

MASTER SUBSCRIPTION AGREEMENT

Version: January 2019

This Master Subscription Agreement (the “**MSA**”) is a legally binding agreement that governs your access to and use of our products and related services (collectively, the “**Subscription Services**”) identified on the order form (“**Order Form**”). This MSA is made and entered into by and between Boston Logic Technology Partners, Inc., d/b/a Propertybase (“**Propertybase**”), and its Affiliates (as defined in 1.3 below), including, without limitation Propertybase, Inc. and CERT Holdings, LLC d/b/a Backagent (where Propertybase and its Affiliates are collectively referred to herein as “**Company**”) and the person, business, or other entity agreeing to this MSA and the Order Form (“**Customer**”). “**Customer**” shall refer to the legal entity executing the Order Form, and its officers, directors, agents and employees; or an individual, only in the case of a non-legal entity. This MSA is effective as of the date Customer executes an Order Form (the “**Effective Date**”).

BY EXECUTING AN ORDER FORM, CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS MSA. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SUBSCRIPTION SERVICES OR EXECUTING AN ORDER FORM. IF YOU DO NOT AGREE OR DO NOT WISH TO BECOME A PARTY TO THIS MSA, DO NOT ACCESS OR USE THE SUBSCRIPTION SERVICES, AND DO NOT EXECUTE AN ORDER FORM. If Customer is entering into this MSA on behalf of a legal entity, Customer represents and warrants that: (i) it has full legal authority to bind such entity to the terms of this MSA; (ii) it has read and understand this MSA; and (iii) it agrees, on behalf of such legal entity, to this MSA.

Company may revise this MSA and all addendums hereto from time to time at its sole discretion. Any such changes will be published on Company’s website: <https://www.propertybase.com/legal-notice>. Customer’s continued use of the Subscription Services will be deemed acceptance of any such revisions. Any conflict between this MSA and any Order Form shall be resolved in favor of the Order Form. Any terms or conditions appearing on any purchase order or other order document that are different from, or in addition to, the terms of this MSA will not be binding on Company, even if payment is accepted. Customer agrees that purchases hereunder are not contingent on the delivery of any future functionality or features. Capitalized terms not defined herein shall have the meaning set forth in the Order Form, or in the Agreement (as defined in the Order Form).

1. **Subscription Services.**

1.1 Subscription Services. Subject to Customer’s compliance with the terms of the Agreement, and in consideration of the payment of fees set forth on the applicable Order Form, Company grants to Customer, solely during the applicable Order Term, a limited, non-transferable, non-sublicensable, non-exclusive right to access and use the specific Subscription Services set forth on the Order Form solely for Customer’s own internal business purposes. Customer is responsible for obtaining any equipment and Internet service necessary to access and use the Subscription Services. Customer acknowledges that certain additional terms apply to specific Subscription Services, as further specified on the Order Form. Customer will use the Subscription Services in accordance with the terms of the Agreement and all applicable laws and regulations.

1.2 Content. Subject to Customer’s compliance with the terms of the Agreement, and in consideration of the payment of fees set forth on the applicable Order Form, Company grants to Customer, solely during the applicable Order Term, a limited, non-transferable, non-sublicensable, non-exclusive right to access and use the Content made available by Company (or any third party) via the specific Subscription Services licensed by Customer, solely for Customer’s own internal business purposes. “**Content**” means the audio and visual information, documents, software, products and other materials contained or made available to Customer and its Users (as defined in Section 1.4 below) in the course of using the Subscription Services. Customer will use the Content in accordance with the terms of the Agreement and all applicable laws and regulations.

1.3 Affiliates and Franchisees. If expressly permitted on the applicable Order Form, Customer’s Affiliates (where “**Affiliate**” means any corporation, partnership or other entity in which a party owns the majority of shares and/or voting rights) and any franchisee who is bound by a valid franchisee agreement with Customer (“**Franchisee**”) are permitted to access and use the Subscription Services and Content during the applicable Order Term, in accordance with the terms of the Agreement, provided that: (i) Customer has purchased User (defined in 1.4 below) licenses for such Affiliates and Franchisees under the Order Form; (ii) such Franchisees and Affiliates are not competitors of Company or any of its affiliates; and (iii) Customer provides Company with the names of all Affiliates and Franchisees and the number of User licenses used by each at any time upon Company’s request. Customer is liable for any breach of the Agreement by any of its Affiliates or Franchisees. If an Affiliate or Franchisee no longer meets the definition of Affiliate or Franchisee as set forth herein, such Affiliate or Franchisee is no longer authorized to use the Subscription Services. Any license restrictions (User counts, etc.) set forth on an Order Form shall be deemed to apply to Customer and its Affiliates and Franchisees in the aggregate.

