

# MUCK RACK

## AMENDED AND RESTATED EXHIBIT A TO CUSTOMER AGREEMENT

This Amended and Restated Exhibit A to Customer Agreement (this “Amendment”) is executed as of September 9th, 2020 (the “Effective Date”), in order to amend the terms of the Customer Agreement between the parties dated September 9th, 2020 (the “Customer Agreement”). Capitalized terms used and not defined herein shall have the meanings assigned to such terms in the Customer Agreement.

Accordingly, the parties have agreed that Exhibit A to the Customer Agreement shall be amended and restated in its entirety as of the Effective Date to read as follows:

<b>Number of Authorized Users</b>	4 <sup>1</sup>
<b>Fees</b>	<ul style="list-style-type: none"><li>• Complimentary access to Muck Rack for up to 4 users from September 9th, 2020 through February 9th, 2021 (valued at \$7,500)</li><li>• Access to Muck Rack for two years for up to 2 users for a one-time discounted price of \$18,000 total, \$9,000 per year (discounted from \$20,000 for two years and to renew at \$10,000 per year), plus any amounts for additional Authorized Users as set forth herein.</li><li>• Complimentary access to Muck Rack for 2 users from 2/10/21 through 2/9/2023 (valued at \$2,500 per user/year - \$10,000 total- and to renew at \$2,500 per user/year)</li><li>• Each user account must be associated with an individual employee’s email and cannot be shared. Generic or shared emails cannot be used for accounts.</li></ul>

<sup>1</sup> Additional Authorized Users may be added by Customer upon written request at the rate of \$2,500 per additional Authorized User per year.

<b>Initial Term</b>	9/9/2020 - 2/9/2023

Except as set forth above, the Customer Agreement shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereby enter into this Amendment as of the Effective Date.

**CUSTOMER: Florida Housing Finance Corporation**

**MUCK RACK, LLC:**

Signature: 

Signature: 

Name: Hugh R. Brown

Name: Matthew Darling

Title: General Counsel

Title: Sales Director

Date: 9-16-20

Date: 09 / 16 / 2020

# MUCK RACK

## CUSTOMER AGREEMENT

This Customer Agreement (this “**Agreement**”) is entered into as of 09 / 09 / 2020 (the “**Effective Date**”) by and between Muck Rack, LLC, a Delaware limited liability company with offices at 96 Spring Street, 7th Floor, New York, New York 10012 (“**Muck Rack**”), and Florida Housing Finance Corporation, with offices at (227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, US) (“**Customer**”). The parties agree as follows:

### 1. BACKGROUND

Muck Rack is a provider of online, Web-based applications and services that, among other things, permit companies to track their public relations communications and media coverage. Customer desires to obtain, and Muck Rack desires to provide, Customer with access to certain of these applications and services.

### 2. SERVICES

2.1 Provision of Service. Subject to the terms and conditions of this Agreement, including, without limitation, Customer’s payment of all amounts that may be due from time to time hereunder, Muck Rack will provide Customer with access to the Muck Rack service (the “**Service**”) during the Term of this Agreement. Customer may use the Service solely for its intended purpose in accordance with this Agreement. Certain of Customer’s employees and other representatives may sign up for journalist profiles from time to time. For the avoidance of doubt, such journalist profiles shall be governed by the terms of use available on the Muck Rack website, rather than the terms and conditions of this Agreement. From time to time, as part of the Service, Muck Rack may offer Customer applications (including, without limitation, the Pitching Distribution application) that allow Customer to send messages to third parties via email and other methods (collectively, “**Messaging Services**”). Customer acknowledges and agrees that Messaging Services are intended to be used solely to send newsworthy material to members of the press and may not be used to send any commercial or marketing messages of any type. While Messaging Services may provide features that allow Customer to include an unsubscribe link in the message, these services are not intended to comply with the CAN-SPAM Act, the General Data Protection Regulation (EU), or any similar laws and Muck Rack makes no representation or warranty to such effect. The Messaging Services will be deemed part of the Service, and the content of all messages sent by Customer via the Messaging Services will be deemed User Content (as hereinafter defined) for purposes of the Customer Agreement. Use of Messaging Services may be limited by volume restrictions on the number of messages sent over a period of time. These restrictions are intended to ensure that the Messaging Services are being used properly. In the event that Customer requires a higher volume restriction, it can submit an application for a higher volume restriction, and Muck Rack will promptly review and respond in good faith. In addition, as a part of the Messaging Services, Customer has the option to connect email to said Messaging Services. Use of and access to Customer’s email data shall be limited as described in Muck Rack’s Privacy Policy.

