

TERMS & CONDITIONS

ACCEPTANCE OF TERMS AND CONDITIONS THROUGH USE

By using this site or by clicking "I agree" to this Agreement ("Agreement") to the Terms and Conditions applicable to the use of this website provided and/or hosted by Vivaara LLC d/b/a/ Intentwise, an Illinois limited liability company located at 862 Forest Avenue, Evanston, Illinois 60202 ("Service Provider"), you signify your agreement to these terms and conditions. If you do not agree to this Agreement in full, do not use this site and do not click "I agree". Please check this Agreement periodically for changes as Service Provider, as the owner of this site, reserves the right to revise this Agreement and your continued use of this site following the posting of any changes to the Agreement constitutes full and complete acceptance of such changes. This Agreement applies to licensors and advertisers as well.

YOU MUST BE OVER 18 TO AGREE TO THIS AGREEMENT AND USE THIS SITE

This Agreement must be completed, understood, and agreed to by a person over 18 who is legally able to enter into a contract. If you are: (a) not yet 18; (b) not legally able to enter into a contract; or (c) accessing this site from any country where material on this site is prohibited or illegal, please leave this site now as you do not have permission to access this site or to use the Service Provider's Services (as defined below) in any way.

Effective Date: 28th Dec 2017

RECITALS

WHEREAS, you sell goods on Amazon on any of its sites such as amazon.com,amazon.co.uk, amazon.fr,amazon.de as such (“Amazon”) or are an agency that helps other companies sell goods on Amazon;

WHEREAS, Service Provider provides services (“Services,” as described further herein or in any Addendum hereto (“Addendum”)) in connection with the extraction and analysis of marketing data related to your data (“Data,” as described further herein) and in connection with recommendations related thereto (themselves, the “Recommendations”), all related to your marketing and sales on Amazon only;

WHEREAS, the terms of any Addendum hereto are incorporated herein, and all of the terms and conditions set forth in this Agreement shall apply to and supplement any Addendum hereto; provided, however, that the terms of any Addendum shall control over the terms of this Agreement.

WHEREAS, you have requested the Services be provided through Service Provider’s third-party hosted “software as a service” with respect to certain of your information technology needs in connection with the provision and analysis of its marketing efforts on Amazon only;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, based on Service Provider’s knowledge and experience relating to such Services, you have selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services under the terms and conditions set forth herein;

WHEREAS, you agree and acknowledge that for the successful performance of the Services, the availability of your Data is critical to the provision of the Services; and

WHEREAS, Service Provider has agreed to provide the Services to you, subject to the timely and complete provision by you and/or Amazon, of all of the necessary and correct

Data to Service Provider, all on the terms and conditions set forth herein or in any Addendum.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. **The Services.** This Agreement sets forth the terms and conditions under which Service Provider agrees to allow your use of certain hosted software and provide all other services reasonably necessary for productive use of such software for the extraction and analysis by Service Provider of Data and the provision of Recommendations related thereto. The Agreement shall remain in effect unless terminated as provided for herein.
 - 1.1 **Authorized Users; Authorized Uses.** Service Provider grants you a renewable, nonexclusive and worldwide right for any your employee, contractor, or agent, or any other individual or entity authorized by you, including but not limited to advertising agencies working on behalf of you.
 - 1.2 **Control of Services; Offensive Content.** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to your requests.
 - 1.2.1 **Offensive Content.** You agree not to provide Data, either directly or through Amazon, that is unreasonably offensive or otherwise inappropriate in Service Provider's sole judgement. Where your Data contains offensive content, Service Provider may immediately remove the offensive content and may terminate this Agreement immediately by written notice to you.
 - 1.3 **Changes in Functionality.** During the term hereof, Service Provider may reduce or eliminate certain functionalities in the Services. Where Service Provider has reduced or eliminated functionality in the Services, Service Provider and You shall determine the value of the reduced or eliminated functionality and Service Provider will, within a commercially reasonable time, adjust the Fees accordingly on a prospective basis only.

2. **Performance.**

2.1 **Provision of Services.** For the term hereof, Service Provider shall provide the Services, force majeure events excepted, in accordance with its standard policies and procedures in place from time to time.

3. **Free Trial.**

If you register for a free trial, we will make the applicable Subscription Service available to you on a trial basis free of charge for a period of 3 weeks. You will have an option to convert the free trial to a paid service subscription anytime before the end of the trial period.

