



BAZAARVOICE, INC.
MASTER AGREEMENT 5.0

This Master Agreement (the “Agreement”) is by and between Bazaarvoice, Inc. and its Affiliates (“Bazaarvoice”) and the Client identified in the applicable Service Order referencing this Agreement or otherwise using the Services (“Client”). Bazaarvoice and Client, by Client’s execution of an applicable Service Order or by use of the Services, hereby agree to the following terms and conditions:

1. DEFINITIONS. For purposes of this Agreement, the below shall have the following meanings:

“Affiliate(s)” means, with respect to Bazaarvoice or Client, any company, corporation, partnership or other entity, directly or indirectly, controlling, controlled by, or under common control with, Bazaarvoice or Client where “control” is defined as having rights to more than 50% of the equity, ownership or voting rights for such entity.

“Bazaarvoice Network” means Bazaarvoice’s entire customer base that have subscribed to Bazaarvoice software as a service offerings, including, but not limited to, Ratings and Reviews, Q&A, Curations, Connections, and Sampling.

“Client Data” means, collectively, all UGC Service Data and any other data collected exclusively on the Client’s behalf.

“Confidential Information” means information designated as confidential in writing or information which ought to be in good faith considered confidential and proprietary to the disclosing party. Confidential Information of Bazaarvoice and/or its licensors includes but is not limited to the terms and conditions (but not the existence) of the Agreement, all trade secrets, software, source code, object code, specifications, documentation, business plans, Client lists and Client-related information, financial information, auditors reports of any nature, proposals, as well as results of testing and benchmarking of the Services, product roadmap, data and other information of Bazaarvoice and its licensors relating to or embodied in the Services.

“Documentation” means documentation that describes the principles of the operation or functionality of the Services found at https://knowledge.bazaarvoice.com/wp-content/knowledge/en_US/Home.html.

“Feedback” means suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client relating to the Services.

“Independent Client Activity” means: (i) use of equipment by Client not provided or previously approved by Bazaarvoice; or (ii) negligent acts or omissions or willful misconduct by Client.

“Internet Unavailability” means Client’s inability to access, or Bazaarvoice inability to provide, Services through the Internet due to causes outside of Bazaarvoice direct control, including, but not limited to: (i) failure or unavailability of Internet access; (ii) unauthorized use, theft or operator errors relating to telephone, cable or Internet service provider; (iii) bugs, errors, configuration problems or incompatibility of equipment or services relating to Client’s computer or network; or (iv) failure of communications networks or data transmission facilities, including without limitation wireless network interruptions.

“Intellectual Property” or **“Intellectual Property Rights”** means all intellectual, moral, industrial or proprietary rights recognized under applicable law anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyrights, patents, trademarks and service marks, and rights in trade secrets, and all tangible embodiments thereof.

“Network Data” means data that is generated, stored or collected by Bazaarvoice technologies (e.g., cookies, web beacons, pixels, or mobile SDKs). Network Data includes but is not limited to, anonymized or aggregated interaction data, impressions, and transactions. Network Data does not include Client Data.

“Prohibited Content” means any data that (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; (iii) promotes illegal activity, (iv) violates any applicable law; (v) is Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L. 104-91), as amended); (vi) is payment card Cardholder Information (as defined by Payment Card Industry standards); (vii) is protectable information under the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended; (viii) is Customer Proprietary Network Information (as defined by the Telecommunications Act of 1996), or (vii) is protected information under any state or federal laws similar to any of the Acts or standards above .

“Restricted Country” means (i) any country, including but not limited to Russia or China, that prohibits the export of data regardless of the existence of adequate measures or (ii) a country which requires data to be held in a locale other than the United States or Ireland.

“Service Data” means data provided by Client for the purpose of facilitating the Services. Service Data includes but is not limited to, product

information included in feeds and transaction detail information such as unit prices and cart values.

“**Service Order**” means the document(s), regardless of actual name, executed by the parties which incorporates by reference the terms of this Agreement, and describes order-specific information, such as description of Services ordered and fees.

“**Services**” means the software as a service and other services identified in the Service Order as well as associated Support.

“**Syndicated Content**” is content submitted on third party sites that may be shared through the Bazaarvoice Network. An example of Syndicated Content is a review submitted on a product site that may be redisplayed across affiliated retail sites.