2.2 Authorized User Accounts. Customer may establish accounts for Customer’s employees or independent contractors to use the Service on behalf of Customer (“**Authorized Users**”), provided that the number of Authorized Users shall not exceed the amount set forth in Exhibit A. Customer may not charge any fee for Authorized Users’ access to the Service. Customer and Authorized Users shall immediately notify Muck Rack in the event that Customer or an Authorized User becomes aware of any violation of the terms of this Agreement.

2.3 Customer Assistance. Customer shall provide Muck Rack with all information and assistance as reasonably required for Muck Rack to activate and operate the Service for Customer pursuant to this Agreement. Customer grants Muck Rack all rights or licenses necessary for Muck Rack to access and use such information in connection with the provision of the Service.

2.4 Support and Maintenance. Muck Rack will provide Customer with all reasonably necessary maintenance and support regarding use of the Service during the Term. Updates to the Service will be provided at no charge to Customer. However, certain major functional updates or enhancements may, in Muck Rack’s discretion, be considered new products that will be made available to Customer at an additional charge. Scheduled system maintenance will take place during a normal maintenance window during minimal-traffic times. During such time, the Service may be unavailable. Emergency maintenance may be required at other times in the event of system failure. Muck Rack will use commercially reasonable efforts to notify Customer of the emergency maintenance event and promptly remedy any system failure and restore the Service.

2.5 Restrictions. Customer and any Authorized Users may not, and may not permit any third party to, (i) copy, reproduce, modify, translate, prepare derivative works of, de-compile, reverse engineer, disassemble or otherwise attempt to derive source code from the Service; (ii) use, evaluate or view the Service for the purpose of designing, modifying, or otherwise creating any environment, program, or infrastructure or any portion thereof, that performs functions similar to the functions performed by the Service; or (iii) use the Service in a service bureau or any other manner to provide services for a third party. Neither Customer nor any Authorized User shall remove, obscure, or alter any copyright notice, trademarks, logos and trade names, or other proprietary rights notices affixed to, or contained within the Service. Except for the express rights granted herein, Muck Rack does not grant any other licenses, whether express or implied, to any Muck Rack software, services, copyrights, trademarks or other intellectual property.

### 3. FEES AND PAYMENT

3.1 Fees. Customer shall pay Muck Rack the fees set forth on Exhibit A for use of the Service. Subscription fees will be invoiced on an annual basis in advance. All fees are due within 30 days of receipt of the Muck Rack invoice. All fees are exclusive of applicable sales, excise, or use taxes.

3.2 Late Payments. If payment is not made within thirty (30) days after receipt of invoice, Muck Rack may charge Customer a late fee on the unpaid balance at the lesser of two percent (2%) per month or the maximum lawful rate permitted by applicable law, compounded monthly. Should Customer not pay amounts when due, Muck Rack may also (at its discretion and in addition to other remedies it may have) suspend Customer's access to the Service.

### 4. PROPRIETARY RIGHTS

4.1 Service Ownership. Muck Rack shall own all right, title, and interest in and to the Service, including all modifications, improvements, upgrades, derivative works, and feedback related thereto and all intellectual property rights therein. Customer agrees to assign all right, title, and interest it may have in the foregoing to Muck Rack.

