



**BAZAARVOICE, INC.
MAIN SERVICES AGREEMENT**

This Main Services Agreement (the “Agreement”) is by and between Bazaarvoice, Inc. (“Bazaarvoice”) and the Client identified in the applicable Service Order referencing this Agreement (“Client”). Bazaarvoice and Client, hereby agree to the following terms and conditions:

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

“**Affiliate(s)**” means 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 Data**” means any data first collected on Bazaarvoice-owned sites, including but not limited to Content as well as data, know-how, and documents provided by Bazaarvoice for the purpose of facilitating the Services.

“**Bazaarvoice Network**” means Bazaarvoice’s entire customer base that has subscribed to Bazaarvoice offerings. It is understood that the Bazaarvoice Network is subject to variation and change.

“**Client Data**” means, collectively, Service Data, and any Content first collected on Client-owned sites. Client Data does not include Bazaarvoice Data, Syndicated Content, or other data first collected by Bazaarvoice Services on non-Client-owned sites, including but not limited to social media or third-party sites.

“**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 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 other client-related information, financial information, audit reports of any nature, proposals, as well as results of testing and benchmarking of the Services, and product roadmap. Information will not be considered Confidential Information 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.

“**Content**” means content collected via the Services with the intent of being publicly displayed. Content includes but is not limited to reviews, ratings, questions, answers, photos, videos, and associated meta data, such as date and time stamp. Either party may own Content and such is delineated in this Agreement as Bazaarvoice Content and Client Content.

“**Documentation**” means documentation that describes the principles of the operation or functionality of the Services the latest version of which may be found at https://knowledge.bazaarvoice.com/wp-content/knowledge/en_US/Home.html as updated from time to time.

“**Feedback**” means suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client relating to the Services. Feedback does not include any pre-existing intellectual property of the Client.

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



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“**Internet Unavailability**” means Client’s inability to access, or Bazaarvoice’s inability to provide, Services through the Internet due to causes outside of Bazaarvoice’s 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.

“**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) violates the Bazaarvoice Authenticity Policy; or (vi) is sensitive data including, but not limited to payment card information, protected health information, and government identification numbers, etc.

“**Regulated Industries**” means companies subject to specialized government regulation, including but not limited to pharmaceuticals, tobacco and tobacco-related products, alcoholic beverage, dietary supplements, financial services, and medical devices.

“**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) or online order, regardless of actual name, executed by the parties which incorporates by reference the terms of this Agreement, and describes order-specific information, such as a description of Services ordered and fees.

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

“**Syndicated Content**” is licensed Content received by Client through the Services from the Bazaarvoice Network. An example of Syndicated Content is a review submitted on a brand site that may be redisplayed across affiliated retail sites.

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 and will form part of this Agreement.

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 will 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, and Client providing Bazaarvoice with all information and assistance as reasonably requested and required for Bazaarvoice to activate and operate the Services, Bazaarvoice will provide the Services in accordance with the terms of this Agreement, including the Service Levels outlined in Exhibit A and (if applicable) any Sampling and Fulfillment Terms in Exhibit B, and any other terms and conditions included in a Service Order.

3.2 **Security, Back-Ups.** Without limiting Client’s obligations under Section 3.7, Bazaarvoice will implement reasonable and appropriate measures designed to secure Client Data against accidental or unlawful loss, access, or disclosure.



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3.3 **Acceptable Use.** Client agrees to use the Services exclusively for authorized purposes, consistent with all applicable laws and regulations, any additional terms of use included in the Service Order, and Bazaarvoice policies, including the terms of the Bazaarvoice Authenticity Policy, the latest version of which can be found at www.bazaarvoice.com/legal/authenticity-policy. Client will not intentionally procure Prohibited Content through the Services, and Bazaarvoice may remove any Prohibited 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 **Notice of Limited Availability of Services.** Bazaarvoice Services cannot be configured to provide Services in a country that requires data to be held in a locale other than the United States or Ireland. If Client deploys Services in a country which requires data to be held in a locale other than the United States or Ireland, Bazaarvoice will not, in relation to such country or countries (i) be responsible for the configuration of the Services; (ii) provide any technical support for the Services; (iii) guarantee uptime or service levels for the Services; or (iv) assume any liability for the Services. No Services may be deployed by Client in countries or to entities and/or persons in violation of Section 13.7.