1.4 Users. Customer is solely responsible for ensuring that all Customer’s Affiliates, Franchisees, employees, and consultants (collectively, “**Users**”) comply with the terms of the Agreement and all applicable laws and regulations. Customer is fully liable for any breach of the Agreement by Customer’s Users. Customer is responsible providing such Users with unique User identifications and passwords (“**User Credentials**”), for keeping all such User Credentials secure and for all activities conducted under the User Credentials. Customer will take all commercially reasonable steps to protect the Subscription Services and the Documentation (as defined in Section 1.12) from unauthorized use and/or access. Customer shall immediately notify Company of any known or suspected unauthorized use of any User Credentials or any other known or suspected breach of security.

Users must be unique individuals, with one set of User Credentials assigned to a single User. Users must be human. No User may impersonate another individual or User, or otherwise provide fraudulent information to Company. Users may not share User Credentials to create a “concurrent” user license. Customer are expressly prohibited from circumventing any User license metrics by engaging in tactics such as sharing an account or creating a username “alias” for a group of individuals. A User license may be reassigned from time to time to a new User who is replacing a former User who has terminated employment or otherwise changed job status or function and no longer requires use of the Subscription Services. Customer will purchase the appropriate number of subscriptions needed for Users. Customer understands that it may not decrease the number of Users ordered under an Order Form during the Order Term.

1.5 Volume Limitations. Customer acknowledges that access and use of the Subscription Services is licensed to Customer for use up to the number of Users and/or other restrictions set forth on the applicable Order Form (the “**Volume Limitations**”). In the event that the Subscription Services are used in excess of the Volume Limitations set forth on the Order Form, Customer will pay Company the applicable fees associated with such Volume Limitations at Company’s then-current excess fee rates (the “**Excess Fee**”). Customer may also add licenses for additional Users or other offerings purchased by Customer by executing a new Order Form or amendment thereto.

