

## **RNA 180 Inc. - Terms of Service**

**Last Updated:** September 5<sup>th</sup>, 2024

These Terms of Service are between RNA 180 Inc. (“**Company**”, “**our**”, “**we**” or “**us**”) and you, either individually, or on behalf of your enterprise (“**you**” or “**your**”). We offer to our customers (“**Customer(s)**”) dental hygiene management software to maximize efficiency and boost dental hygiene productivity, and other related services (“**Solution**”), in addition to our website located at <https://www.rna180.ca/> (“**Website**”) and its subdomains, which contains information about us, our technology, and information concerning our Solution. The Website together with the Solution and related services, except if specifically, otherwise designated, shall be referred to herein as the “**Services**”.

The terms “**User**”, “**you**” or “**your**” refer to: (i) Customer; (ii) Customer’s admin-user of the Solution (“**Customer’s Admin**”) and (ii) End Users (as such term is defined below) who have been provided access to the Services via their enterprise. A User’s use of some or all features of the Service may be subject to additional terms, which will be made available at the time of access, subscription, or purchase of the applicable Services features (collectively, “**Additional Terms**”). Any Additional Terms entered into between Company and User with respect to use and access to the Services shall take precedence over conflicting provisions in these Terms.

By taking an action to indicate acceptance (such as clicking a checkbox) or by using the Services, you acknowledge that you have read and understood these Terms of Service (“**Terms**”), which constitute a binding legal agreement between you and Company and shall be effective as of the date of your acceptance of these Terms. If you do not accept these Terms, then do not use the Services. If you are accepting these Terms on behalf of a corporation or other entity, you represent and warrant that: (i) the individual accepting these Terms is duly authorized to accept the Terms on such entity's behalf and to bind such entity; and (ii) such entity has full power, corporate or otherwise, to enter into these Terms and perform its obligations hereunder.

Please note that the collection, use and disclosure of your personally identifiable information (“**Personal Information**”) will be governed by our Privacy Policy located at [rna180.ca](https://www.rna180.ca/privacy-policy) (“**Privacy Policy**”). By using the Services, you consent to our collection, use, and disclosure of Personal Information and other data as outlined therein.

The Company may revise these Terms at any time and at Company’s sole discretion. Any non-material change to these Terms will become effective on the date the change is posted. Any material changes to these Terms will be effective: (i) immediately if you are a new User; and (ii) if you are an existing User, upon the earlier of (a) thirty (30) days after notice is provided of such changes, which notice may be provided by updating the “Last Modified” date above, through email or through the Services (as applicable), or (b) your acceptance of the updated Terms.

### **1. The Services.**

**1.1 Access to the Services.** Subject to compliance with these Terms, Customer is provided with

a limited, non-exclusive, non-assignable, royalty-free, limited right: (i) to access and use the Website; and (ii) where you have purchased a subscription to access and use the Solution (“**Subscription**”), to access and use the Solution for Customer’s internal business purposes, in accordance with any User guides and manuals provided by Company (“**Documentation**”) and solely during the term of your Subscription. As part of Customer’s Subscription, Customer may make the Solution available to Customer’s Admin and End Users for whom Solution licenses have been purchased.