4. **Beta Services**

4.1 Service Provider may offer certain Services as closed or open beta services ("Beta Service" or "Beta Services") for the purpose of testing and evaluation. You agree that Service Provider has the sole authority and discretion to determine the period of time for testing and evaluation of Beta Services. Service Provider will be the sole judge of the success of such testing and the decision, if any, to offer the Beta Services as commercial Services. You will be under no obligation to use any paid Service as a result of Service Provider's provision or testing or approval of any Beta Service. Service Provider reserves the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, any of the Beta Services with or without notice to you. You agree that Service Provider will not be liable to you or to any third party for any harm related to, arising out of, or caused by the modification, suspension or discontinuance of any of the Beta Services for any reason, in accordance with the other limitations of liabilities contained herein.

5. **Maintenance; Amazon's Services.**

5.1 **Maintenance.** Notwithstanding anything contained herein to the contrary, Service Provider shall have no obligation to provide maintenance for any decrease in the functionality of the Services that is caused, directly or indirectly, by any action or inaction of Amazon or any event related to the

provision of Amazon's services, including but not limited to advertising services provided by or in connection with Amazon.

6. **Term and Termination.**

6.1 **Term.** This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement is terminated earlier in accordance with the terms set forth herein shall continue until such time as a party provides the other party with written notice of termination; provided, however, that: (a) such notice be effective no fewer than thirty (30) calendar days prior to notice thereof.

6.2 **Termination for Convenience.** Without limiting the right of a party to terminate this Agreement as provided for in this Agreement, a party may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the other party.

6.3 **Termination for Cause.** Without limiting the right of a party to immediately terminate this Agreement as otherwise provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement as of a date specified in such notice.

6.4 **Payments upon Termination.** Upon the termination of this Agreement, You shall pay to Service Provider all amounts payable hereunder (as described on any Service Provider invoice issued within five (5) days after notice of termination is provided).

7. **Recommendations.** As set forth herein, Service Provider shall provide certain Recommendations to you based upon its extraction and analysis of the Data. You agree and acknowledge that any Recommendations are recommendations only and are, in addition, dependent entirely on the Data received by Service Provider and that any action or inaction by Amazon may affect the Data and/or any Recommendations provided by Service Provider. You specifically agree and acknowledge that: (a) you will not rely in any way on any Recommendations; (b)

you will make your own, independent evaluation of any Recommendations; and (c) you will exercise due care and your own independent judgment in connection with any act or failure to act that is in any way associated, directly or indirectly, with any Recommendation. You agree and acknowledge that the limitation of liability contained herein with respect to the Recommendations is absolute and continuing and that such limitation of liability is in addition to, and in no way a limitation of, any other limitation of liability contained herein.

8. **Limitation of Liability for Recommendations.** NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN OR IN ANY OTHER DOCUMENT OR AGREEMENT BETWEEN THE PARTIES (INCLUDING, BUT NOT LIMITED TO, ANY ADDENDUM), SERVICE PROVIDER SHALL HAVE NO LIABILITY OR OBLIGATION TO YOU WHATSOEVER, UNDER ANY CIRCUMSTANCES OR IN ANY AMOUNT, WITH RESPECT TO OR BASED UPON ANY RECOMMENDATION MADE BY SERVICE PROVIDER OR ANY OF ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS, AGENTS OR OTHER AFFILIATES OF ANY KIND.

9. **Fees: Payments and Billing.**

9.1 In consideration for Service Provider providing the Services, you shall pay to Service Provider all the applicable subscription Fees and other charges, as provided for in this section (collectively, "Fees"). Fees negotiated between you and Service Provider shall be set forth in an Addendum hereto. Fees will commence when you click to accept this Agreement. At the beginning of each month during the Term of this Agreement, Service Provider will automatically bill your credit card (or shall be paid via check or ACH transfer, all as provided in the Addendum hereto) for your use of the Services. Fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "Taxes"). You shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Service Provider's net income.