3.5 **Third Party Programs.** To the extent that Client requests or causes the Services to be integrated with, or make use of data or services from Third Party Providers, Bazaarvoice does not have control over the terms of use, privacy policies, intellectual property rights, performance or Content of any Third Party Providers. Accordingly, unless specifically stated in a Service Order, Bazaarvoice disclaims all responsibility and liability for any use of data, Content or services received from Third Party Providers. "Third Party Providers" includes but is not limited to social media sites, Client vendors, and any other website or business that collects Content outside of Bazaarvoice Services and makes such Content available for re-syndication and/or publication through the Bazaarvoice Services.

3.6 **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.

3.7 **Security.** Client will not: (i) 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 (ii) 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 Affiliates, employees, vendors, partners, consultants, contractors, agents or other third parties ("Permitted Users") who have 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 user 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 the affected user account.

4 FEES AND PAYMENT

4.1 **Fees.** Client will pay Bazaarvoice the fees in the currency set forth in each Service Order. Client will submit such payments as required in accordance with the payment instructions provided in each invoice. All fees are exclusive of any applicable taxes. Except for income taxes levied on Bazaarvoice's net income, Client will pay or reimburse Bazaarvoice for all taxes and assessments of any jurisdiction. Unless otherwise notified, Bazaarvoice will use Client's corporate address as set forth in the applicable Service Order to determine if its purchase of Services is subject to taxation. Bazaarvoice may increase recurring fees annually upon seventy-five (75) days prior written notice. Client agrees the fees and any subsequent payments to Bazaarvoice are not 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.



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4.2 **Payment.** Unless otherwise specified in the Service Order, payment of invoiced fees is due thirty (30) days after the invoice date. Interest accrues on past due balances at the lesser of 1.5% 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 11.3 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 all expenses incurred, including interest and reasonable attorneys' fees, in collecting amounts due to Bazaarvoice hereunder. Client will notify Bazaarvoice of any invoice dispute within thirty (30) days after the invoice date, at which time the parties will engage in good faith efforts to resolve the dispute.

5 PROPRIETARY RIGHTS

5.1 **Service Ownership, Retained Rights.** Subject to the limited rights expressly granted hereunder, Bazaarvoice, its Affiliates, and its licensors reserve all of their right, title and interest in and to the Services and Bazaarvoice Data, including all of their related intellectual property rights. No rights are granted to Client hereunder other than as expressly set forth herein. Client's right to use the Services is non-transferable, non-exclusive and limited to use for internal business purposes and only for the duration of the applicable Service Order. The rights granted herein extend to Permitted Users who have access to and use the Services on behalf of the Client. The Client will remain liable and responsible for all acts and omissions of Permitted Users and will procure that each Permitted User abides by the Agreement.

5.2 **Restrictions.** Client may not itself, nor through any Permitted User: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Services or Bazaarvoice Data; (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 or Bazaarvoice Data to any unapproved third-party, including but not limited to any third party for the purpose of creating an unauthorized import or syndication of Content; (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 Services on a service bureau basis; or (ix) 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 otherwise use or copy any of the foregoing except as expressly permitted herein. Notwithstanding anything to the contrary, the limitations of liability set forth in this Agreement will not apply to any breach of this Section 5.2.

6 DATA OWNERSHIP AND USE

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

6.2 **Bazaarvoice Data.** As between Bazaarvoice and Client, Bazaarvoice owns all Bazaarvoice Data. Nothing contained herein will be construed as granting Client ownership of any Bazaarvoice Data.

6.3 **License.** Client grants Bazaarvoice a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use Client Data as necessary to provide, improve, monitor and develop the Services for the duration of the Agreement, and an irrevocable, perpetual license to use Client Content for analytics purposes. Unless it has been aggregated or anonymized, any Client Data not publicly displayed will be disclosed only as necessary to provide the Services. Client grants Bazaarvoice and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into the Services any Feedback.

If Client receives Bazaarvoice Data through the Services, Bazaarvoice grants Client a limited, worldwide, non-exclusive, royalty-free right and license to use the Bazaarvoice Data for the duration of the applicable Service Order; provided that Client will not use the Bazaarvoice Data for any reason other than the display of Content without Bazaarvoice's express written consent. Client is expressly prohibited from modifying any words, sentences or editorials of such Content.



