

## **SYMPHONY SOURCE, LLC/ESPRESSO AGENT SERVICE/LICENSE AGREEMENT**

This SYMPHONY SOURCE, LLC/ESPRESSO AGENT SERVICE/LICENSE AGREEMENT, is by, and between, Symphony Source, LLC, sometimes hereinafter referred to as, Symphony Source, and you, the Client/Licensee, who is sometimes hereinafter referred to as, the Subscriber, and who is a Licensed Real Estate Agent, and a Member, in good standing, with the Multiple Listing Service, for which the Subscriber desires to use the Symphony Source, LLC/Espresso Agent Software/Service, pursuant to the Terms and Conditions, as set forth in this Agreement, and, further, the Subscriber acknowledge, and agrees that, in order to be able to use the Symphony Source, LLC/Espresso Agent Software/Service, the Subscriber must remain a Member, in good standing, with the Multiple Listing Service, during the Term of this Service/License Agreement.

This Symphony Source, LLC /Espresso Agent Service/License Agreement, sometimes hereinafter referred to as, the Agreement, is a legal and enforceable Contract between the Subscriber, and Symphony Source, LLC, and contains the Terms, Conditions, Rights, and Limitations, associated with the Subscriber's use of the Symphony Source, LLC/Espresso Agent Software/Service. By using the Espresso Agent Software/Service, the Subscriber is accepting, and agreeing, to the Terms of this Agreement. Acceptance of this Agreement for the Espresso Agent Software/Service, constitutes acceptance of this Agreement for all aspects, and tools, of the Espresso Agent Software/Service that the Subscriber uses. Symphony Source is willing to License the Software/Service, to the Subscriber, as the Individual, Organization, or Legal Entity, that will be using the Espresso Agent Software/Service, but only upon the Condition that the Subscriber accepts all of the Terms of this Agreement. This Agreement becomes effective, and the Subscriber accepts it, and agree to the Terms of the Agreement, if the Subscriber clicks, the "I Agree" button the first time they login to Espresso Agent, as provided for on the Symphony Source, LLC/Espresso Agent site. If the Subscriber does not agree, to the Terms and Conditions of this Agreement, do not click the "I Agree" button, or otherwise use the Espresso Agent Software/Service. If the Subscriber uses the Espresso Agent Software/Service, pursuant to any Trial, Evaluation, or Purchase, such conduct constitutes Acceptance of this Agreement, and the Subscriber will be bound by all of its Terms and Conditions of this Agreement. The Subscriber may access, download, and/or print a copy of this Agreement, from the Symphony Source Website, at <https://espressoagent.com/terms-of-service/> PLEASE READ THIS AGREEMENT AND PRINT A COPY FOR YOUR RECORDS.

### **RECITALS:**

Symphony Source, LLC is a Data Research Software Company, that provides a Software/Service to its Clients/Licensees. Espresso Agent is one of its Software/Services. The Symphony Source Software/Service appends certain Contact Information to Leads, to identify Owners, and potential Sellers and Buyers, sometimes hereinafter referred to as Contacts, of Real

Estate Properties. The Espresso Agent Software/Service also provides an optional Dialing System, to assist the Clients/Licensee/Subscriber in reaching their Contacts.

The Symphony Source, LLC/Espresso Agent Software/Service is only intended for use in the United States and Canada. The Symphony Source, LLC/Espresso Agent Software/Service is not available for users located in the European Union or United Kingdom, or for the storage of Personal Data belonging to individuals residing in the European Union or United Kingdom. Because of this prohibition, Symphony Source, LLC and Espresso Agent will not knowingly collect or maintain Personal Data at our Site, from those individuals that we actually know are located in the European Union or United Kingdom.

## **SECTION 1** **DEFINITIONS**

- 1.1. **“Activation,”** and its variants, “Activate”, “Activated”, and the like, means a process, by which the Software/Service is activated, when the Subscriber (i) receives a User Name and Password from Symphony Source, and (ii) the Subscriber accepts this Agreement.
- 1.2. **“Affiliate,”** means a Person, Organization, or Entity that actively is referring potential Clients to Symphony Source, LLC, in compensation for a Referral Fee, a Free Software/Service, and/or a discounted Service/License Fee.
- 1.3. **“Automatic Subscription Renewal,”** means the Subscription Period shall automatically be renewed, after each Subscription Period, unless the Subscriber has contacted Symphony Source to terminate the Service/License. In the event of a Service/License Agreement, the Subscription Period shall automatically renew, as a Monthly Subscription Period, at the end of the Subscription Agreement Period, if the Subscriber has not renewed the Service/License Agreement or terminated the Service/License Agreement.
- 1.4. **“Dialer System,”** means the Dialing System, which is included with the Espresso Agent Software/Service. The Dialer System only has the capacity to make one (1) phone call at a time. The Dialing System requires human intervention, and it cannot, and does not, dial on its own. The Dialing System cannot store, or produce, telephone numbers, using a random, or sequential, number generator. The Dialing System requires that the Subscriber, who is making the call, be present, on the phone line, for each phone number, which is being dialed.
- 1.5. **“Documentation,”** means the current User Guide, if applicable, Training Materials, Knowledge-Based Articles and Videos relating to the Software/Service.
- 1.6. **“Free Service,”** means the use of the Software/Service for the Subscriber's own use, without paying a Subscription Fee, for an agreed upon time period.
- 1.7. **“Intellectual Property Rights,”** means all of Symphony Source’s ownership rights, associated with Intellectual Property, and the Symphony Source Products, and Software/Service and License, including, but not limited to, patents, copyrights, trademarks, trade secrets, know how, and any and all rights pursuant to patent law, copyright law, trade-secret law, trademark law, unfair competition law, or other similar law.

- 1.8. **“Leads,”** means Off-Market, Expired Leads, For-Sale-By-Owner, “FSBO,” Leads, Neighborhood Leads, and other leads, provided by Symphony Source to the Subscriber. The Subscriber can get access to Third-Party Leads, such as the Cole Neighborhood Search Data, and Probate Leads, by subscribing directly to the third-party providers, of such Leads, and importing them into the Software/Service. The Subscriber may also add their own Leads, such as current and past clients, to the Software/Service.
- 1.9. **“Monthly Subscription Period,”** means a month-to-month Subscription Period.
- 1.10. **“Party,”** means the Subscriber or Symphony Source. **“Parties,”** means the Subscriber and Symphony Source.
- 1.11. **“Product,”** means any of the following Symphony Source Services: Espresso Agent Dialer, Espresso Agent Customer Relationship Management Software, “CRM Software”, Espresso Agent Leads, and StoryTellr, which the Subscriber is subscribing to, in accordance with this Agreement.
- 1.12. **“Product Support,”** means Standard Support for a Support Issue, associated with the Software/Service. “Standard Support” includes on-line and telephone support for Support Issues, during Symphony Source’s regular business hours; Symphony Source’s online, and telephone support system; and the Symphony Source knowledge base, which is a question and answer resource that includes frequently asked questions.
- 1.13. **“Referral Fee,”** means the compensation of a Person, Organization, or Entity is receiving compensation, for referring potential Clients to Symphony Source. The Referral Fee is either monetary, or Free Service, for an agreed upon period of time.
- 1.14. **“StoryTellr,”** means a Third-Party Product, available to the Client, through the Software/Service. StoryTellr is integrated with Software/Service, making it one of the only CRM systems to provide the Subscriber with the ability to send a Video E-Mail directly to the Subscriber's Contacts, making a more personable connection with the Subscriber's Prospects, through Video Communication.
- 1.15. **“Service/License Agreement,”** means the Agreement, signed by the Subscriber, for the right to use the Software/Service for a 3-Month Subscription Period, a 6-Month Subscription Period, or an Annual Subscription Period, at a discounted Subscription Fee. The Subscriber agrees to pay the agreed upon cancellation fees associated with a Subscription Agreement upon early termination.
- 1.16. **“Service/License Fee,”** means the Fee that the Subscriber pays to Symphony Source, to subscribe to the Software/Service, for a Monthly Subscription Period, a 3-Month Subscription Period, a 6-Month Subscription Period, or an Annual Subscription Period, in accordance with the limitations established in this Agreement.
- 1.17. **“Subscriber/Licensee,”** means a Person, Organization, or Entity that accepts this Agreement.
- 1.18. **“Support Issue,”** means any questions the Subscriber has as a Subscriber/Licensee in relation to the Software/Service.
- 1.19. **“Service/License Period,”** means the term of the subscription with Symphony Source.

