU HEREBY REPRESENT AND WARRANT THAT YOU ARE THE SOLE AND EXCLUSIVE OWNER OF ANY USER CONTENT THAT YOU SUBMIT THROUGH THE SERVICE. YOU SHALL BE SOLELY RESPONSIBLE FOR ANY VIOLATIONS OF ANY

LAWS AND FOR ANY INFRINGEMENTS OF THIRD-PARTY RIGHTS CAUSED BY YOUR USE OF THE SERVICE. RETROGRAPHIC LLC USERS BEAR THE SOLE BURDEN OF PROVING THAT CONTENT, INFORMATION, OR OTHER MATERIALS DO NOT VIOLATE ANY LAWS OR THIRD-PARTY RIGHTS.

## **22.2. Trademarks**

Retrographic LLC and the “Retrographic LLC logo” (collectively, the “**Retrographic LLC Marks**”) are trademarks or registered trademarks of Retrographic LLC. Other trademarks, service marks, graphics, logos, and domain names appearing anywhere on, through, or in connection with the Service may be the trademarks of third parties. Neither Your use of the Service nor this Agreement grant You any right, title, or interest in or to, or any license to reproduce or otherwise use, the Retrographic LLC Marks or any third-party trademarks, service marks, graphics, logos, or domain names. You agree that any goodwill in the Retrographic LLC Marks generated as a result of Your use of the Service will inure to the benefit of Retrographic LLC, and You agree to assign, and hereby do assign, all such goodwill to Retrographic LLC. You shall not at any time, nor shall You assist others to, challenge Retrographic LLC’s right, title, or interest in or to, or the validity of, the Retrographic LLC Marks.

## **22.3. Copyrighted Materials; Copyright Notice**

All content and other materials available through the Service, including without limitation the Retrographic LLC logo, design, text, graphics, and other files, and the selection, arrangement, and organization thereof, are either owned by Retrographic LLC or are the property of Retrographic LLC’s licensors and suppliers. Except as explicitly provided, neither Your use of the Service nor this Agreement grant You any right, title, or interest in or to any such materials.

## **22.4. DMCA Policy**

As Retrographic LLC asks others to respect Retrographic LLC’s intellectual property rights, Retrographic LLC respects the intellectual property rights of others. If You believe content located on or linked-to by the Service violates Your copyright, you are encouraged to please immediately notify Retrographic LLC by means of emailed notice (“**Infringement Notice**”), providing the information described herein. If Retrographic LLC takes action in response to an Infringement Notice, it will make a good faith attempt to contact the party that made such content available by means of the most recent email address, if any, provided by

such party to Retrographic LLC. Please be advised that You may be held liable for damages based on certain material misrepresentations contained in an Infringement Notice. Thus, if You are not sure content located on or linked-to by the Service infringes Your copyright, You should consider first contacting an attorney.

All Infringement Notices should include the following:

- A signature, electronic or physical, of the copyright owner or a person authorized to act on their behalf;
- An identification of the copyright claimed to have been infringed;
- A description of the nature and location of the material that You claim to infringe Your copyright, in sufficient detail to permit Retrographic LLC to find and positively identify that material;
- Your name, address, telephone number, and email address; and
- A statement by You: (i) that You believe in good faith that the use of the material that You claim to infringe Your copyright is not authorized by law, or by the copyright owner or such owner's agent; and, (ii) under penalty of perjury, that all of the information contained in Your Infringement Notice is accurate, and that You are either the copyright owner or a person authorized to act on their behalf.

Infringement Notices should be sent to [retrographic.developer@gmail.com](mailto:retrographic.developer@gmail.com) with the subject line "DMCA Notice: [INSERT YOUR NAME OR YOUR COMPANY'S NAME]".

Retrographic LLC will respond to all such notices, including as required or appropriate by removing the offending material or disabling all links to the offending material.

## **23. DISCLAIMERS; LIMITATION OF LIABILITY**

### **23.1. No Warranties.**

RETROGRAPHIC LLC, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE, **ARISING BY OPERATION OF LAW OR OTHERWISE**, INCLUDING WITHOUT LIMITATION **ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,**

**NON-INFRINGEMENT, NO ENCUMBRANCE, OR TITLE, IN ADDITION TO ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.**

NEITHER RETROGRAPHIC LLC NOR ITS LICENSORS OR SUPPLIERS WARRANTS THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. RETROGRAPHIC LLC DISCLAIMS ALL IMPLIED LIABILITY FOR DAMAGES ARISING OUT OF THE FURNISHING OF THE SERVICE PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, ERRORS, REPRESENTATIONS, OR OTHER DEFECTS ARISING OUT OF THE FAILURE TO THE FURNISH THE SERVICE, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, OR ANY OTHER DAMAGE OCCURRING. RETROGRAPHIC LLC SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR LOST REVENUES), WHETHER CAUSED BY THE ACTS OR OMISSIONS OF RETROGRAPHIC LLC, R RETROGRAPHIC LLC PARTIES, OR RETROGRAPHIC LLC USERS, OR THEIR AGENTS OR REPRESENTATIVES.

