

Rexair RBO Subscription Agreement

PLEASE READ THIS REXAIR RBO SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE USING THE REXAIR RBO PLATFORM (THE “PLATFORM”). BY CLICKING THE “I AGREE” BUTTON BELOW, YOU AGREE THAT YOU ARE OVER THE AGE OF LEGAL MAJORITY WHO CAN FORM LEGALLY BINDING AGREEMENT(S) UNDER APPLICABLE LAW AND HAVE READ, UNDERSTAND AND AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BOTH OF THESE, CLICK THE “CANCEL” BUTTON.

THIS AGREEMENT IS A BINDING AGREEMENT SOLELY BETWEEN YOU (“YOU”, “YOUR” AND “DISTRIBUTOR”) AND REXAIR LLC (“REXAIR” AND “WE”) THAT GOVERNS YOUR USE OF THE PLATFORM. YOUR USE OF THE PLATFORM IS CONDITIONED UPON COMPLIANCE AND ACCEPTANCE OF THIS AGREEMENT. THIS AGREEMENT SHALL SUPERSEDE ANY AGREEMENT OR TERMS OF USE FOR THE PLATFORM PREVIOUSLY ACCEPTED BY YOU. BY ACCESSING AND/OR USING THE PLATFORM, YOU AGREE TO ACCEPT AND BE FULLY BOUND BY ANY REVISIONS TO THIS AGREEMENT WHEN THEY BECOME EFFECTIVE, WHETHER OR NOT YOU HAVE ACTUALLY REVIEWED THEM. IF YOU DO NOT AGREE TO ACCEPT AND BE FULLY BOUND BY THIS AGREEMENT, YOU ARE EXPRESSLY PROHIBITED FROM ACCESSING AND/OR USING THE PLATFORM. YOUR ACCESS AND/OR USE OF THE PLATFORM IS FURTHER CONDITIONED ON YOUR ACCEPTANCE OF REXAIR’S PRIVACY POLICY, WHICH REXAIR STRONGLY ENCOURAGES YOU TO READ AND WHICH MAY BE FOUND AT [<https://rainbowoffice.net/legal>].

THIS AGREEMENT INCLUDES AN AGREEMENT TO MANDATORY ARBITRATION, WHICH MEANS THAT YOU AGREE TO SUBMIT ANY DISPUTE RELATED TO THIS PLATFORM OR THIS AGREEMENT TO BINDING INDIVIDUAL ARBITRATION RATHER THAN PROCEEDING IN COURT. IF YOU WANT TO OPT-OUT OF THIS MANDATORY ARBITRATION AGREEMENT, THE DISPUTE RESOLUTION/ARBITRATION PROVISION BELOW DESCRIBES THE PROCEDURES YOU MUST FOLLOW TO DO SO. THE DISPUTE RESOLUTION/ARBITRATION PROVISION ALSO INCLUDES A CLASS ACTION WAIVER, WHICH MEANS THAT YOU AGREE TO PROCEED WITH ANY DISPUTE INDIVIDUALLY AND NOT AS PART OF A CLASS ACTION. THIS AGREEMENT ALSO INCLUDES A JURY TRIAL WAIVER.

1. Definitions.

- 1.1. "Account" means Your unique user account for purposes of accessing and using the Platform.
- 1.2. "Account Data" means Your personal data collected in connection with Your use of the Platform, including data You may upload to the Platform for the purposes of accessing the functionality of the Platform, including the purchase, registration, billing, or support of Your Account.
- 1.3. "Applicable Data Protection Law" means (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) and (ii) any and all applicable national data protection laws made under or pursuant thereto (iii) in each case as may be amended or superseded from time to time.
- 1.4. "Authorized Users" means those users of the Platform authorized by You to access the Platform solely in connection with supporting Your fulfillment of the Intended Purpose.

- 1.5. "Documentation" means any published or electronic user guides or operating manuals that Rexair may make generally available to its authorized independent distributors for use with the Platform and as updated by Rexair, at its sole discretion, from time to time.
- 1.6. "Intended Purpose" means use of the Platform made available to You by Rexair solely to facilitate Your management and operation of Your Rainbow distribution business.
- 1.7. "Rexair Materials" means such materials as Rexair may supply or make available to you to facilitate your use of the Platform
- 1.8. "Security Incident" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.
- 1.9. "Your Data" or "Distributor Data" means the data, including personal data, and information related to third parties, loaded or otherwise entered into the Platform by You, or by Authorized Users, in the course of Your use of the Platform, and for the Intended Purpose.

