

## ONLINE SOFTWARE AS A SERVICE AGREEMENT

### IMPORTANT – READ CAREFULLY

This Online Software as a Service Agreement (“Agreement”) is a legal contract between Shopperations Research & Technology LLC (“Shopperations”), an Ohio limited liability company, and the entity or individual on whose behalf the SaaS Services (as defined below) are being accessed or used (“Client”). By indicating acceptance of this Agreement during the account setup process or using the SaaS Services, you are agreeing that Client is bound by and your use of the SaaS Services on behalf of the Client is governed by the terms and conditions of this Agreement. If Client enters a separate written agreement with Shopperations for the SaaS Services, the terms of that separate agreement will govern and will supersede the terms of this Agreement.

#### 1. SAAS SERVICES

1.1 *Access.* Subject to Client’s compliance with the terms of this Agreement, Shopperations will allow Client and the Authorized Users (as defined in Paragraph 3.1 below) to access and use Shopperations’ Web-based application software programs, including the online documentation, (collectively, “Software”) through Shopperations’ designated secured-access Web site (“Web Site”). Such access and use is referred to in this Agreement as “SaaS Services”. The SaaS Services provide users with the ability to access and use the Software in connection with Client’s business activities. Client’s access to the SaaS Services will be limited to the maximum number of Authorized Users covered by the applicable license fees paid by Client under this Agreement. Shopperations will provide implementation set up and basic training to allow Client to access the SaaS Services. Shopperations may outsource certain aspects of the SaaS Services (e.g., Web Site and Software hosting) to third-party providers.

1.2 *SaaS Services Availability.* Shopperations will take all commercially reasonable steps to keep the SaaS Services operating smoothly and efficiently. However, since the SaaS Services operate using computer equipment, computer software programs, and the Internet, Shopperations shall not be responsible for delays or service interruptions attributable to causes beyond its reasonable control, including, without limitation, limitations on the availability of telephone transmission lines and facilities, failures of other communications equipment, Internet access delays or failures, failures or deficiencies of Client’s equipment, or Client’s failure to meet its responsibilities under this Agreement. Shopperations will employ commercially reasonable measures to maintain the security of the Web Site and protect Client’s data stored on or through the Web Site. In addition, Shopperations will maintain adequate back-up arrangements and equipment in order to maintain Client’s data stored on or through the Web Site in the event of the failure of any of Shopperations’ equipment. Service interruptions for maintenance and system upgrades will be scheduled, to the extent reasonably practicable, to minimize interference with Client’s daytime business activities. For unscheduled service interruptions attributable to causes within Shopperations’ reasonable control, as Shopperations’ sole obligation and Client’s exclusive remedy, Shopperations shall make reasonable efforts to restore the SaaS Services.

1.3 *Consulting Services.* Shopperations will provide project planning, integration, customizations, special training, and other consulting services (“Consulting Services”) to Client

on a time and expenses basis at its then-current standard rates.

1.4 *Support Services.* Shopperations will provide support to Client on the use of the SaaS Services (“Support Services”) during Shopperations’ normal business hours. Support Services may be provided via telephone or e-mail, at Shopperations’ option.

#### 2. SOFTWARE LICENSE

2.1 *License Grant.* Subject to the terms and conditions of this Agreement, and in consideration of Client’s payment of the license fees, Shopperations grants Client a personal, non-exclusive, and non-transferable license to use the Software, on an on-line basis, only in connection with Client’s use of the SaaS Services. This license shall terminate upon the termination of this Agreement.

2.2 *Proprietary Rights.* Client acknowledges that the Software, and associated report formats, screen displays, and menu features, and all derivative works, constitute copyrighted works protected by federal and international copyright laws and are owned by Shopperations or its licensors. The Software and all copies, versions, and derivative works of the Software shall remain the sole property of Shopperations and/or its licensors. Client shall not make and shall not permit anyone else to make any copies of the Software, except as necessary in connection with its authorized use of the SaaS Services. All such copies must include all proprietary rights notices contained in the Software. Except as otherwise permitted in this Agreement, Client shall not allow any third party to access or use the Software. Client shall not modify or create any derivatives of the Software. Client shall not decompile or otherwise reverse engineer or decode the Software. Client shall not take or refrain from taking, directly or indirectly, any action that may in any way lead to the unauthorized dissemination, reproduction, access, or use of the Software. Client shall not export the SaaS Services, the Software, or any direct product thereof, directly or indirectly, in violation of the export laws and regulations of the United States of America. The foregoing export restriction shall survive termination of this Agreement.