“**User Generated Content**” or “**UGC**” means content submitted via the Services and collected exclusively on behalf of Client with the intent of being publicly displayed. UGC includes but is not limited to reviews, ratings, questions, answers, photos, videos, and associated meta data, such as date and time stamp.

2. PURPOSE AND SCOPE

2.1 **Purpose.** This Agreement establishes the general terms and conditions to which the parties have agreed with respect to the provision of Services by Bazaarvoice to Client. Additional terms applicable to specific Services are set forth in the Service Order.

2.2 **Incorporation of Service Order.** At any time after execution of the initial Service Order, Client may purchase additional Services or otherwise expand the scope of Services granted under a Service Order, upon mutual execution of a new Service Order.

2.3 **Order of Precedence.** To the extent any terms and conditions of this Agreement conflict with the terms of a Service Order or any other document, the documents shall control in the following order: (i) Service Orders with the latest date(s), (ii) this Agreement and, (iii) any other documents expressly incorporated herein by reference.

3. SERVICES AND USE OF SERVICES

3.1 **Provision of Services.** Subject to Client’s compliance with this Agreement, including without limitation Client’s payment of all of the fees due, Bazaarvoice will provide the Services, in accordance with the terms of this Agreement, including the Service Levels outlined in Exhibit A and any other terms and conditions included in a Service Order.

3.2 **Security; Back-Ups.** Without limiting Client’s obligations under Section 3.6, Bazaarvoice will implement reasonable and appropriate measures designed to secure Client Data against accidental or unlawful loss, access or disclosure.

3.3 **Acceptable Use.** Client shall provide Bazaarvoice with all information and assistance as reasonably requested and required for Bazaarvoice to activate and operate the Services. Client agrees to use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations and Bazaarvoice’s policies, including the terms of Bazaarvoice’s Authenticity Policy, which can be found at www.bazaarvoice.com/legal/authenticity-policy. Bazaarvoice may remove any violating content posted or transmitted through the Services without notice to Client. Bazaarvoice may suspend or terminate any user’s access to the Services upon notice if Bazaarvoice reasonably determines that such user has violated the terms of this Agreement.

3.4 **Restricted Countries.** If Client deploys Services in a Restricted Country (as defined under this Agreement), Bazaarvoice shall not (i) be responsible for the configuration of the Service(s) deployed for use in a Restricted Country; (ii) provide any technical support for Service(s) deployed for use in a Restricted Country; or (iii) guarantee uptime or service levels for any Service(s) deployed for use in a Restricted Country and disclaims all liability resulting from the use of the Services within such Restricted Country

3.4 **Loyalty, Rewards and Similar Programs.** If Client elects to use the Services in conjunction with a loyalty, rewards, contest, sweepstakes or similar program, then Client acknowledges and agrees that it is responsible for ensuring that such program, including without limitation the earning, redemption and expiration of points and rewards, is compliant with all applicable laws, codes, rules and regulations.

3.5 **Changes to Services.** Client access is limited to the version of the Services in Bazaarvoice’s production environment. Bazaarvoice regularly updates the Services and reserves the right to discontinue, add and/or substitute functionally equivalent features in the event of product unavailability, end-of-life, or changes to software requirements. Bazaarvoice will notify Client of any material change to or discontinuance of the Services.

3.6 **Security.** Client will not: (a) breach or attempt to breach the security of the Services or any network, servers, data, computers or other hardware relating to or used in connection with the Services, or any third party that is hosting or interfacing with any part of the Services; or (b) use or distribute through the Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Services or the operations or assets of any other Client of Bazaarvoice or any third party. Client will comply with the user authentication requirements for use of the Services. Client is solely responsible for monitoring its designated users’ access to and use

of the Services. Bazaarvoice has no obligation to verify the identity of any person who gains access to the Services by means of a Client's account. Any failure by any Client user to comply with the Agreement will be deemed to be a breach by Client, and Bazaarvoice will not be liable for any damages incurred by Client or any third party resulting from such breach. If there is any compromise in the security of a Client user account or if unauthorized use is suspected or has occurred, Client must immediately take all necessary steps, including providing notice to Bazaarvoice, to effect the termination of suspected account.