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Except as provided for in Section 6.4, as between Bazaarvoice and Client, neither party will acquire any ownership or usage rights for Content first collected from third-party sites.

6.4 **Syndicated Content.** If Client receives Syndicated Content through the Services, Client is granted a limited, non-exclusive, royalty-free, revocable, worldwide license solely to display Syndicated Content on Client's website for the duration of the applicable Service Order. Syndicated Content is owned by the person or entity that originally collected it and that person or entity may revoke licenses to use or display its Content at-will. Client may not use Syndicated Content for any other purpose, unless otherwise granted directly to Client by the owner of the Syndicated Content. Except as expressly provided for in this Section 6.4, neither party has any responsibility, liability or indemnification obligation to the other party for any Syndicated Content.

6.5 **Confidential Information.** All Confidential Information disclosed hereunder will remain the exclusive property of the disclosing party. The receiving party will not disclose (except as permitted herein) 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 of the disclosing party 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 (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, and (ii) as required to respond to any summons or subpoena or in connection with any litigation, provided that 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, the receiving party may retain information for regulatory purposes or in back-up files, provided that the receiving party's confidentiality obligations hereunder will continue to apply so long as such information is so retained.

7 WARRANTY

7.1 **Bazaarvoice Warranty.** Bazaarvoice represents and warrants that the 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 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 Services with any items not provided 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 operating procedures described in the Documentation. For any breach of a warranty above, Client's exclusive remedies are those described in Section 11.4.

7.2 **Client's Warranty.** Client represents and warrants that Client has any and all consents and authorizations as may be necessary for Bazaarvoice to provide the Services.

7.3 **Warranty Disclaimer.** Except as expressly set forth herein, and to the maximum extent permitted by law, all Services are provided "as-is" and Bazaarvoice disclaims all warranties, conditions, or representations (express, implied, oral or written) with respect to the Services and any support related thereto, including but not limited to 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.** This Agreement is not intended to and will not be construed to give any third party any interest or rights with respect to any agreement or provision contained herein, even if the third party is indirectly benefited by this Agreement. Unless otherwise agreed in writing by the parties, Client will be responsible for any and all of its 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 the Services by Client's Affiliates, such claim will be brought solely by Client.



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8 INDEMNIFICATION

8.1 Bazaarvoice Indemnity. Bazaarvoice agrees to defend Client against any claim, demand, suit or proceeding made or brought against Client by a third party alleging that the Services as used in accordance with this Agreement infringe the registered U.S. patent or copyright of such third party, and will indemnify Client against any damages and other costs finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement, provided that Client (a) promptly gives Bazaarvoice written notice of the claim; (b) gives Bazaarvoice sole control of the defense and settlement, provided that no settlement may be made without the consent of Client, such consent not to be unreasonably withheld or delayed; and (c) gives Bazaarvoice all reasonable assistance. The foregoing obligations of Bazaarvoice do not apply (i) to the extent that the allegedly infringing Services or portions or components thereof or modifications thereto result from any change made by Client or any third party for the Client or could have been avoided by the Client using an unaltered current version of the Service; (ii) to the extent that an infringement claim is based upon any process, information, know-how, design, specification, instruction, software, data, intellectual property, or other 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 Services (“External Outputs”); (iii) to the extent that an infringement claim is based upon the combination of any External Outputs with any products or services not provided by Bazaarvoice; or (iv) to the extent that an infringement claim arises from Content. 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: (A) procure for Client the right to continue using the Services; (B) replace or modify the enjoined Services to make it non-infringing but functionally equivalent; or (C) terminate the affected Services and return any fees paid for the terminated Services not yet rendered. The remedies set forth in this Section will be the exclusive remedies of the Client with respect to any claim for which Bazaarvoice may have an obligation of indemnity, contribution or defense pursuant to this Section.

8.2 Client’s Indemnity. Client will defend Bazaarvoice and its Affiliates, and their respective officers, directors, employees, and agents, 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 any Independent Client Activity; (iii) Client’s use of Services in violation of the terms of this Agreement or applicable law, or (iv) any dispute between Client and any of its end users, and indemnify Bazaarvoice and its Affiliates, and their respective officers, directors, employees and agents, from and against any fines, damages, and other costs finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement; provided that Bazaarvoice (i) promptly gives Client written notice of the claim; (ii) gives Client sole control of the defense and settlement of the claim (except that Client may not settle any claim unless it unconditionally releases Bazaarvoice of all liability); and (iii) gives Client all reasonable assistance, at Client’s expense.