2.3 *Survival; Injunctive Relief.* Client’s obligations under this Section 2 shall survive termination of this Agreement. Client acknowledges that a breach of its obligations under this Section 2 will cause irreparable harm to Shopperations and/or its licensors for which monetary damages would be inadequate. Shopperations and/or its licensors will be entitled to injunctive relief for any such breaches, threatened or actual.

### 3. CLIENT RESPONSIBILITIES

- 3.1 *Authorized Users.* Client shall be responsible for identifying those users who are authorized by Client to access the SaaS Services ("Authorized Users"). The maximum number of permitted Authorized Users is limited based on the license fees paid by Client. Authorized Users shall be limited to those who need to use the SaaS Services in connection with facilitating Client's business activities. Client shall require each Authorized User to safeguard his or her user name and password for accessing the SaaS Services and otherwise comply with the provisions of this Agreement. An Authorized User may not disclose his or her user name and password to any other person, including another Authorized User. If Client determines that another person has gained access to an Authorized User's user name and password, or that anyone has wrongfully accessed the SaaS Services, Client shall promptly notify Shopperations. Client is responsible for misuse of the SaaS Services by Authorized Users and by unauthorized users who gain access due to Client's or any Authorized User's failure to maintain security.
- 3.2 *Operations.* Client is responsible for the operational aspects of accessing the SaaS Services, including, but not limited to, (a) acquiring, installing, and maintaining computer equipment and computer software programs at its premises compatible with and as necessary to use the SaaS Services and the Software, (b) obtaining access to the Internet, (c) downloading from the Web Site and installing any necessary plug-ins, (d) determining the accuracy of all data it uploads to and downloads from the Web Site, and (e) adopting reasonable policies, procedures, and quality assurance measures to limit Client's exposure with respect to potential losses and damages arising from use, non-use, errors and omissions of the SaaS Services and/or Software or the results thereof, and system downtime, including, but not limited to, examining and confirming data prior to use, identifying and correcting errors and omissions, preparing and storing backup data, replacing lost or damaged data or media, reconstructing data, and providing network security.
- 3.3 *Implementation.* Client shall provide Shopperations with such time and attention of Client personnel and such access to files, information, or other materials, and shall take such site preparation steps as may be necessary or appropriate to enable Shopperations to implement and provide the SaaS Services.

### 4. FEES AND PAYMENT

- 4.1 *Fees.* Client shall pay Shopperations the subscription fees and any other fees due under this Agreement. The SaaS Services are provided on an annual subscription fee per Authorized User basis. After the first year of this Agreement, Shopperations may increase the fees upon 60 days' prior written notice to Client effective as of the renewal of the term.
- 4.2 *Expenses.* Client shall pay all reasonable out-of-pocket expenses incurred by Shopperations on Client's behalf. Expenses are due as incurred.
- 4.3 *Taxes.* Client shall pay when due or, if necessary, reimburse Shopperations for, all sales, use, property, excise, and other similar taxes, including penalties and interest arising from Client's failure to pay such taxes timely, resulting from any activities under this Agreement, exclusive of taxes based on Shopperations' net income or corporate franchise. If Client has tax exempt status, it shall

supply Shopperations with its tax-exempt certificate or number as necessary. Taxes are due as assessed.

