

MERCHANT ADWORDS

TERMS OF SERVICE

Last Updated – October 16, 2018

THE FOLLOWING SERVICE TERMS OF SERVICE (THESE “**TOS**”) SHALL BE DEEMED INCORPORATED BY REFERENCE INTO EACH ORDER (AS DEFINED BELOW) BETWEEN MERCHANT ADWORDS LLC, A MINNESOTA LIMITED LIABILITY COMPANY (“**MERCHANT ADWORDS**”) AND THE LICENSEE IDENTIFIED THEREIN (“**LICENSEE**”).

YOUR RIGHT TO ACCESS AND USE THE SERVICE (AS DEFINED BELOW), WHETHER OR NOT AN ORDER HAS BEEN EXECUTED BETWEEN MERCHANT ADWORDS AND YOU (OR AN ENTITY THAT YOU REPRESENT), IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THESE TOS. BY ACCESSING OR USING THE SERVICE, YOU AGREE TO BE BOUND AND ABIDE BY THESE TOS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY, ITS AFFILIATES AND ALL USERS (AS DEFINED BELOW) WHO ACCESS THE SERVICE ON BEHALF OF SUCH COMPANY OR ENTITY TO THESE TOS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY, ITS AFFILIATES AND USERS ASSOCIATED WITH SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TOS, YOU MAY NOT USE THE SERVICES.

1. Acceptance of Terms. Merchant AdWords provides its services to you through multiple web sites, including the sites located at <https://merchantwords.com> and <http://ppcxglobal.com> and <https://ppcxglobal.com> and <http://merchantadwords.com> and <https://merchantadwords.com> and any additional web site affiliated with

Merchant AdWords or MerchantWords (the “**Site**”), or any Merchant AdWords and MerchantWords Application Programming Interfaces (“**APIs**”) pursuant to these TOS. The “**Service**” includes (a) the Site, (b) Merchant AdWords’s online commerce advertising optimization and management services platform and related technologies, and (c) all software (including the Software, as defined below), data, documentation, reports, text, images, sounds, video, and content made available through any of the foregoing (collectively referred to as the “**Content**”). By entering into a Service order form, or other ordering document, web-based or email-based ordering mechanism or registration process (each an “**Order**”) or otherwise downloading, accessing or using the Service, Licensee unconditionally accepts and agrees to all of the terms of these TOS. Licensee represents that it has the authority to bind itself and its affiliates to the terms of these TOS, and, accordingly, the term “Licensee” shall refer to such entity. If Licensee is an individual using the Service, the terms “Licensee” and “User” shall each apply to such individual using the Service for the purposes of these TOS. Capitalized terms not defined herein shall be given the meaning set forth in the applicable Order. These TOS shall apply to all use by Licensee and Users (as defined below) of the Service. “**User**” means an individual who is authorized by Licensee to use the Service, for whom Licensee (or MERCHANT ADWORDS at Licensee’s request) has supplied a user identification and password either manually or using a Non-MERCHANT ADWORDS Application (as defined below) (e.g., oAuth). Users may include, for example, Licensee’s employees, consultants, contractors and agents, and third parties that Licensee transacts business on behalf of Licensee. MERCHANT ADWORDS may change these TOS from time to time by providing Licensee and Users at least thirty (30) days notice either by emailing the email address associated with Licensee’s or User’s account or by posting a notice on the Service. The revised TOS shall become effective thirty (30) days after MERCHANT ADWORDS posts the updated TOS on the Service or e-mail’s Licensee and/or Users notice of a change to these TOS. If any change to these TOS is not acceptable to a Licensee or a User, such User shall stop using the Service or, in the case of Licensee, shall

send a cancellation e-mail to support@MerchantWords.com and admaster@merchantadwords.com .

