



TERMS OF SERVICE FOR CRESCENDO eNEWSLETTER EMAIL SERVICE

By using Crescendo Interactive, Inc.'s ("Crescendo") eNewsletter and email Service ("Service(s)"), you and your organization (collectively the "User") agree to these Terms of Use as may be updated by Crescendo from time to time without further notice:

1. **DESCRIPTION OF SERVICE.** The Services allow User to: (1) upload, maintain and manage a database on Crescendo's web servers of User's donors, donor prospects and, in the case of GiftLaw, professional advisors (which are individually referred to as a "Donor" and collectively as "Donors"); (2) maintain Donor information including name, mailing address, email address and other information specific to each Donor ("Donor Data"); (3) use the Donor Lists to schedule and send personalized planned giving GiftLegacy or GiftLaw eNewsletters to selected Donors; (4) customize the eNewsletters to include a custom header and footer or other information specific to User; (5) organize, manage, add, delete or rearrange the contents of the eNewsletters; and (6) send periodic custom messages to Donors (limit one custom message per week). Crescendo may employ a third party service provider for email delivery and validation services.
2. **USER ACCOUNT.** Each User approved by Crescendo, will receive a user account and password upon completing the registration process. The User may change their password, is responsible for maintaining the confidentiality of the password and account, and is fully responsible for all activities that occur under their account. User agrees to: (a) immediately notify Crescendo of any unauthorized use of a password or account or any other breach of security; and (b) ensure to log out of their Account at the end of each session. Crescendo shall not be liable for any loss or damage arising from User's failure to comply with the terms of this Section.
3. **DISTRIBUTION LISTS.** User understands and agrees: (1) not to upload or use any distribution list in connection with the Services that contains any purchased or rented donor information, including email addresses; (2) that any lists uploaded on to Crescendo's servers will have been compiled exclusively by User, its staff or employees; (3) that the use of salted, purchased or rented list may cause damage to Crescendo which includes jeopardizing Crescendo's ability to ensure delivery of eNewsletters to User and other clients of Crescendo; (4) that User will not use the Services to test whether any list is current or has not been salted; and (5) Crescendo may take such action as Crescendo, in its sole discretion, deems appropriate if Crescendo has reason to believe any of User's lists do not live up to the promises made by User herein. User confirms there is a lawful basis for processing the data contained on the distribution list.
4. **DISCLOSURE AND PRIVACY.** Crescendo agrees that: (1) all of User's Donor Data uploaded to or maintained as part of the Service shall, at all times, remain User's exclusive property; (2) Crescendo will protect Donor Data to the extent that it protects its own data; (3) Crescendo will not use or disclose the Donor Data, except as necessary to perform the Business Purpose for which Crescendo was retained, without express written permission or except as may otherwise be required by law; and (4) Crescendo will comply with applicable state and federal laws as relates to Donor privacy. For more details on the applicable state privacy laws please refer to the GiftLegacy Terms and Services. Crescendo shall not retain, use or disclose the Personal Information for any purpose other than for the specific purpose of performing the services set forth in Agreement or the direct business relationship between the Parties. The Parties agree to limit the collection, sale, or use of Personal Information disclosed, except as necessary to perform the Business Purpose for which Crescendo was retained. Crescendo may use subcontractors to fulfill duties under this Agreement and will bind such subcontractor to written data protection terms that require the subcontractor to assist Crescendo in complying with its legal obligations hereunder including responses to access, correction and deletion requests and, where applicable, upon written notice to Subscriber.
5. **USER CONDUCT.** User understands and agrees that: (1) any information, data, text, photographs, graphics, messages and other materials provided by Crescendo for use in connection with the Services (collectively "Crescendo Content") are licensed to User by Crescendo and that Crescendo retains the exclusive rights of ownership to the same; (2) User will not use Crescendo Content except as allowed herein or by separate written agreement between Crescendo and User; (3) User will not license, sublicense,

sell, transfer or assign any of the Crescendo Content to any third party; (4) User, and not Crescendo, is solely responsible for any content provided by User or to User by any third party, including as relates to accuracy, errors, omissions or third party claims of right whether the same is uploaded to Crescendo's servers, otherwise made available via the Service, or not; (5) Crescendo will not pre-screen User provided content or Donor Data, but Crescendo shall have the right, but not the obligation, in its sole discretion, to remove such content or data that violates these Terms of Use. Any other agreement between User and Crescendo, or which Crescendo deems, in its sole discretion, is otherwise objectionable (for example, Crescendo may modify User's distribution lists if the use of the same would result in excessive "bounces" due to inaccuracy in information contained therein); and (6) User agrees to hold Crescendo and its officers harmless from any claim or demand made by any third party due to, or arising out of, content that User makes available through the Service.