- 1.20. “Espresso Agent,”** means the Symphony Source Software/Service, comprised of the Espresso Agent Dialer, Espresso Agent CRM, and Espresso Agent Leads, and StoryTellr. Espresso Agent includes the executable program accessible through a unique Espresso Agent login on your Physical System.
- 1.21. “Espresso Agent CRM,”** means Espresso Agent Customer Relationship Management Software. The Subscriber can manage the Espresso Agent Leads in your CRM platform, by making notes; scheduling follow-up activities; customizing layouts and tags; performing advance searches on leads; delivering e-mail campaigns; connecting teams; and delivering Team Management and Admin Control with Real Time Reporting. The Espresso Agent CRM has Lead Integration Software, Lead Generation capabilities, and Integration with Google.

## **SECTION 2**

### **PROPRIETARY RIGHTS**

This is an Agreement, and not a sale. The Software/Service and Documentation are Proprietary Products of Symphony Source, or its Licensors, and are protected, pursuant to United States Copyright Laws. Nothing in this Agreement constitutes a waiver of Symphony Source’s rights under U.S. or International Copyright Law, or any other Law. Notwithstanding anything to the contrary in this Agreement, Symphony Source owns, and retains, all right, title, and interest in: (a) the Software/Service, including, without limitation, all copies, modifications, translations, localizations, components, features, and merged portions of the Software/Service; and (b) the Intellectual Property Rights, including, without limitation, all Copyrights, Patent rights, Trade Secret rights, Trademarks, Trade Dress, Logos, Know-How, Goodwill, and other Intellectual Property Rights in, and associated with, the Software/Service and Documentation. Symphony Source retains unconditional, and unrestricted, rights to market, sell, and distribute Symphony Source Products to all current and potential Clients and users. Symphony Source retains exclusive ownership of its Trademarks and Logos, including, without limitation, “Symphony Source”, “Espresso Agent” and “Vulvan7 Software” and StoryTellr, as they are depicted, in any respect, and including, without limitation, their use in Symphony Source Products and Documentation. This Agreement provides you with specified rights, and all rights, not expressly granted herein, are reserved by Symphony Source and/or its Third-Party Licensors.

## **SECTION 3**

### **SOFTWARE/SERVICE LICENSES**

Certain conditions, for use of the Espresso Agent Software/Service, are described below, and are subject to the other terms of this Agreement.

- 3.1. Espresso Agent Software/Service:** The Subscriber is granted a limited, personal, non-assignable, non-transferable, non-exclusive, non-sublicenseable, License to use the Software/Service, during a defined Subscription Period, (Monthly Subscription Period, 3-Month Subscription Period, 6-Month Subscription Period, or Annual Subscription Period), as follows: (i) use the Software/Service, only on a Physical System owned by the Subscriber, (ii) concurrent or simultaneous use on two or more computers is prohibited, unless multiple Licenses are granted, and (iii) the Subscriber agrees not to disseminate or disclose the Subscriber's Account's Username or Password, nor to allow anyone else to utilize the Subscriber's Account for access to the Software/Service. The Subscriber understands that the foregoing rights, concerning the Software/Service, and/or receipt of Product Support, are subject to termination, if the Subscriber does not pay the Subscription Fee, or other amounts due, or otherwise breach this, or any other Agreement, with Symphony Source. The Subscriber understands, and agrees, that terminating the Subscriber's Service/License, or Service/License Agreement will result in the Deactivation of the Software/Service, at the end of the Subscription Period, resulting in the suspension of the ability to use the Software/Service and the ability to access the historical data contained within the Software/Service.
- 3.2. Espresso Agent Leads:** This limited License permits the Subscriber to utilize Espresso Agent Leads for the Subscriber's own purposes. The Subscriber acknowledges that Espresso Agent Leads are Symphony Source's Trade Secret, Proprietary Information, and the Subscriber agrees not to share, copy, re-produce, or re-distribute Espresso Agent Leads, to Third-Parties, without the express written permission of Symphony Source.
- 1. Data Restrictions:** The Subscriber acknowledges that Symphony Source may limit the amount of Leads provided. The Symphony Source Expired Service, or Off-Market Service, is a Data Append Service, which appends missing owner Contact Information, for Expired MLS listings. Due to the costs associated with the research of such Contact Information, the Subscriber agrees that Symphony Source may restrict the Subscriber's search criteria (areas, type or price range) within the Multiple Listing Service (MLS), in the event it becomes cost-prohibitive for Symphony Source to continue the initial agreed upon search criteria. On certain dates, with excessive numbers of listings, i.e. January 1, Symphony Source may also restrict the number of searches, per Client.
  - 2. Disclaimer:** Symphony Source has made reasonable best efforts to ensure accurate Information in all Espresso Agent Leads and Data Append Services, and to provide it in a timely, accurate manner, including, if applicable, reliable acknowledgment of individuals listed on the National Do-Not-Call Registry. However, Symphony Source assumes no responsibility for the accuracy of Espresso Agent Leads or any errors, misrepresentations, or inaccurate information contained therein. Further, Symphony Source assumes no responsibility for researching, or warning the Subscriber of home and cell telephone numbers that are listed in the "Do-Not-Call

Registry," and "Do Not Call Compliance" is your responsibility. Symphony Source provides its content, "as is," and without warranties of any kind, either expressed or implied. Neither does Symphony Source warrant uninterrupted, error free functionality for its Products and Services.