2. Platform.

- 2.1. Description. The Platform provides You and Authorized Users with access to information, documents, and communications that You may elect to upload to the Platform and to which You and Your Authorized Users have been granted access by You. Rexair will provide you with administrative credentials to the Platform so that you may manage Your use and Authorized Users' use of the Platform. Such use includes, but is not limited to, granting initial access and use rights to the Platform, deactivating such credentials to the extent an Authorized User is no longer under your direction or control or otherwise no longer requires access to the Platform to fulfill the Intended Purpose, enforcing the restrictions set forth herein on Authorized Users and remaining responsible for all acts and omissions of Authorized Users to the extent they do not fulfill Your obligations under this Agreement or do not abide by the Platform use restrictions set forth herein, including, but not limited to, those set forth in Sub-Section 2.5. Subject to Your and your Authorized Users' compliance with the terms and conditions of this Agreement, Rexair shall provide You with access to the functionality of the Platform in accordance with this Agreement for the Term and solely for the Intended Purpose. You agree to abide by, and ensure that all Authorized Users abide by, all then-current applicable laws and regulations, including obtaining consent where applicable, in connection with uploading Your Data to the Platform, and shall ensure and cause all Authorized Users to abide by the same. Rexair reserves all rights, title and interest not expressly granted to You. Except as otherwise expressly provided in this Agreement, Rexair has and will retain sole control over the operation, provision, maintenance and management of the Platform.
- 2.2. Term. Unless terminated earlier in accordance with this Agreement, Rexair shall continue to provide access to the functionality of the Platform until the expiration or termination of Your distributor agreement with Rexair (the "Term"). For the avoidance of doubt, unless terminated earlier under the terms herein, this Agreement shall be coterminous with Your distributor agreement with Rexair. Your rights under the Agreement will terminate immediately without notice from Rexair if You fail to comply with the terms of the Agreement. Upon termination or expiration of this Agreement, You shall cease all use of the Platform and return or destroy all

Rexair Materials. Rexair's termination of this Agreement will not limit any of Rexair's other rights or remedies at law or in equity. The provisions of Sections (including subsections) 1, 2.5, 4, 8, 9, 10, 11, 12, 12 and 13 shall survive termination or expiration of this Agreement, for any reason.

- 2.3. Access. Subject to and conditioned upon Your payment of the applicable fees and Your compliance with the terms and conditions of this Agreement, Rexair hereby authorizes You to access and use, during the Term, the Platform and any Rexair Materials, solely for the Intended Purpose and solely by You and Authorized Users in accordance with the Documentation and the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and, other than as may be expressly set forth herein in regard to Authorized Users and in Section 13.7, non-transferable.
- 2.4. Credentials. You agree to ensure that the Platform and Rexair Materials are accessed and used only by You with the login credentials supplied to You by Rexair, and you agree to ensure that Authorized Users only use login credentials supplied to them solely by You. You will be responsible for safeguarding and maintaining the confidentiality of such login credentials for You and Your Authorized Users.
- 2.5. Restrictions; Prohibited Actions. Except in connection with permitted use by Authorized Users as set forth herein, You shall not: (a) sell, rent, lease, loan, sublicense, disseminate, assign, transfer, or otherwise provide the Platform or Rexair Materials to third parties, make the Platform or Rexair Materials available for use by third parties, or use the Platform or Rexair Materials for the benefit of any third party, including through any outsourcing, timesharing, service bureau, facilities management, practice management, billing or data processing service; (b) copy, reproduce, modify, adapt, translate or create any derivative works from the Platform or Rexair Materials; (c) disassemble, decompile, reverse engineer, or make any other attempt by any means to discover or obtain the source code for, the Platform or Rexair Materials, in whole or in part; (d) remove, alter, obscure or tamper with any trademark, copyright or other proprietary markings or notices affixed to or contained within the Platform or Rexair Materials; (e) take any action that may adversely impact or impair Rexair's or its suppliers' rights, title and interest in the Platform or Rexair Materials; (f) bypass or breach any security device or protection used by the Platform or Rexair Materials, or access or use the Platform or Rexair Materials other than through the use of Your own then-valid login credentials; (g) access or use the Platform or Rexair Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other authorized independent Rainbow distributor), or that violates any applicable law; (h) access or use the Platform or Rexair Materials for purposes of competitive analysis of the Platform or Rexair Materials, the development, provision or use of a competing software product or any other purpose that is to Rexair's detriment or commercial disadvantage; (i) otherwise access or use the Platform or Rexair Materials beyond the scope of the authorization granted under this Section 2; or (j) encourage or permit any other third party to engage in any of the foregoing. You shall not cause or permit the installation or use of any programs or device that attempts to read the Platform's files without Rexair's express prior written authorization.