2. Evaluations. From time to time, Licensee may be invited to try certain products at no charge for a free trial or evaluation period or if such products are not generally available to licensees (collectively, “**Evaluation Services**”). Evaluation Services shall be designated or identified as beta, pilot, evaluation, trial or the like. Notwithstanding anything to the contrary, Evaluation Services are licensed for Licensee’s internal evaluation purposes only (and not for production use), are provided “as is” without warranty or indemnity of any kind, and may be subject to additional terms. Notwithstanding the foregoing, MERCHANT ADWORDS may discontinue Evaluation Services at any time at its sole discretion and may never make any Evaluation Service generally available. MERCHANT ADWORDS shall have no liability for any harm or damage arising out of or in connection with any Evaluation Service.

3. License and Restrictions; Licensee and User Obligations with Regard to Use of the Service.

- a. License. Any software that may be made available by MERCHANT ADWORDS in connection with the Service (“**Software**”) contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Subject to all the terms of these TOS and payment of all fees described in an Order, during the Term (as defined below) MERCHANT ADWORDS grants Licensee and each User a non-sublicensable, non-exclusive, non-transferable license to use the object code of any Software and Content solely in connection with the Service and any terms and procedures MERCHANT ADWORDS may prescribe from time to time.
- b. Restrictions. Subject to these TOS, Licensee and Users may access and use the Service and Content only for lawful purposes. All rights, title and interest in and to the Service and its components, Content and all related intellectual property rights shall remain with and belong exclusively to MERCHANT ADWORDS. Licensee shall maintain the

copyright notice and any other notices that appear on the Service on any copies and any media. Neither Licensee nor any User shall (or allow any third party to) (i) modify, reverse engineer or attempt to hack or otherwise discover any source code or underlying ideas or algorithms of the Service (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) sell, resell, license, sublicense, provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Service or Content for the benefit of any third party, (iii) use the Service or Content, or allow the transfer, transmission, export, or re-export of the Service or Content or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency, (iv) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights, (v) use the Service to store or transmit Malicious Code (as defined below), (vi) interfere with or disrupt the integrity or performance of the Service or its components, (vii) attempt to gain unauthorized access to the Service or its related systems or networks, (viii) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (ix) copy the Service or any part, feature, function or user interface thereof, access the Service in order to build a competitive product or service or (x) use the Service for any purpose other than as expressly licensed herein. **“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

- c. Licensee Obligations with Regard to Use of the Service. Any User of the Service must be thirteen (13) years old or older to use the Service. Licensee shall (i) be responsible for Users’ compliance with these TOS, (ii) be responsible for the quality and legality of Licensee Content (as defined below) and the means by which Licensee acquired Licensee Content, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify MERCHANT ADWORDS promptly of any such unauthorized access or use, (iv) use

the Service only in accordance with the MERCHANT ADWORDS' Service documentation and applicable laws and government regulations, (v) comply with terms of service of Non-MERCHANT ADWORDS Applications (as defined below) with which Licensee uses the Service. Licensee and Users are responsible for maintaining the security of User's accounts and passwords. MERCHANT ADWORDS cannot and shall not be liable for any loss or damage from Licensee's or any User's failure to comply with this security obligation. Licensee and Users may not access the Service, if they are MERCHANT ADWORDS' direct competitor, except with MERCHANT ADWORDS's prior written consent. In addition, Licensee and Users may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. "**Licensee Content**" means all data, software, information, text, audio files, graphic files, content and other materials that you upload, post, deliver, provide or otherwise transmit or store (hereafter "**post(ing)**") in connection with or relating to the Service submitted by or for Licensee to the Service or collected and processed by or for Licensee using the Service, excluding Content and Non-MERCHANT ADWORDS Applications. "**Non-MERCHANT ADWORDS Applications**" means a web-based or offline software application that is provided by Licensee or a third party and interoperates with the Service.