4. FEES AND PAYMENT

4.1 **Fees.** Client shall pay Bazaarvoice the fees in the currency and as of the date set forth in each Service Order. Client shall submit such payments as required in accordance with the payment instructions (e.g. payment address) provided in each invoice. All fees are exclusive of any applicable taxes. Except for income taxes levied on Bazaarvoice's net income, Client shall pay or reimburse Bazaarvoice for all taxes and assessments of any jurisdiction which are legally payable by Client for charges set, services performed or to be performed, or payments made or to be made hereunder. Client shall not be entitled to deduct the amount of any such taxes, duties or assessments from payments made to Bazaarvoice under this Agreement. Unless otherwise notified, Bazaarvoice will use Client's corporate address as set forth in Service Order to determine if its purchase of Services is subject to taxation. Bazaarvoice may increase annually recurring fees upon 60 days prior written notice.

4.2 **Payment.** Unless otherwise specified in the Service Order, payment of invoiced fees is due 30 days after the invoice date. Interest accrues on past due balances at the lesser of 1% per month or the highest rate allowed by law. Failure to make timely payments is a material breach of the Agreement and Bazaarvoice will be entitled to suspend any or all of its performance obligations hereunder in accordance with the provisions of Section 10.4 and/or to modify the payment terms, and to request full payment before any additional performance is rendered by Bazaarvoice. Client agrees to reimburse Bazaarvoice for expenses incurred, including interest and reasonable attorney fees, in collecting amounts due Bazaarvoice hereunder that are not under good faith dispute by Client. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Bazaarvoice regarding future functionality or features. Client will notify Bazaarvoice of any invoice dispute within thirty (30) days of the date of invoice, at which time the parties will engage in good faith efforts to resolve the dispute.

5. PROPRIETARY RIGHTS

5.1 **Service Ownership; License; Retained Rights.** Bazaarvoice and its licensors own all right, title, and interest in and to the Services, including, without limitation, all modifications, improvements, upgrades, derivative works, and feedback or any other materials related thereto and all Intellectual Property Rights therein. Bazaarvoice grants Client a limited, revocable, royalty-free, non-exclusive, non-transferable license to use the Services for its internal business purposes and only for the duration of an applicable Service Order. All rights, title and interest in or to any copyright, trademark, service mark, trade secret, and other proprietary right relating to the Services and the related logos, Service names, etc. and all rights not expressly granted are reserved by Bazaarvoice and its licensors. Client shall not use, register or attempt to register, any marks, trade names or logos, in any manner, that may cause confusion with the Bazaarvoice trademarks, including without limitation the Bazaarvoice logo. Client will not register, nor attempt to register, any design, patent or copyright which, in whole or in part, incorporates any Bazaarvoice Intellectual Property Right. Any Feedback shall be deemed to be automatically assigned to Bazaarvoice under this Agreement, and the fully paid up, sole and exclusive property of Bazaarvoice as a result thereof.

5.2 **Restrictions.** Client may not itself, nor through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Services; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Services, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Services to any unapproved third-party; (iv) write or develop any derivative works based upon the Services; (v) modify, adapt, tamper with or otherwise make any changes to the Services or any part thereof; (vi) obliterate, alter, or remove any proprietary or intellectual property notices from the Services; (vii) create Internet "links" to or from the Services, or "frame" or "mirror" any content, (viii) use the Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (ix) permit consumers to submit any Prohibited Content in Client terms and conditions; (x) disclose or publish, without Bazaarvoice's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services; or (xi) otherwise use or copy the same except as expressly permitted herein.

6. DATA OWNERSHIP AND USE.

6.1 **Client Data.** As between Bazaarvoice and Client, Client owns all Client Data. Nothing contained herein shall be construed as granting Bazaarvoice ownership in any Client Data.

6.2 **Network Data.** Bazaarvoice owns all Network Data. Network Data may be used to provide Client the Services and may be reported to other clients in the Bazaarvoice Network.

6.3 **License.** Client grants Bazaarvoice a limited, non-exclusive, royalty-free, irrevocable, world-wide license to use Client Data as necessary to provide, improve, monitor and develop the Services for the duration of the Agreement, and an irrevocable license to use UGC for analytics purposes in perpetuity. Unless it has been aggregated or anonymized, Client Data will only be disclosed as necessary to provide Client the Services.

6.4 **Syndicated Content.** If Client receives Syndicated Content through the Bazaarvoice Syndication service, Client is granted a limited, non-exclusive, royalty-free, revocable, world-wide license solely to display Syndicated Content on Client's website for the duration of the applicable Service Order. Client may not use it for any other purpose. Syndicated Content is owned by the party who originally collected it and that party may revoke licenses in that content at-will.