- 1.6 Integrations; Third Party Products; MLS.** Company may maintain integrations for the Subscription Services with third party vendors. Any such integrations, if provided by Company under an Order Form, are considered Subscription Services. However, Customer acknowledges that use of any such integrations require a separate license and the payment of any applicable fees to a third party vendor for access to the software, services and/or data feed (“**Third Party Products**”) to which the integration connects. Certain Third Party Products may be available for optional download and use by Customer via the Subscription Services. Customer acknowledges that such Third Party Products not Subscription Services under this Agreement. Company is not responsible or liable for any Third Party Products, or errors that may arise in the Subscription Services as a result of any such Third Party Products or modifications thereto. Company reserves the right to add or delete any third party integration(s) at any time, without notice to Customer. Customer may request a current list of integrations at any time. Furthermore, the Company may provide access to and use of licensed property data provided by a third party multiple listing service (“**MLS**”), in order to facilitate Customer’s use of the Subscription Services to market and transact on internet data exchange (“**IDX**”) properties. Use of MLS data is subject to the payment of additional fees as set forth on the applicable Order Form. Customer acknowledges that it has no right or license to use any MLS data not expressly stated on the Order Form and unless all the required paperwork by the MLS has been completed and the MLS’s approval has been received by Company for Customer to use such MLS data. For the purpose of maintaining compliance with all MLSs, Customer agrees to notify Company immediately of any: (i) change or termination in membership status with an MLS whose MLS data Customer is currently using with Company; (ii) addition or subtraction of agents/brokers receiving Subscription Services from Company within Customer’s firm. Customer further acknowledges and agrees that use of the MLS data may be subject to additional terms and conditions from the third party providing such MLS data, and the update frequency and availability of MLS data (including, without limitation, sold listing data and open house information) is defined by such third party and any generally applicable MLS rules.
- 1.7 Advertising by Customer.** Certain Subscription Services may include the ability to offer advertising and/or promotions (“**Customer Advertisements**”). Customer may post Customer Advertisements only in the Advertising space allocated (if any). Customer is responsible for any costs associated with the creation, design and digital file of Customer Advertisements. No Customer Advertisement may compete with Company’s products, services or business. Company may suspend or terminate any Customer Advertisement if Company reasonably believes the Customer Advertisement violates Section 1.10 (Acceptable Use) below or is in any way harmful to Company’s business or Company’s customers. Customer grants to Company a perpetual, irrevocable, fully-paid up, royalty-free right and license to display Customer Advertisements within the Subscription Services. Customer further grants Company access to and use of associate directory and associate account information contained in such directory for direct or indirect support requests and to promote Customer Advertisements.
- 1.8 Advertising by Company.** Certain Subscription Services may include the ability for Customer to view advertising, incentives and/or promotions from Company (“**Company Advertisements**”). All such Company Advertising and any revenues generated therefrom will be controlled solely and exclusively by Company and shall the sole and exclusive property of Company and its licensors. Customer has the ability (through the Subscription Services) to “opt out” of certain Company Advertisements, including the ability to suppress or hide from view promotions, products or integration options shown to associates on a per product or service basis if such promotions, products, integration options conflict with Customer’s primary business or Customer’s existing advertising agreements.
- 1.9 Restrictions.** Unauthorized use, resale or commercial exploitation of the Subscription Services and Content in any way is expressly prohibited. Customer understands that any Subscription Services and Content supplied by Company is exclusively for use by Customer and its Users (on behalf of Customer). Customer and Customer’s Users shall not, and shall not permit any person or entity to: (i) sell, rent, assign, transfer, lease, distribute, resell or use the Subscription Services or Content on a service bureau, time sharing or any similar basis, or for the benefit of any other person or entity; (ii) alter, enhance, modify, or make derivative works of the Subscription Services or Content; (iii) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Subscription Services or any software component of the Subscription Services or access the Subscription Services or Content in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Subscription Services or Content; (iv) use, or allow the use of, the Subscription Services or Content for any unfair or deceptive practices or in violation of any applicable law, or regulation; (v) act in a fraudulent, tortious, malicious, or negligent manner when using the Subscription Services or Content; (vi) create Internet “links” to the Subscription Services or “frame” or “mirror” any Content on any other server or wireless or Internet-based device. Except as expressly permitted in the Agreement, Customer and Customer’s Users will not copy, license, sell, transfer, make available, lease, time-share, or distribute the Subscription Services or Content to any third-party. In addition to Company’s other remedies hereunder, Company reserves the right to suspend or terminate any User’s right to access the Subscription Services if such User has violated any restrictions contained in this Section 1.9.
- 1.10 Acceptable Use.** Customer and Customer’s Users will not use the Subscription Services to: (a) send, upload or otherwise transmit any data or content that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any data or content that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Services or networks connected to the Subscription Services; or (e) violate any applicable law or regulation. In addition to Company’s other remedies hereunder, Company reserves the right to suspend or terminate any User’s right to access the Subscription Services if such User has violated any restrictions contained in this Section 1.10.
- 1.11 Backups.** Company will back up the Subscription Services and the Customer Data (as defined in Section 5.1 below) from time to time in accordance with Company’s then current backup policies and procedures. In the event of any errors or corruptions to Client Data processed by the Subscription Services resulting solely from an error or defect in the Subscription Services (“**Data Errors**”), Company shall, as Customer’s sole and exclusive remedy for such Data Error, restore the affected Client Data from the most recent backup. This remedy is expressly contingent upon the following: (i) the Subscription Services have not been altered or changed in any way by anyone other than Company; (ii) the Subscription Services are being used by Company in strict conformance with this Agreement and the applicable Documentation; and (iii) the Subscription Services has not experienced interference from products, applications, integrations, data, or configurations provided by anyone other than Company.
- 1.12 Documentation.** Company will may Documentation available to Customer, where “**Documentation**” means the documentation for the Subscription Services generally supplied by Company to assist its customers in the use of the Subscription Services, including user and system administrator guides and manuals and other written materials.
- 2. Professional Services.**
- If set forth in the applicable Order Form, Company will provide installation, integration, configuration, consulting, training and/or other computer related professional services (“**Professional Services**”), pursuant to the terms of this MSA and the [Professional Services Addendum](#). For the avoidance of doubt, Professional Services are not Subscription Services.
- 3. Fees; Payment Terms.**