- d. Enforcement. Licensee shall ensure that all Users comply with the terms and conditions of these TOS, including, without limitation, with Licensee's obligations set forth in Sections 3(b) and 3(c). Licensee shall promptly notify MERCHANT ADWORDS in writing of any suspected or alleged violation of these TOS and shall cooperate with MERCHANT ADWORDS with respect to: (i) investigation by MERCHANT ADWORDS of any suspected or alleged violation of these TOS and (ii) any action by MERCHANT ADWORDS to enforce these TOS. MERCHANT ADWORDS may, in its sole discretion, suspend or terminate any User's access to the Service with or without written notice (including, but not limited to e-mail) to Licensee in the event that MERCHANT ADWORDS reasonably determines that a User has

violated these TOS. Licensee shall be liable for any violation of these TOS by any User.

4. Provision of the Service; Support; APIs.

- a. As part of the registration process, each User shall generate a user name and password for its MERCHANT ADWORDS account (“**Account**”) either manually or through a Non-MERCHANT ADWORDS Application (e.g., OAuth). Each User is responsible for maintaining the confidentiality of their login, password and Account and for all activities that occur under any such logins or the Account. MERCHANT ADWORDS reserves the right to access Licensee’s and any User’s Account in order to respond to Licensee’s and Users’ requests for technical support. MERCHANT ADWORDS has the right, but not the obligation, to monitor the Service, Content, or Licensee Content. Licensee further agrees that MERCHANT ADWORDS may remove or disable any Content at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content), or for no reason at all.
- b. MERCHANT ADWORDS shall (a) make the Service available to Licensee and its Users pursuant to these TOS and the applicable Order, (b) provide community-based support via MERCHANT ADWORDS’s support site located at <https://www.MERCHANT ADWORDS.com> (or a successor URL) for the Service to Licensee and Users at no additional charge, and/or upgraded support if purchased pursuant to an Order, and (c) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which MERCHANT ADWORDS shall give at least eight (8) hours electronic notice and which MERCHANT ADWORDS shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Pacific time), and (ii) any unavailability caused by circumstances beyond MERCHANT ADWORDS’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or

other labor problem (other than one involving MERCHANT ADWORDS's employees), Internet service provider failure or delay, Non-MERCHANT ADWORDS Application, or denial of service attack.

- c. Licensee understands that the operation of the Service, including Licensee Content, may be unencrypted and involve (i) transmissions over various networks; (ii) changes to conform and adapt to technical requirements of connecting networks or devices and (iii) transmission to MERCHANT ADWORDS's third-party vendors and hosting partners solely to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Service. Accordingly, Licensee acknowledges that Licensee bears sole responsibility for adequate backup of Licensee Content. MERCHANT ADWORDS shall have no liability to Licensee for any unauthorized access or use of any of Licensee Content, or any corruption, deletion, destruction or loss of any of Licensee Content.
- d. Licensee and its Users may enable or log in to the Service via various Non-MERCHANT ADWORDS Applications, such as GitHub. By logging in or directly integrating these Non-MERCHANT ADWORDS Applications into the Service, MERCHANT ADWORDS make Users' online experiences richer and more personalized. To take advantage of this feature and capabilities, MERCHANT ADWORDS may ask Users to authenticate, register for or log into Non-MERCHANT ADWORDS Applications on the websites of their respective providers. As part of such integration, the Non-MERCHANT ADWORDS Applications shall provide MERCHANT ADWORDS with access to certain information that Users have provided to such Non-MERCHANT ADWORDS Applications, and MERCHANT ADWORDS shall use, store and disclose such information in accordance with MERCHANT ADWORDS's Privacy Policy located at <https://MERCHANT ADWORDS.com/privacy>. The manner in which Non-MERCHANT ADWORDS Applications use, store and disclose Licensee and User information is governed solely by the policies of the third parties operating the Non-MERCHANT ADWORDS Applications, and MERCHANT ADWORDS shall have no liability or responsibility for the privacy practices or other actions of any third party

site or service that may be enabled within the Service. In addition, MERCHANT ADWORDS is not responsible for the accuracy, availability or reliability of any information, content, goods, data, opinions, advice or statements made available in connection with Non-MERCHANT ADWORDS Applications. As such, MERCHANT ADWORDS shall not be liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Non-MERCHANT ADWORDS Applications. MERCHANT ADWORDS enables these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation.

