



## Master Subscription Agreement

### MARKETBRIGHT TERMS OF SERVICE:

BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF MARKETBRIGHT'S ONLINE ON-DEMAND MARKETING AUTOMATION PLATFORM SERVICE, (THE "SERVICE"). 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 TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICE.

### Welcome

As part of the Service, Marketbright will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on Marketbright's website incorporated by reference herein, including but not limited to Marketbright's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement. The service product configurations will be detailed in the order form.

### 1. Privacy & Security; Disclosure

Marketbright's privacy and security policies may be viewed at [www.marketbright.com/legal](http://www.marketbright.com/legal). Marketbright reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Note that because the Service is a hosted, online application, Marketbright occasionally may need to notify all users of the Service of important announcements regarding the operation of the Service.

### 2. License Grant & Restrictions

Subject to the terms and conditions of this Agreement, Marketbright hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service via the website provided by Marketbright to you, solely for your own internal business purposes. All rights not expressly granted to you are reserved by Marketbright and its licensors.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, display, host, outsource, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

You shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material,

including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained



therein; (v) attempt to gain unauthorized access to the Service or its related systems or networks; or (vi) disclose any review of the Service, including but not limited to the results of any performance tests, to any third party without Marketbright's prior written approval.

### **3. Your Responsibilities**

You are solely responsible for obtaining and maintaining the necessary software, hardware, Internet connection, and other systems required to access and use the Service. You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, the federal CAN-SPAM Act, international communications and the transmission of technical or personal data. Failure to comply with these laws shall be grounds for immediate termination by Marketbright. You shall: (i) notify Marketbright immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Marketbright immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Marketbright user or provide false identity information to gain access to or use the Service. In addition, you are required to ensure that each of your independent contractors who are using the Service will abide by the Digital Millennium Copyright Act and the federal CAN-SPAM rules. Your independent contractors must also maintain their own E&O and liability insurance.

You will ensure that any use of the Service by your Users is in accordance with the terms of this Agreement. Further, you and your Users shall maintain the accuracy of all User names and passwords (collectively, "User Codes") issued by Marketbright and used to access the Service. You may designate as Users only (a) your employees and (b) your independent contractors with whom you have entered into written agreements with respect to the contractors' use of the Service with terms no less restrictive or protective of Marketbright's rights than the terms of this Agreement. You acknowledge and agree that you are responsible for all access to and use of the Service by Users or by means of the User Codes. You further agree to make every reasonable effort to prevent unauthorized third parties, including your employees who are not designated Users, from accessing or using the Service or the Content.

### **4. Account Information and Data**

Marketbright does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Content"). You, not Marketbright, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content, and Marketbright shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Content. In the event this Agreement is terminated (other than by reason of your breach), Marketbright will make available to you a file of the Customer Content within 30 days of termination if you so request at the time of termination. Marketbright reserves the right to withhold, remove and/or discard Customer Content without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Content immediately ceases.

### **5. Intellectual Property Ownership**

Marketbright alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Marketbright Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. No transfer of ownership will occur under this

Agreement, and all rights not expressly granted to you are reserved by Marketbright. The Marketbright name, the Marketbright logo, and the product names associated with the Service are trademarks of Marketbright or third parties, and no right or license is granted to use them.



## 6. Licenses from You

You grant to Marketbright the non-exclusive, worldwide right to use, copy, transmit and display: (i) any Customer Content provided to Marketbright by you in the course of using the Service, solely to the extent necessary to provide the Service to you; and (ii) any trademarks that you provide Marketbright for the purposes of including them in your user interface of the Service. You acknowledge and agree that Customer Content may be transferred outside of the country or other jurisdiction where you or your Users are located. In addition, you acknowledge and agree that it is your obligation to inform third parties of the processing of Customer Content and to ensure that such third parties have given any required consent to such processing as required by all applicable data protection legislation. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of use on the Service of all Customer Content.

Subject to the terms and conditions of this Agreement, you hereby grant to Marketbright a non-exclusive, non-transferable, personal, limited right and license to use as permitted in this Agreement any trademarks, service marks, trade names, logos, and other identifiers (collectively, the “Customer Marks”) which you provide to Marketbright. You will retain all right, title and interest in and to the Customer Marks worldwide, subject to the limited license granted to Marketbright in this Agreement. Marketbright may identify you as a customer in its marketing and advertising materials and press releases, and announce that you are a customer of the Service, and reproduce your Customer Marks in connection therewith.

## 7. Support Services

Marketbright will provide system and technical support to your Users. Standard support is included as part of the monthly service fee, and includes the following services: (i) phone and email support for Users on a 24x7 basis, 365 days per year for non-critical issues; (ii) resolution of critical issues (any issue that causes a disruption in the Marketbright service such as a server being unavailable or the application not responding properly) typically within 24 hours, and resolution of non-critical issues typically within 2 business days; (iii) up to 10 non-systems related support requests per month. Support does not include marketing consulting assistance and it is at Marketbright’s discretion to assist with support outside of the scope of system related issues.