- 2.6. **Updates.** Periodically, Rexair may incorporate product updates and new releases with respect to the Platform. All such updates and releases shall be governed by this Agreement unless such update or new release is accompanied by a separate agreement in which case the terms of that agreement will govern. You shall be solely responsible, at your own expense, for acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for You to connect to, access and use the Platform or use the Rexair Materials.
- 2.7. **Availability; Suspension.** Rexair does not guarantee availability or operation of the Platform or any particular feature, functionality, or content in the Platform. Rexair reserves the right to change, remove, delete, restrict or block access to, charge for, or stop providing all or any part of the Platform at any time without notice. Rexair may, directly or indirectly, suspend, terminate or otherwise deny Your access to or use of all or any part of the Platform, without incurring any resulting obligation or liability, if: (a) Rexair receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Rexair to do so; or (b) Rexair believes, in its good faith and reasonable discretion, that You: (i) have failed to comply with any material term of this Agreement; (ii) have accessed or used the Platform beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; or (iii) You have been, or are likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Platform. This Sub-Section 2.7 does not limit any of Rexair's other rights or remedies whatsoever, including any rights or remedies at law, in equity or under this Agreement.
3. **Fees; Payment.** After an initial period of complimentary use of the Platform, the length of which is in Rexair's discretion, You agree to pay Rexair for access to the Service. All fees shall be paid to Rexair within thirty (30) days after the applicable invoice date. You consent to receiving invoices electronically, including by e-mail or through the Platform. All payments shall be made in U.S. dollars in accordance with instructions provided by Rexair.
4. **Your Data.** Each Party undertakes that it shall comply with its obligations under the Applicable Data Protection Law and respectively assume its obligations and liabilities as described below, without prejudice to Section 9 of this Agreement.
- 4.1. **Roles.** The Parties declare that they have full and entire knowledge of the obligations under the Applicable Data Protection Law that apply to them as set forth below:
- 4.1.1. Each party shall act as an independent data controller for their administrative and business contacts' personal data, including name, surname, contact details, and functions of the employees or representatives of each Party with regards to the management of their mutual relationship;
- 4.1.2. Distributor shall act as independent data controller for any use of Distributor Data for its business purposes;
- 4.1.3. Rexair shall act as independent data controller for the sole control over the operation, provision, maintenance and management of the Distributor's Account Data on the Platform as described in the Rexair Platforms Privacy Policy;

4.1.4. Rexair shall act as independent data controller for purposes of de-identifying and aggregating Distributor Data to reuse such aggregate Distributor Data (“Aggregated Data”) to maintain and improve Rexair’s products and services; and

4.1.5. Rexair shall act as processor for any processing, hosting, transmitting, sharing and storing of Distributor Data through the Platform on Distributor’s behalf as described below from Sub-Section 4.3 to Sub-Section 4.11.

4.2. Compliance with Data Protection Laws. As the Party entirely responsible for any content related to Distributor Data placed by You on the Platform and, as a result, acting as data controller with regard to said content or data, You shall take, for Your own activity, any appropriate measures to ensure compliance with the Applicable Data Protection Law, in particular:

4.2.1. insert in the register of processing made under Your responsibility in particular the subject and the duration of the processing, its nature and its purpose, as well as the type of personal data and the categories of concerned data subject according to the Applicable Data Protection Law;

4.2.2. ensure that the information notice to data subjects is easily accessible and easily understandable, and that such information provides categories required by the Applicable Data Protection Law;

4.2.3. if applicable, obtain the data subjects’ consent for processing their personal data, except in case of alternative legal grounds provided by the Applicable Data Protection Law;

4.2.4. to comply with any request by a data subject to exercise his/her rights of access, modification, deletion, if any limitation, opposition or portability, even withdrawal of his/her consent;

4.2.5. to inform the other Party of any Security Incident discovered during the Agreement and that may affect the use of the Platform;

4.2.6. take all sufficient technical and organizational safeguards, including any precautions, concerning, notably, the personal nature of Distributor Data and Account Data and the risks implied by the processing of such data, in order to preserve a high level of security and confidentiality of these data and, in particular, to prevent them from being altered, destroyed or lost and especially from being disclosed to unauthorized persons.