- e. Licensee shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, “**Equipment**”). Licensee shall be responsible for ensuring that such Equipment is compatible with the Service (and, to the extent applicable, the Software) and complies with all configurations and specifications set forth in MERCHANT ADWORDS’s published policies then in effect. Licensee shall also be responsible for maintaining the security of the Equipment, Licensee’s Account, all passwords (including but not limited to administrative and User passwords) and files, and for all uses of Licensee Account or the Equipment with or without Licensee’s knowledge or consent.
- f. In the event that Licensee shall desire to use any MERCHANT ADWORDS APIs, Licensee’s use of any Merchant AdWords MerchantWord’s APIs shall be governed by the MERCHANT ADWORDS API License & Terms of Use located at <https://www.MERCHANTWORDS.com/terms-conditions-api>.
- g. Licensee shall be solely responsible for the use of the MERCHANT ADWORDS services on its web sites or other in any other applications.

5. Fees and Payment.

a. Licensee shall pay MERCHANT ADWORDS the fees set forth in an Order in accordance with the terms set forth therein; provided that MERCHANT ADWORDS may change any applicable fees upon thirty (30) days' notice at any time and such new fees shall become effective for any subsequent renewal Term. All payments shall be made in U.S. dollars. Any payments more than thirty (30) days overdue shall bear a late payment fee of one and one-half percent (1.5%) per month, or, if lower, the maximum rate allowed by law. In addition, Licensee shall, except for tax on MERCHANT ADWORDS's property or net income, if any, imposed by taxation authorities on amounts payable to MERCHANT ADWORDS hereunder, pay all national, federal, state, local or other taxes and assessments of any jurisdiction, including but not limited to sales or use taxes, value-added taxes, duties, customs or other import or export taxes or duties, other governmental assessments, and amounts levied in lieu thereof based on charges set, services performed or payments made hereunder, as are now or hereafter may be imposed under the authority of any national, federal, state, local or other taxing jurisdiction., as well as all pre-approved out of pocket expenses incurred by MERCHANT ADWORDS in connection with any consulting and/or support services, promptly upon invoice. If Licensee is paying any fees by credit card, Licensee shall provide MERCHANT ADWORDS complete and accurate information regarding the applicable credit card. Licensee represents and warrants that all such information is correct and that Licensee is authorized to use such credit card. Licensee shall promptly update its account information with any changes (for example, a change in billing address or credit card expiration date) that may occur. Licensee hereby authorizes MERCHANT ADWORDS to bill such credit card in advance on a periodic basis in accordance with the terms of these TOS and each Order, and Licensee further agrees to pay any charges so incurred. Licensee shall maintain, and MERCHANT ADWORDS shall be entitled to audit, any records relevant to Licensee's use of the Service hereunder. MERCHANT ADWORDS may audit such records on

reasonable notice at MERCHANT ADWORDS's cost (or if the audits reveal material non-compliance with these TOS, at Licensee's cost).

