Terms & Conditions

Master Subscription Agreement (MSA)

This SalesVista Online Subscription Agreement (the "Agreement"), dated as of the Order Form eSignature by Customer (the "Effective Date"), is by and between SalesVista, LLC, a Georgia corporation with offices at 5060 Peachtree Blvd, Suite 320, Atlanta, GA 30341, ("SalesVista") and Customer ("Customer").

1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Agreement**" means this Online Subscription Agreement.

"**Customer**" means the company or other legal entity set forth in the opening paragraph to this MSA and Affiliates of Customer. If an Affiliate of Customer or entity (for so long as Customer remains Affiliates) which have entered into Order Forms.

"**Customer Data**" means electronic data and information submitted by or for Customer to the Services.

"**Documentation**" means the applicable Service's documentation provided by SalesVista and its usage guides and policies, as each are updated by SalesVista from time to time.

"**Enterprise Services**" means those services that are provided by SalesVista that include SalesVista's Standard Services, as well as, among other things, certain onboarding services (such as loading, configuring & validating Users, teams, products, categories, compensation plans, rules and sales transactions) that are required to fully deploy and begin monitoring and reporting as well as ongoing monthly services (such implementing Customer's Users, products, categories, compensation plans, rules and sales transactions) on behalf of the Customer and its Users in a managed, professional services capacity, as further specified in the Documentation and the applicable Order Form.

"**Malicious Code**" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"**Order Form**" means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer or any of its Affiliates and SalesVista, including any addenda and supplements thereto. By entering into an Order Form hereunder, Customer or its Affiliates, as applicable, agrees to be bound by the terms of this Agreement.

"**Purchased Services**" means Services that Customer or Customer's Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Trial Services.

"**Services**" means the services that are ordered by Customer under an Order Form or online purchasing portal, including Standard Services, and the Enterprise Services or that are provided to Customer free of charge (as applicable) as Trial Services, and made available online by SalesVista, as described in the Documentation. "Services" exclude Third-Party Applications.

"**Standard Services**" means those services that are provided by SalesVista such as manual or automated importing of settings & compensation data, configuration of Users, Teams, Products & Categories and onboarding training, monthly backups & maintenance of Customer instances and product upgrades as further specified in the Documentation and the applicable Order Form.

"**Third-Party Application**" means a Web-based, mobile, offline or other software application that (i) interoperates with a Service and that is provided by Customer or a third party or (ii) that is utilized by SalesVista to provide Extract, Transform & Load ("ETL") services and for the loading of configuration and sales compensation data into the Services from the source systems for that data.

"**Trial Services**" means Services that SalesVista makes available to Customer free of charge for a limited period of time.

"**User**" means an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by SalesVista without charge, for whom a Service has been provisioned), and to whom Customer has supplied user identifiers and passwords (and any Customer-supplied user identification and password for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

2. SALESVISTA RESPONSIBILITIES

- Provision of Services. Subject to and conditioned on Customer's and its Users' compliance with the terms and conditions of this Agreement, the Documentation and the applicable Order Form, SalesVista will (a) make the Services available to Customer pursuant to this Agreement and the applicable Order Form and Documentation, (b) provide applicable SalesVista standard support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime of which SalesVista shall give advance electronic notice, (ii) any unavailability caused by circumstances beyond SalesVista's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack, or (iii) any suspension or termination of Customer's or any Users' access to or use of the Services as permitted by this Agreement and (d) provide the Services in accordance with laws and government regulations applicable to SalesVista's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services). - Protection of Customer Data. SalesVista will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described at salesvista.com/privacy-policy or such other location as SalesVista may provide. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access, use, modification and disclosure of Customer Data (the "Security Program"). For a period of 30 days after the effective date of termination or expiration of this Agreement or a particular Service, SalesVista will make Customer Data available to Customer for export or download as provided in the Documentation. After such 30-day period, SalesVista will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation will thereafter delete or destroy all copies of Customer Data in SalesVista's systems or otherwise in SalesVista's possession or control, unless legally prohibited.
- SalesVista Personnel. SalesVista may from time to time in its discretion engage third parties to perform services related to this Agreement. SalesVista will be responsible for the performance of its personnel (including its employees and third party contractors) and their compliance with SalesVista's obligations under this Agreement, except as otherwise specified in this Agreement.
- Changes. SalesVista reserves the right, in its sole discretion, to make any changes to the Services and Documentation that it deems necessary or useful to: (a) comply with applicable law or (b) maintain or enhance (i) the quality or delivery of SalesVista's services to its customers, (ii) the competitive strength of or market for SalesVista's services or (iii) the Services' cost efficiency or performance.
- Trial Services. If Customer is entitled to use Trial Services for a free trial, SalesVista will make the applicable Service(s) available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscription ordered by Customer for such Service(s), or (c) termination of the Trial Services by SalesVista in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding on Customer. In the event of a conflict between this section and any other portion of this Agreement, this section shall control.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES DURING CUSTOMER'S TRIAL SERVICES WILL BE STORED FOR A PERIOD OF 30 DAYS AFTER THE END OF TRIAL SERVICES UNLESS CUSTOMER CONVERTS THE TRIAL SERVICES TO PURCHASED SERVICES. IF CUSTOMER DOES NOT CONVERT THE TRIAL SERVICES TO PURCHASED SERVICES, ALL CUSTOMER DATA WILL BE PERMANENTLY LOST AFTER THIS 30 DAY PERIOD CUSTOMER EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY SALESVISTA" SECTION BELOW, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND SALESVISTA SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE SALESVISTA'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED $100.00. WITHOUT LIMITING THE FOREGOING, SALESVISTA AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED OR ERROR-FREE, AND (C) ANY DATA CUSTOMER ENTERS AND DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO SALESVISTA AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