- 1.2 Modification of the Services.** Company may continuously update the Services with new capabilities or offerings or replace and/or discontinue some of the capabilities. You acknowledge and agree that some of the features and capabilities may be experimental and/or offered in limited versions or limited locations. In addition, the Company may at any time, in its sole discretion, add or remove supported features and/or capabilities from the Solution.
- 1.3 Availability.** Subject to Section 3.1, the Services availability and functionality depend on various factors, such as communication networks, software, hardware, and Company’s service providers and contractors. Company will make all reasonable efforts to have the Services materially available. Notwithstanding the foregoing, the Company does not warrant or guarantee that the Services will operate without disruption or interruption, or that it will be immune from any unauthorized access or will otherwise be error-free. Information sent or received over the internet is generally insecure and Company cannot and does not make any representation or warranty concerning security of any communication to or from the Services or any representation or warranty regarding the interception by third parties of personal or other information.
- 1.4 Third-Party Services.** The Services may integrate with or rely on artificial intelligence (“**AI**”) technologies powered by machine learning and third-party platforms and services (including, without limitation, third-party AI technologies (“**AI Services**”)) that are not owned or controlled by Company (collectively, “**Third-Party Services**”). The Customer acknowledges that the use and enabling (as applicable) of any such Third-Party Services will be subject to any terms which govern and/or apply to such Third-Party Services. You acknowledge that we are not responsible for the products and services provided by any Third-Party Services, and that the Company is not the author or owner of any Third-Party Services and makes no warranties or representations, express or implied, as to the quality, capabilities, operations, performance, or suitability of Third-Party Services.
- 1.5 Subcontractors.** Company may retain the services of independent contractors or consultants, which may include Third-Party Services (“**Subcontractors**”) from time to time to assist Company in performing its obligations under these Terms. Subcontractors shall remain under the direction and control of Company. Company shall, in the performance of its obligations under these Terms, use reasonable efforts to comply with all Customer policies, procedures and rules pertaining to Subcontractors that have been communicated to Company in writing.

## **2. Registration and Account**

**2.1. User Eligibility.** You must be at least eighteen (18) years of age to use the Services. By using

the Services and agreeing to these Terms, you represent and warrant to us: (i) that you are at least eighteen (18) years of age; or (ii) that you are the legal guardian of the User under the age of eighteen (18) and both you and the User have read and agreed to these Terms and approved of the User's continued use of the Services subject to these Terms; (iii) that you have not previously been suspended or removed from the Services; and (iii) that your use of the Services is in compliance with any and all applicable laws and regulations.

- 2.2 Account Registration.** To use the Solution, Customer must register and open an account through the Website or as otherwise directed by Company ("**Account**"). You agree to provide accurate, current, and complete Account registration information requested by any Account registration forms ("**Registration Data**"), including but not limited to your name, organization name, e-mail, and password. The Solution requires an internet connection and each User is solely responsible for registering with enabling the applicable Third-Party Service functionality required to register an Account.
- 2.3 Account Security.** You are responsible for maintaining the confidentiality of your Registration Data and for all activities that occur under your Account. You agree not to disclose your Account credentials to any third party, and you are responsible for any use or misuse of the Services performed through your Account (including by any third party). If you think the security of your Account or Registration Data has been compromised, please contact us immediately. In the event of a dispute regarding the Account owner, we reserve the right to request documentation to determine Account ownership. If we are unable to reasonably determine the rightful Account owner, the Company reserves the right to temporarily disable an Account until resolution has been determined.
- 2.4 Setup.** To onboard Customer onto the Solution, Customer will need to provide Company with access to Customer's internal systems, data, and information. Customer agrees to provide access to Customer's internal systems, data, and information as reasonably required by Company to permit Customer's onboarding. Company may be required to customize Customer's internal systems to enable the Solution to function. Any integrations or intellectual property developed by Company in connection with the Customer's onboarding process ("**Integrations**") shall be the sole property of Company.
- 2.5 End User Access.** Once Customer has been onboarded, Customer's Admin may invite end users from the Customer's enterprise to access and use the Solution ("**End User(s)**"). Invited End Users will be required to register an End User account ("**End User Account**") or may be provided with End User Account credentials to access and use the Solution, as applicable. End User Accounts are for use by designated End Users and cannot be shared or used by more than one End User. Customer and/or Customer's Admin may reassign End User Accounts to new End Users via the Solution.
- 2.6 Audit Rights.** Company shall have the right to use the capabilities of the Services to confirm the number of Users using the Solution and Customer's compliance with these Terms. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process, or governmental request, (ii) enforce these, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security, or technical issues, (iv) respond to Customer, Customer's Admin or User support requests, or (v) protect the rights,

property, or safety of our users and the public.