- b. For any upgrade in a subscription level for a month-to-month service plan, MERCHANT ADWORDS shall automatically charge Licensee the new subscription fee, effective as of the date the service upgrade is requested and for each subsequent one-month recurring cycle pursuant to the billing method applicable to Licensee. If MERCHANT ADWORDS is providing Licensee the Service pursuant to a yearly service plan, MERCHANT ADWORDS shall immediately charge Licensee any increase in subscription level plan cost pursuant to the billing method applicable to Licensee, prorated for the remaining Term of Licensee's yearly billing cycle; provided, however, any decrease in a subscription level plan cost shall only take effect upon the renewal date of the then current yearly service plan. Licensee's downgrading its subscription level may cause the loss of features or capacity of Licensee's Account. MERCHANT ADWORDS does not accept any liability for such loss.
- c. If any amount owing by Licensee under these TOS for the Service is thirty (30) or more days overdue (or ten (10) or more days overdue in the case of amounts Licensee has authorized MERCHANT ADWORDS to charge to Licensee's credit card), MERCHANT ADWORDS may, in its sole discretion and without limiting its other rights and remedies, suspend Licensee's and any User's access to the Service and/or otherwise limit the functionality of the Service until such amounts are paid in full.
- d. Licensee agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by MERCHANT ADWORDS regarding future functionality or features.
- e. No Returns, Credits or Refunds. LICENSEE UNDERSTANDS AND AGREES THAT PAYMENTS ARE NONREFUNDABLE. MERCHANT ADWORDS IS NOT OBLIGATED, AND LICENSEE IS NOT ENTITLED AND HEREBY WAIVES ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT OR ANY OTHER DISCOUNT, COMPENSATION OR RECOMPENSE FOR ANY PARTIALLY USED OR UNUSED

SERVICE (E.G., SUBSCRIPTION SERVICES NOT USED). Refunds are only issued if required by law. Notwithstanding the foregoing, although not required or obligated, MERCHANT ADWORDS reserves the right to evaluate or elect to provide credits, refunds, price adjustments or other discounts, compensation or recompense, from time to time, and at any time, in MERCHANT ADWORDS's sole and absolute discretion; provided that any such elections to offer any such credits, refund, price adjustment or other discount, compensation or recompense in one instance does not entitle Licensee to the same or any such benefit in the future for similar or unrelated instances, nor does it create any obligation whatsoever for MERCHANT ADWORDS to offer such benefit to Licensee or any other user in connection with any past, present, or future request under any circumstance whatsoever.

- f. The Licensee agrees to pay a 2% commission on the total sales generated from any advertising activities, the licensee agrees to pay Merchant AdWords on a monthly or otherwise stated period of time for the full amount, the licensee grants Merchant AdWords the right to charge, pre authorize any charges and collect payment in any means necessary to receive the service fee and commissions. The commission may vary from the one stated above, and the Merchant AdWords company must agree in writing, via email or document, to those differences.
- g. Merchant AdWords has the right to modify any of the customers service provided data or advertising efforts during service, during trial, and at any point if deemed necessary to ensure compensation or to formalize a commitment and ongoing service arrangement.
- h. If the customer has trial at a discount or at no cost "free" it will last for the duration laid out, and the customer connects their seller account to begin the trial, these TOS apply for the entire trial.

6. Term; Expiration and Termination. These TOS shall continue in effect for the term and any renewal term as specified in an Order (collectively, the "Term"). If either party materially breaches these TOS, the other party shall have the right to terminate the applicable Order and in the case where no

Order exists, these TOS (and, in each case, all licenses granted herein) upon thirty (30) days (ten (10) days in the case of non-payment and immediately in the case of a breach of Sections 3(b)) written notice of any such breach, unless such breach is cured during such notice period. In the case of a free trial or MERCHANT ADWORDS otherwise providing the Service at no cost to a Licensee, MERCHANT ADWORDS shall have, upon Licensee or any Users failing to use the Service for more than six (6) consecutive months, the right, in its sole discretion, to terminate all User Accounts of Licensee and terminate Licensee's and all Licensee's Users' access to and use of the Service without notice. Upon expiration or termination of an Order or these TOS, Licensee shall immediately be unable access and use the Service, all Licensee Content may be deleted from the Service at MERCHANT ADWORDS's sole discretion (such information cannot be recovered once Licensee's Account or any User Account is terminated) and Licensee shall return or destroy all copies of all Content and all portions thereof in Licensee's possession and so certify to MERCHANT ADWORDS, if such certification is requested by MERCHANT ADWORDS. Sections 3(b) and 5 through 14 of these TOS, shall survive termination or expiration of these TOS. Termination is not an exclusive remedy and all other remedies shall be available whether or not termination occurs.