6.5 **Confidential Information.** All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information, but in no case less than reasonable care. The receiving party will limit access to Confidential Information to its affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Bazaarvoice may disclose Client's Confidential Information on a need to know basis to its subcontractors who are providing all or part of the Services. Bazaarvoice may use Client's Confidential Information solely as provided for under this Agreement. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (a) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, and (b) as required to respond to any summons or subpoena or in connection with any litigation, provided the receiving party gives the disclosing party prior notice of such 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. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, Bazaarvoice may retain information for regulatory purposes or in back-up files, provided that Bazaarvoice's confidentiality obligations hereunder continue to apply. Information will not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was in the receiving party's possession before receipt from the disclosing party; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other. The obligations of Bazaarvoice set forth in this Section 6.5 will not apply to any Feedback in connection with any present or future Bazaarvoice product or service, and, accordingly, neither Bazaarvoice nor any of its clients or business partners will have any obligation or liability to Client with respect to any use or disclosure of such information.

7. WARRANTY

7.1 **Bazaarvoice Warranty.** Bazaarvoice represents and warrants that Services, as updated by Bazaarvoice and used in accordance with the Documentation, will perform substantially in accordance with the Documentation under normal use and circumstances and that the other Services will be performed in a manner consistent with general industry standards reasonably applicable to the provision thereof. Bazaarvoice is not responsible for any claimed breach of any warranty set forth in this Section caused by: (i) modifications made to the Services by anyone other than Bazaarvoice; (ii) the combination, operation or use of the hosted Bazaarvoice Software with any items not certified by Bazaarvoice; (iii) Bazaarvoice's adherence to Client's specifications or instructions; (iv) errors caused by or related to Internet Unavailability or Independent Client Activity; or (v) Client deviating from the Service operating procedures described in the Documentation.

7.2 **Client's Warranty.** Client represents and warrants Client has any and all consents and authorizations as may be necessary for Bazaarvoice to provide the Services. If Client has Bazaarvoice import any of Client's content that exists prior to this Agreement, Client further represents and warrants that it has any and all consents necessary to use such content.

7.3 **Warranty Disclaimer.** EXCEPT AS SET FORTH HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL SERVICES FROM BAZAARVOICE ARE PROVIDED "AS-IS" AND BAZAARVOICE DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SERVICES OR ANY SUPPORT RELATED THERETO, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, ACCURACY OF DATA, AND WARRANTIES ARISING FROM A COURSE OF DEALING.

7.4 **Third-Party Beneficiaries; Client Affiliates.** The warranties made by Bazaarvoice in this Agreement, and the obligations of Bazaarvoice under this Agreement, run only to Client and where applicable its Affiliates who enter into Service Orders with Bazaarvoice hereunder, and not to Client's Affiliate(s) who only 'use' or 'administer' the Services (or any other third parties such as Client's customers or contractors). In such circumstances where a Client Affiliate has not signed a Service Order, in no circumstances shall any Client Affiliate, or other Client third party, be considered a third-party beneficiary of this Agreement and be otherwise entitled to any rights or remedies under this Agreement.

Unless otherwise agreed in writing by the parties, Client will be responsible for any and all of its Affiliate's/Affiliates' performance and compliance with the terms of this Agreement. If a claim for breach of this Agreement is brought against Bazaarvoice based on the use of Services by Client's Affiliate(s), such claim will be brought solely by Client

8. INDEMNIFICATION

8.1 Bazaarvoice Indemnity. Bazaarvoice agrees to defend, indemnify and hold Client, and its affiliates, officers, directors, employees, and agents harmless against any fines, damages, and other costs finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement, that arises out of a third party claim that the Services, as provided by Bazaarvoice to Client within the scope of this Agreement, infringe a valid copyright or patent in the United States or any Patent Cooperation Treaty country. The foregoing obligations of Bazaarvoice do not apply (i) to the extent that the allegedly infringing Service or portions or components thereof or modifications thereto result from any change made by Client or any third party for the Client, (ii) if the infringement claim could have been avoided by using an unaltered current version of a Service which was provided by Bazaarvoice, (iii) to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Bazaarvoice, or any material from a third party portal or other external source that is accessible to Client within or from the Service, (iv) to the extent that an infringement claim is based upon the combination of any material with any products or services not provided by Bazaarvoice, or (v) to the extent that an infringement claim is caused by the provision by Client to Bazaarvoice of materials, designs, know-how, software or other Intellectual Property with instructions to Bazaarvoice to use the same in connection with the Services. The indemnity and other remedies set forth in this Section shall be the exclusive remedies of the Client with respect to any claim for which Bazaarvoice has an obligation of indemnity pursuant to this Section.