4.2 Confidentiality. To the extent allowable under Chapter 119, Fla. Stat., neither Party will disclose to any third party, without the prior written consent of the other party, any information of a confidential or proprietary nature that is received from the other party for the purposes of performing its obligations hereunder whether disclosed orally, electronically or in writing. Furthermore, each party will limit dissemination of confidential or proprietary information to those of its personnel who may need and use it only for the purposes indicated above. Each party agrees to make such efforts and take such measures to avoid disclosure or dissemination of the confidential or proprietary information as the party may employ with respect to its own confidential or proprietary information. This restriction will not apply to any information that: (a) was in the public domain at the time of receipt by the receiving party or has subsequently entered into the public domain other than by reason of the breach of the provisions of this Section 4.2 or any obligations of confidence owed by the receiving party to the disclosing party; (b) is acquired from a third party who owes no obligation of confidence in respect of the information; (c) is already known to the receiving party prior to its receipt of such information from the disclosing party as evidenced by written records; (d) is generated independently by personnel of the receiving party without the use of or any reference to information disclosed pursuant to or in connection with this Agreement as evidenced by written records; (e) the receiving party is required by law to disclose; or (f) is deemed Personal Data, as defined and governed by the next Section.

4.3 Data Protection. Each party agrees that it shall, in relation to personal data processed in connection with this Agreement ("Personal Data"): (i) process the Personal Data as defined by and in accordance with DP Legislation (defined below); (ii) process the Personal Data only so far as is necessary for the purpose of performing its obligations under this Agreement; and (iii) process Personal Data consistent with the Privacy Policy posted on Muck

Muck Rack, LLC

Rack's website. With regard to Personal Data provided by Customer to Muck Rack, Muck Rack will not retain, use, or disclose the Personal Data for any purpose other than for the specific purpose of performing the services as described in this Agreement, or as otherwise permitted by law, including not retaining, using, or disclosing the Personal Data for a commercial purpose other than providing the services described in this Agreement. Muck Rack agrees to offer reasonable assistance to Customer regarding Personal Data where required by DP Legislation. Such assistance is offered consistent with and limited by the information available to Muck Rack and the nature of the Personal Data processed. Any assistance beyond what is reasonable in light of the DP Legislation, the information available to Muck Rack, and the nature of the Personal Data shall be at Customer's sole expense. If Customer is aware that they will provide Muck Rack with Personal Data from the European Union ("EU") as defined by the EU General Data Protection Regulation 2016/679 ("GDPR"), it shall notify Muck Rack, and a data processing agreement will be executed as an addendum to this MSA. "DP Legislation" means any data privacy law of the jurisdictions in which Customer or Muck Rack operate, and any implementing laws, regulations and secondary legislation as amended or updated from time to time.

#### 4.4 User Content.

4.4.1 Customer shall own all right, title, and interest in and to any content it submits for transmission through, or inclusion on, the Service ("**User Content**").

4.4.2 Customer retains all ownership rights in its User Content as set forth in Section 4.4.1. However, by submitting User Content to Muck Rack, Customer hereby grants Muck Rack a limited, revocable, worldwide, non-exclusive, royalty-free license to use the User Content solely for purposes of providing the Service to Customer.

4.4.3 Customer shall be solely responsible for its User Content and the consequences of submitting User Content to Muck Rack. Customer represents and warrants that it owns or has the necessary licenses, rights, consents, and permissions to all submitted User Content, including, but not limited to, the right to submit the User Content for Customer's use on the Muck Rack platform. Customer is solely responsible for compliance with DP Legislation as it pertains to User Content including, but not limited to, obtaining individual consent, providing individual notice, or responding to the exercise of individual privacy rights as may be required by DP Legislation. Muck Rack expressly disclaims any and all liability in connection with User Content.

### 5. WARRANTIES; LIMITATIONS OF LIABILITY

5.1 Warranties. Muck Rack warrants that the Service will operate in substantial conformance with its documentation. For any breach of this warranty, Customer's exclusive remedy, and Muck Rack's entire liability, shall be the timely correction of such deficient component of the Service. Customer must report any deficiency in the Services to Muck Rack in writing within thirty (30) days of

Muck Rack Point of Contact: Lauren Cavataro

becoming aware of such deficiency in order to receive the above warranty remedies.