You are fully responsible for any content related to Distributor Data as well Account Data and, as a result, You shall indemnify Rexair from any damages or legal actions costs, including investigations or fines by the relevant data protection authority, related to any violation by You in relation to the content of Distributor Data and Account Data.

4.3. International Transfers. Rexair shall not transfer the Distributor Data (nor allow the Distributor Data to be transferred) outside of the European Economic Area (“EEA”) or the United Kingdom (“UK”) unless it takes necessary measures to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Distributor Data to a recipient:

- 4.3.1. in a country that the European Commission has decided provides adequate protection for personal data;
 - 4.3.2. that has achieved binding corporate rules authorization in accordance with Applicable Data Protection Law and, where appropriate, has conducted an assessment to ensure that the data subjects under the Applicable Data Protection Law are enforceable in the country where the recipient is located; or
 - 4.3.3. that has executed standard contractual clauses adopted or approved by the European Commission and, where appropriate, has conducted an assessment to ensure that the data subjects under the Applicable Data Protection Law are enforceable in the country where this recipient is located.
- 4.4. **Confidentiality.** Rexair shall ensure that any person that it authorizes to process the Distributor Data (including Rexair's staff, agents and subcontractors) (an "Authorized Person") shall be subject to a strict duty of confidentiality (whether a duty under internal policy, contractual duty or a statutory duty), and shall not permit any person to process the Distributor Data who is not under such a duty of confidentiality. Rexair shall ensure that all Authorized Persons process the Distributor Data only as necessary for the Intended Purpose.
- 4.5. **Security.** Rexair shall implement appropriate technical and organizational measures to protect the Distributor Data from a Security Incident. Such measures shall have regard to the state of the art, the costs of implementation, and the nature, scope, context and purposes of processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Such measures shall include, as appropriate:
 - 4.5.1. the pseudonymization or encryption of personal data;
 - 4.5.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 4.5.3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
 - 4.5.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.
- 4.6. **Sub-Processing.** You hereby consent to Rexair engaging third-party sub-processors to process the Distributor Data, provided that:
 - 4.6.1. Rexair provides notice of the addition or removal of any sub-processor (including details of the processing it performs or will perform), which may be given by posting details of such addition or removal which can be found in your Platform account under "My Profile";
 - 4.6.2. Rexair imposes data protection terms on any sub-processor it appoints that are consistent with the terms of Sub-Section 4.3 to Sub-Section 4.11; and
 - 4.6.3. Rexair remains fully liable for any breach of this Sub-Section 4.6 that is caused by an act, error or omission of its sub-processor that is acting on Our behalf under this Sub-Section 4.3 to Sub-Section 4.11. Rexair shall maintain and provide updated copies of this list which can be found in your Platform account under "My Profile".

If You refuse to consent to Rexair’s appointment of a third-party sub-processor relating to the protection of the Distributor Data, You may elect to suspend or terminate the Agreement, subject to all fees and payment due for Platform access rendered.

4.7. Cooperation and Data Subjects’ Rights. During the Term, You undertake to manage on Your own any exercise by data subjects of their rights related to Distributor Data. In case that You are unable to do so for technical or material reasons, Rexair shall, in a manner consistent with the functionality of the Platform and taking into account the nature of the processing, provide only technical assistance to enable You to respond to:

4.7.1. any request from a data subject to exercise any of its rights under the Applicable Data Protection Law (including its rights of access, deletion, restriction, correction, objection, erasure and data portability, as applicable); and

4.7.2. any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Distributor Data as required under the Applicable Data Protection Law. If Rexair receives any requests from a data subject related to Distributor Data, Rexair shall advise the data subject to provide such request directly to You, and You shall be responsible for responding to such request.