**3.3. Espresso Agent Dialer, including Espresso Agent CRM:** The Subscriber agrees to become familiar with any and all legalities, of any calls, performed by the Symphony Source/Espresso Agent Dialer, by understanding the Laws and Regulations found on the following websites:

1. [www.ftc.gov](http://www.ftc.gov): Federal Trade Commission
2. [www.fcc.gov](http://www.fcc.gov): Federal Communications Commission
3. [www.donotcall.gov](http://www.donotcall.gov): National Do Not Call

The Subscriber agrees to comply with all Laws, Ordinances, Regulations, and Requirements of Local, Provincial, and Federal Governmental Authorities, governing dialing, auto-dialing, and automatic, power, or predictive dialers. The Subscriber agrees to immediately mark any and all Individuals requesting to not be called, as Do-Not-Call status, within the Lead manager on the Subscriber's individual Do-Not-Call list. The Subscriber agrees to provide Legal Contact Information in any outbound campaign within the initial greeting message. The Subscriber agrees to responsibly dial each campaign with courtesy to the recipients for which it is meant. The Subscriber agrees not to send any calls to life-line services, such as hospitals, fire, police, 911, or utility related telephone numbers. The Subscriber also agrees not to send any sales outbound Broadcasts to recipients that have not consented to receiving such a Broadcast. The Subscriber agrees to use Do-Not-Call and opt-out features made available to you, within the Lead Manager.

Also, the Subscriber agrees to comply with any, and all, Laws, and Regulations, relative to recording conversations. In that regard, the Subscriber should review the following Laws, to-wit:

- (1) The Federal Communications Act of 1934, as set forth at 47 U.S.C.A. §151, et seq, and
- (2) The Federal Wiretap Act, as set forth at 18 U.S.C. §2520, and
- (3) The Electronic Communication Privacy Act of 1986, as set forth at 8 U.S.C. §2510, et

seq.

**3.4 Compliance with Export Laws:** The Subscriber agrees to comply with all applicable international, national, state, regional and local laws and regulations concerning use of Symphony Source Products. The Subscriber also acknowledges that Symphony Source, its employees and its agents are subject to U.S. Export Control Laws that prohibit or restrict: (i) transactions with certain parties, and (ii) the type and level of technologies and services that may be exported. These laws include, without limitation, the Export Administration Act, the Arms Export Control Act, the International Economic Emergency Powers Act, and the Regulations issued, pursuant to these and other applicable Export Laws. The Subscriber will comply, fully, with all Export Laws, to assure that neither the Software/Service, nor any direct products thereof are: (1) exported, directly or indirectly, in violation of the Export Laws, or (2) used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. None of the

Software/Service or underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria, the Crimea region of Ukraine or any other country subject to U.S. sanctions, applicable to the Export or re-export of goods; or (ii) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons List and Foreign Sanctions Evaders List, or the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or the Department of State's Nonproliferation Sanctions list. The Subscriber acknowledges that the Subscriber can contact the U.S. Departments of Commerce and Treasury for guidance as to applicable export licensing requirements, sanctioned programs and other restrictions. By using the Symphony Source/Espresso Agent Software/Service, the Subscriber agrees to the foregoing and represents and warrants that the Subscriber is not located in, under the control of, or a national or resident of any such country or on any such list, and that the Subscriber acknowledges the Subscriber is responsible to obtain any necessary U.S. Government authorization to ensure compliance with U.S. law.

**3.5 Foreign Corrupt Practices Act (FCPA).** The Subscriber warrants and represents that neither the Subscriber, nor any of the Subscriber's officers, directors, employees, agents or other representatives have performed, or will perform, any of the following acts, in connection with this Agreement, any sale made, or to be made hereunder, or any compensation paid, or to be paid, hereunder: pay, offer or promise to pay, or authorize the payment of, any money, or give or promise to give, or authorize the giving of, any services or anything else of value, either directly or through a third party, to any official or employee of any governmental authority or instrumentality, or of a public international organization, or of any agency or subdivision thereof, or to any political party or official thereof or to any candidate for political office for the purpose of (i) influencing any act or decision of that person in his official capacity, including a decision to fail to perform their official functions with such Governmental Agency or instrumentality or any international organization or political party, (ii) inducing such person to use their influence with such governmental agency or instrumentality or international organization or political party to affect or influence any act or decision thereof, or (iii) securing any improper advantage.

**3.6 Virtual Assistant:** As applicable to the Subscriber, relative to Symphony Source Expireds, and for Markets, in which Symphony Source provides the Expired Listing Assistant Program: The Subscriber is a Licensed Real Estate Agent, and wishes to engage Symphony Source, to be the Subscriber's Virtual Assistant, to create an Export File and/or Automation from the Subscriber's Multiple Listing Service (MLS) Account, for the Subscriber's personal use, within your Symphony Source System or e-mail. The Subscriber is responsible for ensuring that any actions taken, or any Services or Software/Service requested from Symphony Source, pursuant to this Agreement, are in compliance with all applicable Laws, and Multiple Listing Service (MLS) regulations, in all jurisdictions in, and to which, the Services are provided to the Subscriber, by Symphony Source. The Subscriber is also responsible for ensuring that both Symphony Source, and the Subscriber, are authorized, pursuant to all applicable Multiple Listing Service (MLS), and State and Federal Laws and Regulations, to allow Symphony Source to act as a Virtual Assistant, and the Subscriber

agrees to obtain the necessary authentication Information for the exportation of Multiple Listing Service (MLS) Data. In consideration of the above, Symphony Source agrees to act as the Virtual Assistant for the Subscriber, and to assist the Subscriber in the process of exporting the Multiple Listing Service (MLS) Data, for which the Subscriber is authorized to utilize, within the Subscriber's Multiple Listing Service (MLS).

#### **SECTION 4** **LICENSE RESTRICTIONS**

The Subscriber's rights to use the Espresso Agent Software/Service are (a) limited solely to those Rights identified in this Agreement, (b) subject to the Terms of this Agreement, and (c) subject to the Subscriber's payment of any Fees charged by Symphony Source. Symphony Source retains all rights, not expressly granted to the Subscriber in this Agreement. There are no implied License rights granted to the Subscriber. This Agreement governs any Up-dates, Up-grades, releases, revisions, or enhancements to the Software/Service that Symphony Source may furnish to the Subscriber. This Agreement does not include a grant of any ownership right, title, interest, security interest, or other interest, in the source Code or Object Code of the Software/Service, in any copy of the Software/Service or Documentation, or in Symphony Source's Intellectual Property Rights. The Subscriber agrees that, unless the Subscriber have obtained Symphony Source's prior written consent, the Subscriber will not directly, or indirectly, or through any subsidiary, affiliate, agent, Designated Technician, or other third party, do any of the following with respect to Software/Service and Documentation: (i) use the Software/Service or Documentation in violation of the terms of this Agreement; (ii) grant a security interest in, sublicense, sell, lend, rent, lease, give, transfer rights to, assign, or otherwise dispose of, or deal with, all or any portion of the Software/Service, a copy thereof, or any interest in the Software/Service or Documentation, any such disposition made without such consent shall be null and void; (iii) provide, lend, disclose, divulge, make available to, or permit use of the Software/Service or Documentation by persons, other than the Subscriber, or the Subscriber's authorized employee, agent, or representative, which the Subscriber has engaged, for purposes of operating and using the Software/Service on the Subscriber's sole behalf; (iv) use the Software/Service in any Service Bureau, Facility Management, or Time Sharing Arrangement; (v) remove, obscure, or alter any notice of Patent, Copyright, Trade Secret, Trademark, or other Proprietary right of Symphony Source; (vi) reverse engineer, de-compile, or re-compile the Software/Service, or otherwise attempt to discover Source Code or Trade Secrets, related to the Software/Service or any part thereof; (vii) modify the Software/Service, or create derivatives or derivative works of the Software/Service; (viii) work around any technical limitations in the Software/Service; (ix) permit use of Software/Service by anyone other than the Subscriber; (x) assign or transfer the rights granted to the Subscriber pursuant to this Agreement; and (xi) concurrent or simultaneous use on two or more Physical Systems is prohibited, unless multiple Licenses are granted. The Subscriber



further agrees not to disseminate, or disclose, the Subscriber's account's Username or Password, nor to allow anyone else to utilize the Subscriber's account for access to the Software/Service.