5.2 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTION 5.1, Muck Rack DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL, OR WRITTEN) WITH RESPECT TO THE SERVICE OR ANY SUPPORT RELATED THERETO, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, ACCURACY OF DATA, AND WARRANTIES ARISING FROM A COURSE OF DEALING.

5.3 Limitations of Liability. EXCEPT FOR LIABILITY ARISING FROM SECTIONS 2.5, 3, 4.2, 5.4 OR 5.5, (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING; AND (B) IN NO EVENT SHALL THE TOTAL COLLECTIVE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT EXCEED THE AGGREGATE FEES PAID OR OWED BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. The warranty disclaimer and limitations of liability set forth in this Agreement shall apply irrespective of any failure of essential purpose of any limited remedy.

5.4 Customer Indemnity. To the extent allowable under s. 768.28, Fla. Stat., Customer shall defend, indemnify and hold harmless Muck Rack and its officers, directors, employees, shareholders, affiliates and its and their respective representatives from and against any and all third party claims, liabilities, damages and/or costs (including, but not limited to reasonable attorneys' fees) arising out of or related to: (i) any violation of this Agreement or applicable law by Customer, (ii) any claim that any content or materials provided by Customer (including, without limitation, any User Content) is misleading, inaccurate, false or otherwise violates the intellectual property rights, privacy rights or other rights of any third party or any applicable law, or that Customer did not have the right to provide the User Content to Muck Rack for use in accordance with the terms hereof, or (iii) any unauthorized use of the Services or underlying software.

5.5 Muck Rack Indemnity. Muck Rack shall indemnify, defend and hold harmless Customer and its officers, directors, employees, shareholders, affiliates and its and their respective representatives from and against any and all third party claims, liabilities, damages and/or costs (including, but not limited to, reasonable attorneys' fees) arising out of or related to: (i) any violation of this Agreement or applicable law by Muck Rack or (ii) any claim that the Service violates the intellectual property rights, privacy rights or other rights of any third party or any applicable law. Following notice of a claim under clause (ii) regarding infringement of a third party's intellectual property rights or any facts that may

Muck Rack, LLC

give rise to such a claim, Muck Rack may, in its sole discretion and at its option, (a) procure for Customer the right to continue to use the applicable portions of the Service, (b) replace the applicable portions of the Service or (c) modify the applicable portions of the Service to make them non-infringing. If Muck Rack determines that it is not commercially reasonable to perform any of these alternatives, Muck Rack shall have the option to terminate this Agreement with respect to the allegedly infringing portions of the Service. In no event will Muck Rack have any obligations under this Section 5.5 or any liability for any claim or action caused by: (a) Customer's combination or use of the Service with non-Muck Rack software or services, products or data, if such Claim would have been avoided by the non-combined or independent use of the Service, (b) modification of the Service by anyone other than Muck Rack if such Claim would have been avoided by use of the unmodified Service, (c) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement or (d) Customer's use of the Service in a manner not strictly in accordance with this Agreement and the documentation provided to Customer by Muck Rack. THE FOREGOING STATES MUCK RACK' ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

## 6. TERM

6.1 Term. This Agreement will commence on the Effective Date and will continue for the initial term set forth in Exhibit A (the "Term").

6.2 Termination. In the event that either party is in material breach of this Agreement, and the breaching party does not cure such breach within ten (10) days following notice of such breach, then the non-breaching party may immediately terminate this Agreement by sending written notice to the breaching party.

6.3 Effect of Termination. Upon termination of this Agreement, Customer and any Authorized Users must immediately stop using the Service, return or destroy all documentation, and certify such return or destruction in writing. Upon termination of this Agreement, Sections 2.5, 3 (with respect to fees owed for periods prior to termination), 4, 5.2, 5.3, 5.4, 5.5, 6.3 and 7 shall survive and remain in effect. In the event of a termination by Customer pursuant to Section 6.2, the subscription fee for the remainder of the term will be prorated based on the remaining length of the Agreement. In all other circumstances, Muck Rack shall be entitled to the full subscription fee for the subscription period in which the termination occurs.