### **3. Use of the Service.**

**3.1. Support.** Support will be available during normal office hours.

**3.2.** information submitted by Users to the Services or passed through the Services by User via a Third-Party Service (“**Customer Data**”) in accordance with applicable laws and solely to perform its obligations or exercise its rights under these Terms; (ii) maintain the security and integrity of the Services and the Customer Data and notify Customer of any breach thereof in accordance with applicable laws; (iii) provide basic support to Customer at no additional charge; and (iv) use commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week, except for: (a) planned downtime (of which Company shall make best efforts to give at least eight (8) hours’ notice via the Services and which Company shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. Eastern Time Friday to 3:00 a.m. Eastern Time Monday); or (b) any unavailability caused by circumstances beyond Company’s reasonable control, including without limitation, acts of God, wars, acts of terrorism, riots, embargoes, acts of government authorities, fires, floods, accidents, or strikes, acts of government authorities, floods, fires, earthquakes, civil unrest, strikes or other labor problems (other than those involving Company employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Company’s possession or reasonable control, and denial of service attacks.

**3.3. Customer Responsibilities.** Customer is responsible for all activities that occur under its Account and End User Accounts and for End User and Customer’s Admin’s compliance with these Terms. Client’s Admin and End Users shall be bound by these Terms to the same extent as Customer and Customer will be directly responsible for any breaches of these Terms by Client’s Admin and End Users. Customer shall: (i) have sole responsibility for obtaining all consents and third-party licenses, and providing all necessary notices in accordance with applicable to ensure Customer Data can be shared with Company and used by Company as contemplated herein; (ii) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Company promptly of any such unauthorized access or use; and (iv) comply with all applicable local, provincial, state, federal and foreign laws in using the Services.

**3.4. Use Guidelines.** Customer shall not (and shall not permit Customer’s Admin or End Users to): (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party; (ii) use the Services to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) use the Services to send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs (“**Malicious Code**”); (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (v) attempt to gain unauthorized access to the Services or its related systems or networks; (vi) upload, make available, or otherwise transmit any

Customer Data via the Services which results in a violation of a third party's rights under applicable laws or that: (I) constitutes unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; (II) infringes any patent, trade-mark, trade secret, copyright, publicity, or other proprietary or privacy rights of any party; (III) is misleading, contains sexually explicit content, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, racially, ethnically or otherwise objectionable; (IV) or contains any Malicious Code; or (vii) use any other measures in an attempt to mislead Company or Company's other customers, or otherwise take advantage of the Services.

- 3.5. Publicity.** Company may include the name and logo of the Customer in its public lists of customers or vendors ("**Lists**") in accordance with Customer's standard guidelines governing use of its logos (as applicable). Company agrees to promptly remove the Customer's name and logo from its Lists upon written request.

#### **4. Fees and Payment**

- 4.1. Subscription Fees.** To use the Solution, Customer must pay the applicable Subscription fee ("**Subscription Fees**"), which will vary depending on the Solution module selected and the number of End Users. Customer is required to provide us with a current, valid, accepted method of payment at the time of Account registration, as may be updated from time to time ("**Payment Method**"). The Customer must maintain accurate payment information and notify us of any changes to billing information. For some Payment Methods, the issuer may charge you certain fees, such as foreign transaction fees or other fees relating to the processing of your Payment Method, and you are solely responsible for any such fees.
- 4.2. Billing.** Subscription Fees are processed and may be billed by a Third-Party Service or by the Company and are billed monthly. Unless Customer terminates the Subscription before the next billing date, Customer authorizes us to charge the applicable Payment Method for the Subscription Fees on the first day of each Subscription billing cycle. If Customer's payment method expires, is invalid, or is otherwise not able to be charged for Subscription Fees for any reason, Customer's Subscription may not be continued or renewed (as applicable) and in addition to any of its other rights or remedies, Company reserves the right to suspend the Customer's access to the Solution, without liability to Customer, until all outstanding Subscription Fees are paid in full.
- 4.3. Subscription Renewals.** Upon the expiry of Customer's initial Subscription, on the day the initial Term expires, Customer's Subscription shall be automatically renewed for an additional term of the same length as the initial Subscription unless Customer terminates in accordance with Section 5. The Customer will be charged in full at the then-current price for the Subscription for each such renewal. Company will provide Customer with at least thirty (30) days' prior notice of any material modifications to Customer's Subscription, including changes to Fees, before such changes take effect.
- 4.4. Changes to Tier.** If Customer's modification to the Subscription plan results in changes to Subscription Fees, the new Subscription Fees will be effective and billed on the first day of the subsequent Subscription billing cycle. Customer acknowledges and agrees that

downgrading a Subscription plan may cause the loss of access to certain Solution features or customizations.

