

# Respage Agreement

The provisions of this Respage Agreement, together with each Respage Order Form (the “Order Form”) signed by Company and acknowledged by 4 Walls, and the current versions of the Terms of Use, Privacy Policy and other Legal Notices form a binding agreement (collectively, the “Agreement”) as of the date of the Respage Order Form between 4 Walls Inc. (“4 Walls”) and the company listed on the Respage Order Form (“Company”). The Respage Order Form may be in hard copy or online, but in any case this Agreement is binding on the parties.

**1. Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

**1.1 “Business Hours”** means Monday to Friday (excluding 4 Walls holidays), 9 a.m. to 5 p.m. U.S. Eastern time.

**1.2 “Chatbot”** means an automated process provided by 4 Walls to communicate with Company’s Users and customers.

**1.3 “Content”** means text, photographs, drawings, data and other information provided by either party or by any User for use on or in connection with a Site. “4 Walls Content” means any Content provided by 4 Walls. “Company Content” means any Content provided by Company, including by any Users.

**1.4 “Documentation”** means the online documentation of the Service for Users as provided by 4 Walls.

**1.5 “Intellectual Property Rights”** means any and all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.

**1.6 “Service”** means the combination of services set forth on one or more Order Forms, including the development, provision, management, and marketing of Sites and 4 Walls Content by 4 Walls pursuant to this Agreement.

**1.7 “Site”** means a website managed by 4 Walls that is associated with Company.

**1.8 “Subscription Period”** means the period during which Company’s Users may access and use the Service in accordance with this Agreement.

**1.9 “Third Party Site”** means a website owned or operated by any entity other than 4 Walls or Company.

**1.10 “User”** means any person authorized by Company to use the Service pursuant to the terms and conditions of this Agreement, including but not limited to Company’s employees, agents and clients.

**2. The Service.** Subject to the terms and conditions of this Agreement, including, without limitation, the payment of all amounts due, 4 Walls permits Company to use the

Service during the Subscription Period solely (i) for Company's business or organizational purposes and (ii) in accordance with the Documentation.

**3. Company's Responsibilities.** Company agrees to provide Content in accordance with 4 Walls's specifications for each Service. Company further agrees that for each Third Party Site that 4 Walls interacts with on behalf of Company, such as to post Company Content on the Third Party Site, Company is bound by the agreements, policies and other documents of the Third Party Site, including without limitation the Third Party Site's terms of service, privacy policy, and acceptable use policy.

**4. Restrictions.** Company acknowledges that the Documentation and the Service (and its structure, organization, and source code) constitute valuable trade secrets of 4 Walls, and Company shall keep the Documentation and Service confidential. Except as expressly permitted by this Agreement, Company may not, and may not permit or encourage any User or any third party to (a) download, copy, modify, adapt, alter, translate, port or create derivative works of the Service, the Documentation, the 4 Walls Content, any software used to provide the Service, or any portion thereof; (b) permit anyone other than Users to use the Service; (c) sublicense, distribute, sell, use as a service bureau, lease, rent, loan, or otherwise transfer the Service, the Documentation or any software used to provide the Service; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for or any other proprietary information or trade secrets from the Service; (e) remove, alter, or obscure any copyright, trademark or other proprietary notices of 4 Walls or its licensors or suppliers; or (f) otherwise use, reproduce, display or copy the Service. Except as stated in this Agreement, 4 Walls grants no rights or licenses to Company, by implication, estoppel, or otherwise, in or to the Service or the Documentation, or any Intellectual Property Rights therein. Any and all rights not expressly granted to Company in this Agreement are reserved by 4 Walls.

**5. Communications.** By entering into this Agreement, Company and 4 Walls agree that they may communicate and send notices to each other via telephone, email, U.S. mail and any other electronic means or other means used by the parties now known or hereafter invented to communicate with each other for any reason during the term of this Agreement and following the termination of Agreement. Company agrees that 4 Walls may at any time modify this Agreement, its Terms of Use, Privacy Policy and other Legal Notices by posting new versions of the same on the 4 Walls website, and by transmitting notification of the new versions to Company by any communications method then permitted by this Agreement, and the new versions shall thereafter be binding on Company and its Users. If for any reason Company does not want to be bound to a revised Terms of Use, Privacy Policy or other revised Legal Notices, then Company may terminate the current Agreement with 4 Walls promptly after receiving notice of a new or revised version of this Agreement, and the immediately preceding version of the Agreement – along with any accompanying preceding version of the Terms of Use or Privacy Policy— will continue to govern Company's rights and responsibilities.

**6. Ownership.** The Service, the Sites, the Documentation and the 4 Walls Content, and all worldwide Intellectual Property Rights therein, are and will remain the property of 4 Walls and its licensors. The Company Content provided directly or indirectly to 4 Walls

and the Service are and will remain jointly owned by Company and 4 Walls, without the right of accounting, and without the right of one party controlling the other party's use of such Content. Company warrants that it either owns or has all necessary and appropriate rights to upload or otherwise provide the Company Content in connection with this Agreement.