- 4.4 *Payment.* Payment of the subscription fees is due in advance on the first day of the applicable subscription period or on the renewal date of the subscription, as applicable. Client shall pay the subscription fees by credit card or electronic debit through Shopperations' third-party payment processor. Client shall pay all other amounts due under this Agreement, except those disputed in good faith, upon receipt of the invoice to the address designated on the invoice. Client shall pay a monthly service charge of 1½% on all such amounts not paid within 30 days of the invoice date. If Client fails to pay any of such amounts for 45 days, Shopperations shall have the right to suspend Client's access to the SaaS Services as provided in Paragraph 7.5 below. Client shall reimburse Shopperations for all reasonable costs of collection of past due amounts, including, but not limited to, attorney fees and collection agency charges.

### 5. WARRANTIES

- 5.1 *Right.* Shopperations warrants that it has the right to grant the license and other rights granted to Client under this Agreement.
- 5.2 *Performance.* Shopperations warrants that the SaaS Services and other services provided under this Agreement will be of professional quality conforming to the applicable generally accepted industry standards and will be performed in a good and timely manner and in compliance with the requirements of this Agreement. As Shopperations' sole responsibility and Client's exclusive remedy, in the event of any material failure to meet such standards, Shopperations shall make all reasonable efforts to correct any such failure.
- 5.3 *Disclaimer.* EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SHOPPERATIONS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER. SHOPPERATIONS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF TITLE, ACCURACY OF DATA, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR FROM USAGE OF TRADE.

### 6. INDEMNITIES AND LIABILITIES

- 6.1 *Indemnification by Client.* Client shall indemnify and hold Shopperations harmless from any claims resulting from Client's and the Authorized Users' use of the SaaS Services, except to the extent such claims arise from Shopperations' gross negligence or willful misconduct.
- 6.2 *Shopperations' Infringement Indemnification.* If Client receives a claim that the use of the SaaS Services or the Software infringes a United States of America patent, copyright, trade secret, or other intellectual property right, Client will promptly notify Shopperations in writing, and will give Shopperations all necessary information and assistance and the exclusive authority to evaluate, defend, and settle such claim. Provided such timely notice, assistance, and authority have been given by Client, Shopperations (or its licensors) will defend, at its own expense, such claim, and will indemnify and hold Client harmless from all damages and expenses, including court costs and reasonable attorney fees, incurred or awarded as a result of the claim. The foregoing indemnity will not apply to infringement claims based on programming made to the specification or design of Client, Client's modifications, or

Client's use of the SaaS Services or the Software in combination with anything not intended by Shopperations to be used with the SaaS Services or the Software to the extent caused by such combination. The limitation set forth in Paragraph 6.3 below shall not apply to infringement claims under this Paragraph 6.2. This Paragraph 6.2 states Shopperations' entire obligation and liability with respect to any infringement claim.

- 6.3 *Limitation of Liability.* The total liability of Shopperations for all claims, whether in contract, tort, or otherwise, arising out of, connected with, or resulting from the SaaS Services or any other services under this Agreement shall not exceed the amounts paid by Client to Shopperations under this Agreement during the 12 months immediately preceding the claim.
- 6.4 *Exclusion of Liability.* SHOPPERATIONS SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY ANY ERRORS OR OMISSIONS IN ANY DATA, CONTENT, OR OTHER INFORMATION PROVIDED THROUGH THE SAAS SERVICES OR BY DELAYS IN OR INTERRUPTIONS OF ACCESS TO THE WEB SITE. IN NO EVENT SHALL SHOPPERATIONS, ITS LICENSORS, SUPPLIERS, OR SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUE, OR LOST SAVINGS, INCURRED BY CLIENT OR ANY THIRD PARTY, EVEN IF SHOPPERATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6.5 *Survival.* The indemnification obligations and the limitations of liability under this Agreement shall survive the termination of this Agreement.