7. Indemnification. Licensee and each User shall defend, indemnify and hold harmless MERCHANT ADWORDS from all damages, settlements, attorneys' fees and expenses related to any third-party claim, suite or demand (i) arising from Licensee or any User's use of the Service or Content in breach of these TOS or in violation of applicable law, or (ii) alleging that the Licensee Content infringes or misappropriates such third party's intellectual property rights or violates applicable law; provided Licensee is promptly notified of any and all threats, suits, claims and proceedings related thereto and given reasonable assistance by MERCHANT ADWORDS (at Licensee's cost). MERCHANT ADWORDS reserves the right to assume the exclusive defense and control of any matter that is subject to indemnification under this Section 7. In such case, Licensee and Users agree to cooperate with any reasonable requests in assisting MERCHANT ADWORDS's defense of such matter.

8. DISCLAIMER OF WARRANTIES. THE SERVICE MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED MAINTENANCE OR FOR UNSCHEDULED EMERGENCY MAINTENANCE, EITHER BY MERCHANT ADWORDS OR BY THIRD-PARTY PROVIDERS, OR BECAUSE OF OTHER CAUSES BEYOND MERCHANT ADWORDS'S REASONABLE CONTROL, BUT MERCHANT ADWORDS SHALL USE REASONABLE EFFORTS TO PROVIDE ADVANCE NOTICE IN WRITING OR BY EMAIL OF ANY SCHEDULED SERVICE DISRUPTION. HOWEVER, THE SERVICE, INCLUDING THE SITE AND CONTENT, AND ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND MERCHANT ADWORDS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. LICENSEE AND USERS ACKNOWLEDGE THAT MERCHANT ADWORDS DOES NOT WARRANT THAT THE SERVICE SHALL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DOES MERCHANT ADWORDS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY LICENSEE OR USERS FROM MERCHANT ADWORDS OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TOS.

9. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL MERCHANT ADWORDS BE LIABLE TO LICENSEE, ANY USER OR ANY THIRD-PARTY FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES. INCLUDING LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA, GOODWILL, OR OTHER INTANGIBLE LOSSES OR (B) FOR ANY DIRECT DAMAGES, COST, LOSSES OR LIABILITIES IN EXCESS OF THE FEES ACTUALLY PAID BY LICENSEE IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO LICENSEE'S OR USER'S CLAIM OR, IF NO FEES APPLY,

ONE HUNDRED DOLLARS (US\$100). THE PROVISIONS OF THIS SECTION ALLOCATE THE RISK UNDER THESE TOS BETWEEN THE PARTIES AND PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THESE TOS. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHICH MEANS THAT SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE OR SOME USERS. IN SUCH STATES, MERCHANT ADWORDS'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

MERCHANT ADWORDS IS NOT LIABLE FOR ANY MONETARY EXPENSES OR SPENDING THAT OCCURS IN ASSOCIATION WITH ITS SERVICES AND TECHNOLOGIES AND MANAGEMENT AND REPORTING DONE AS A SERVICE OR PRODUCT FOR CUSTOMERS. THE LICENSEE IS SOLELY LIABLE FOR ALL MONETARY EXPENSES THAT OCCUR DURING THE SERVICE OR AFTER. THE LICENSEE IS RESPONSIBLE FOR THE CONTROL OF ANY ADVERTISING OF SERVICE RELATED EXPENSES AFTER A TRIAL OR SERVICE AGREEMENT IS TERMINATED, INCLUDING DURING AND SERVICE AGREEMENTS, AND MERCHANT ADWORDS WILL NEVER BE LIABLE FOR ANY EXPENSES OR REPORTING ACCURACY OR DATA OR INFORMATION ASSOCIATED WITH THE SERVICES IN ANY CAPACITY

10. Proprietary Rights; Limited License to MERCHANT ADWORDS; Feedback.

- a. Reservation of Rights. Subject to the limited rights expressly granted hereunder, MERCHANT ADWORDS and its licensors reserve all of MERCHANT ADWORDS's and its licensors right, title and interest in

and to the Service, including all of MERCHANT ADWORDS's and its licensors related intellectual property rights. No rights are granted to Licensee hereunder other than as expressly set forth herein.