9.2 Any sum due to Service Provider for the Services for which payment is not otherwise specified in the Addendum shall be due and payable on the first (1st) day of the month for which the Services are provided and shall be charged to your credit card or debited directly from your bank unless

otherwise agreed in an Addendum. If for any reason Fees are not timely paid as set forth above, the Fees are late after the fifth (5th) day of the month for which Services are provided. Upon the failure to timely pay the Fees, the Fees shall be subject to a ten percent (10%) late fee, which is immediately due and payable. In addition to any other remedies contained herein, Service Provider shall have the right to terminate this Agreement upon the failure by You to pay three (3) Fees when due. Service Provider shall maintain accurate records of all Fees and other fees billable to, and payments made by, You in a format that will permit audit by You for a period of no less than twelve (12) months from when a Subscription Fee or other fee was incurred or a payment was made. The foregoing obligation of Service Provider shall survive the termination of this Agreement. For the term of this Agreement, upon your written request, Service Provider shall provide You with a copy of any such records within ten (10) days.

10. **Representations and Warranties.**

10.1 **Mutual.** Each of You and Service Provider represent and warrant that:

- 10.1.1 it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
- 10.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- 10.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
- 10.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,

- 10.1.5 There is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

11. **Disclaimer of Warranties**

- 11.1 EXCEPT AS PROVIDED HEREIN, YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SERVICE PROVIDER MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. USE OF ANY MATERIAL DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM SERVICE PROVIDER, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

12. **Data.**

- 12.1 Ownership. Data (which shall also be known and treated by Service Provider as Confidential Information) shall include Data collected, used, processed, stored, or generated as the result of the use of the Services. Data is and shall remain your sole and exclusive property and all right, title, and interest in the same is reserved by you, subject to the Service Provider's license to such Data as described herein. This Section shall survive the termination of this Agreement.
- 12.2 Service Provider Use of Data. Service Provider is provided a limited license to Data for the sole and exclusive purpose of providing the Services,

including a license to collect, process, store, generate, and display Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; and, (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data for Service Provider's own purposes or for the benefit of anyone other than you without your prior written consent. Service Provider is specifically granted the right to provide any and all Data to Amazon for the purpose of effecting the terms hereof, for providing the Services and/or for any other reasonable business purpose. This Section shall survive the termination of this Agreement.

12.3 Data Security and Storage

Service Provider shall adopt adequate archival procedures to store the Data. In the event of any loss or corruption of Data, Service Provider shall use its commercially reasonable efforts to restore the lost or corrupted Data from the latest backup of such Data maintained by Service Provider in accordance with its archival procedures. Service Provider shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Data caused by any third party, including, but not limited to, Amazon. SERVICE PROVIDER'S EFFORTS TO RESTORE LOST OR CORRUPTED DATA PURSUANT TO THIS SECTION SHALL CONSTITUTE SERVICE PROVIDER'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF DATA. Service Provider reserves the right to establish or modify its general practices and limits relating to storage of Data.

13. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

- 13.1 Meaning of Confidential Information. For the purposes of this Agreement, the term “Confidential Information” shall mean all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and/or, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, Data shall be deemed to be Confidential Information.
- 13.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.
- 13.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party

will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

- 13.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in at your election, the immediate termination of this Agreement corresponding to the breach or threatened breach, subject to the immediate payment of all Fees due hereunder as of the date of termination.

14. **Data Privacy and Information Security.**

- 14.1 Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing and maintaining a commercially reasonable data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing; provided, however, that Amazon shall not be required to execute any documents or certify its compliance with the confidentiality requirements contained in this Agreement. The safeguards of Service Provider's data privacy and information security program may be less stringent than the safeguards that you use as described herein or allowed pursuant to the terms of this Agreement or any Addendum hereto.

14.2 **Personal Information and Privacy**

Personal information you provide to Intentwise through the Service is governed by Intentwise Privacy Policy. Your election to use the Service indicates your acceptance of the terms of the Intentwise Privacy Policy. We are not

responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your user account, or otherwise.

15. **Proprietary Rights.**

15.1 **Pre-existing Materials.** You acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the “Pre-existing Materials,” which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.

15.2 **No License.** Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials; provided, however, that, notwithstanding the foregoing, Service Provider’s right to utilize your Confidential Information in cooperation with Amazon shall not be affected by such restrictions..