- 4.5. No Refunds.** Subscription Fees are non-refundable, and we do not provide refunds or credits for any partial Subscription periods or unused Solution functionality.
- 4.6. Overdue Payments.** Any incurred fees not received from Customer by their due date may accrue (except with respect to fees then under reasonable and good faith dispute), at Company's discretion, late charges at the rate of 1.5% of the outstanding balance per month (18% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 4.7. Taxes.** All Subscription Fees are exclusive of any taxes, duties or levies assessed by applicable governmental authorities ("**Taxes**"). All Taxes (exclusive of any Taxes based upon Company's net income) shall be assumed by and paid for by Customer, not Company.

## **5. Term and Termination**

- 5.1. Term.** The Subscription term shall commence as of the date of Subscription Fee payment and will continue until terminated by the Customer (the "**Term**").
- 5.2. Termination by Customer.** The Customer may terminate the Subscription at any time and will continue to have access to the Solution through the end of the applicable billing period, and from that date, Customer and End Users and Customer's Admin (as applicable) will no longer be able to access the Solution and the permissions, rights and licenses granted to you under these Terms shall terminate. To terminate their Subscription, Customers must go to the "Account" page on the Website and follow the instructions for termination.
- 5.3. Termination by Company.** Company may, under certain circumstances and without prior notice, immediately terminate your ability to access or receive the Services (as applicable) or portions thereof. Cause for such termination may include, but not be limited to: (a) breaches or violations of these Terms or any Additional Terms that you may have entered into; (b) requests by law enforcement or other government agencies; (c) a request by the Account owner; (d) discontinuance or material modification to the Services (or any part thereof); (e) unexpected technical, security, or legal issues or problems; (f) actual or suspected participation by you, directly or indirectly, in fraudulent or illegal activities; or (g) verbal, physical, written, or other abuse (including threats of abuse or retribution) of any Company customer, employee, member, or officer. You acknowledge and agree that all terminations may be made by Company in its sole discretion and that Company shall not be liable to you or any third party for any termination of your access to the Services or for the removal of any User Content. Any termination of these Terms by Company shall be in addition to any and all other rights and remedies that Company may have.
- 5.4. Result of Termination.** Upon termination, the permissions, rights, and licenses granted to you under these Terms shall terminate. Termination may cause the loss and/or availability of content, features, or capacity of your Account. To the extent Customer Data is in the Company's possession, custody, or control, Company will perform such deletion subject to the retention policy in our Privacy Policy, and upon your request, we will certify the same in writing. The following provisions shall survive termination: 1.4, 2, 3.2-3.4, 4, 5.3,

and 6-11.