- b. License to MERCHANT ADWORDS by Licensee to Host Licensee Content. Licensee hereby grants MERCHANT ADWORDS a worldwide, non-exclusive, royalty-free, fully paid, sublicensable, limited-term license to host, copy, transmit and display Licensee Content that Licensee or any User posts to the Service, solely as necessary for MERCHANT ADWORDS to provide the Service in accordance with these TOS. Subject to the limited licenses granted herein, MERCHANT ADWORDS acquires no right, title or interest from Licensee or Licensee's licensors under these TOS in or to Licensee Content.
- c. License by Licensee to Use Feedback. Licensee hereby grants to MERCHANT ADWORDS a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Service any suggestion, enhancement request, recommendation, correction or other feedback provided by Licensee or Users relating to the operation of the Service.

11. Confidentiality.

- a. Definition of Confidential Information. "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as code, inventions, know how, business and marketing plans, technology and technical information, financial information, product plans and designs, and business processes disclosed by such party. Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii)

was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information, as demonstrated by documents or files in existence at the time of the confidential disclosure.

- b. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less restrictive than those herein. Neither party shall disclose the terms of any Order Form to any third party other than its legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its legal counsel or accountants shall remain responsible for such legal counsel's or accountant's compliance with this Section 11(b).
- c. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential

Information. In the event that such protective order or other remedy is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information that is legally required and use commercially reasonable efforts to obtain assurance that confidential treatment shall be accorded the Confidential Information.

12. DMCA Copyright Policy. MERCHANT ADWORDS has adopted the following policy toward copyright infringement on the Service in accordance with the Digital Millennium Copyright Act (the “**DMCA**”). The address of MERCHANT ADWORDS’s Designated Agent for copyright takedown notices (“**Designated Agent**”) is listed below.

Reporting Instances of Copyright Infringement:

If you believe that Content residing or accessible on or through the Service infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent at the address below:

1. Identification of the work or material being infringed.
2. Identification of the material that is claimed to be infringing, including its location, with sufficient detail so that MERCHANT ADWORDS is capable of finding it and verifying its existence.
3. Contact information for the notifying party (the “**Notifying Party**”), including name, address, telephone number, and email address.
4. A statement that the Notifying Party has a good faith belief that the material is not authorized by the copyright owner, its agent or law.
5. A statement made under penalty of perjury that the information provided in the notice is accurate and that the Notifying Party is authorized to make the complaint on behalf of the copyright owner.
6. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed.

Please also note that the information provided in a notice of copyright infringement may be forwarded to the Subscriber who posted the allegedly infringing content. After removing material pursuant to a valid DMCA notice, MERCHANT ADWORDS shall immediately notify the Subscriber responsible for the allegedly infringing material that it has removed or disabled access to the material. MERCHANT ADWORDS shall terminate, under appropriate circumstances, the Accounts of Subscribers who are repeat copyright infringers, and reserves the right, in its sole discretion, to terminate any Subscriber for actual or apparent copyright infringement.

Submitting a DMCA Counter-Notification:

If you believe you are the wrongful subject of a DMCA notification, you may file a counter-notification with MERCHANT ADWORDS by providing the following information to the Designated Agent at the address below:

1. The specific URLs of material that MERCHANT ADWORDS has removed or to which MERCHANT ADWORDS has disabled access.
2. Your name, address, telephone number, and email address.
3. A statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located (or the federal district courts located in the County of Hennepin, Minnesota if your address is outside of the United States), and that you shall accept service of process from the person who provided the original DMCA notification or an agent of such person.
4. The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled."
5. Your signature.