**23.2. Your Responsibility For Loss Or Damage; Backup Of Data**

YOU AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. YOU WILL NOT HOLD RETROGRAPHIC LLC OR ITS LICENSORS AND SUPPLIERS, AS APPLICABLE, RESPONSIBLE FOR ANY LOSS OR DAMAGE THAT RESULTS FROM YOUR ACCESS TO AND/OR USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY LOSS OR DAMAGE TO ANY OF YOUR COMPUTERS, MOBILE DEVICES, INCLUDING WITHOUT LIMITATIONS TABLETS AND/OR SMARTPHONES, OR DATA. THE SERVICE MAY CONTAIN BUGS, ERRORS, PROBLEMS, OR OTHER LIMITATIONS.

IMPORTANTLY, YOU HEREBY ACKNOWLEDGE THAT A CATASTROPHIC DISK FAILURE OR OTHER SIMILAR EVENT COULD RESULT IN THE LOSS OF ALL OF THE DATA RELATED TO YOUR ACCOUNT. YOU AGREE AND UNDERSTAND THAT IT IS YOUR RESPONSIBILITY TO BACKUP YOUR DATA TO YOUR PERSONAL COMPUTER OR EXTERNAL STORAGE DEVICE AND TO ENSURE SUCH BACKUPS ARE SECURE.

**23.3. Limitation of Liability**

IN NO EVENT SHALL RETROGRAPHIC LLC OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO YOU FOR ANY CLAIMS ARISING FROM YOUR USE WITH THE SERVICE, INCLUDING WITHOUT LIMITATION FOR SPECIAL, INCIDENTAL, OR

CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST DATA OR CONFIDENTIAL OR OTHER INFORMATION, LOSS OF PRIVACY, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, FAILURE TO MEET ANY DUTY INCLUDING WITHOUT LIMITATION OF GOOD FAITH OR OF REASONABLE CARE, NEGLIGENCE, OR OTHERWISE, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES OR OF ANY ADVICE OR NOTICE GIVEN TO RETROGRAPHIC LLC OR ITS LICENSORS AND SUPPLIERS ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SERVICE. THIS LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT, OR ANY OTHER LEGAL THEORY OR FORM OF ACTION. YOU AGREE THAT THIS LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK AND IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN Retrographic LLC AND YOU. THE SERVICE WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS.

#### **23.4. Application**

THE ABOVE DISCLAIMERS, WAIVERS, AND LIMITATIONS DO NOT IN ANY WAY LIMIT ANY OTHER DISCLAIMER OF WARRANTIES OR ANY OTHER LIMITATION OF LIABILITY IN ANY OTHER AGREEMENT BETWEEN YOU AND RETROGRAPHIC LLC OR BETWEEN YOU AND ANY OF Retrographic LLC'S LICENSORS AND SUPPLIERS. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR THE LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE DISCLAIMERS, WAIVERS, AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU. RETROGRAPHIC LLC'S LICENSORS AND SUPPLIERS ARE INTENDED THIRD-PARTY BENEFICIARIES OF THESE DISCLAIMERS, WAIVERS, AND LIMITATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU THROUGH THE SERVICE OR OTHERWISE SHALL ALTER ANY OF THE DISCLAIMERS OR LIMITATIONS STATED IN THIS SECTION.

#### **24. YOUR REPRESENTATIONS AND WARRANTIES**

You represent and warrant that Your use of the Service will be in accordance with this Agreement and any other Retrographic LLC policies, and with any applicable laws or regulations.

#### **25. INDEMNITY BY YOU**

Without limiting any indemnification provision of this Agreement, You (the "**Indemnitor**") agree to defend, indemnify, and hold harmless Retrographic LLC and

the Retrographic LLC Parties (collectively, the “**Indemnitees**”) from and against any and all claims, actions, demands, causes of action, and other proceedings (individually, “Claim,” and collectively, “**Claims**”), including but not limited to legal costs and fees, and providing sole and exclusive control of the defense of any action to Retrographic LLC, including the choice of legal counsel and all related settlement negotiations, arising out of or relating to: (i) the relationship between You and Retrographic LLC, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory; (ii) Your breach of this Agreement, including without limitation any representation or warranty contained in this Agreement; (iii) Your access to or use of the Service; (iv) Your provision to Retrographic LLC or any of the Indemnitees of information or other data; (v) Your violation or alleged violation of any foreign or domestic, international, federal, state, or local law or regulation; or (vi) Your violation or alleged violation of any third party’s copyrights, trademarks, or other intellectual property or proprietary rights.