**SECTION 5**  
**CONFIDENTIALITY AND NON-DISCLOSURE**

- 5.1. The Subscriber acknowledges that Confidential Information may be obtained, during the course of doing business, and during the term of this Agreement. This Information may include operations and affairs of Symphony Source, including particular methods and procedures used by it, to conduct Business, and the Subscriber agrees that all Records, Data, Materials, and all other Information and Equipment, provided by Symphony Source, are the sole property of Symphony Source, and remain so, after the termination of this Agreement. The Subscriber agrees to surrender all such Information or Material to Symphony Source on demand, or upon termination of this Agreement, by either party.
- 5.2. The Subscriber agrees that by, subscribing to Symphony Source/Espresso Agent Software/Service, the Subscriber will have received Confidential Information about Symphony Source/Espresso Agent, and that, irrespective of the cause of termination of this Agreement, the Subscriber will not engage, directly or indirectly, personally, or by any agent, use, disclose, copy, reproduce, disseminate, or otherwise produce, in oral, written or electronic fashion, to any Person, Firm, or Corporation, the name, or by means of any corporate or other device, in Dialer Systems and CRM, or Expireds, Neighborhood or FSBO Lead Services. Also, the Subscriber will not use knowledge of the Business, for the benefit of the Subscriber, or other persons, or divulge information or data concerning Symphony Source, including, customer names, prices, terms or particulars of Symphony Source, whether by sale, gift, or any device, subterfuge or evasion. The Subscriber will in good faith protect the goodwill of Symphony Source.

**SECTION 6**  
**CLIENT'S/LICENSEE'S DUTIES AND RESPONSIBILITIES**

- 6.1. In performing the Subscriber's obligations, pursuant to this Agreement, the Subscriber is solely responsible for ensuring that all methods used in the compilation of Data or Leads, not received from Symphony Source, are in accordance with all applicable Federal, State, and Local Laws, Statutes, Regulations, Ordinances, and the Common Law and will obtain, and will maintain, in full force and effect, all Licenses, Permits, approvals, and other authorizations that are necessary or required, to be in compliance.
- 6.2. In addition to the general obligation to comply with all applicable Laws, Rules, and Regulations, and not in limitation thereof, the Subscriber specifically agrees that the Subscriber's methods of gathering Data will comply with the Federal Trade Commission's

(“FTC”) Telemarketing Sales Rule (“TSR”), the Telephone Consumer Protection Act of 1991, as amended (“TCPA”), Codified as, Title 47 of the US Code § 227, and with all other applicable Federal and State Laws, Rules, and Regulations, in regard to Tele-marketing. The Subscriber hereby agrees to become, and remain sufficiently familiar with those regulations, in order to ensure compliance with their terms.

**6.3.** In addition to the general obligation to comply with its applicable Laws, Rules, and Regulations, and not in limitation thereof, the Subscriber agrees not to transmit unsolicited Commercial E-mail or “Spam,” as defined in the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003,” the “CAN-SPAM Act,” 15 U.S.C. §7701, not to illegally create, or collect E-mail addresses, are not to deceptively use E-mail relays or transmissions, and not to otherwise violate the CAN-SPAM Act, in generating Leads, or otherwise performing its obligations hereunder.

**6.4. Registration for Service, Password, and Security.**

1. To become a Subscriber/Licensee to use the Symphony Source/Esspresso Agent Software/Service, the Subscriber must register, by providing Symphony Source with current, complete, and accurate Information, as prompted by the <https://www.esspressoagentapp.com/signup/>. The Subscriber will also choose a Password and a Symphony Source ID name. The Subscriber is required to provide Symphony Source with accurate, complete, and updated registration Information. The Subscriber shall not knowingly provide inaccurate Information with the intent to create a false identity.
2. The Subscriber also agrees not to provide false or misleading information in the administrative panel of the Software/Service or the Subscriber's Website. This includes, but is not limited to, providing false E-mail address in "FROM:" field on outgoing E-mails.
3. The Subscriber is entirely responsible for maintaining the confidentiality of the Subscriber's Password and Account. Furthermore, the Subscriber is entirely responsible for any and all activities that occur under the Subscriber's Account. The Subscriber agrees not to provide false or misleading Information on the Software/Service Sign-up Form. This includes, but is not limited to, providing false Name or E-mail address.
4. The Subscriber agrees to notify Symphony Source, immediately, of any unauthorized use of the Subscriber's account, or any other breach of security. The Subscriber agrees that Symphony Source is the neutral host of the Software/Service and has no responsibility or liability, in relation to the Business methods/tools that the Subscriber represents, as part of the Subscriber's use of the Software/Service.
5. The Subscriber agrees that Symphony Source may rely on any data, notice, instruction or request furnished to Symphony Source by the Subscriber, which is reasonably believed, by Symphony Source, to be genuine, and to have been sent or

presented by a person reasonably believed, by Symphony Source, to be authorized to act on the Subscriber's behalf.

6. The Subscriber shall notify Symphony Source at [cs@espressoagent.com](mailto:cs@espressoagent.com) of any known or suspected unauthorized uses of the Subscriber's Account, or any known or suspected breach of security, including loss, theft or unauthorized disclosure of the Subscriber's Password. The Subscriber shall be responsible for maintaining the confidentiality of the Subscriber's Password, and the Subscriber is responsible for all usage, and activity, on the Subscriber's Account, including use of the Account by a Third-Party authorized by the Subscriber to use the Subscriber's Account.
  7. Any fraudulent, abusive, or otherwise illegal activity, may be grounds for termination by Symphony Source, and referral to the appropriate Law Enforcement Agencies.
  8. The Subscriber acknowledges, and agrees, that the Subscriber will promptly notify Symphony Source, if the Subscriber is aware of any person who, in the Subscriber's good faith opinion, is intending to take unfair advantage of the Software/Service provided by Symphony Source.
  9. Symphony Source reserves the right to send an E-mail to you, for the purposes of informing the Subscriber of applicable offers, changes, or additions to the Software/Service, or any related products and services.
- 6.5.** Any unauthorized use of the Software/Service is expressly prohibited. The Subscriber agrees to abide by all applicable Local, State, and National Laws and Regulations, and the Subscriber is solely responsible for all acts or omissions that occur under the Subscriber's Account or Password, including the content of the Subscriber's transmissions through the Software/Service. By way of example, and not as a limitation, You agree not to:
1. Use the Software/Service in connection with chain letters, junk E-mail, pyramid schemes, untrue, inaccurate, misrepresentative, deceptive, or otherwise unethical testimonials, cross soliciting, money games, spamming, or any duplicative or unsolicited messages, commercial or otherwise;
  2. Harvest, or otherwise collect, information about others, including E-mail addresses, without their consent;
  3. Create a false identity or forged E-mail, or otherwise attempt to mislead others, relative to the identity of the sender or the origin of the message;
  4. Transmit, through the Software/Service, unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material, of any kind or nature;
  5. Transmit any material that may infringe the Intellectual Property Rights, or other rights, of Third-Parties, including Trademark, Copyright or Right of Publicity;
  6. Libel, defame, or slander any person, or infringe upon any person's Privacy Rights;
  7. Transmit any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs;

8. Violate any United States Law, regarding the transmission of Technical Data or Software/Service exported from the United States, through the Software/Service;
9. Interfere with or disrupt Networks, connected to the Software/Service or violate the Regulations, Policies or Procedures of such networks;
10. Attempt to gain unauthorized access to the Software/Service, other Accounts, Computer Systems or Networks connected to the Software/Service, through Password Mining or any other means;
11. Interfere with another Affiliate's use, and enjoyment, of the Software/Service or another Entity's use and enjoyment of similar services; or engage in any other activity that Symphony Source believes could subject it to criminal liability or civil penalty or judgment.