**7. Support Services.** 4 Walls will support the Service during Business Hours with a combination of telephone, email and any other means of communication chosen by 4 Walls. Unless otherwise expressly agreed to in writing by 4 Walls, Company shall not permit any third party to perform or provide any maintenance or support services with respect to the Service. Upon 4 Walls's receipt of notice from Company of a failure of the Service to conform to its current online Documentation (an "Error"), 4 Walls will use commercially reasonable efforts to promptly resolve the Error. 4 Walls does not provide support for any failure of or defect in the Service caused by any of the following: (1) the improper use of, alteration to, or damage to the Service by Company or any User or any third party; (2) modifications to the Service not made or authorized in writing by 4 Walls; (3) interaction between the Service and Company's computer systems unless 4 Walls expressly approves such use in writing; (4) any failures in the supervision, management, backup, security, and control of Company's information technology systems; or (5) any third-party systems or networks, including the internet. Company must provide 4 Walls with complete good faith cooperation and such information as may be required by 4 Walls in order to support the Service.

**8. Fees.** In consideration of the rights to the Service and provided under this Agreement, Company agrees to pay 4 Walls the amounts (the "Fees") set forth on the Order Form and on any other current 4 Walls document. Unless Company provides 4 Walls written notice of Company's intent not to renew at least thirty (30) days prior to the expiration of the current Subscription Period, 4 Walls will invoice Company in advance for the upcoming Subscription Period. Invoiced amounts are due in immediately available U.S. funds within thirty (30) days of the date of invoice, or by the due date if a due date is stated on the invoice. The Fees exclude all applicable sales, use, and other taxes, fees, duties and similar charges ("Taxes"), and Company will be responsible for payment of all Taxes (other than taxes based on 4 Walls's income) and any penalties or charges that accrue with respect to the non-payment of any Taxes. Should Company fail to pay any Fees when due, then 4 Walls may terminate or suspend Services. Amounts not paid when due will be subject to a late charge of one percent (1.0%) of the overdue amount per month or any applicable legal maximum, whichever is less, plus the costs of collection, including reasonable attorney fees, court costs and expenses. Late charges are intended as reasonable estimates of the amounts necessary to compensate 4 Walls for costs and losses associated with delays in payment, and not as penalties.

**9. Performance.** 4 Walls represents and warrants that 4 Walls will use commercially reasonable efforts to remedy any Errors reported to 4 Walls during the Subscription Period. If 4 Walls determines that it is unable to correct an Error, 4 Walls may refund to Company the Fees actually paid by Company for Services that are the subject of the warranty claim. The foregoing remedy represents 4 Walls's sole obligation and

Company's sole and exclusive remedy with respect to any breach of the warranty set forth in this Section.

**10. Disclaimers.** THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICE, THE DOCUMENTATION, THE 4 WALLS CONTENT, AND ALL OTHER SERVICES AND GOODS PROVIDED OR REFERENCED PURSUANT TO THIS AGREEMENT. 4 WALLS AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE EXPRESS WARRANTIES IN THIS AGREEMENT DO NOT APPLY IF THE SERVICE HAS BEEN USED, MODIFIED OR OPERATED OTHER THAN IN ACCORDANCE WITH INSTRUCTIONS FURNISHED BY 4 WALLS OR OTHER THAN AS EXPRESSLY PERMITTED BY THIS AGREEMENT. 4 WALLS DOES NOT WARRANT THE COMPANY'S USE OF THE SERVICE WILL BE ERROR-FREE, UNINTERRUPTED, VIRUS-FREE, OR SECURE. COMPANY ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT.

**11. 4 Walls Indemnification.** 4 Walls will defend and indemnify Company at 4 Walls's own expense, against any action against Company brought by an unaffiliated third party that alleges that the Service in the form provided by 4 Walls to Company infringes any Intellectual Property Rights of a third party, and the venue for such allegations is a courtroom or other tribunal physically located in the United States of America, and 4 Walls will pay those costs and damages finally awarded or those costs and damages agreed to in a monetary settlement of such action in accordance with this Section. The foregoing obligations are conditioned on Company notifying 4 Walls promptly in writing of any such action, giving 4 Walls sole control of the defense thereof and any related settlement negotiations, and cooperating and, at 4 Walls's reasonable request and expense, assisting in such defense. If the Service becomes, or in 4 Walls's opinion is likely to become, the subject of an infringement claim, 4 Walls may, at its option and expense, either procure for Company the right to continue using the Service, replace or modify the Service so that it becomes non-infringing, or terminate this Agreement upon written notice to Company, and refund Company any unearned Fees pro-rated for the applicable Subscription Period. Notwithstanding the foregoing, 4 Walls will have no obligation under this Section or otherwise with respect to any allegation or claim based upon any use of the Service by Company or any User not in accordance with this Agreement, any use of the Service by Company or any User in combination with products, equipment, software, or data not supplied by 4 Walls if such infringement would have been avoided by the combination with other products, equipment, software or data, or any modification of the Service by any person other than 4 Walls or its expressly authorized agents or subcontractors. THIS SECTION STATES 4 WALLS'S ENTIRE LIABILITY AND COMPANY'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS OR ACTIONS.