- 3.1 Fees.** Customer agrees to pay Company for Subscription Services and Professional Services provided and expenses incurred. Customer is responsible for all fees associated with use of the Subscription Services by its Users. The initial fees are specified in the applicable Order Form. Any additional charges are based on Company's then-current rates. Any additional Subscription Services added during the applicable Order Term will (i) run coterminous with the existing subscriptions, and (ii) be billed for the entire month in which they are added and pro-rated for the remainder of the then-current Order Term. Fees for Subscription Services are due and payable in advance for the committed Order Term. All fees are non-refundable and non-cancellable.
- 3.2 Modifications.** Company reserves the right to modify fees and applicable charges at any time, and to introduce new charges, provided that any such modifications shall only be applicable to (a) renewals, where Company will provide at least thirty (30) days notice of any such modifications, and (b) any new Order Forms or other license expansions. Furthermore, in the event of an increase in fees charged by any third party service provider, Company may proportionally increase the fees charged to Customer for such Subscription Services or Professional Services at any time upon reasonable notice to Customer.
- 3.3 Payment Terms.** Payment terms and frequency are set forth on the applicable Order Form. All payments are to be made in US Dollars. Customer agrees to pay a late charge of one percent (1.5%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts not subject to a good faith dispute and not paid when due. If Customer declines to pay any undisputed fees when due, Company may suspend Customer's access to the Subscription Services and/or Professional Services (a "Suspension"), provided that Company will provide Customer with five (5) business days notice of any Suspension, and no Suspension shall occur if payment is made within the five (5) business day period. Customer will continue to be charged all applicable fees during a Suspension.
- 3.4 Expenses.** In addition to paying the applicable fees, Customer shall also pay all reasonable travel and out-of-pocket expenses incurred by Company in connection with any Subscription Services and Professional Services rendered.
- 3.5 Taxes.** Fees are exclusive of taxes. Customer are responsible for the payment of all sales, use and similar taxes arising from or relating to the Subscription Services and Professional Services rendered hereunder, except for taxes related to Company's net income and any taxes or obligations imposed upon Company under federal, state and local laws.
- 3.6 Disputes.** If Customer has a good-faith dispute with respect to any fees, charges, or amounts and such dispute cannot be resolved promptly through discussions between the parties, Customer agrees to pay the amounts due under the Agreement less the disputed amount, and the parties shall diligently proceed to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Customer delivers a written statement to Company on or before the due date of such amount, describing in detail the basis of the dispute and the amount being withheld by Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Customer that are not in dispute have been paid in full as and when required under the Agreement.