CUSTOMER SHALL REVIEW THE APPLICABLE SERVICES' DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

3. USE OF SERVICES

- Subscriptions. Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal, (b) subscriptions for Purchased Services may be ordered during a subscription term at the same per-unit pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SalesVista regarding future functionality or features.
- User Limits. Customer and its Users may use the Services only in accordance with the applicable User limits. If Customer exceeds a contractual usage limit, SalesVista will notify Customer, and will work with Customer in good faith to either: (i) seek to reduce Customer's usage so that it conforms to that limit or (ii) execute an Order Form for additional contract usage limit. If within 90 days of SalesVista's notice Customer is unable or unwilling to abide by a contractual usage limit, Customer agrees that SalesVista shall invoice Customer for such invoice for excess usage at SalesVista's standard pricing and Customer agrees to pay such invoice in accordance with the "Invoicing and Payment" section below.
- Customer Responsibilities. Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Third-Party Applications with which Customer uses Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services , and notify SalesVista promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement, Documentation, the Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Third-Party Applications with which Customer uses with the Services. Any use of the Services in breach of the foregoing by Customer or Users that in SalesVista's judgment threatens the security, integrity or availability of SalesVista's services, may result in SalesVista's immediate suspension of the Services; however SalesVista will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- Usage Restrictions. Customer will not (a) make any Service available to anyone other than Customer or Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service or a Third-Party Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or a Third-Party Application to interfere or attempt to interfere in the functioning or performance of any Service, (e) attempt to gain unauthorized access to any Service or its related systems or networks, (f) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, or use any Services to access or use any of SalesVista's intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any Third-Party Content, feature, function or user interface thereof, (i) use except as permitted in Section 4 of this Agreement, any Trial Services, (j) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, or (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service.

4. THIRD-PARTY PRODUCTS AND SERVICES

- Third-Party Products and Services. SalesVista or third parties may make available third-party products or services, including, for example, Third-Party Applications and implementation and other consulting services, either for use by Customer or by SalesVista in order to provide Services to Customer. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Third-Party provider or Third-Party product or service is solely between Customer and the applicable Third-Party provider. SalesVista does not warrant or support Third-Party Applications or other Third-Party products or services, unless otherwise set forth in any designated by SalesVista as "certified" or otherwise, unless expressly provided otherwise in an Order Form. SalesVista is not responsible for any disclosure, modification or deletion of Customer Data resulting from Customer's access by such Third-Party Application or its provider.
- International Data Transfers. The Services may contain features designed to interoperate with Third-Party Applications. SalesVista cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Service features in a manner acceptable to SalesVista.

5. FEES AND PAYMENT

- Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, even if Customer stops using a Service, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- Invoicing and Payment. Customer will provide SalesVista with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to SalesVista. If Customer provides credit card information to SalesVista, Customer authorizes SalesVista to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the "Term of Purchased Subscriptions" section below. Such charges shall be made in advance, either annually or in accordance with any differing billing frequency stated in the applicable Order Form, or monthly or quarterly billing, depending on the Services. If the Order Form specifies that payment will be by a method other than a credit card, SalesVista will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to SalesVista and notifying SalesVista of any changes to such information.
- Overdue Charges. If any invoiced amount is not received by SalesVista by the due date, then without limiting SalesVista's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) SalesVista may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.
- Suspension of Service and Acceleration. If any charge owing by Customer under this Agreement is 30 days or more overdue, SalesVista may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such Order Form or applicable Service such that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, SalesVista will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.
- Payment Disputes. SalesVista will not exercise its rights under the "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- Taxes. SalesVista's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If SalesVista has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, SalesVista will invoice Customer and Customer will pay that amount unless Customer provides SalesVista with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, SalesVista is solely responsible for taxes assessable against it based on its income, property and employees.