8.2 Client's Indemnity. Client shall indemnify, defend, and hold harmless Bazaarvoice, its affiliates, officers, directors, employees, and agents against fines, damages, and other costs finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement, from a third party's claim related to (i) Client's website on which the Services are provided or any application that Client develops that infringes any third-party Intellectual Property rights; (ii) any and all losses, including without limitation, data loss or damage to hardware, software and other property arising from Client's acts and omissions in using the Services, including without limitation Independent Client Activity; (ii) Client's use of Services in violation of the terms of this Agreement or applicable law or (iii) a dispute between Client and any of its end users.

8.3 Bazaarvoice Indemnity Remedies. If Client's use of the Services is enjoined or is likely to be enjoined due to a third party claim of infringement for which Bazaarvoice is required to indemnify Client under this Agreement, then Bazaarvoice may, at its expense and within its sole discretion, do one of the following: (i) procure for Client the right to continue using the Services; (ii) replace or modify the enjoined Service to make it non-infringing but functionally equivalent; or (iii) terminate the affected Service and return any fees paid for affected Services not yet rendered.

8.4 Indemnification Conditions. Whether Bazaarvoice or Client, the indemnitor will pay costs and damages finally awarded against the indemnitee, or agreed in settlement by the indemnitor directly attributable to any such claim and will bear all reasonable costs of the investigation and defense of the claim, but only on the condition that: (i) notice by the indemnitee to the indemnitor of any claim, action or demand for which indemnity is claimed within five (5) days of the indemnitee receiving notice of such claim (failure to meet this condition does not exempt the indemnitor of its indemnification obligation, except to the extent that failure has materially prejudiced the indemnitor's ability to defend the claim); (ii) indemnitor retains complete control of the defense and settlement, provided that no settlement may be made without the consent of the indemnitee, such consent not to be unreasonably withheld or delayed; and (iii) indemnitee reasonably cooperates in the defense as the indemnitor may request. The indemnitee has the right to participate in the defense against the indemnified claims with counsel of its choice and at its own expense but may not confess judgment, admit liability or take any other actions prejudicial to the defense. Further, the indemnitee may not settle an indemnified claim unless the indemnitor has declined to defend a covered claim.

9. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement, any Service Order, Statement of Work, or other exhibits and attachments, Bazaarvoice's total liability for any and all damages will not exceed the fees paid by Client for the twelve (12) month period preceding the action or event giving rise to the liability. The foregoing limitation will not apply to the extent prohibited by applicable law. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BAZAARVOICE AND ITS LICENSORS AND SUPPLIERS WILL NOT BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR DAMAGES FOR BUSINESS INTERRUPTION, INACCURATE INFORMATION OR LOSS OF INFORMATION OR COST OF COVER) THAT THE CLIENT MAY INCUR OR EXPERIENCE IN CONNECTION WITH THE AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. TERM

10.1 **Term.** This Agreement commences on the effective date of the first Service Order and continues until such time that there is no active Service Order for three (3) months, unless terminated earlier as provided hereunder.

10.2 **Services Term.** The initial term of each of the Services is specified in the Service Order (“Initial Term”) and, unless otherwise specified in the Service Order, automatically renews for the same length as the Initial Term unless either party gives written notice 60 days prior to the end of the Initial Term, or any renewal term, of its intention to terminate the Service Order. The Initial Term and any renewal terms, combined, are referred to as the “Term”.

10.3 **Termination for Breach.** In addition to any other remedies it may have, if either party (i) breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days after written notice from the non-breaching party, the non-breaching party may terminate this Agreement or a specific Service Order upon ten (10) days’ written notice, or (ii) either party may immediately terminate this Agreement if the other becomes insolvent or the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors, if that proceeding is not dismissed with prejudice within sixty (60) days after filing. In addition to the foregoing, in the event that the Client voluntarily files for protection against its creditors under the bankruptcy laws of any jurisdiction or is the subject of an involuntary petition in bankruptcy, Bazaarvoice will be entitled to retain all rights and benefits of this Agreement. Where a party has rights to terminate under this Section, that party may at its discretion either terminate the entire Agreement or the applicable Service Order. In such case, Service Orders that are not terminated will continue in full force and effect under the terms of this Agreement. Upon termination of this Agreement or a Service Order due solely to a breach by Bazaarvoice, Bazaarvoice shall refund a pro rata portion of any fees paid for Services not yet rendered as of the date of termination.