4. Term and Termination.

- 4.1 Term and Termination.** The Agreement shall be in effect unless terminated by either party by pursuant to this Section 4.1. The initial Order Term ("**Initial Order Term**") for the Subscription Services is set forth in the applicable Order Form. Following the Initial Order Term, the Subscription Services will automatically renew for successive 12-month renewal periods, unless either party provides the other with ninety (90) days written notice of its intent not to renew (each a "**Renewal Order Term**," and together with the Initial Order Term, the "**Order Term**"). The term for any Professional Services shall be set forth in the applicable Order Form or the SOW (as defined in the Professional Services Addendum). Either party may terminate the Agreement or any Order Form or SOW (i) immediately in the event of a material breach of the Agreement or any Order Form or SOW by the other party that is not cured within thirty (30) days of written notice thereof, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Furthermore, in the event a Suspension lasts for longer than thirty (30) days, the applicable Order Form or SOW will automatically terminate. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Company or its affiliates directly or indirectly owning or controlling fifty percent (50%) or more of Customer's assets or equity shall entitle Company to terminate the Agreement for cause immediately upon written notice. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of the Agreement.
- 4.2 Effect of Termination.** Upon any termination or expiration of the Agreement or any applicable Order Form, Company shall no longer provide the applicable Subscription Services (including any websites using the Subscription Services) to Customer and Customer and its Users shall cease using the Subscription Services (including any websites using the Subscription Services). Upon any termination or expiration of the Agreement or any applicable Order Form or SOW for Professional Services Company shall no longer provide the applicable Professional Services or Deliverables (as defined in the Professional Services Addendum) to Customer and Customer and its Users shall cease using the Deliverables. Upon termination of the Agreement or any applicable Order Form or SOW, other than a termination by Customer as a result of any uncured breach by Company, Customer shall pay Company for any fees that had accrued prior to the termination date that are not yet paid and, as liquidated damages and not as a penalty, Customer shall continue to pay Company for all fees that would have continued to accrue through the end of the then-current term of the Order Form had it not been so terminated. Except as expressly provided herein, termination of the Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Upon any termination, Customer will no longer be able to use, access or modify Customer Data (defined in Section 5) or Advertisements through the Subscription Services, however, within five (5) days from the date of termination, Customer may make a written request for a copy of Customer Data. If such request is made, Company will provide a file in a generally accepted format within thirty (30) days of such request. Thereafter, Company will have no further obligation to store and/or make available Customer Data and may delete the same, pursuant to its then-current data deletion policies. Company shall not be liable to Customer nor to any third party for any termination of Customer access to the Subscription Services or deletion of Customer Data or Advertisements pursuant to this Section. Upon termination of the Agreement, each Party shall promptly return or destroy all Confidential Information of the other Party in its possession.

5. Intellectual Property Rights.

- 5.1 Ownership.** Company and/or its licensors retain exclusive ownership of the Content, Company Advertisements, Deliverables, Technology (defined below), and the Subscription Services (collectively, the "**Company IP**") including (a) all modifications, enhancements, derivatives of the Company IP (collectively, the "**Derivatives**"); and (b) any and all unpatented inventions, patents, patent applications, design rights, copyrights, trade secret rights, trademarks, service marks, trade names, domain name rights, mask work rights, moral rights, know-how and other proprietary and intellectual property rights embodied in the Company IP and Derivatives or associated therewith anywhere in the world; and all copies thereof. "**Technology**" means all information, content methodologies, data, ideas, concepts, materials, templates, know-how, techniques, documentation, software, algorithms, user interfaces, designs, and development tools that Company possesses prior to the commencement of the Subscription Services or which it develops independently of any activities governed by the Agreement, and any derivatives, modifications or enhancements made to any such property while performing the Subscription Services. Company may utilize any and all methods, computer software, know-how

or techniques related to programming and processing of data, developed by it while providing the Subscription Services and Professional Services and may incorporate the same in future releases of any of its Subscription Services and Professional Services. The Subscription Services are licensed, not sold. Except as expressly set forth in the Agreement, no license or other right in or to the Company IP and Derivatives are granted to Customer, by implication, estoppel, or otherwise, and all such licenses and rights are hereby reserved. The Company's name, logos and product names are trademarks of Company, and no right or license is granted to use them.