## **6. Intellectual Property Rights; License**

- 6.1. Company Intellectual Property.** Any proprietary and intellectual property rights in and to the Services, including any content thereon, such as logos, graphics, icons, images, as well as the selection, assembly and arrangement thereof and related materials, Company's trademarks, trade names, copyrightable materials, designs, "look and feel," all whether or not registered and/or capable of being registered ("**Content**"), are the property of Company and/or its licensors and are subject to copyright and other intellectual property rights under applicable laws. You acknowledge and agree that you have no right, license, or authorization with respect to the Services or any of the technology underlying the Services except as expressly set forth in these Terms. The Services are licensed to you and not sold. Except as expressly stated herein, nothing in these Terms gives you the right to use Content without the Company's prior written consent.
- 6.2. Use Restrictions.** You may not and you shall not permit any person, and/or any third party to: (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Services or Content except to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary; (b) circumvent any User limits or other timing or use restrictions that are built into the Services; (c) remove any Content or other proprietary notices, labels, or marks from the Services; (d) frame or mirror any content forming part of the Services; or (e) access the Services in order to (i) build a competitive product or service or (ii) copy any ideas, features, functions or graphics of the Services.
- 6.3. Customer Data.** As between Company and Customer, Customer and its licensors retain all rights, title, and interest in and to all Customer Data, including all intellectual property rights therein. Company shall not access Accounts, including Customer Data, except to respond to service or technical problems, at your request or as necessary for the operation of the Services or billing. You hereby grant Company a non-exclusive, non-transferable, irrevocable, worldwide, royalty-free, fully paid-up license to use and otherwise exploit the Customer Data as reasonably required to provide and improve the Services (including, without limitation, to generate Aggregated Statistics) and meet its obligations under these Terms.
- 6.4. Aggregated Statistics.** Company may create aggregated and anonymized statistical analytics arising from your interaction with and use of the Services ("**Aggregated Statistics**"), which shall not include any underlying Customer Data, nor shall they otherwise be capable of referencing back to an identifiable individual. As between Customer and Company, Company shall own all rights to such Aggregated Statistics free from encumbrance.
- 6.5. Feedback.** If you provide Company with any suggestions, comments or other feedback relating to Company's services (collectively, "**Feedback**"), you hereby grant Company a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, unrestricted license to use or incorporate Feedback into the Services and/or any other Company products or services and waive any moral rights you may have in such Feedback. You hereby represent and warrant that you shall not provide any Feedback which is subject to any third-

party rights or any limitations or which you are otherwise preclude from providing to Company and shall promptly inform Company as soon as you become aware of any third-party right or limitation which may apply to Feedback already provided by you.

## **7. Confidentiality.**

**7.1. Definition of Confidential Information.** “Confidential Information” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”) in connection with the Services, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including but not limited to business and marketing plans, know-how, technology, technical and financial information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**7.2. Confidentiality; Protection.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, except with the Disclosing Party’s prior written permission. The Receiving Party agrees to protect the Confidential Information of Disclosing Party in the same manner that it protects its own Confidential Information (but in no event using less than reasonable care).

**7.3. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance if the Disclosing Party wishes to contest the disclosure.

**7.4. Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of these Terms, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

## **8. Disclaimers and Warranties.**

**8.1. Warranties.** You warrant that: (i) you have the legal power to enter into and accept these Terms; and (ii) you have all rights and licenses necessary to perform your obligations hereunder and grant the licenses contemplated hereunder. Company warrants that: (I) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (II) the Services will not contain or transmit to Customer any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs (“**Malicious Code**”) (except for any Malicious Code contained in or otherwise originating from Customer or Customer’s Admin or an End User).

**8.2. Disclaimer.** Except as expressly provided in Section 8.1, Company makes no

representations and provides no warranties or conditions of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied representations, warranties and/or conditions, including any representations, warranties and/or conditions of merchantability, merchantable quality, durability, title, non-infringement, satisfactory quality or fitness for a particular purpose, to the maximum extent permitted by applicable law. You agree and acknowledge that the use of the Services is entirely, or otherwise to the maximum extent permitted by applicable law, at your own risk. Under no circumstances will Company be responsible for any damage, loss, or injury resulting from use of or reliance on the Services, or hacking, tampering or other unauthorized access or use of the Services or your Account or the information contained therein. For clarity, Company does not warrant that use of or reliance on Services will guarantee any result or compliance with any regulatory or security requirements.

**8.3. AI Services.** You acknowledge, understand, and agree that you are prohibited from using AI Services in certain prohibited manners, which include, but are not limited to, bypassing filters or otherwise making an AI Service perform unanticipated actions, exposing any information used in an AI Services' training data, overriding the privacy or security controls in an AI Service, creating or exacerbating biases in an AI Service, or otherwise negatively impacting an AI Services' safeguards or extracting personal information in the course of using an AI Service.