**6.6. Forbidden Content.**

1. The Subscriber agrees that they will not host, post, or promote any Website which advocates, encourages, endorses, or makes possible, any form of pornography, gambling, pyramid schemes, illegal, untrue, inaccurate, misrepresentative, deceptive, or otherwise unethical testimonials, or any type of Business Method, or tool, that is unethical, illegal, or otherwise objectionable whatsoever. The Subscriber agrees that they will not post, or promote, any Copyrighted Materials not their own. The Subscriber agrees that the Subscriber will not post, or promote, any material which is pornographic, threatening, embarrassing, hateful, racially or ethnically insulting, libelous, or otherwise inappropriate. Affiliates are prohibited from transmitting on, or through, any of the Software's Services, any material that is, in the Symphony Source/Esspresso Agent Software/Service's sole discretion, unlawful, obscene, threatening, abusive, libelous, or hateful, or that encourages conduct which would constitute a Criminal Offense, give rise to Civil Liability, or otherwise violate any Local, State, National or International Law. Affiliates are prohibited from making any income claims or illegal product claims of any sort. This action will result in immediate termination of the Subscriber's account without refund. Any Service interruptions, as a result of Subscriber's spamming will be Billed to you at \$500.00 per hour, with a \$1,000 minimum Billing for clean-up. The Subscriber will also be in violation of this Agreement, and may be subject to Legal Action.
2. Symphony Source reserves the sole right to ban any Business Method, or tool, from being promoted through the Software/Service.
3. Should Symphony Source discover that the Subscriber's Site, or the Subscriber's communications, promote Business Methods, or tools, of this type, in any form, will constitute grounds for immediate suspension or termination of the Subscriber's Software/Service, and the loss of all content contained in the Subscriber's Database.

4. Symphony Source does not take responsibility for monitoring any usage of the Software/Service. It is the Subscriber's responsibility to ensure that all usage of the System complies with this Agreement.

**6.7. Submitting/Importing Information.**

1. The Subscriber represents to Symphony Source that any, and all, E-mails that the Subscriber uploads into the System are "Opt in" and contacts that have specifically requested Information regarding the Subscriber's Business Methods, or Tools. The Subscriber also represents that any content that the Subscriber uploads to the Software/Service is solely owned by the Subscriber, or provided by the Subscriber, with the express authority of the Owners, does not infringe upon any other Individual's or Organization's rights including, without limitation, Copyright, Trademark, or Intellectual Property Rights.
2. By submitting Content, Data, or other Personally Identifying Information, provided by others, to any "Public Area," e.g. public chat rooms, bulletin boards, auto responder, etc., the Subscriber automatically grants to Symphony Source a royalty-free, perpetual, irrevocable, non-exclusive right, and License, to use, reproduce, sell, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such Content, Data, or Leads, in whole or part, worldwide and/or to incorporate it into other works in any form, media, or technology, now known, or later developed, for the full term of any rights that may exist in such Content.
3. Although Symphony Source provides some encryption to protect certain Personal Information which is transmitted, the Subscriber understands that the Subscriber's upload, and transmissions, may be intercepted, and used, and that all of the risks associated therewith, is solely the Subscriber's. The Subscriber shall not upload to, or distribute, or otherwise publish, through the Software/Service, any Content, which is libelous, defamatory, obscene, pornographic, abusive, or otherwise violates any Law. As Symphony Source does not, and cannot, review every Message created by the Subscriber, the Subscriber shall remain solely responsible for the content of the Subscriber's Messages.
4. Symphony Source reserves the right to disclose Information about Sales and usage generated by the Software/Service, in forms that do not reveal the Subscriber's Personal Identity.

**SECTION 7**

**PAYMENT INFORMATION AND LICENSE FEES**

- 7.1. **The License Fee** is the Fee, that the Subscriber pays to Symphony Source, in exchange for a License to use the Espresso Agent Software/Service, for a Monthly Subscription Period,

a 3-Month Subscription Period, a 6-Month Subscription Period, or an Annual Subscription Period, in accordance with the limitations established in this Agreement.

- 7.2. Initial and Recurring Payments:** When the Subscriber originally signs up for a Subscription Period, the Subscriber will provide Symphony Source with a Credit Card. After receiving billing authorization, and receiving the initial payment, the Subscriber's Credit Card number will be stored in a secure password protected Merchant System. The Subscriber agrees that any Automatic Recurring Payments will be using the same Credit Card that is on file. Any exception to this would be when the Subscriber up-date the Credit Card, on the Subscriber's Account, via website or over the phone with one of Symphony Source's representatives. If the Subscriber up-dates the Credit Card on the Account, the Subscriber agrees that you are also authorizing recurring payments on the updated Credit Card.
- 7.3. Recurring Payment Dates:** The Subscriber can elect to either pay month-by-month, even if the Subscriber is on a Subscription Agreement, or pay the entire Subscription Fee at sign-up. In the event that the Subscriber elects to pay month-by-month, even if the Subscriber is on a Subscription Agreement, the Subscriber's Credit Card shall automatically be billed, monthly, on the same date of the month, as when the Subscriber signed up. For example, if the Subscriber signed up on the 20<sup>th</sup> of May 2018, then the next automatic billing date shall be on the 20<sup>th</sup> of June, 2018.
- 7.4. Subscription Fee Changes:** Symphony Source reserves the right to change its Subscription Fees at any time. Any such Subscription Fee changes will be made known to the Subscriber before the next Subscription payment. In the event the Subscriber has a Subscription Agreement, any Subscription Fee changes shall take affect after the end of the Subscription Agreement Period.

## **SECTION 8**

### **PRODUCT SUPPORT**

In the case of Software/Service, for which the Subscriber paid a Subscription Fee, Standard Support is included in the Subscription Fee. As a condition of receiving Product Support, the Subscriber agrees to provide all information reasonably requested by Symphony Source Support Personnel that they deem necessary, for the delivery of such Support. The Subscriber acknowledges, and agrees, that such information may be sent to Symphony Source or its designee, and the Subscriber warrants and represents that the Subscriber will obtain, to the extent required by law or contract, any consents or waivers necessary to provide such information, including, without limitation, any such information that constitutes personally identifiable information or which is subject to Data Privacy Laws and Regulations.