4.8. Data Protection Impact Assessment. Upon Your written request and to the extent that You do not otherwise have access to the relevant information and the information is available to Rexair, Rexair shall provide You with reasonable assistance (at Your cost) needed to fulfil Your obligations under the Applicable Data Protection Law to carry out a data protection impact assessment related to Your use of the Platform. To the extent necessary, Rexair shall provide reasonable assistance to You in Your consultation with the relevant data protection authority.

4.9. Security Incidents. If Rexair becomes aware of an actual Security Incident that involves Distributor Data, Rexair will:

4.9.1. notify You of the Security Incident without undue delay;

4.9.2. take appropriate steps to identify the cause of the Security Incident and minimize harm and secure the Distributor Data, to the extent remediation is within Rexair’s reasonable control; and

4.9.3. provide You with information, subject to Our privacy and data security policies, confidentiality and legal requirements, as may be reasonably necessary to assist You with Your notification and reporting responsibilities.

Rexair will not assess the contents of the Distributor Data to identify any specific reporting or other legal obligations that are applicable to You. Any and all regulatory and/or data subject reporting obligations related to the Security Incident are Your responsibility. Rexair’s notification of or response to a Security Incident under this Sub-Section 4.9 will not be construed as an acknowledgement by Rexair of any liability or fault with respect to the Security Incident. Notification(s) of any Security Incident(s) by Rexair shall be delivered to the notification email or address provided in the Agreement or, at Rexair’s discretion, by phone or in-person meeting. You are solely responsible for ensuring that the notification contact details (e.g., phone and email) are valid and accurate.

4.10. **Deletion or Return of Data.** At Your election, Rexair Shall return or destroy all Distributor Data in its possession or control (including in the possession of any Sub-processor) in accordance with Rexair’s data retention and destruction procedures and timeframes unless otherwise agreed with You. This requirement shall not apply:

4.10.1. to the extent that Rexair’s retention of some or all of the Distributor Data is required by or results from any EEA (or any EEA Member State) or United Kingdom law, Rexair shall isolate and protect Distributor Data from any further processing except to the extent required by such law; or

4.10.2. to any data stored on back-ups, and such data will be destroyed in accordance with our standard destruction policies for back-up data due to the cost and technical difficulty of deleting back-ups.

4.11. **Audit.** Rexair shall respond to any written audit questions related to Rexair’s security practices that submitted to it by You, provided that You shall not exercise this right more than once per year.

5. Communicating with Rexair. On certain areas of the Platform, You may be given the ability to contact Rexair through the Platform or by electronic mail. These areas are designed to give users the ability to contact Rexair with questions or concerns and provide feedback. You expressly disclaim any rights or causes of action You may have with respect to any ideas, concepts, techniques, procedures, methods, systems, designs, plans, charts or other similar materials You may submit to Rexair through the Platform.

6. Support Services Not Included. Rexair will not provide any maintenance or support services under this Agreement. This Agreement does not give You any rights to any updates or upgrades to the Platform or to any extensions or enhancements to the Platform developed by Rexair at any time in the future. Any updates, new releases, or other materials that Rexair elects to provide to You will be considered part of the Platform and are subject to the terms and conditions of this Agreement.

7. Confidential Information and Proprietary Rights.

7.1. Confidential Information. You acknowledge and agree that the Rexair Materials and the Platform are valuable intellectual property of Rexair and are considered Rexair’s confidential information (“Confidential Information”). You agree that You will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person, unless such duplication, use or disclosure is specifically authorized by Rexair in writing prior to any disclosure. You shall use reasonable diligence, and in no event less than that degree of care that You use in respect to Your own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of the Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions and party shall keep detailed records of the location of all Confidential Information.

7.2. Proprietary Rights. You acknowledge that Rexair and its licensors retain all ownership and intellectual property rights to the Platform and Rexair Materials, including any names, data,

marks, brands, logos, designs, trade dress, slogans and other designations Rexair uses in connection with its products and services (“Rexair Trademarks”) that appear in the Platform and Rexair Materials. You acknowledge Rexair’s rights in the Rexair Trademarks and agree that any use of Rexair Trademarks by You shall inure to Rexair’s sole benefit. Except to the extent that the information, communications or materials are covered by the [PLATFORM PRIVACY POLICY](#), You represent, warrant and covenant that any information, communication or material You submit or transmit to the Platform are not confidential or proprietary, that You have sufficient rights to submit such information, communications and materials to the Platform. Rexair reserves all rights not explicitly granted to You under this Agreement.