## 7. GENERAL

7.1 Injunctive Relief. The parties agree that any breach of the provisions of Section 2.5 or Section 4 would cause irreparable harm to the non-breaching party and that, in the event of such breach, the non-breaching party shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent such breach.

7.2 Independent Contractor. In performing under this Agreement, Muck Rack Point of Contact: Lauren Cavataro

Agreement, each party is acting as independent contractor, and in no way are the parties to be construed as partners, joint venturers, or agents of one another in any respect.

7.3 Export. Customer agrees not to export or re-export any software included within the Service, either directly or indirectly, without both parties' written consent and any required license from the appropriate governmental agency.

7.4 Force Majeure. Neither party shall be in default for failing to perform any obligation hereunder, other than the payment of monies, if such failure is caused solely by supervening conditions beyond the parties' respective control, including without limitation acts of God, civil commotion, strikes, terrorism, failure of third party networks or the public Internet, power outages, labor disputes or governmental demands or restrictions.

7.5 Assignment. Either party may assign this Agreement in connection with a merger, acquisition or sale of all or substantially all of its assets related hereto. Except as expressly stated in this section, neither party may assign its rights or obligations under this Agreement without obtaining the other party's prior written consent. Any assignment in contravention of this subsection shall be void.

7.6 Miscellaneous. This Agreement shall be governed by the

laws of the State of Florida (excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction). Further, the parties agree that any claim or cause of action under or relating to this Agreement shall be brought in the state or federal courts located in Leon County, Florida, and the parties agree to submit to the exclusive jurisdiction of, and waive any objection to venue in, such courts. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties regarding the subject matter stated herein, and supersedes all previous communications, representations, understandings, and agreements, either oral, electronic, or written. Any amendments to this Agreement shall only be valid if in writing and signed by an executive of both parties. Nothing contained in any purchase order or other document shall in any way modify this Agreement or add any additional terms or conditions. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, a valid provision that most closely matches the intent of the original shall be substituted and the remaining provisions of this Agreement shall be interpreted so as best to reasonably effect its original intent. No delay or omission by a party to exercise any right or power occurring upon any breach or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. This Agreement may be executed in two counterparts and facsimile signatures shall be binding.

IN WITNESS WHEREOF, the parties hereby enter into this Agreement as of the Effective Date.

**CUSTOMER: Florida Housing Finance Corporation**

**MUCK RACK, LLC:**

Signature:  \_\_\_\_\_

Signature:  \_\_\_\_\_

Name: Hugh R. Brown

Name: Matthew Darling

Title: General Counsel

Title: Sales Director

Date: 9-9-20

Date: 09 / 09 / 2020

## EXHIBIT A

<b>Number of Authorized Users</b>	4 <sup>1</sup>
<b>Fees</b>	<ul style="list-style-type: none"> <li>● Complimentary access to Muck Rack for up to 4 users from September 4th, 2020 through February 9th, 2021 (valued at \$7,500)</li> <li>● Access to Muck Rack for one year for up to 2 users for a one-time discounted price of \$9,000 (discounted from \$10,000 and to renew at \$10,000), plus any amounts for additional Authorized Users as set forth herein</li> <li>● Complimentary access to Muck Rack for 2 users from 2/10/21 through 2/9/2023 (valued at \$2,500 per user/year - \$10,000 total- and to renew at \$2,500 per user/year)</li> <li>● Each user account must be associated with an individual employee’s email and cannot be shared. Generic or shared emails cannot be used for accounts.</li> </ul>
<b>Initial Term</b>	2 years

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<sup>1</sup> Additional Authorized Users may be added by Customer upon written request at the rate of \$2,500 per additional Authorized User per year.  
Muck Rack, LLC

Muck Rack Point of Contact: Lauren Cavatara