The Indemnitees each have the individual right, but not the obligation, to participate through counsel of their choice in any defense by You of any Claim as to which You are required to defend, indemnify, or hold harmless any, each, and/or all Indemnitees. You may not settle any Claim without the prior written consent of the concerned Retrographic LLC Parties.

Without limitation, the Indemnitor also hereby agrees to compensate Retrographic LLC for any and all lost revenues, future lost profits, and reasonable search costs and any other reasonable expenses resulting from any Indemnitor violation of Section Prohibited Uses of this Agreement (Prohibited Uses), including without limitation, any suspension of affiliate accounts or affiliate payment attributable to fraudulent efforts to manipulate or otherwise modify reported impressions generated by the Retrographic LLC Parties under any affiliate advertising agreement.

## **26. GOVERNING LAW; JURISDICTION AND VENUE**

### **26.1. Binding Arbitration**

If You and Retrographic LLC cannot resolve a Claim through negotiations, either party may elect to have the Claim finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other(s). YOU HEREBY ACKNOWLEDGE THAT WITHOUT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT WITH A JURY TRIAL OR TO PARTICIPATE IN A CLASS ACTION. The language in this Agreement shall be

interpreted in accordance with its fair meaning and not strictly for or against either party.

The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), as modified by this Agreement, available at the AAA website [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. Except as otherwise provided for herein, Retrographic LLC will pay the AAA filing, administration, and arbitrator fees. If, however, the arbitrator finds that either the substance of Your claim or the relief sought is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then You will pay the arbitrator fees, in addition to any amount that exceeds the filing fees. In that case, You also hereby agree to reimburse Retrographic LLC for all payments disbursed that are Your obligation to reimburse under the AAA Rules. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to resolve, except that issues relating to the enforceability of the arbitration provision are for a Court of Competent Jurisdiction to resolve. The arbitration may be conducted in person, through document submission, through telephone, or online. The arbitrator will issue a decision in writing, but need only provide a statement of reasons if requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Retrographic LLC may litigate to compel arbitration in court, to stay proceedings pending arbitration, or to modify, confirm, vacate, or enter judgment on the award entered by the arbitrator. The arbitrator shall award costs to the prevailing party (including, without limitation, fees, expenses, and reasonable attorneys’ fees) at any time during the proceeding and upon request from either party, within fourteen (14) days of the arbitrator’s ruling on the merits.

## **26.2. Restrictions Against Joinder of Claims**

You and Retrographic LLC agree that any arbitration shall be limited to each Claim individually. YOU AND Retrographic LLC HEREBY AGREE THAT EACH MAY ONLY BRING CLAIMS AGAINST THE OTHER IN YOUR OR Retrographic LLC’S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. In the event that this specific provision is found to be unenforceable in a Court of Competent Jurisdiction, the Claim will still be finally and exclusively resolved by binding arbitration upon the election of either party, and any election to arbitrate by one party shall be final and binding on the other(s). In addition: (1) no arbitration shall be joined with any other arbitration, and (2) there is no right for any Claim to be

arbitrated on a class-action basis or to employ class action procedures, and (3) there is no right of authority for any dispute to be brought in a purported representative capacity on behalf either of the general public or any other individuals.

### **26.3. Remedies in Aid of Arbitration; Equitable Relief**

This agreement to arbitrate will not preclude You or Retrographic LLC from seeking provisional remedies in aid of arbitration, including without limitation orders to stay a court action, compel arbitration, or confirm an arbitral award, from a Court of Competent Jurisdiction. Furthermore, this agreement to arbitrate will not preclude You or Retrographic LLC from applying to a Court of Competent Jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary. As used herein, "**Court of Competent Jurisdiction**" means any federal or state court: (1) that has jurisdiction over the subject matter; and (2) that is located in the State of California.

### **26.4. Venue for any Judicial Proceeding**

This Agreement, including without limitation this Agreement's interpretation, shall be treated as though this Agreement were executed and performed in the State of California and shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of law principles. The language in this Agreement shall be interpreted in accordance with its fair meaning and not strictly for or against either party. THE PROPER VENUE FOR ANY JUDICIAL ACTION ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT WILL BE THE STATE AND FEDERAL COURTS LOCATED IN OR NEAREST TO SAN JOSE, CALIFORNIA. THE PARTIES HEREBY STIPULATE TO, AND AGREE TO WAIVE ANY OBJECTION TO, THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS, AND FURTHER EXPRESSLY SUBMIT TO EXTRATERRITORIAL SERVICE OF PROCESS.

## **27. TERMINATION**

### **27.1. By Retrographic LLC**

WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, RETROGRAPHIC LLC RESERVES THE RIGHT TO, IN RETROGRAPHIC LLC'S SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY USE OF THE SERVICE TO ANY PERSON FOR ANY REASON OR FOR NO REASON AT ALL, INCLUDING WITHOUT LIMITATION FOR ANY BREACH OR SUSPECTED BREACH OF ANY

REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THIS AGREEMENT, OR OF ANY APPLICABLE LAW OR REGULATION.