9 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Agreement, any Service Order, or any other agreement that incorporates this Agreement by reference, Bazaarvoice’s total liability to Client and responsibility for any and all damages, claims, obligations, losses or expenses arising out of or in connection with this Agreement or the Services (including but not limited to, any amounts paid by Bazaarvoice for the defense or settlement of any indemnified claims) will not exceed the fees paid by Client for the twelve (12) month period preceding the action or event giving rise to the Client’s claim. Notwithstanding anything to the contrary in this Agreement, any Service Order, or any other agreement that incorporates this Agreement by reference, Bazaarvoice and its licensors and suppliers will not be responsible for any 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. The limitations of liability set forth in this Section 9 will not apply to any amounts due for the Services, and will not limit or exclude the liability or remedy of either party to the extent prohibited by applicable law.



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10 TERMS APPLICABLE TO REGULATED INDUSTRIES

10.1 Bazaarvoice Services are not designed for compliance with Regulated Industries and Bazaarvoice makes no representation that the Services will comply with any requirements specific to Regulated Industries.

10.2 Clients who are subject to requirements specific to Regulated Industries will provide Bazaarvoice with written instructions, including, but not limited to, instructions on whether, in what form, and to what extent Bazaarvoice may approach customers of Client's products and grant considerations for sending product sampling and/or obtaining Content, information on the scope of the products' marketing authorizations and what types of use would be considered outside the scope of the marketing authorizations.

10.3 Client represents and warrants that it will ensure and will be exclusively responsible for compliance with all applicable laws in relation to the distribution and advertising of its products as well as, if applicable, the handling of any government-required reports or disclosures. Client therefore undertakes to indemnify Bazaarvoice and its Affiliates, and their respective officers, directors, employees, and agents against any 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 the non-compliance with laws concerning the distribution and advertising of its products as well as any required government reporting or disclosure, unless Client can show that Bazaarvoice, in providing the Services, did not comply with Client's written instructions under Section 10.2.

11 TERM

11.1 **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 ninety (90) days, unless terminated earlier as provided hereunder.

11.2 **Services Term.** The initial term of each of the Services is specified in the applicable Service Order ("Initial Term") and, unless otherwise specified in such Service Order, automatically renews for 12 months unless either party gives written notice at least sixty (60) days prior to the end of the Initial Term, or any renewal term, of its intention to terminate such Service Order. The Initial Term and any renewal terms, collectively, are referred to as the "Term".

11.3 **Suspension.** Bazaarvoice will be entitled to suspend any or all Services upon ten (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 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.

11.4 **Termination for Breach.** If either party 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 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. 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.

11.5 **Post Termination.** Bazaarvoice has no obligation to retain Client Data beyond ninety (90) days after the expiration or termination of Services.

11.6 **Survival.** Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, and 13 will survive termination of this Agreement.



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12 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 12.

13 MISCELLANEOUS

13.1 **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.

13.2 **Use of Agents/Subcontractors.** Bazaarvoice may designate any agent or subcontractor to perform such tasks and functions to complete any part of the 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.

13.3 **Force Majeure.** Neither party will be in default for failing to perform any obligation hereunder if such failure (except for payment obligations) 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.

13.4 **Assignment.** 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, provided however that either party may assign, transfer or novate its rights and obligations to an Affiliate or a successor in connection with a merger, acquisition or consolidation or to the purchaser in connection with the sale of all or substantially all of its assets. Any assignment in contravention of this Section is void. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

13.5 **Notice and Delivery.** Any notice or other communication required or permitted under this Agreement will be in writing and will 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; or (ii) immediately if sent by email or by a notification delivered via the Services. All Notices to Bazaarvoice will 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 or electronic 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.



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13.6 **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 as outlined below. The language of the arbitration will be English. The number of arbitrators will 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 for the applicable Bazaarvoice sales region listed below.

Bazaarvoice Sales Region:

North America: Texas – JAMS - Comprehensive Arbitration Rules and Procedures, 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

13.7 **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 and Client will not deploy, export, re-export, transfer or license any of the Services to any person, entity, or country prohibited by the Export Control Laws.