6. **LINKS.** The eNewsletter Service may provide links to outside websites including federal and state government websites, or to a limited number of similar public or subscription-based sites. Because Crescendo has no control over such sites and resources, User agrees that Crescendo does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources and for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.
7. **USER EMAIL SECURITY.** It is strongly recommended that User implement an email Domain-based Message Authentication, Reporting and Conformance (DMARC) validation system. DMARC enhances the email authentication techniques Sender Policy Framework (SPF) and Domain Keys Identified Mail (DKIM). A domain owner may include a DMARC entry in a DNS record to control email sent from or associated with that domain. If the User implements DMARC, User agrees to include a DKIM key and SPF record provided by Crescendo in the domain associated with the DMARC record. The DKIM key must be obtained from Crescendo. The User agrees to hold Crescendo harmless if the User implements DMARC without notifying Crescendo. If the User does not include the Crescendo-provided DKIM record in the associated DNS record where DMARC is implemented, User assumes the risk that most or all of the User GiftLegacy emails or eBlasts will be blocked.
8. **INTELLECTUAL PROPERTY.** Crescendo and User agree that the intellectual property of each party including the trademarks, trade names, logo, copyrighted materials, service marks, symbols, and respective Crescendo Content or User provided content, constitute valuable property rights. Crescendo and Subscriber agree not to use the intellectual property of the other without prior permission except as permitted by this agreement or another written agreement between the parties. User warrants that it has a license or other right to use and distribute all images, content or other media used or placed on a Crescendo eNewsletter of email. User may not incorporate any copyrighted material from another source into the eNewsletter or email unless User has prior written permission from the party who owns such material. User affirms that it has ownership of any text, graphic, image or other material added to its eNewsletter and/or email Service. Both Crescendo and User agree that this Letter of Agreement shall grant User a nonexclusive license to use the Crescendo intellectual property included on the eNewsletter and email Services, but that the respective intellectual property of Crescendo and User shall remain within the ownership of each party. Furthermore, Crescendo and User agree that appropriate disclaimers shall be included in all eNewsletters which include either or both of: (1) any disclaimers required under the Terms and Services for GiftLegacy or GiftLaw, as the case may be; or (2) something similar to the following: "Note: Case studies, articles, commentary and other materials provided herein are included solely for educational purposes. You should consult with your tax advisor for information specific to your situation"
9. **WARRANTIES.** User expressly understands and agrees that: (1) Crescendo has not made any representations or warranties with respect to the provisions contained herein or as relates to the Services, and that Crescendo does hereby disclaim any all warranties that may be disclaimed by law including whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement; (2) the Services are offered on an "as is" and "as available" basis and, as such, use of the same is at User's sole risk; and (3) no advice or information, whether oral or written, obtained from Crescendo or through or from the Service shall create any warranty not expressly stated herein. User expressly agrees that Crescendo shall not be liable for any direct, indirect, incidental,

special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Crescendo has been advised of the possibility of such damages), resulting from: (1) the use or the inability to use the service; (2) unauthorized access to or alteration of User's transmissions or data; or (3) any other matter relating to the service.

10. **USE OF THIRD PARTY SERVICES.** Use of third party services for email or any other technologies where a third party reproduces, copies or resends Crescendo's eNewsletter or email Services, content or links onto a third party server is subject to approval by Crescendo. If User is granted permission by Crescendo to utilize third party services, User shall be liable for any alteration, change or omission to the Service including changes to links, content, design, appearance or any other change.
11. **MISCELLANEOUS.** These Terms of Service constitute the entire agreement between User and Crescendo and govern use of the Service, superseding any prior agreements related to the eNewsletter services. The failure of Crescendo to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision. If any provision of these Terms of Service is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect.

== END OF AGREEMENT ==

Crescendo Interactive, Inc., 110 Camino Ruiz, Camarillo, CA 93012

p. 800-858-9154 f. 805-388-2483 web. www.crescendointeractive.com

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Effective 5.22.2024