10.4 **Suspension.** Bazaarvoice will be entitled to suspend any or all Services upon 10 days written notice to Client in the event Client is in breach of this Agreement. However, Bazaarvoice may suspend Client’s access and use of the SaaS Services immediately, with notice to Client following promptly thereafter, if, and so long as, in Bazaarvoice’s sole judgment, there is a security or legal risk created by Client that may interfere with the proper continued provision of the Services or the operation of Bazaarvoice’s network or systems. Bazaarvoice may impose an additional charge to reinstate service following such suspension.

10.5 **Post Termination.** Bazaarvoice has no obligation to retain Client Data beyond three months after the expiration or termination of Services.

10.6 **Survival.** Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, and 12 will survive termination of this Agreement.

11. INSURANCE

During the term of this Agreement and for one (1) year thereafter, Bazaarvoice will maintain insurance of the type and in the amounts specified below:

- i. Workers’ Compensation and Employers Liability in accordance with all federal, state, and local requirements and coverage with a minimum limit of \$1,000,000 each accident, with a policy limit of not less than \$1,000,000;
- ii. Commercial General Liability, including coverage for bodily injury, property damage and personal injury liability, with a minimum limit of \$1,000,000 each occurrence;
- iii. Business Automobile Liability covering all vehicles that Bazaarvoice hires or leases in an amount not less than \$1,000,000 combined single limit for bodily injury and property damages;
- iv. Commercial Excess Umbrella in an amount not less than \$5,000,000 each occurrence and annual aggregate; and
- v. Cyber/Technology Errors and Omissions coverage in an amount not less than \$5,000,000 each claim.

All insurance obtained by Bazaarvoice will be underwritten by an insurer having a minimum AM Best insurance rating of “A-”. Upon request, Bazaarvoice will furnish Client certificates of insurance and/or other appropriate documentation evidencing all of the coverage described in this Section 11.

12. MISCELLANEOUS

12.1 **Independent Contractors.** In performing under this Agreement, each party is acting as independent contractor, and in no way are the parties to be construed as partners, as a joint venture, or agents of one another in any respect.

12.2 **Use of Agents/Subcontractors.** Bazaarvoice may designate any agent or subcontractor to perform such tasks and functions to complete any services covered under this Agreement. However, nothing in the preceding sentence will relieve Bazaarvoice from responsibility for performance of its duties under the terms of this Agreement.

12.3 Force Majeure. Neither party will be in default for failing to perform any obligation hereunder, if such failure is caused solely by supervening conditions beyond the parties' respective control, including without limitation acts of God, war, terrorism, failure of third party networks, utility or communication failures, industry- wide labor disputes or governmental demands or restrictions.

12.4 Assignment. Either party may assign this Agreement in connection with (i) a merger where the contracting entity does not survive such merger, or (ii) the sale of all or substantially all of the contracting entity's assets related hereto. Except as expressly stated in this section, neither party may assign its rights or obligations under this Agreement without obtaining the other party's prior written consent. Any assignment in contravention of this subsection is void. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.5 Notice and Delivery. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given (i) upon receipt by personal delivery, delivery by overnight courier (with signature acknowledgement of receipt), or delivery by certified mail, (ii) the second business day after mailing via first class mail (other than pursuant to (i)), or (iii) immediately if sent by email or by a notification delivered via the Services. All Notices to Bazaarvoice shall be directed to: Bazaarvoice, Inc., 10901 Stonelake Blvd., Austin, Texas 78759 ATTN: Legal, or if by email: legal@bazaarvoice.com. Notices to Client will be addressed to the contact designated in writing by Client to Bazaarvoice for Client's relevant account, and in the case of billing-related notices, to the relevant contact designated by Client. Delivery of a copy of this Agreement, any Service Order, notice, or such other document bearing an original signature, by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

12.6 Jurisdiction and Governing Law. This Agreement, and all matters arising out of or relating to this Agreement, will be governed by and construed and resolved by arbitration in accordance with the rules of the jurisdiction set forth in the governing law column opposite the applicable Bazaarvoice sales region in the table below. The language of the arbitration shall be English. The number of arbitrators shall be three. The application of the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Further, for any action arising out of or related to this Agreement, Client consents to the exclusive jurisdiction and venue located in the venue/seat column opposite the applicable Bazaarvoice sales region in the table below.