**SECTION 9**  
**TERMINATION**

**9.1.** This Agreement is effective, until terminated, as permitted in this Section. Either Party may terminate this Agreement at any time.

**9.2. Client/Licensee Termination:**

- 1.** The Subscriber may terminate the Subscription, at any time, by e-mailing a cancellation request to cs@espressoagent.com, or mailing in a written cancellation request to the Symphony Source Corporate Office: 195 W Main Street, American Fork, UT 84003. The Subscriber will receive a prompt 100% refund, if this is done within the first three (3) business days of original Subscription Period.
- 2.** In order to avoid an **Automatic Subscription Renewal Period**, the e-mail must be received at least five (5) business days, prior to the beginning of the Subscriber's next Subscription Period. There will be no refunds, under any other circumstances, including partial use of service or termination of service, prior to the end date.
- 3.** In the event that the Subscriber has a **Subscription Agreement**, but wants to terminate the Subscription Agreement early, the Subscriber agrees to pay the agreed-upon early termination fees, within fifteen (15) days of termination date.

**9.3. Symphony Source Termination:**

- 1.** If, for its convenience, Symphony Source terminates this Agreement, as to a Monthly Software/Service Subscription, it shall terminate this Agreement, at the end of the Monthly Subscription Period, and there shall be no refunds paid.
- 2.** If, for its convenience, Symphony Source terminates the Subscription Agreement, it shall refund a portion of the Fee paid, on a pro rata basis, in an amount, corresponding to the remaining unused period of the Subscription Agreement.
- 3.** In the event of your material breach of this Section of the Agreement, or the Subscriber's failure to timely pay Fees due, and owing to Symphony Source, Symphony Source may terminate this Agreement, effective immediately, by providing a Notice to the Subscriber. Symphony Source may terminate this Agreement within ten (10) days written Notice to the Subscriber, if the Subscriber materially breaches any provision of this Agreement, and fails to cure such breach within ten (10) days, after receiving Symphony Source's written Notice of the breach. In the case of termination for the Subscriber's Material Breach of this Agreement, the Subscriber shall not be entitled to a refund of any portion of the Subscription Fee.

**SECTION 10**  
**DISCLAIMER OF WARRANTIES**

Symphony Source does not warrant that the Software/Service will meet the Subscriber's requirements or that its operation will be uninterrupted or error-free. Except as expressly stated in this Agreement or the standard Symphony Source return policy, the Software/Service is provided, "as is." Except as stated in this Agreement, there are no warranties, representations, or conditions, express or implied, written or oral, arising by statute, operation of law, or otherwise, regarding the Software/Service, or any other Symphony Source Product or Service provided, pursuant to, or in connection with, this Agreement. Unless otherwise stated in this Agreement, and to the maximum extent permitted by applicable law, Symphony Source, its Corporate Affiliates, employees, subsidiaries, agents, and authorized representatives disclaim all Warranties and Conditions, whether express, implied, or statutory, including, without limitation, any warranties or conditions of, or related to: merchantability, durability, fitness for a particular purpose, lack of viruses, non-infringement, accuracy or completeness of responses, results, workmanlike effort, and negligence. Also, except as otherwise stated in this Agreement, and to the maximum extent permitted by law, there is no warranty, duty, or condition of title. This is an arm's length transaction, and the Subscriber acknowledges that the Subscriber has engaged in appropriate Due Diligence, concerning both Symphony Source and the Espresso Agent Software/Service. Consequently, unless this Agreement expressly provides otherwise, the entire risk arising out of the use of, or performance of, the Software/Service, remains with the Subscriber. No agreements, varying or extending the foregoing Warranties or limitations will be binding on either Party, unless in writing, and signed by an authorized representative of both Parties.

**SECTION 11**  
**LIMITATION OF LIABILITY**

The liability, if any, of Symphony Source, its Corporate Affiliates, subsidiaries, employees, agents and authorized representatives, for any losses, shall be limited to direct Damages, and shall not exceed any Fee that the Subscriber has paid for use of the Software/Service. In no event shall Symphony Source, its Corporate Affiliates, Subsidiaries, Employees, Agents or Authorized Representatives be liable for any incidental, indirect, special, punitive, or consequential damages, including, without limitation, procurement of substitute goods or services; loss of profits and revenues, use, or data; or business interruption. The limitations imposed by this Section, the remedies available, and the consideration exchanged, reflect the allocation of risk between the Parties and are an essential element of the basis of the bargain between them. These limitations apply, even in the event of fault, tort, negligence, misrepresentation, or strict or product liability. In no event shall any person who has contributed to any part of the Symphony Source Products be liable for any Damages whatsoever, however caused, and on any theory of liability, whether in



Contract, Strict Liability, or Tort, including Negligence or otherwise, arising, in any way, out of the use of the Symphony Source Products. The Subscriber releases Symphony Source from all Liability in excess of the liabilities that are limited by this Section, including, without limitation, any claim for indemnification or contribution, whether arising under Statutory Law, Common Law, or otherwise. If the Subscriber acquired the Software/Service for the purposes of a Business, the Subscriber confirms that any applicable consumer protection laws do not apply to the Subscriber or the Subscriber's use of the Software/Service. If Symphony Source breaches a condition or warranty implied by applicable law, and which cannot lawfully be modified or excluded by this Agreement then, to the extent permitted by law, Symphony Source's liability to the Subscriber is limited, at Symphony Source's option, to: (a) replacement or repair of the Software/Service and/or re-supply of Product Support; or (b) the cost of replacing or repairing the Software/Service and/or the cost of re-supplying Product Support. The Subscriber agrees to comply with any and all Third-Party Licensing requirements that may be affected by the Subscriber's use of the Software/Service. The Subscriber further agrees to indemnify, and hold Symphony Source harmless, from any and all Claims by Third Parties, relating to the Subscriber's use of the Software/Service, in violation of any Third-Party Licensing requirements.

## **SECTION 12**

### **COMPLIANCE WITH INTELLECTUAL PROPERTY OBLIGATIONS**

The Subscriber acknowledge that certain Symphony Source Products include features, and functionality, that transfer Electronic Data, and that these processes require the copying of such Data, which may include digital files, software programs, and other Data that may be protected by Third-Party Intellectual Property Rights, such as Copyrights. The laws and regulations, governing the use and copying of such Data vary by jurisdiction. The Subscriber understand, and agree, that Symphony Source has no knowledge concerning the Data contained in the Software/Service, or transfer, through use of Symphony Source Products. Therefore, Symphony Source has no knowledge of the Third-Party Intellectual Property rights applicable to that Data. The Subscriber also understands and agrees that this Agreement does not grant the Subscriber authority, or License, to copy or transfer the Data contained in the Software/Service. The Subscriber acknowledges, and agrees, that it is solely the Subscriber's obligation to understand and comply with Laws associated with the contents of the Software/Service. The Subscriber represents, and warrants, that the Subscriber's use of Symphony Source Products does not violate applicable International, National, State, Regional or Local Laws or Regulations governing the back-up, copying, or transfer of the Data contained in Software/Service, and the Subscriber further agrees to indemnify, and hold Symphony Source harmless, against costs, expenses, and liabilities arising from any claim that the Subscriber's use of Symphony Source Products violates Third-Party Intellectual Property Rights.