Additional non-systems related support requests are charged at the then current rate . Any critical issues or requests outside of regular business hours (9am – 5 pm PST) that are not system related (i.e., campaign or website related) will be charged at \$97 per hour. Marketbright can pass XLS, CSV, XML, and raw Oracle database dumps. The CSV and XLS are self-service; the others require a service request.

Marketbright will also provide the following user help and training:

- Each component of the Marketbright system has online help pages, FAQs, and a glossary of terms available. These include basic descriptions of common tasks and user flows with tips to help Users complete tasks.
- Marketbright will also provide up to three (3) conference call training sessions and three (3) onsite training sessions in the San Francisco Bay Area of 1-hour in length each, to ensure that Users are properly trained.
- Any additional training on the Service that is outside of the scope of this Agreement may be provided for an additional fee or an hourly rate of \$200 per hour.

Rates for support and training services are subject to change upon 30 days notice.

## 8. Hosting Infrastructure and Service Levels

Marketbright is committed to providing the most secure, high performance and highly available hosted infrastructure possible. The Marketbright system will be supported by a high performance web server and



industry-leading database, located in a secure, professional managed data center. The systems are monitored around the clock, 365 days of the year. They are monitored both internally and externally (around the Internet) with notification and alerts to our support team to ensure both availability and performance around the globe. They also have firewall protection against Internet attacks and virus and anti-spyware protection.

#### System Performance

Historically, typical performance and response time for any application screen is between 0.06 to 0.23 seconds (plus any Internet network latency outside of Marketbright's control). If any screen shows bad performance with a response time worse than 0.5 seconds our support team is notified so any persistent performance issue can be addressed.

#### Backups and Archives

Incremental backups are taken throughout the day, with daily full backups that are stored remotely. Complete downloads of the Marketbright system will also be available at anytime.

#### System Availability

Marketbright uses commercially reasonable efforts to provide in excess of 99.9% availability or less than 8 hours per year downtime. From time to time (once or twice a year), scheduled system maintenance may be required, taking place over a weekend whenever possible, or otherwise in a manner that causes minimal interruptions to you. Marketbright will plan and coordinate such system maintenance with you to minimize disruptions. Marketbright is not responsible for other infrastructure issues that do not directly affect availability of the system, but that prohibit your Users from using the Marketbright system (such as an outage of your corporate network).

#### System Updates

In addition, Marketbright seeks to continually improve the system with new capabilities or features and any applicable bug fixes. Because of Marketbright's flexible infrastructure, these updates do not typically require system downtime or cause any impact to users. However, to minimize any impact to Users, any changes will be scheduled and arranged with you and occur outside of normal peak hours whenever possible, or otherwise in a manner that causes minimal interruptions to you.

#### Infrastructure Requirements

Due to the nature of computer systems and physical hardware, unexpected failures can occur. Depending on the level of support required by you, it is possible to mitigate some of the downtime risk by removing single points of failure with hardware upgrades. If you have any special availability, performance, or infrastructure requirements beyond those discussed above, you should specify them to Marketbright and you could incur additional setup costs and monthly services fees.

#### Data Retention

Marketbright will keep up to the latest three versions of any file for up to six months. Marketbright keeps raw web logs for three months and maintains summary data for the term of the contract.

### **9. Billing and Payment**

The fees for the Service are set forth in the applicable Order Form at the time of purchase. You agree to pay in advance all annual fees for your use of the Service ("Annual Fees") and any other fees for services



agreed to between you and Marketbright. Payments may be made annually, consistent with the Initial Term, or as otherwise mutually agreed upon. Marketbright reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. Fees for other services will be charged on an as-quoted basis. All amounts are payable in U.S. dollars and are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding taxes based solely on Marketbright's income.

You agree to provide Marketbright with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Marketbright reserves the right to terminate your access to the Service in addition to any other legal remedies.

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

## **10. Non-Payment and Suspension**

In addition to any other rights granted to Marketbright herein, Marketbright reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or Marketbright initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Marketbright may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Marketbright reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Marketbright has no obligation to retain Customer Content.

## **11. Term and Termination**

This Agreement commences on the Effective Date. If you have purchased a full subscription to the Service, the Initial Term will be as for a period of one (1) year, or as otherwise mutually agreed upon in an Order Form. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at Marketbright's then current fees. Other than in the event of breach of this Agreement, either party may terminate this Agreement effective only upon the expiration of the then current License Term, by notifying the other party in writing at least five (5) business days prior to the date of the invoice for the following term. In the event this Agreement is terminated (other than by reason of your breach), Marketbright will make available to you a file of the Customer Content within 30 days of

termination if you so request at the time of termination. You agree and acknowledge that Marketbright has no obligation to retain the Customer Content, and may delete such Customer Content, more than 30 days after termination.

