TERMS & CONDITIONS

1. **_Scope_**. These Terms and Conditions sets forth the terms and conditions applicable to the limited one-month trial licensing of the Admin Portal (as defined herein) from Merkle Inc. ("**Merkle**") by the party subscribing to the LoyaltyPlus Enterprise Software (the "**Software**") through the AWS Marketplace (the "**Client**"). The offer of the Software as a listing on the AWS Marketplace, and Client's purchase of the corresponding subscription on the AWS Marketplace, constitutes each Party's respective acceptance of these Terms and Conditions.

2. **_Definitions_**. Capitalized terms not otherwise defined herein shall have the following meanings:

   2.1   **_"Admin Portal"_** means the administration portal for the LoyaltyPlus Enterprise Software made available to Client to configure certain parameters common to loyalty programs.

   2.2   "**_Documentation_**" means the operating instructions, user manuals, product specifications, "read-me" files, and other documentation that Merkle makes available to Client in hard copy or electronic form for the Software, and any modified, updated, or enhanced versions of such documentation.

   2.3   "**_Intellectual Property Rights"_** means patents and patent applications, inventions (whether or not patentable), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, mask-work rights, moral rights, author's rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all derivatives, renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction.

3. **_License Grant_**. Subject to these Terms and Conditions, Merkle hereby grants to Client a one-month, non-exclusive, non-transferable, revocable, world-wide, royalty-free license, without the right to grant or authorize sublicenses, to use the Admin Portal and related APIs.

4. **_Restrictions_**. Client acknowledges that the Software and Documentation embodies, contains, and constitutes valuable trade secrets of Merkle. Accordingly, Client agrees that it will not, and it will not permit any third party (including any Client affiliate or end user) to, (a) access or use the Software, except to the extent otherwise expressly permitted in these Terms and Conditions; (b) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Software; (c) modify, adapt, translate or create derivative works based on the Software or Documentation made available hereunder; and (d) distribute, license, sublicense, assign, transfer or otherwise make available to any third party any Software or Documentation. Client agrees not to remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Merkle or its suppliers on or within the Software or Documentation. Merkle reserves all rights and licenses not expressly granted to Client in these Terms and Conditions and no implied license is granted by Merkle.

5. **_Ownership_**. Merkle and its suppliers retain all right, title and interest in and to all Intellectual Property Rights in the Software, Documentation, and all other materials provided or made available to Client in connection with these Terms and Conditions, and any and all modifications, updates, and enhancements to the foregoing items.

6.   **_Confidential Information_**

   6.1   **Confidential Information.** Each party will have access to Confidential Information of the other. For the purposes of these Terms and Conditions, "**Confidential Information**" shall mean any written or oral information, whether or not created by or for the other party, disclosed by either party during performance under these Terms and Conditions. The Software and Documentation are Merkle's Confidential Information.

6.2   Exclusions. Confidential Information shall not include information which (i) was in or enters the public domain through no breach of these Terms and Conditions by the receiving party; (ii) was lawfully in the receiving party's possession prior to such disclosure and without obligation of confidentiality; (iii) was received by the receiving party from a third party not known by the receiving party to be under an obligation of confidentiality; (iv) was independently developed by the receiving party without any use of Confidential Information; or (v) has been specifically approved by the disclosing party in writing for disclosure.

6.3   Non-Use and Non-Disclosure. Neither party shall use or disclose the other party's Confidential Information except as required by applicable law or to perform its obligations under these Terms and Conditions. Each party will employ the same measures that it uses to protect its own Confidential Information, which shall not be less than reasonable, to protect the Confidential Information of the other party from unauthorized or inadvertent use or disclosure. In the event that the receiving party receives a request from a third party requiring the production of information pertaining to the disclosing party, the receiving party will give the disclosing party prompt notice, to the extent permitted by law. The disclosing party will hold the receiving party harmless from, and also assumes responsibility for, any expenses (including without limitation attorney's fees, court costs, data retention costs, e-discovery costs, costs incurred by outside advisors and any other cost imposed whether by way of penalty or otherwise) incurred by the receiving party as a result of such request. Client may only upload or insert into the Admin Portal fictitious information created for the purpose of evaluating the Software and which does not relate to or otherwise describe an actual, living person; violation of the foregoing shall constitute a breach of confidentially obligations on the part of Client.

7.   *Disclaimer.* NEITHER PARTY MAKES ANY WARRANTIES WHATSOEVER, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH REGARD TO THESE TERMS AND CONDITIONS OR, WITH RESPECT TO MERKLE, THE SOFTWARE, DOCUMENTATION OR OTHER MATERIALS PROVIDED BY MERKLE, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. MERKLE DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED.

8.   *Limitation of Liability*. EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO BUSINESS REPUTATIONS, LOST BUSINESS, LOST PROFITS, OR LOSS OF GOODWILL), REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING BUT NOT LIMITED TO CLAIMS ARISING FROM A PARTY'S NEGLIGENCE), EVEN IF SUCH PARTY KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS. EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR DIRECT DAMAGES.

9.   *Force Majeure*. Neither party shall be responsible for any delay in its performance due to labor disputes, shortage of materials, fire, earthquake, flood, telecommunications failure, or any other cause beyond its reasonable control.

10.   *Miscellaneous*. These Terms and Conditions shall be governed by, and construed in accordance with, the laws of the State of New York, excluding those laws that direct the application of the laws of another jurisdiction and including its statute of limitations. The parties acknowledge and agree that they are dealing with each other as independent contractors. Nothing in these Terms and Conditions and its performance shall be construed as creating a joint venture or agency between Merkle and Client. These Terms and Conditions constitute the entire agreement between the parties regarding this subject matter, and supersedes all prior oral or written agreements or communications with regard to the subject matter described.