**SECTION 13**  
**NOTICES**

All Notices required, or permitted to be given, or served, under this Agreement shall be in writing and: (a) personally delivered to the Party to be notified, in which instance Notice shall be deemed to have been given and received upon actual delivery; (b) sent by a reputable over-night commercial courier service, such as FedEx or UPS, addressed to the Party to be notified, in which instance notice shall be deemed to have been given one (1) business day after deposit with such courier service for delivery; (c) sent by E-mail or Facsimile, in which instance Notice shall be deemed to have been given, and received, upon actual delivery; or (d) delivered to the Party to be notified by any other means where it can be established that the Party to be notified received such Notice, in which instance Notice shall be deemed to have been given and received upon the date of receipt. The point of contact of the Parties for notice by any of the foregoing means shall be as follows. If to Symphony Source: Symphony Source LLC, 195 W Main Street, American Fork, UT 84003; email address: cs@espressoagent.com. If to the Subscriber: to the address, facsimile, and/or email address provided by the Subscriber to Symphony Source. Either Party may change its contact information for Notice purposes by giving ten (10) days prior written notice to the other Party in the manner described above.

**SECTION 14**  
**MISCELLANEOUS**

- 16.1. Documentation Review.** The Subscriber agrees that they will review the Documentation, relating to the Symphony Source Products, including but not limited to, on-line user guides outlining proper installation and use of the Symphony Source Products.
- 16.2. Severability.** If any provision of this Agreement is unenforceable or is invalid, pursuant to any applicable Law, such unenforceability, or invalidity, will not render this Agreement unenforceable, or invalid, as a whole, and such unenforceable or invalid provision will be changed, and interpreted, so as to best accomplish the objectives of such provision within the limits of applicable Law.
- 16.3. Entire Agreement.** Unless the Subscriber has entered into a separate, written and signed Agreement with Symphony Source, that expressly modifies this Agreement, this Agreement is the complete and exclusive statement of the Agreement between the Subscriber, and Symphony Source, concerning the Symphony Source Products and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the Parties.
- 16.4. Relationship of Parties.** The Subscriber and Symphony Source are independent contractors, and no provision of this Agreement creates any partnership, joint venture, agency, franchise, sales representative, or employment relationship, between the Parties. The Subscriber agrees that they are not entitled to the rights, or benefits, that may be

afforded to Symphony Source's Employees, and that the Subscriber is solely responsible for all of the Subscriber's income taxes or other applicable taxes.

- 16.5. Waiver or Modification.** This Agreement may not be modified, except by a written and express amendment or addendum, issued by a duly authorized representative of Symphony Source. The Subscriber understands and agrees, that Symphony Source, in its sole discretion, may amend or modify this Agreement at any time. The Subscriber acknowledges, understands, and agrees that the Subscriber's receipt of future releases of the Software/Service, including Up-dates and Up-grades, will require the Subscriber's acceptance of a new Subscriber/Licensee License Agreement which may alter, amend, or replace all, or part, of this Agreement, and affect the Parties' obligations concerning the Symphony Source Products. No delay or failure to take action represents a waiver of the rights inherent to, retained by, or granted to Symphony Source under this Agreement.
- 16.6. No Third Party Beneficiary.** No third party is, or shall be, a beneficiary of this Agreement, and no third party shall have the right to enforce this Agreement.
- 16.7. Assignment.** This Agreement is personal to the Subscriber, and the Subscriber may not assign it, including by operation of law, except as provided in Section 5. A change of control of Subscriber/Licensee shall constitute an Assignment. Any other attempt by the Subscriber to transfer the rights or obligations under this Agreement will be null and void, and will constitute a material breach of this Agreement.
- 16.8. Headings and Captions.** The Headings and Captions used in this Agreement are for convenience or reference only, and shall not modify, expand, limit, or describe the scope or intent of this Agreement, or in any other way affect the terms or conditions of this Agreement.
- 16.9. Force Majeure.** No delay, failure, or default in the performance of any obligation of Symphony Source shall constitute a breach of the Agreement to the extent caused by fire, flood, explosion, war, terrorism, embargo, labor strike, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control.
- 16.10. Applicable Law.** This Agreement shall be governed, and construed, exclusively in accordance with the Laws of the State of Utah, U.S.A., without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the Laws of any jurisdiction, other than Utah. The Parties irrevocably submit to the personal jurisdiction of the State or Federal Courts of Utah. Any action for provisional relief, concerning this Agreement, or the Parties' relationship hereunder, including, but not limited, to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure, shall be brought exclusively in Utah County, in the State of Utah, U.S.A. The Parties consent, and submit, to the exclusive jurisdiction of the State or Federal Courts in Utah County, in the State of Utah, U.S.A., for purposes of any action for such provisional remedy or interim or conservatory measure.

**16.11. Dispute Resolution.** At the election of either Party to this Agreement, any dispute, controversy, or claim, arising out of, relating to, or in connection with, the following shall be submitted for final resolution by Arbitration: the Software/Service's performance, including, without limitation, any alleged deficiency or defect; loss or corruption of data or damage to systems or infrastructure; breach or alleged breach of privacy or Data privacy laws or regulations; the existence or breach of a contractual, statutory, or common-law warranty associated with this Agreement or a Symphony Source Product; the terms and obligations of this Agreement, as they pertain to the foregoing; and the performance, termination, rescission, or alleged breach of this Agreement, as they pertain to the foregoing collectively, "Arbitral Dispute". In the event Arbitration is elected, both Parties expressly waive any right to a trial by jury for any claim constituting an Arbitral Dispute. Any claim by Symphony Source, for infringement or violation of Copyright, Trademark, or Intellectual Property Rights is not an Arbitral Dispute, but shall be brought, exclusively, before a court of competent jurisdiction in Utah County, in the State of Utah, U.S.A. In the event of an Arbitral Dispute, the election to Arbitrate must be made in writing, by a Party, on or before the last day to Answer and/or respond to a Summons and Complaint, brought by the other Party. If the Subscriber is a U.S. resident, or maintain a place of business in the U.S., the Arbitration shall be conducted by the American Arbitration Association, the "AAA" in accordance with the AAA Commercial Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to Class Arbitrations. If the Subscriber is not a U.S. resident or does not maintain a place of business in the U.S., the Arbitration shall be conducted by the International Centre for Dispute Resolution, the "ICDR" in accordance with the ICDR International Arbitration Rules in effect, at the time of the Arbitration, excepting any rules pertaining to Class Arbitrations. The AAA and ICDR are referred to as, "Arbitral Bodies". The Commercial Arbitration Rules and International Arbitration Rules are collectively referred to as, the "Rules". Copies of the Rules can be obtained, free of charge, at <http://www.adr.org/>. The Parties shall be entitled to conduct discovery by Interrogatory, Request for Production of Documents, Subpoena to third parties, and oral Deposition.