Bazaarvoice Sales Region	Governing Law	Venue/Seat
North America	Texas – JAMS - Comprehensive Arbitration Rules and Procedures	Houston, Texas
Latin America	Texas – JAMS - Comprehensive Arbitration Rules and Procedure	Houston, Texas
EMEA	England & Wales – London Court of International Arbitration (LCIA)	London, United Kingdom
APAC	Australia – Australian Centre for International Commercial Arbitration (ACICA)	New South Wales, Australia

12.7 Export Control. Client acknowledges that use of the Services hereunder may be subject to export control laws which may include, without limitation, the United States Export Administration Regulations, the Trading With the Enemy Act, the International Emergency Economic Powers Act, the Arms Export Control Act and regulations promulgated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), as amended from time to time (collectively, the "Export Control Laws"). Client agrees that all actions taken by it in furtherance of fulfillment of this Agreement will be in compliance with applicable Export Control Laws. In addition, Client agrees that it will not export, re- export, transfer or license any of the Services to any third parties that are named as a "Specially Designated National" or "Blocked Person" as designated by the OFAC (which is currently published under the Internet address <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

12.8 Entire Agreement. The Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes and overrides all prior agreements on the same subject matter and will govern all disclosures and exchanges of Confidential Information made by the parties previously hereto. This Agreement may not be modified except by a writing signed by a duly authorized representative of both parties. Bazaarvoice acceptance of a Client purchase order or other ordering document is for convenience only, and any additional or different terms in any purchase order or other response by Client are deemed objected to by Bazaarvoice without need of further notice of objection and will be of no effect or in any way binding upon Bazaarvoice.

12.9 **Modification; Waiver.** If any provision of this Agreement, or the application thereof, is for any reason and to any extent determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, a valid provision that most closely matches the intent of the original will be substituted and the remaining provisions of this Agreement will be interpreted so as best to reasonably affect its original intent. If an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement. No delay or omission by a party to exercise any right or power occurring upon any breach or default by the other party with respect to any of the terms of this Agreement will impair any such right or power or be construed to be a waiver.

EXHIBIT A
BAZAARVOICE PLATFORM SERVICE LEVEL AGREEMENT

1. Uptime Commitment. Bazaarvoice will deliver 99.9% uptime of the Bazaarvoice platform (the “Uptime Commitment”). The uptime is calculated as follows: (total minutes in any calendar month – total minutes of unavailability) divided by (the total minutes in same calendar month). Downtime during the weekly maintenance window does not count as a period of unavailability. The weekly maintenance window will not exceed two hours per week and will be scheduled during minimal traffic times.

1.1. Exceptions. Bazaarvoice is not responsible for a failure to meet any service level to the extent that failure is attributable to any of the following, in which case the services downtime does not count against the Uptime Commitment:

1.1.1. Client’s failure to perform any of its responsibilities set forth in the Agreement to the extent such failure adversely affects Bazaarvoice’s ability to perform the Services, provided that Bazaarvoice uses commercially reasonable efforts to perform despite Client’s failure.

1.1.2. Factors outside Bazaarvoice’s reasonable control; provided that Bazaarvoice would have been able to perform but for such factor, Bazaarvoice has not materially contributed in the cause of such factor, and Bazaarvoice could not have reasonably foreseen and prevented the effect of such factor with a commercially reasonable effort.

2. Communication. Client may subscribe to Service status updates at <https://status.bazaarvoice.com/>. If the Services are unavailable Bazaarvoice will use this means to notify Client’s designated contact(s). If the Services are down due to Client’s actions (e.g., code change without notice) Bazaarvoice will not proactively notify Client but Bazaarvoice will remain at Client’s disposal to provide reasonable assistance to Client to allow Client to resolve the issue. If the platform is unavailable for a period longer than fifteen (15) minutes, Bazaarvoice shall use commercially reasonable efforts to identify the source of the issue and resolve the issue in accordance with the Client Care Quick Reference Card, a copy of which is available on request.

3. Termination Option. Client may terminate the affected Service Order with thirty (30) days’ written notice if Bazaarvoice fails to meet the Uptime Commitment during two (2) consecutive calendar months or in three (3) calendar months within any twelve (12) month period. The provisions of this Exhibit A state Client’s sole and exclusive remedy for any Uptime Commitment failures of any kind.