Upon receipt of a valid counter-notification, MERCHANT ADWORDS shall forward it to Notifying Party who submitted the original DMCA notification. The original Notifying Party (or the copyright holder he or she represents) shall then have ten (10) days to notify us that he or she has filed legal action

relating to the allegedly infringing material. If MERCHANT ADWORDS does not receive any such notification within ten (10) days, MERCHANT ADWORDS may restore the material to the Service.

Designated Agent

MERCHANT ADWORDS LLC

PO Box # 1189

Minnetonka, MN 55345

Repeat Infringer Policy

In accordance with the DMCA and other applicable law, MERCHANT ADWORDS has adopted a policy of terminating access to the Service, and in appropriate circumstances and at MERCHANT ADWORDS's sole discretion, for Users who are deemed to be repeat infringers. MERCHANT ADWORDS may also and at its sole discretion limit access to the Site and/or terminate the access of Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

13. Miscellaneous.

- a. Assignment. Neither the TOS nor the licenses granted hereunder are assignable or transferable by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that either party may assign and transfer these TOS without consent to a successor to all or substantially all of its assets or business; any attempt to assign in violation of the foregoing shall be void. There are no third-party beneficiaries under these TOS.

- b. Independent Contractors. The parties are independent contractors. These TOS does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- c. Waivers. No failure or delay in exercising any right hereunder shall operate as a waiver thereof, nor shall any partial exercise of any right or power hereunder preclude further exercise. If any provision of these TOS shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these TOS shall otherwise remain in full force and effect and enforceable.
- d. Governing Law; Venue; Attorney's Fees. These TOS shall be governed by and construed pursuant to the laws of the State of Minnesota and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Any proceeding relating to these TOS or the subject matter hereof shall be brought only in federal or state court in the County of Hennepin, Minnesota, and each party hereby generally and unconditionally submits to and accepts the jurisdiction of such courts. Each party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph. The prevailing party in any action to enforce these TOS or any Order shall be entitled to recover its attorney's fees and costs in connection with such action, in addition to any other relief the prevailing party shall be entitled.
- e. Data Processed in the United States. The Service is controlled and offered by MERCHANT ADWORDS from its facilities in the United States, and the MERCHANT ADWORDS servers and data centers are located in the United States. If Licensee chooses to access and use the Service from outside the United States, then Licensee and all Users acknowledge that Licensee and Users are transferring Licensee Content into the United States for storage and processing and that Licensee is responsible for compliance with all local laws applicable to such transfer, storage and processing.

- f. Amendments; Waivers; Complete Agreement. Any waivers or amendments shall be effective only if made in writing. These TOS and each Order is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of these TOS. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Licensee purchase order or in any other Licensee order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- g. Government Licensee Provisions. Government technical data and software rights related to the Services include only those rights customarily provided to the public as set forth in this Agreement. The Service is “commercial computer software” and “commercial computer software documentation as such terms are used in FAR 12.212, DFARS 252.227-7014 and DFARS 227.7202.
- h. Force Majeure. Except for the payment obligations hereunder, non-performance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, earthquake, government acts or orders or restrictions, failure of supplier, or any other reason where failure to perform is beyond the reasonable control of and not caused by the negligence of the non-performing party.
- i. Notices. Except as otherwise specified in these TOS, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Licensee shall be addressed to the relevant billing contact designated by Licensee on the applicable Order. All other notices to Licensee shall be addressed to the relevant contact designated by Licensee on the applicable Order. All notices to MERCHANT ADWORDS shall be sent to MERCHANT

ADWORDS to the applicable MERCHANT ADWORDS contact at the address set forth on the applicable Order.

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