Any breach of your payment obligations or unauthorized use of the Marketbright Technology or Service will be deemed a material breach of this Agreement. Marketbright, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, Marketbright may terminate a free account at any time in its sole discretion. You



agree and acknowledge that Marketbright has no obligation to retain the Customer Content, and may delete such Customer Content, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

The following provisions shall survive any termination of this Agreement: Sections 5, 9, 11, 14, 16, 18, 21, 22, 23, and 24.

## **12. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Marketbright represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with its online documentation under normal use. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

## **13. Mutual Indemnification**

You shall indemnify and hold Marketbright, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Content infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Marketbright (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Marketbright of all liability and such settlement does not affect Marketbright's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Marketbright shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Marketbright of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Marketbright; provided that you (a) promptly give written notice of the claim to Marketbright; (b) give Marketbright sole control of the defense and settlement of the claim (provided that Marketbright may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Marketbright all available information and assistance; and (d) have not compromised or settled such claim. Marketbright shall have no indemnification obligation, and you shall indemnify Marketbright pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s). This section represents the sole and exclusive liability of Marketbright and your exclusive remedy for infringement or misappropriation of third party rights.

## **14. Disclaimer of Warranties**

MARKETBRIGHT AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. MARKETBRIGHT AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR



OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY MARKETBRIGHT AND ITS LICENSORS.

### **15. Internet Delays**

MARKETBRIGHT'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MARKETBRIGHT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

### **16. Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 17 SHALL NOT APPLY IN THE EVENT OF YOUR BREACH OF SECTION 2 OR SECTION 3 OF THIS AGREEMENT.

### **17. Additional Rights**

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.

### **18. Confidentiality**

A party may have access to information that is confidential to the other party ("Confidential Information"). Your Confidential Information shall include Customer Content, and MarketBright's Confidential Information shall include the Service, Content, and any other materials provided to you by MarketBright. In addition, as to either party, Confidential Information shall include information that is clearly identified in writing at the time of disclosure as confidential, as well as any information that, based on the circumstances



under which it was disclosed, a reasonable person would believe to be confidential. A party's Confidential Information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use or reference to the other party's Confidential Information. The parties agree to use all reasonable care to prevent disclosure of the other party's Confidential Information to any third party and not use the other party's Confidential Information except as necessary to perform its obligations under the Agreement.

## **19. Digital Millennium Copyright Act Compliance**

### Notification of Claimed Infringement under the Digital Millennium Copyright Act (the "Act"):

If any owners of copyrights believe Marketbright's users are infringing copyright protected work, they may send a notice to Marketbright's designated agent at Marketbright, pursuant to the notice procedure specified in Section 21, below.

Consistent with the Act, you must abide by the following policies: (i) you may not use Marketbright's systems or servers for sharing of copyrighted materials; (ii) you shall not post original works on Marketbright's systems or servers that you do not have a license for; (iii) if you give access to a third party contractor, you are responsible for ensuring enforcement of the Act with respect to the third party contractor's compliance.

Marketbright will, in appropriate circumstances, terminate repeat infringers of the Act, in its sole discretion. Please contact Marketbright to learn more about counterclaim processes.

## **20. Local Laws and Export Control**

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

Marketbright and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, you are solely

responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government for such purposes.



## 21. Notice

Marketbright may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Marketbright's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Marketbright's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Marketbright (such notice shall be deemed given when received by Marketbright) at any time by any of the following:

letter sent by confirmed facsimile to Marketbright at the following fax number: (509) 271-0695; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Marketbright at the following address: Marketbright, Inc., 1150 Bayhill Dr., Suite 215, San Bruno, CA 94066, addressed to the attention of: Account Terminations.

## 22. Modification to Terms

Marketbright reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

## 23. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of Marketbright but may be assigned without your consent by Marketbright to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Marketbright directly or indirectly owning or controlling 50% or more of you shall entitle Marketbright to terminate this Agreement for cause immediately upon written notice.

## 24. General

This Agreement shall be governed by California law without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in San Francisco, California. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Marketbright as a result of this agreement or use of the Service. The failure of Marketbright to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Marketbright in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and Marketbright and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## 25. Definitions

As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means these online terms of use, any Order Forms, whether written or submitted online, and any materials available on the Marketbright website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Marketbright from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services



contained or made available to you in the course of using the Service; "Customer Content" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the contract term, beginning on the contract start date and ending on the contract end date, specified on the applicable Order Form; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses online or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s); "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "Marketbright" means collectively Marketbright, Inc., a Delaware corporation, having its principal place of business at 1150 Bayhill Dr., Suite 215, San Bruno, CA 94066; "Marketbright Technology" means all of Marketbright's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Marketbright in providing the Service; "Service(s)" means the specific product configuration of Marketbright's online marketing campaign management services identified during the ordering process, developed, operated, and maintained by Marketbright, accessible via <http://www.marketbright.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by Marketbright, to which you are being granted access under this Agreement, including the Marketbright Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by Marketbright at your request).

**Questions or Additional Information:**

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to [info@marketbright.com](mailto:info@marketbright.com).