**12. Company Indemnification.** Company will defend, indemnify and hold 4 Walls harmless at Company's own expense, against any action against 4 Walls brought by a User or any other third party to the extent that the action alleges or is based upon a claim that such third party has been damaged as a result of Company's use of the Service, or any claim that the Company Content infringes the Intellectual Property Rights or any other rights of any third parties, or arising out of the actions or omissions of any Company User, and Company will pay those costs and damages finally awarded or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on 4 Walls notifying Company promptly in writing of any such action, giving Company sole control of the defense thereof and any related settlement negotiations, and cooperating and, at Company's reasonable request and expense, assisting in such defense.

**13. Limitation of Liability.** IN NO EVENT WILL 4 WALLS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL OR OTHER NON-DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF 4 WALLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 4 WALLS'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SERVICE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO 4 WALLS BY COMPANY FOR THE SERVICES OR DELIVERABLES THAT ARE THE SUBJECT OF THE DISPUTE DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. Company acknowledges that the Fees reflect the allocation of risk set forth in this Agreement and that 4 Walls would not enter into this Agreement without these limitations on its liability.

**14. Term and Termination.** This Agreement will commence on the date stated on the applicable Order Form and will continue for an initial period of three months. After the initial three-month period, either party may terminate this Agreement upon 30 days prior written notice for any reason or no reason whatsoever. Either party may terminate this Agreement if the other party materially breaches any material provision of this Agreement and does not cure such breach within five (5) calendar days after sending written notice thereof.

**15. Effects of Termination.** Upon the effective date of termination of this Agreement for any reason, all of Company's rights to the Service (including, without limitation, the rights of any Users) granted hereunder will immediately cease, and Company shall cease all use of the Service, Documentation and 4 Walls Content, and shall insure that all Users discontinue all use of the Service and Documentation. Company shall have thirty (30) calendar days from the effective date of termination to download or otherwise copy any Company Content stored on the Service; after which 4 Walls may delete such Company Content. 4 Walls is under no duty to delete archival or back-up copies of Company Content. Any amounts owed to 4 Walls under this Agreement prior to its termination or expiration shall become due and payable immediately upon such termination or expiration. Company's decision not to renew the Service shall not affect

Company's rights pursuant to this Agreement. All definitions and those provisions that reference rights and remedies of either party after termination of this Agreement will survive the termination of this Agreement for any reason.

**16. Use of Company's Name and Marks.** Company agrees that 4 Walls may, at 4 Walls's expense, use Company's name, logo and trademarks thereof, and may disclose that Company is a customer of the Service, in 4 Walls's advertising, marketing, promotion and similar public disclosures with respect to the Service.

**17. Assignment.** Neither party may assign any of its rights or obligations under this Agreement without the other party's prior written permission (which may be refused in its sole discretion); provided however, that either party may assign all of its rights and obligations under this Agreement as part of a merger or acquisition of the party effective upon receipt of written notice by the other party. In addition, should Company acquire or sell a property during the term of this Agreement, the property may be transferred to the account of the acquiring party upon the acquiring party signing a copy of the Agreement or a confirmation reasonably specified by 4 Walls. Any attempted assignment, delegation or transfer in violation of the foregoing will be void and of no force or effect.

**18. Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile (fax), or certified or registered mail, (postage prepaid and return receipt requested) to the other party to the addresses provided for by Company and 4 Walls on the most recent Order Form, and will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

**19. Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the law of the Commonwealth of Pennsylvania and the federal law of the United States of America, without reference to conflict of laws rules or principles. The U.N. Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any controversy or claim between the parties or arising out of this Agreement or its performance shall be determined by one arbitrator in binding arbitration administered by the American Arbitration Association pursuant to its Commercial Arbitration Rules. The arbitration hearings will be conducted by video conference and audio conference. The arbitral award will be final and binding, and may be entered and enforced in any court of competent jurisdiction.

**20. Severability.** If any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deleted and re-interpreted to the extent necessary to comply with law and interpreted and substituted to accomplish the objectives of such provision to the greatest extent possible under applicable law. The remaining provisions of this Agreement will continue in full force and effect.

**21. Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**22. Revision Dates.** This Agreement is dated November 13, 2017. Prior versions:

- January 6, 2014