- 5.2 Suggestions.** If Customer provides any ideas, proposals, feedback, improvements or other suggestions (collectively, "**Suggestions**") to Company for improvements to the Subscription Services or Professional Services, Customer hereby grants to Company a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license that is sub-licensable and transferable to such Suggestions and all intellectual property rights therein to fully exploit and distribute the Suggestions in connection with the Subscription Services and Professional Services.
- 6. Customer Data.**
- 6.1 Customer Data.** "**Customer Data**" means any data, information or material provided or submitted by Customer or its Users to the Subscription Services. Customer retains all rights to and ownership of Customer Data. Customer represents and warrants that it has the right to provide Customer Data to Company and to use Customer Data with the Subscription Services. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of Customer Data. Company is not responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data caused by Customer or its Users. Customer represents and warrants that Customer Data was obtained in compliance with all applicable laws (including all data privacy laws) and that Customer has obtained all appropriate consents for any Customer Data.
- 6.2 Use.** During the Order Term, Customer grants to Company a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 12.2), royalty-free right to use, display, and process Customer Data solely as necessary to provide the Subscription Services and the Professional Services to Customer and to help operate, support, secure and improve the Subscription Services and the Professional Services, and to develop new services or functionality. For instance, this may include identifying and fixing problems in the Subscription Services and the Professional Services, enhancing the Subscription Services and the Professional Services to better protect against attacks and abuse, and making suggestions aimed at improving performance or reducing cost.
- 6.3 Aggregated Data.** Customer acknowledges and agrees that Company has the right to use any information, analysis, statistics and other data generated by the Subscription Services (or derived from Customer's use of the Subscription Services) to compile generalized, aggregated statistics about the Subscription Services and how Company's customers use the Subscription Services ("**Aggregated Data**") for its own internal purposes and for marketing purposes; provided that Company will not publicly disclose data that is not in an aggregated form or that would permit a third party to identify the data is associated with Customer or any Users. Aggregated Data may be used by Company in perpetuity.
- 6.4 Applicable Laws.** Customer shall comply with all applicable laws, rules and regulations in its use of the Subscription Services, including without limitation the federal "CANSPAM ACT OF 2003"(<http://www.ftc.gov/spam>) and any additional Anti-Spam laws of their respective countries. All emails built and/or sent by or on behalf of Customer using the Subscription Services must use a built-in unsubscribe link. Customer agrees that if at any time any person chooses to no longer receive an electronic communication from Customer it will immediately remove such person from the distribution list of any and all future communications and that Customer will keep them removed from the distribution list until such person chooses to receive the communications again. Customer agrees to indemnify and hold harmless Company and its owners, officers, employees, representatives, agents, licensors, successors and assigns from and against any and all claims, damages, charges, costs, expenses, causes of action, liabilities and other obligations resulting from Customer's failure to so comply.
- 6.5 Email Standards.** Customer shall send emails on an "Opt-In" basis only; no email sends shall be made unless they are "Opt-In" and are in compliance with all applicable laws. Company strongly urges Customer to send to double Opt-In lists only. In no event shall any Subscription Services be used to send SPAM. As used herein, "Spam" shall mean (a) unsolicited commercial email sent to a recipient who has not provided his/her/its email address directly to the sender or sent to a recipient who would not have a reasonable expectation of receiving email from the sender, or (b) any email advertising illicit or illegal activities, or (c) any electronic message sent to email addresses provided by a third party. Customer agrees that its data and lists loaded into the Subscription Services will not be used to send Spam, or otherwise constitute Spam. Customer accepts any and all liability for, and agrees to indemnify and hold harmless Company and its owners, officers, employees, representatives, agents, licensors, successors and assigns from and against, any and all costs, expenses, liabilities, damages and other obligations in connection with any and all complaints, fines, cleaning of IP addresses and/or other services required as a result of supplying Company with addresses and/or sending electronic mail that do not comply with the foregoing.
- 6.6 Advertising Standards.** Customer will follow the Notice and Choice Provisions of the NAI Principles found at www.networkadvertising.org and will publish and comply with a legally sufficient privacy policy that fulfills the requirements of the DAA Self-Governing Principles found at www.aboutads.info. Company reserves the right to the AdChoice icon (or a similar icon) on the ads provided by Customer that do not already include such icon and pass through any associated fees and expenses.
- 7. Confidentiality.**
- 7.1 Confidential Information.** During the term of the Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential ("**Confidential Information**"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. Company's Confidential Information includes Company IP and Derivatives and all pricing. Customer's Confidential Information includes Customer Data. The receiving party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "**Representatives**") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party's Confidential Information than the Agreement. The receiving party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for purposes other than as set forth in the Agreement. Each party accepts responsibility for the actions of its Representatives and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care. Customer agrees that it (and its Users) shall not use the Company IP and Derivatives for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Subscription Services and will not publicly post any analysis or reviews of the Company IP and Derivatives without Company's prior written approval in each instance.
- 7.2 Exclusions.** Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of the Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements

of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

8. Warranty, Disclaimer.

8.1 Limited Warranty. Company warrants that, during the applicable Order Term, the Subscription Services will perform substantially in accordance with the Documentation provided by Company to Customer. For any breach of this warranty, Company will, at no additional cost to Customer, provide remedial services necessary to enable the Subscription Services to conform to the warranty. Customer will provide Company with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedy set out in this section is Customer's sole remedy for breach of this warranty. This warranty shall only apply if the Subscription Services have been utilized by Customer in accordance with the Agreement.