**8.4. Outputs.** AI Services use machine learning models that generate predictions based on patterns in data. Given the probabilistic nature of machine learning, Customers should evaluate the accuracy of any output generated by AI Services arising out of your use of the Services ("**Output**") as appropriate for their use case, including by manually reviewing the Output. You shall be solely responsible for all decisions made, advice given, actions taken, and failures to act based on use of or reliance on Outputs. The Company does not represent or warrant that Outputs: (i) will be accurate or applicable for your desired use; or (ii) will be unique to you.

## **9. Mutual Indemnification.**

**9.1. Indemnification of Customer.** Subject to these Terms, Company shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) awarded to a third party against Customer by a court of competent jurisdiction in any claims, demands, suits, or proceedings made or brought against Customer by a third party alleging that the Services infringe the intellectual property rights of a third party ("**IP Claims**"), subject to the condition that Customer: (a) promptly gives written notice of each IP Claim to Company; (b) gives Company sole control of the defense and settlement of each IP Claim (provided that Company may not settle or defend any IP Claim unless it unconditionally releases Customer of all liability); and (c) provides to Company, at Company's cost, all reasonable assistance in respect to each IP Claim.

**9.2. Mitigation.** If: (a) Company becomes aware of an actual or potential IP Claim; or (b) Customer provides Company with notice of an actual or potential IP Claim, Company may (or in the case of an injunction against Customer, shall), at Company's sole option and determination: (I) procure for Customer the right to continue to use the Services; or (II) replace or modify the Services with equivalent or better functionality so that Customer's

use is no longer infringing; or (III) if (I) or (II) are not commercially reasonable, terminate provision of the Services and refund to Customer any pre-paid Subscription Fees for any periods after the termination of the Services, less any outstanding Subscription Fees owed by Customer to Company.

**9.3. Exclusions.** The obligations in Sections 9.1 and 9.2 do not extend to: (a) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Services furnished by Company, with other products, software or services not provided by Company; (b) any IP Claim related to any Customer Data or a Third-Party Service; or (c) any IP Claim related to any use or exercise of any other right in respect to the Service; outside the scope of the Documentation or the rights granted in these Terms.

**9.4. Indemnification of Company.** You shall defend, indemnify and hold Company and its subsidiaries, affiliates, officers, agents, and employees (“**Company Parties**”) harmless against any and all claims, actions, allegations, damages, losses, liabilities and expenses (of whatever form or nature, including, without limitation, reasonable attorneys’ fees and expenses and all costs of litigation), whether direct or indirect, that Company or any related party may sustain as a result of any acts, errors or omissions of Customer or its affiliates, Customer’s Admin, or End Users, including but not limited to: (i) breach of any of the provisions of these Terms; (ii) negligence or other tortious conduct, or willful misconduct; (iii) breach of a third party’s intellectual property rights or rights under privacy laws, and any claims arising in connection with Customer Data or Third-Party Services (each a “**Customer Claim**”); provided, that Company: (a) promptly gives written notice of each Customer Claim to Customer; (b) gives Customer sole control of the defense and settlement of each Customer Claim (provided that Customer may not settle or defend any Customer Claim unless it unconditionally releases Company Parties of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance in respect to each Customer Claim. This provision does not require you to indemnify Company for any unconscionable commercial practice by Company or for Company’s fraud, deception, false promise, misrepresentation, concealment, suppression, or omission of any material fact in connection with the Services provided hereunder. The Customer acknowledges that for the purpose of this Section 9.4, the Company is acting as agent and trustee of Company Parties.

## **10. LIMITATION OF LIABILITY**

**10.1. Exclusion of Consequential and Related Damages.** EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT SHALL COMPANY AND/OR ANY OF THE COMPANY PARTIES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, RESULTING FROM OR ARISING OUT OF THE SERVICES, USE OR INABILITY TO USE THE SERVICES, FAILURE OF THE SERVICES TO PERFORM AS EXPECTED, LOSS OF GOODWILL, LOSS OF DATA OR PROFITS, THE PERFORMANCE OR FAILURE OF COMPANY TO PERFORM UNDER THESE TERMS, AND ANY OTHER ACT OR OMISSION OF COMPANY BY ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING FROM THE CONDUCT OF ANY USERS OF THE SERVICES.