8. No Warranty. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE PLATFORM AND REXAIR MATERIALS IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLATFORM AND REXAIR MATERIALS ARE PROVIDED “AS IS” AND “AS AVAILABLE”, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND REXAIR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE PLATFORM, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. REXAIR DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE PLATFORM OR REXAIR MATERIALS, THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE PLATFORM AND REXAIR MATERIALS WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PLATFORM WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY REXAIR OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE EXCLUSION AND LIMITATIONS OF THIS SECTION 8 SHALL ONLY APPLY TO YOU TO THE EXTENT ALLOWED BY APPLICABLE LAW.

9. Limitation of Liability.

9.1. Limitation of Damage Types. IN NO EVENT SHALL REXAIR BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, OR DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE PLATFORM, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF REXAIR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OF THIS SUB-SECTION 9.1 SHALL ONLY APPLY TO YOU TO THE EXTENT ALLOWED BY LAW.

9.2. Limitation of Liability Amount. IN NO EVENT SHALL REXAIR’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES EXCEED THE AGGREGATE FEES PAID OR PAYABLE BY YOU TO REXAIR IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE LIMITATIONS OF THIS SUB-SECTION 9.2 SHALL ONLY APPLY TO YOU TO THE EXTENT ALLOWED BY LAW.

10. Indemnity; Release. You agree to fully indemnify, defend and hold harmless Rexair and its affiliates, and their subsidiaries, predecessors, successors, officers, directors, employees, agents, licensors, suppliers and customers from and against any and all claims, losses, costs (including court costs), fees (including reasonable legal fees), damages and expenses that such parties may incur as a result of, due to, or arising out of a violation by You (or anyone acting under Your account or password) of this Agreement or arising out of communications, information or materials You submit through the Platform or to Rexair by any other means, including any claim alleging that such communications, information or materials violate a third party's intellectual property rights.

11. Export Restrictions. You acknowledge that the Platform is subject to U.S. export restrictions, and that You are not (i) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a 'terrorist supporting country'; or (ii) listed on any U.S. Government list of prohibited or restricted persons. You agree to comply with all applicable international and national laws that apply to the Platform, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments.

12. Dispute Resolution, Arbitration.

12.1. Notification. For any problem or dispute that You may have in connection with the Platform, You acknowledge and agree that You will first give Rexair an opportunity to resolve Your problem or dispute by sending a written description of such problem or dispute via email to Rexair.

12.2. Good Faith Negotiations. You then agree to negotiate with Rexair in good faith about Your problem or dispute. This should lead to resolution, but if for some reason Your problem or dispute is not resolved satisfactorily within sixty (60) days after Rexair's receipt of Your written description of it, You agree to the further dispute resolution provisions below.

12.3. Sole and Exclusive Forum and Remedy. You agree that the sole and exclusive forum and remedy for any and all disputes and claims that cannot be resolved informally and that relate in any way to or arise out of the Platform, Rexair Materials, or this Agreement shall be final and binding arbitration, except to the extent that You have in any manner infringed upon or violated or threatened to infringe upon or violate Rexair's or any third-party patent, copyright, trademark, trade secret, privacy or publicity rights, or breached the confidentiality obligations in this Agreement, in which case You acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought by Rexair and/or the applicable third party(ies). You and Rexair acknowledge that this Agreement affects interstate commerce and that the Federal Arbitration Act and federal arbitration law apply to arbitrations under this Agreement (despite any other choice of law provision).

12.4. Arbitration. Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA"). Any arbitration will be held in the Detroit, Michigan metropolitan area and be subject to the Governing Law provision set forth in Section 13.6 (Governing Law). For claims of less than \$75,000 USD, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for claims over \$75,000 USD, the AAA Commercial Arbitration Rules will apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879 (within the USA). Upon Your filing of the arbitration demand, Rexair will pay all filing,

administration and arbitrator fees for claims that total less than \$75,000 USD. For claims that total more than \$75,000 USD, the payment of filing, administration and arbitrator fees will be governed by the AAA Commercial Arbitration Rules. You agree to pay Your own other fees, costs, and expenses, including those for any attorneys, experts, and witnesses. An arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief and attorneys' fees. The language of the arbitration shall be English.