8.2 DISCLAIMERS. COMPANY DOES NOT REPRESENT THAT IT WILL BE ABLE TO CORRECT ALL DEFECTS, THAT THE COMPANY IP WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE COMPANY IP WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE COMPANY IP WILL BE CORRECTED. THE WARRANTY STATED IN THIS SECTION 8 AND THE WARRANTY SET FORTH IN THE PROFESSIONAL SERVICES ADDENDUM (IF APPLICABLE) ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY COMPANY FOR THE COMPANY IP. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY HEREBY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, AND THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Indemnification.

9.1 Indemnification By Company. Company will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the use of the Subscription Services in accordance with the Agreement and the applicable Order Form infringes or misappropriates such third party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer; provided that Customer complies with the indemnification procedures set forth in Section 9.3. Excluded from the above indemnification obligations are claims to the extent arising from: (a) use of the Subscription Services in violation of the Agreement or applicable law, (b) any claim relating to Customer Data, Customer Advertisements, Third Party Products, or Third Party Activities (defined in Section 10), (c) any claims relating to a third party application; (d) modifications to the Subscription Services made other than by Company or its subcontractors (where the claim would not have arisen but for such modification), or (e) the combination, operation, or use of the Subscription Services with software or equipment which was not provided by Company, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use. If the Subscription Services are held to infringe, or if Company receives information about an infringement or misappropriation claim related to a Subscription Services, Company may in its discretion and at no cost to Customer (i) modify the Subscription Services so that the Subscription Services no longer infringe or misappropriate, (ii) obtain a license for Customer's continued use of the Subscription Services in accordance with the Agreement, or (iii) terminate Customer's subscriptions for the Subscription Services and refund to Customer any prepaid unused fees covering the remainder of the Order Term for the applicable Subscription Services. This Section 9.1 states Customer's sole and exclusive remedy, and Company's only liability, for any Claim Against Customer.

9.2 Indemnification By Customer. Customer will defend Company against any claim, demand, suit or proceeding made or brought against Company by a third party alleging that Customer Data, Customer Advertisements, or Customer's use of Company IP in breach of the Agreement, infringes or misappropriates a third party's intellectual property rights or violates applicable law (a "**Claim Against Company**"), and will indemnify Company from any damages, attorney fees and costs finally awarded against Company as a result of, or for any amounts paid by Company under a court-approved settlement of, a Claim Against Company.

9.3 Indemnification Procedure. The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed) unless it unconditionally releases the indemnified Party of all liability. The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost). No indemnified party shall enter into any settlement agreement for which it will seek indemnification under the Agreement from the indemnifying party without the prior written consent of the indemnifying party. Nothing herein shall restrict the right of a party to participate in a claim, action or proceeding through its own counsel and at its own expense.

10. Limitation of Liability.

EXCEPT AS MAY ARISE OUT OF EITHER PARTY'S WILLFUL MISCONDUCT OR CUSTOMER'S BREACH OF SECTIONS 1 OR 5, NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING LOSS OF REVENUE, PROFITS AND COSTS, LOSS OF DATA, LOSS OF USE, AND LOSS OF ECONOMIC ADVANTAGE) IN CONNECTION WITH THE PERFORMANCE OF THE COMPANY IP OR DERIVATIVES (INCLUDING INABILITY TO USE THE SUBSCRIPTION SERVICES, OR FOR ANY CONTENT OBTAINED VIA THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION IN THE CONTENT, REGARDLESS OF CAUSE), OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF COMPANY TO CUSTOMER FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO COMPANY UNDER THE APPLICABLE ORDER FORM OR SOW FOR THE SUBSCRIPTION SERVICES AND/OR PROFESSIONAL SERVICES WHICH FORM THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