**10.2. Limitation of Liability.** COMPANY AND/OR ANY OF THE COMPANY PARTIES' LIABILITY HEREUNDER SHALL IN NO EVENT EXCEED THE FEES PAID BY CUSTOMER TO COMPANY DURING THE TWELVE (12) MONTHS PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE, AND IF NO FEES WERE CHARGED, THEN LIABILITY SHALL NOT EXCEED \$100.00 CAD. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OF LIABILITY, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

## **11. General**

**11.1. Relationship of the Parties.** These Terms do not, and shall not be construed to create any partnership, joint venture, employer-employee, agency, or franchisor franchisee relationship between the parties hereto.

**11.2. No Third-Party Beneficiaries.** Except as expressly provided in these Terms, there are no third-party beneficiaries to these Terms.

**11.3. Governing Law and Jurisdiction.** Any claim relating to the Services or these Terms will be governed by and interpreted in accordance with the laws of the Province of Ontario, Canada, without reference to its conflict-of-laws principles. Any dispute arising out of or related to your use of the Services or these Terms will be brought in, and you hereby consent to the exclusive jurisdiction and venue in, the competent courts of Ontario, Canada. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.

**11.4. Dispute Resolution.** Before initiating arbitration or other legal action against the other relating to a dispute herein, the parties agree to work in good faith to resolve disputes and claims arising out of these Terms. If the dispute is not resolved within thirty (30) days of the commencement of informal efforts hereunder, the parties will attempt to settle it in good faith by mediation. To initiate the mediation a party must give notice in writing to the other party requesting mediation. A copy of the request should be sent to ADR Chambers. The mediation will take place in Toronto, Ontario and the language of the mediation will be English. The mediation shall be governed by and construed and take effect in accordance with the substantive law of the Province of Ontario. If the dispute is not settled by mediation within thirty (30) days of commencement of the mediation or within such further period as the parties may agree to in writing, the dispute shall be referred to and finally resolved by binding arbitration at ADR Chambers. The arbitration shall be governed by the applicable rules of the *Arbitration Act (Ontario)*, and arbitration proceedings shall take place in Toronto, Ontario before one (1) arbitrator. In the event the parties are unable to agree as to the appointment of an arbitrator for any reason, then such arbitrator shall be selected randomly by ADR Chambers. Each party shall bear its own legal costs in connection with mediation and/or arbitration under this provision.

**11.5. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Company may assign these Terms in their entirety, without your consent, to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its business, shares, or assets. Any attempt by a party to assign its rights or obligations under

these Terms in breach of this section shall be void and of no effect. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 11.6. Severability.** If any provision of these Terms is found to be unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provision.
- 11.7. No Waiver.** No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default.
- 11.8. Electronic Form.** Without limitation, you agree that a printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- 11.9. Force Majeure.** Neither party shall be responsible for its failure to perform its obligations under these Terms to the extent due to unforeseen circumstances or causes beyond its control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes, labour problems (other than those involving the employees of the affected party), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within a party's possession or reasonable control, provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.
- 11.10. Entire Agreement.** These Terms, including our Privacy Policy and any applicable Additional Terms, constitute the final, complete, and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement, proposal, or representation (whether written or oral) concerning its subject matter. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of these Terms, and all such terms or conditions shall be null and void.
- 11.11. Notices.** Company may give notice to you by means of: (i) a general notice in your Account, effective the following business day after enacting the notice; or (ii) by electronic mail to your e-mail address on record in your Account, effective the following business day. You may give notice to the Company by e-mail to [support@rna180.com](mailto:support@rna180.com), with such notice shall be deemed given the following business day after sending the e-mail. All notices shall be in writing.
- 11.12. Counterparts.** These Terms may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.