15.3 The provisions of this Section shall survive the termination of this Agreement.

16. **Indemnification; Limitation of Liability; Insurance.**

16.1 **General Indemnification.** Service Provider agrees to indemnify, defend, and hold harmless You (as used herein, “Indemnatee”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “Claim,” and collectively, the “Claims”), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnatee, by reason of any Claim arising out of or relating to any direct and intentional act, error or omission or misconduct of Service Provider during the performance of this Agreement, including, without

limitation, Claims arising out of or relating to: (a) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; or, (b) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee. You agree to indemnify, defend and hold harmless Service Provider from any and all Claims against Service Provider resulting from any action or inaction by you or your employees, contractors, agents or affiliates.

- 16.2 Proprietary Rights Indemnification. Service Provider agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or such longer period as is reasonably necessary under the circumstances, or in the event that you are adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Service Provider shall, at its expense: (a) obtain for you the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by you; or, (c) in the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Service Provider shall reimburse to you any Fees paid for Services that have not yet been delivered only.

16.3 Trademark

Intentwise, Intentwise logo, the names of individual Services and their logos are trademarks of Vivara LLC. You agree not to display or use, in any manner, the Intentwise trademarks, without Intentwise's prior permission.

- 16.4 Indemnification Procedures. Promptly after receipt by you of a threat, notice, or filing of any Claim against an Indemnitee, you shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall not relieve Service Provider of any liability it may have to the Indemnitee except to the extent that Service Provider demonstrates that the defense of the Claim is prejudiced thereby. Service Provider shall have sole control of the defense and of all negotiations for settlement of a Claim and you shall not independently defend or respond to a Claim; provided, however, that: (a) you may defend or respond to a Claim, at Service Provider's expense, if your counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) you shall have the right, at its own expense, to monitor Service Provider's defense of a Claim. At Service Provider's request, you shall reasonably cooperate with Service Provider in defending against or settling a Claim; provided, however, that Service Provider shall reimburse you for all reasonable out-of-pocket costs incurred by you (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.
- 16.5 Third-Party Beneficiaries. Other than as provided for in this Section, this Agreement is for the sole benefit of the signatories hereto and their permitted successors and assigns. Nothing, express or implied, in this Agreement is intended to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor non-party Indemnitees.
- 16.6 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, SERVICE PROVIDER SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, AND / OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. PROVIDED, HOWEVER, THAT ANY LIABILITY OF SERVICE PROVIDER IMPOSED HEREUNDER BY ANY COURT OF COMPETENT JURISDICTION, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL, IN ALL INSTANCES, NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTH'S FEE

PAID OR PAYABLE UNDER THIS AGREEMENT. This Section shall survive the termination of this Agreement.

17. **General.**

- 17.1 Relationship between You and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for You or in any way to bind or to commit you to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of You. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent, employee, joint venture, or partner of yours.
- 17.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Illinois, without regard to principles of conflicts of law. The parties agree and submit to the jurisdiction of the courts sitting in Cook County, Illinois and/or the Federal courts sitting in the Northern District of Illinois and waive all right to any objection to venue therein, including but not limited to objections based upon the doctrine of forum non conveniens.
- 17.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 17.4 Compliance with Laws; You Policies and Procedures. Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued.
- 17.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder.

- 17.6 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such exclusion and limitation of liability is specifically applicable to any interruption in service cause, directly or indirectly, by any action or inaction of Amazon. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its reasonable efforts to minimize the delays caused by any such event beyond its reasonable control. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance.
- 17.7 Advertising and Publicity. Service Provider shall not refer to you directly or indirectly in any advertisement, news release, or publication without prior written approval from you.
- 17.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 17.9 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the beginning of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee. All notices to Service Provider hereunder shall also be sent (as set forth above) to: Jeffrey D. Schmidt, Scannell & Associates, P.C., 9901

South Western Avenue, Suite 100, Chicago, Illinois 60643; provided, however, that such copy shall not constitute notice to Service Provider.

- 17.10 Assignment of Agreement. Service Provider may assign this Agreement or any part thereof at any time without your consent, and you shall not assign this Agreement or any part thereof without Service Provider's prior written consent, which may be withheld in Service Provider's sole discretion. In the case of an assignment by Service Provider, Service Provider represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services.
- 17.11 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.
- 17.12 Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between you and Service Provider as to the subject matter hereof. This Agreement may only be amended by a written instrument signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 17.13 Cumulative Remedies. All rights and remedies of Service Provider herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against you for the enforcement of this Agreement, and temporary and permanent injunctive relief.