The Parties intend that any Arbitration between them shall involve only the claims between the Parties, and not any claims by a Party against a Third Party. No other dispute between a Party, and a Third Party, shall be included in the Arbitration. Class Arbitration shall not be permitted. The Arbitration shall be conducted by a single Arbitrator selected in accordance with the Rules, except that the Arbitrator must be a retired State or Federal Judge. Filing fees, Arbitration Fees, and other Fees, imposed by the Arbitral Bodies, shall be paid initially by Symphony Source. The place of Arbitration shall be Utah County, in the State of Utah, U.S.A. and shall be conducted in the English language, unless the Parties agree otherwise in writing. Any Arbitral Award must be a reasoned award that: fully sets forth findings of fact from the evidence presented; applies the Findings of Fact to the Law of the Case; fully sets forth Conclusions of Law based upon the Parties' respective Legal

Theories; explains which Legal Theories were followed and why; and, if damages, costs, and/or fees are awarded, specifies the calculations of the types of damages, costs, and/or fees awarded as to each Party. Any Award is final, and binding on the Parties, and may be challenged in a Court of competent jurisdiction only upon those grounds allowed under the Utah Uniform Arbitration Act. In the absence of challenge, Judgment on the Award may be entered in any Court of competent jurisdiction. Without otherwise limiting the authority conferred on the Arbitrator by this Agreement, and the Rules, the Arbitrator shall not have the authority to exercise equitable principles or award equitable remedies. By agreeing to Arbitration, the Parties do not intend to deprive any court of competent jurisdiction in Utah County, State of Utah, U.S.A., of its ability to hear disputes that are not Arbitral Disputes or to issue any form of provisional remedy, including, but not limited to, a Temporary Restraining Order, Preliminary Injunction, Attachment in aid of Arbitration, or order for any interim or conservatory measure. A request for such provisional remedy, or interim or conservatory measure, by a Party, to a Court, shall not be deemed a waiver of the Agreement to Arbitrate. In the event that Symphony Source is the prevailing party in any Arbitral Dispute, the Arbitral Body shall award Symphony Source its costs incurred in the proceeding, including, without limitation, Filing Fees, Arbitrator Fees, and other Fees imposed by the Arbitral Body.

- 16.12. No Fault Tolerance.** The Software/Service contains technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the Software/Service could lead to death, personal injury, or severe physical, property, or environmental damage.
- 16.13. Survival.** The provisions of this Agreement relating to payment of any Fees or other amounts owed, infringement of Intellectual Property Rights, Warranties, Limitation of Liability, Dispute Resolution, matters of construction or interpretation, and other provisions that, by their nature, survive termination, shall survive any termination or expiration of this Agreement.
- 16.14. Electronic Transaction.** The Parties agree that this Agreement may be formed, executed, and/or delivered by electronic means, including the use of electronic signatures and/or electronic agents in accordance with the Utah Uniform Electronic Transactions Act, Utah Code Ann. §46-4-101 et seq.
- 16.15. Electronic Communications.** The Subscriber acknowledges, and agrees, that Symphony Source may communicate with the Subscriber regarding the Subscriber's account or Symphony Source Products via e-mail or other electronic communications. The Subscriber hereby consents to these communications and others, regarding the latest Symphony Source developments, including new product releases, up-grades, special offers, and other information that Symphony Source believes may be relevant to the Subscriber's use of Symphony Source Products.
- 16.16. Personal Information and Privacy.** The Subscriber understands and agrees that, when the Subscriber subscribes to the Software/Service, Symphony Source collects certain User

Information. Symphony Source collects this Information to assist in providing Maintenance and Product Support, and to comply with applicable export control laws. The Subscriber also understands and agrees that the Subscriber may provide certain Information to Symphony Source. This information may include the following: the Subscriber's Company Name and Company Address, together with the name(s), telephone number(s), and e-mail address(es) of any representative(s) the Subscriber identifies, as contact persons, for account, support, or technical purposes, relating to Symphony Source Products or their purchase or licensure. If the Subscriber provides information to Symphony Source the Subscriber represents and warrants that the Subscriber is authorized to provide such information or the Subscriber has obtained any necessary consent to provide such information, including appropriate consent under applicable Data Privacy Laws. Symphony Source will use commercially reasonable safeguards to deter unauthorized use, or disclosure of Information provided to them. Symphony Source will not access, or use, such Information or disclose such Information to Third Parties, other than as permitted, or required by law, or this Agreement, or is necessary to deliver the Symphony Source Products and Services, pursuant to this Agreement or any other Agreement pertaining to the Symphony Source Products that you may have entered into with a Third Party. Symphony Source will never sell the information the Subscriber provides to them. Please visit Symphony Source's website to review the Privacy Policy.

**16.17. Customer Contact.** If the Subscriber has any questions concerning this Agreement, the Subscriber may contact Symphony Source as follows: website - [www.espressoagent.com](http://www.espressoagent.com); telephone 206-420-0205; mail – Symphony Source LLC, 195 W Main Street American Fork, UT 84003, U.S.A.

#### **NOTICES FROM THE MULTIPLE LISTING SERVICE**

I, THE REAL ESTATE AGENT/CLIENT/LICENSEE/SUBSCRIBER, WHO IS SIGNATORY TO THIS SYMPHONY SOURCE, LLC/ESPRESSO AGENT SERVICE/LICENSE AGREEMENT, DO HEREBY AGREE THAT, IN THE EVENT THAT I RECEIVE ANY TYPE OF NOTICE, FROM THE MULTIPLE LISTING SERVICE, RELATIVE TO ANY ALLEGED VIOLATION OF MY MULTIPLE LISTING SERVICE SUBSCRIPTION AGREEMENT, EITHER DURING THE TERM OF THIS AGREEMENT, OR SUBSEQUENT TO THE TERMINATION OF THIS AGREEMENT, I WILL IMMEDIATELY FORWARD A COPY OF THE NOTICE TO SYMPHONY SOURCE, LLC, VIA ELECTRONIC MAIL TRANSMISSION, AT THE FOLLOWING ADDRESS, TO-WIT: CS@ESPRESSOAGENT.COM, AND I WILL IMMEDIATELY TELEPHONE ESPRESSO AGENT SUPPORT, AT 206-420-0205.

#### **NON-DISCLOSURE OF CONTACT INFORMATION**

I, THE REAL ESTATE AGENT/CLIENT/LICENSEE/SUBSCRIBER, WHO IS SIGNATORY TO THIS SYMPHONY SOURCE, LLC/ESPRESSO AGENT

SERVICE/LICENSE AGREEMENT, DO HEREBY AGREE THAT I WILL NOT DISCLOSE, TO THE CONTACT/PROPERTY OWNER, THE SOURCE OF MY CONTACT INFORMATION AND, FURTHER, I WILL NOT DISCLOSE, TO THE CONTACT/PROPERTY OWNER, THE NAME OF, OR ANY INFORMATION ABOUT, SYMPHONY SOURCE, LLC OR ESPRESSO AGENT.

#### **ACKNOWLEDGEMENT**

I, THE REAL ESTATE AGENT/CLIENT/LICENSEE/SUBSCRIBER, WHO IS SIGNATORY TO THIS AGREEMENT, HAVE READ THIS SYMPHONY SOURCE, LLC/ESPRESSO AGENT SERVICE/LICENSE AGREEMENT, UNDERSTAND ITS CONTENTS, AND AGREE THAT IT ACCURATELY SETS FORTH MY UNDERSTANDING, AND AGREEMENT, RELATIVE TO THE SUBJECT MATTER OF THIS AGREEMENT, BEING THE PROVISION BY SYMPHONY SOURCE, LLS, OF THE ESPRESSO AGENT SOFTWARE/SERVICE.

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