13.8 **Entire Agreement; Modification.** The Agreement, together with any exhibits or attachments and any active Service Orders, 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.

13.9 **Severability; 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 give effect to 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 to 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 will 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.



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EXHIBIT B TERMS APPLICABLE TO SAMPLING AND FULFILLMENT SERVICES

The terms contained in this Exhibit will apply only to Bazaarvoice's Sampling and Fulfillment Services and not to any other Services offered by Bazaarvoice under this Agreement. To the extent that the Client does not purchase Sampling and Fulfillment Services, these terms will not apply.

TERMS APPLICABLE TO SAMPLING UNITS

Bazaarvoice will engage the community of opted-in consumers who meet the eligibility requirements to sample Client product(s) as part of this advertising service. Bazaarvoice will manage communications between Client and the consumer sampling Client products. Any collection and distribution of Content left on public domains, brand websites, or other social media locations related to the samples would be governed by the terms of Client's Services related to collection and/or distribution.

License to Client. For any Sampling Unit purchased by Client which generates Bazaarvoice Content, Bazaarvoice grants to Client and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, and disclose such Content.

Sampling Units purchased without Fulfillment. When fulfillment services are not purchased for sampling units, the Client and Bazaarvoice agree to the following:

- Bazaarvoice will provide Client with the mailing addresses needed to package and ship the Client's products ("Fulfillment File");
- Client will not use the information contained in the Fulfillment File for any purpose other than mailing Client's products;
- Client agrees to delete the Fulfillment File data when its use is no longer required; and
- Client agrees to complete shipment of products within two months of receiving the Fulfillment File. If Client does not ship products within two months of receiving the Fulfillment File, the sampling units are forfeited and the Fulfillment File is invalid. In order to proceed with sampling, Client must allocate or purchase additional sampling units for new member selection and receive a new Fulfillment File.

Product Indemnity. Client will indemnify and defend Bazaarvoice against any damages and reasonable cost of defense finally awarded by a court of competent jurisdiction or a government agency, or agreed to in settlement to the extent arising out of third party claims related to (i) violations of any patent, trademark, copyright, trade secret or other intellectual property rights relating to the Client's products; (ii) the sale, resale, labeling, use or consumption of any products provided by Client, but only to the extent that such claim is not the result of Bazaarvoice's breach of its obligations under these terms; (iii) any acts or omissions by Client relating to the Client's products which do not comply with applicable state, federal, provincial or local law; or (iv) written instructions provided to Bazaarvoice by Client.

TERMS APPLICABLE TO FULFILLMENT

When fulfillment services are purchased in conjunction with sampling units, the Client and Bazaarvoice agree to the following:

- When instructed, Client will ship the products to the third-party logistics supplier at the address specified by Bazaarvoice according to the instructions provided on the Bazaarvoice sampling advanced shipping notification form. Shipments that do not follow the requirements for shipping are subject to return at the shipper's expense or additional fees.
- Client will ensure that there are enough products on-hand at the logistics supplier to satisfy any units claimed via a sampling campaign.
- Client will ensure that any products or coupons provided for the campaign will not expire within three months of the ship date.
- Risk of loss of products will transfer from Client to third-party logistics supplier at the time logistics supplier takes possession and will then transfer from logistics supplier to the end user when Client's products leave the logistics supplier's facility. At no point will Bazaarvoice have possession, title, or risk of loss over the products.
- All products will be provided to the logistics supplier DDP (Incoterms 2020 as if Client is the seller) at logistics supplier's facility. Bazaarvoice, its logistics supplier, and any other vendors will not bear any liability or responsibility for the import/export of products.



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- Client always retains title of goods until received by the sampling community member.
- If applicable, Client-supplied inserts must be pre-cut and dimensions should not exceed 4 x 6 in/101.6 x 152.4 mm. Brochures must be pre-folded and dimensions should not exceed 5 x 7 in/127 x 177.8 mm. Only one (1) insert or brochure is permitted per carton.
- At the end of the Term, any unclaimed unused products for sampling may be returned, donated, or destroyed at the discretion of the Client. If Client provides no instructions for the products disposition, unclaimed products may be returned, donated, or destroyed at the discretion of Bazaarvoice.