11. Third Party Activities

Certain Subscription Services may include the ability for Customer to view advertising, incentives and/or promotions from third parties, including, without limitation, other Company customers ("**Third Party Advertisements**"). Customer has the ability (through the Subscription Services) to "opt out" of certain Third Party Advertisements, including the ability to suppress or hide from view promotions, products or integration options shown to associates on a per product or service basis if such promotions, products, integration options conflict with Customer's primary business or Customer's existing advertising agreements. Furthermore, Customer may enter into correspondence and other activities with third parties ("**Third Party Communications**"). Third Party Products, Third Party Advertisements and Third Party Communications shall collectively be referred to herein as "**Third Party Activities**". Any Third Party Activities are solely between Customer and its Users and any such third parties. Company provides Third Party Activities only as a matter of convenience, and in no event shall Company have warranty or indemnity obligations or any liability, whether in contract, tort, warranty or

otherwise, for any claims, demands, damages, liabilities, losses and expenses (collectively, the "Losses") resulting directly or indirectly from Customer's use of or interaction with any Third Party Materials. Company does not endorse any Third Party Activities, and in no event shall Company or its licensors be responsible for any content, products, or other materials on or available from any such third parties.

12. Miscellaneous.

12.1 *Publicity.* Company may include Customer's name and logo in a list of Company's customers, online or in promotional, sales or advertising materials. Company may also verbally reference Customer as a customer of Company.

12.2 *Assignment.* The Agreement shall be binding upon and for the benefit of Company, Customer and their permitted successors and assigns. The Agreement may not be assigned by Customer without the prior written approval of Company. Company may assign the Agreement to an affiliate or as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except as expressly stated in the Agreement, neither party may otherwise assign its rights or delegate its duties under the Agreement either in whole or in part without the prior written consent of the other party, and any attempted assignment or delegation without such consent will be void. Company may use independent contractors or subcontractors to assist in the delivery of Subscription Services; provided, however, that Company shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation.

12.3 *Governing Law.* The Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its principles of conflicts of law where such principles would permit the application of the law of any other jurisdiction.

12.4 *Disputes.* Any disputes between the Parties arising out of the Agreement shall be resolved as follows: members of the senior management of both parties shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within thirty (30) days, either party may make a written demand for mediation. Within thirty (30) days after such written notification, the parties shall meet for one day with an impartial mediator. The costs and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, the dispute shall be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, by a single arbitrator, in Boston, Massachusetts. The arbitrator shall be selected as provided in the Streamlined Arbitration Rules and Procedure. Unless provided otherwise herein, the arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator shall have no power to award damages inconsistent with the Agreement. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. The result of the arbitration shall bind the parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction. Each Party shall bear its own costs of the arbitration. The fees and expenses of the arbitrator shall be shared equally by the parties. The parties agree that a party need not invoke the procedures set forth in this Section 12.4 in order to seek injunctive relief.

12.5 *Relationship of the Parties.* Company and Customer are independent contractors, and nothing in the Agreement shall be construed as making them partners or creating the relationships of employer and employee, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

12.6 *Force Majeure.* Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

12.7 *Modifications.* Company may make modifications to the Company IP time to time provided that such modifications do not materially degrade any functionality or features of the Company IP.

12.8 *Notices.* Any notice, approval, request, authorization, direction or other communication under the Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth on the applicable Order Form. Either party may change its address by giving written notice of such change to the other party.

12.9 *Third Party Beneficiaries.* Nothing contained in the Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person, except as set forth in the Propertybase Addendum.

12.10 *Export Restrictions.* Customer acknowledges that the Company IP is subject to United States export control laws. Customer shall comply with all applicable export laws, obtain all applicable export licenses and will not export or re-export any part of the Company IP to any country in violation of such restrictions or any country that may be subject to an embargo by the United States.

12.11 *Waiver and Severability.* Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under the Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of the Agreement will not affect the validity or enforceability of any of the other provisions hereof, and the Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

12.12 *Equitable Relief.* Notwithstanding any other provision of the Agreement, both parties acknowledge that breach of the other party's Intellectual Property Rights, or any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of the Agreement may cause the non-breaching party irreparable and immediate damage for which remedies other than equitable or injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the non-breaching party may be entitled hereunder, at law or equity, the non-breaching party shall be entitled to seek an injunction or injunctions to restrain such use in addition to other appropriate remedies available under applicable law.

12.13 *Entire Agreement.* The Agreement, this MSA, all linked documents referenced herein and all Order Forms, applicable Addendums, and the Privacy Policy contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. The Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no

presumption or inference against the party drafting the Agreement in construing or interpreting the provisions hereof. The headings and captions used in the Agreement are used for convenience only and are not to be considered in construing or interpreting the Agreement.