6. PROPRIETARY RIGHTS AND LICENSES

- Reservation of Rights. Subject to the limited rights expressly granted hereunder, SalesVista, its Affiliates, its licensors and providers reserve all of their right, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- License by Customer to SalesVista. Customer grants SalesVista and its applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Customer Data, such as appropriate for SalesVista to provide and ensure proper operation of the Services and related services in accordance with this Agreement. If SalesVista or Customer or a Third-Party Application with a Service, Customer grants SalesVista permission to allow the Third-Party Application and its provider to access Customer Data and information about Customer's usage of the Third-Party Application as appropriate for the interoperation of that Third-Party Application with the Service. Any such Customer's Data or Third-Party Application or its provider will be in accordance with SalesVista's data access policies described in its Documentation, at salesvista.com/privacy-policy or such other location as SalesVista may provide. Subject to the limited licenses granted herein, SalesVista acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, which as between SalesVista and Customer, Customer owns.
- License by Customer to Use Feedback. Customer grants to SalesVista a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of SalesVista's services.

7. CONFIDENTIALITY

- Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally and in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of SalesVista includes the Services , and the terms and conditions of this Agreement and any Order Forms (including without limitation pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional SalesVista services.
- Protection of Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form or the existence of any proposal or negotiation to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, SalesVista may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Third-Party Application to the extent necessary to perform SalesVista's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure or seek a protective order. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- SalesVista Warranties. SalesVista warrants that during an applicable subscription term (a) the Purchased Services and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) SalesVista will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Third-Party Applications" section above, SalesVista will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.
- Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. MUTUAL INDEMNIFICATION

- Indemnification by SalesVista. SalesVista will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that SalesVista's Service infringes or misappropriates such third party's intellectual property rights ("Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by SalesVista in writing of, a Claim Against Customer, provided Customer: (a) promptly gives SalesVista written notice of the Claim Against Customer; (b) gives SalesVista sole control of the defense and settlement of the Claim Against Customer (except that SalesVista may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives SalesVista all reasonable assistance, at SalesVista's expense. If SalesVista receives information about an infringement or misappropriation claim related to a Service, SalesVista may in its discretion and at no cost to Customer, (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching SalesVista's warranties under "SalesVista Warranties" above, (ii) obtain a license for Customer's use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by SalesVista, if the Service or use thereof would not infringe without such combination; (2) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (3) a Claim Against Customer arises from Content, a Third-Party Application or Customer's breach of this Agreement, the Documentation or applicable Order Form.
- Indemnification by Customer. Customer will defend SalesVista and its Affiliates against any claim, demand, suit or proceeding made or brought against SalesVista by a third party (a) related to any Customer Data or to Customer's use of Customer Data with the Services, (b) alleging that a Third-Party Application provided by Customer, or the combination of a Third-Party Application provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or (c) arising from Customer's use of the Services in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form (each a "Claim Against SalesVista"), and will indemnify SalesVista from any damages, attorney fees and costs finally awarded against SalesVista as a result of, or for any amounts paid by SalesVista under a settlement approved by Customer in writing of, a Claim Against SalesVista, provided SalesVista: (a) promptly gives Customer written notice of the Claim Against SalesVista; (b) gives Customer sole control of the defense and settlement of the Claim Against SalesVista (except that Customer may not settle any Claim Against SalesVista unless it unconditionally releases SalesVista of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Customer arises from SalesVista's breach of this Agreement, the Documentation or applicable Order Form.
- Exclusive Remedy. This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this Section.

10. LIMITATION OF LIABILITY

- Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOLLOWING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. IN NO EVENT SHALL CUSTOMER AND ITS AFFILIATES' LIABILITY LIMITED UNDER THIS AGREEMENT EXCEED THE LIMITATION OF LIABILITY SET FORTH IN THE "LIMITATION OF LIABILITY" SECTION ABOVE.
- Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COST OF COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

- Term of Agreement. This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.
- Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice at least 60 days (or such shorter period in the case of the relevant subscription term) before the end of the relevant subscription term. Except as provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at SalesVista's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription pricing will increase by more than 5% over the applicable pricing in the prior term will not be effective if Customer gives written notice of the renewal before the relevant renewal term, in the form of a new Order Form, or an amendment to this Agreement, at least 30 days prior to the renewal term.
- Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with the "Termination" section above, SalesVista will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by SalesVista in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to SalesVista for the period prior to the effective date of termination.
- Survival Provisions. The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Customer Data" will survive any termination or expiration of this Agreement for so long as SalesVista retains possession of Customer Data.

12. GENERAL PROVISIONS

- Entire Agreement and Order of Precedence. This Agreement is the entire agreement between SalesVista and Customer regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, joint venture, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.
- Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), provided either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, SalesVista will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.
- Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law of the State of Georgia without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable state or federal courts located in Georgia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of Order Form Acceptance by Customer.