### **27.2. Automatic Termination Upon Breach By You**

This Agreement shall automatically terminate in the event that You breach any of this Agreement's representations, warranties, or covenants. Such termination shall be automatic, and shall not require any action by Retrographic LLC.

### **27.3. By You**

You may terminate this Agreement and Your rights hereunder at any time, for any or no reason at all, by providing to Retrographic LLC notice of Your intention to do so, in the manner required by this Agreement.

### **27.4. Effect Of Termination**

Any termination of this Agreement automatically terminates all rights and licenses granted to You under this Agreement, including all rights to use the Service. Upon termination, Retrographic LLC may, but has no obligation to, in Retrographic LLC's sole discretion, rescind any services and/or delete from Retrographic LLC's systems all Your Personal Information and any other files or information that You made available to Retrographic LLC or that otherwise relate to Your use of the Service. Upon termination, You shall cease any use of the Service. Subsequent to termination, Retrographic LLC reserves the right to exercise whatever means it deems necessary to prevent Your unauthorized use of the Service, including without limitation technological barriers such as IP blocking and direct contact with Your Internet Service Provider.

### **27.5. Legal Action**

If Retrographic LLC, in Retrographic LLC's discretion, takes legal action against You in connection with any actual or suspected breach of this Agreement, Retrographic LLC will be entitled to recover from You as part of such legal action, and You agree to pay, Retrographic LLC's reasonable costs and attorneys' fees incurred as a result of such legal action. The Retrographic LLC Parties will have no legal obligation or other liability to You or to any third party arising out of or relating to any termination of this Agreement.

### **27.6. Survival**

Upon termination, all rights and obligations created by this Agreement will terminate, except that Sections Agreement, Privacy Policy, Eligibility–Your Interactions With

Other Users, and Reserved Rights For Retrographic LLC Fees–General will survive any termination of this Agreement.

## **28. NOTICES**

All notices required or permitted to be given under this Agreement must be in writing. Retrographic LLC shall give any notice by email sent to the most recent email address, if any, provided by the intended recipient to Retrographic LLC. You agree that any notice received from Retrographic LLC electronically satisfies any legal requirement that such notice be in writing. YOU BEAR THE SOLE RESPONSIBILITY OF ENSURING THAT YOUR EMAIL ADDRESS ON FILE WITH RETROGRAPHIC LLC IS ACCURATE AND CURRENT, AND NOTICE TO YOU SHALL BE DEEMED EFFECTIVE UPON THE SENDING BY R RETROGRAPHIC LLC OF AN EMAIL TO THAT ADDRESS. You shall give any notice to Retrographic LLC by means of email to [retrographic.developer@gmail.com](mailto:retrographic.developer@gmail.com).

## **29. PARTIAL INVALIDITY**

Should any part of this Agreement be declared invalid, void, or unenforceable by a Court of Competent Jurisdiction, such decision shall not affect the validity of any remaining portion hereof, which shall remain in full force and effect, and the parties hereby acknowledge and agree that they would have executed the remaining portion hereof without including the part so declared by a Court of Competent Jurisdiction to be invalid, void, or unenforceable.

## **30. GENERAL**

This Agreement constitutes the entire agreement between Retrographic LLC and You concerning Your use of the Service. This Agreement may only be modified by a written amendment signed by an authorized executive of Retrographic LLC or by the unilateral amendment of this Agreement by Retrographic LLC and by the posting by Retrographic LLC of such amended version.

A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

This Agreement and all of Your rights and obligations hereunder will not be assignable or transferable by You without the prior written consent of Retrographic LLC. This Agreement will be binding upon and will inure to the benefit of the parties, their successors, and permitted assigns.

You and Retrographic LLC are independent contractors, and no agency, partnership, joint venture, or employee–employer relationship is intended or created by this Agreement. Except for the Retrographic LLC Parties and to the extent set forth in Sections No Reliance On Third-Party Content, Third-Party Websites, Intellectual Property, Your Representations And Warranties, Indemnity By You, and Termination(e), and in this paragraph, and Retrographic LLC’s licensors and suppliers as—and to the extent—expressly stated in this Agreement, there are no third-party beneficiaries to this Agreement.

You acknowledge and agree that any actual or threatened breach of this Agreement or infringement of proprietary or other third-party rights by You would cause irreparable injury to Retrographic LLC and Retrographic LLC’s licensors and suppliers, and would therefore entitle Retrographic LLC or Retrographic LLC’s licensors or suppliers, as the case may be, to injunctive relief.

The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge, or affect any of the covenants, terms, conditions or provisions of this Agreement.

The English version of these terms will be the version used when interpreting or construing these terms.