12.5. Jury Trial Waiver. YOU AND REXAIR BOTH AGREE THAT, WHETHER ANY CLAIM IS IN ARBITRATION OR IN COURT, YOU AND REXAIR BOTH WAIVE ANY RIGHT TO A JURY TRIAL INVOLVING ANY CLAIMS OR DISPUTES BETWEEN YOU AND REXAIR.

12.6. Time Limitations. In no event shall any claim, action or proceeding by You related in any way to the Platform or this Agreement be instituted more than one (1) year after the cause of action first arose.

13. Miscellaneous.

13.1. Complete Agreement. This Agreement constitutes the complete, final and exclusive understanding between You and Rexair relating to the subject matter hereof and governs Your use of the Platform, superseding all prior or contemporaneous understandings, agreements and communications with respect to such subject matter. Notwithstanding anything to the contrary in this Agreement, We reserve the right to modify this Agreement at any time without prior notice. Rexair may notify You of changes to this Agreement via: (i) a prompt from the Platform that will allow You to read the new or modified agreement, and require You to accept the new or modified terms prior to being able to access the Platform, (ii) by electronic mail, (iii) by posting a notice on the Platform, or (iv) by otherwise providing updates to the Platform containing the new or modified agreement.

13.2. Third Party Terms. You may be subject to additional terms and conditions that may apply when You obtain or use third-party content, third-party software or goods and services provided by or through third-parties. You agree that You will comply with any such applicable third party terms and conditions.

13.3. Severability. If any provision of this Agreement are held to be unlawful, void or for any reason unenforceable by any court or arbitrator of competent jurisdiction, then such provision(s) shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

13.4. Waiver. Rexair's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Rexair in writing. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

13.5. Force Majeure. The failure of Rexair to comply with this Agreement because of an act of God, war, fire, riot, terrorism, pandemic, earthquake, actions of federal, state or local governmental authorities or for any other reason beyond the reasonable control of Rexair, shall not be deemed a breach of this Agreement. If Rexair fails to act with respect to Your breach or

anyone else's breach on any occasion, Rexair is not waiving its right to act with respect to future or similar breaches.

- 13.6. Governing Law. The validity, interpretation and performance of this Agreement shall be controlled and construed under the laws of the State of Michigan but without regard to any choice of law provisions that might substitute the laws of another jurisdiction for the parties' choice of Michigan law. The parties agree that any claim or dispute one party has against the other party arising under or relating to this Agreement (including claims in contract, tort, strict liability, statutory liability, or other claims) that is not resolved under Section 12 must be resolved exclusively by the federal or state courts located in Detroit, Michigan. Each party agrees to submit to the personal jurisdiction of such courts and to accept service of process from them.
- 13.7. Assignment. Rexair may assign its rights and delegate its duties under this Agreement to any party at any time without notice to You. You may not assign or delegate Your rights or obligations without prior written consent of Rexair, which may be withheld at Rexair's sole discretion. Any assignment in violation of this Sub-Section 13.7 shall be null and void.
- 13.8. Headings and Interpretation. All headings in this Agreement are for convenience only and have no legal effect. All references to "Section" correspond to the respective section in this Agreement unless otherwise specified, and any reference to a section includes all subsections therein. The terms "herein", "hereunder", and "hereof" and similar expressions refer to this Agreement. The term "including" means including and without limitation. The term "or" is not exclusive and is deemed to have the meaning "and/or." Any references in this Agreement to "dollars" or "\$" shall be to U.S. dollars. All definitions in this Agreement apply to both their singular and plural forms, as the context may require.
- 13.9. Electronic Communications; Notices. You hereby agree to the use of electronic communications in order to enter into this Agreement, to create other records and to the electronic delivery of notices, policies and records of transactions between You and Rexair with respect to the Service and this Agreement. You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law. In addition, Rexair may deliver notices to You by prepaid certified mail, return receipt requested at the address in Rexair's database; any notice that complies with this Section shall be deemed effectively given upon delivery. You must give notice to Rexair by prepaid certified mail, return receipt requested at the following address: 2600 W. Big Beaver Rd., Suite 555, Troy, MI 48084.

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