## 7. TERM AND TERMINATION

- 7.1 *Term.* This Agreement shall commence on the earlier of (a) the date of acceptance of this Agreement on behalf of Client during the account setup process or (b) the date of first use of the SaaS Services on behalf of Client, and shall continue for the initial term of one year. Thereafter, this Agreement shall automatically renew for successive renewal terms of one year each, unless and until this Agreement is otherwise terminated in accordance with this Agreement.
- 7.2 *Termination for Convenience.* Either party may terminate this Agreement as of the end of any term upon 30 days' prior written notice to the other party.
- 7.3 *Termination for Adverse Status.* Either party may terminate this Agreement upon 15 days' prior written notice to the other party, if the other party ceases to carry on operations as contemplated by this Agreement, makes an assignment for the benefit of creditors, is adjudged bankrupt or insolvent, has a receiver appointed over its assets, or becomes subject to any similar action in consequence of debt.
- 7.4 *Termination for Default.* Failure by either party to comply with any material term or condition of this Agreement shall constitute default. The non-defaulting party shall be entitled to give written notice to the defaulting party requiring it to cure the default. The notice shall include a detailed description of the act or omission that constitutes default. If the defaulting party has not cured the default within 30 days after receipt of the notice or, if the default is not curable within such 30-day period and the defaulting party has not taken commercially reasonable measures within such 30-

day period to begin curing the default, the non-defaulting party may terminate this Agreement by giving written notice to take effect upon receipt. The right to terminate this Agreement is in addition to any other rights and remedies provided under this Agreement or otherwise under law.

- 7.5 *Additional Right.* In addition to the rights set forth in Paragraph 7.4 above, if Client fails to pay any fees or charges due under this Agreement, except those disputed in good faith, for 45 days, or fails to carry out any other material obligation under this Agreement, Shopperations may, at its option, suspend Client's access to the SaaS Services, upon ten days' prior written notice. Unless this Agreement is terminated pursuant to Paragraph 7.4 above, upon Client curing the default, Shopperations shall resume any suspended SaaS Services.
- 7.6 *Effect of Termination.* No termination of this Agreement shall release Client from any obligation to pay Shopperations any amount that has accrued or becomes payable at or prior to the date of termination or the end of the initial term, whichever is later. No suspension of access to the SaaS Services under Paragraph 7.5 above shall release Client from any obligation to pay Shopperations any amounts due under this Agreement. Client shall not be entitled to any refund of any amounts paid to Shopperations as a result of a termination based on Client's default.
- 7.7 *Client's Data.* Upon termination of this Agreement and upon payment of all amounts due from Client under this Agreement, including the amount described in the following sentence, Shopperations will deliver to Client all of Client's data stored on Shopperations' servers in connection with Client's use of the SaaS Services. Client shall pay Shopperations' then-current standard rates for Shopperations' work to format, prepare, and deliver Client's data to Client.

## 8. REFERENCE ASSISTANCE

Shopperations may list Client's name in Shopperations' public customer list. Client will provide a brief statement for, and authorizes Shopperations to use such statement in, a press release announcing the execution of this Agreement and in other testimonial information.

## 9. MISCELLANEOUS

- 9.1 *Non-solicitation.* Each party shall refrain from soliciting for employment or employing, directly or indirectly, without the written consent of the other party, any employee, consultant, or subcontractor of the other until 12 months have elapsed following termination of this Agreement, or until 12 months have elapsed following termination of the employment of the employee, consultant, or subcontractor, whichever occurs first.
- 9.2 *Assignment.* Neither party may assign or otherwise transfer this Agreement or any rights or obligations under this Agreement to any third party without the prior written consent of the other party, except that this Agreement may be transferred to a successor to all or substantially all of the assets and business of the transferring party. Consent shall not be unreasonably withheld. Subject to the restriction on transfer set forth in this Paragraph 9.2, this Agreement shall be binding upon and shall inure to the benefit of the parties' successors and assigns.
- 9.3 *Excused Performance.* Neither party shall be liable for any delay in or failure of performance (excluding failure to make payments required by this Agreement) resulting from any cause or condition beyond its reasonable control, whether foreseeable or not.

- 9.4 *Waiver.* The failure of either party to act upon any right, remedy, or breach of this Agreement shall not constitute a waiver of that or any other right, remedy, or breach. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- 9.5 *Notices.* Unless provided otherwise in this Agreement, any notice required or permitted under this Agreement shall be personally delivered, or sent by e-mail, telefax, courier, express or overnight delivery service, or by certified mail, postage prepaid, return receipt requested, to the address set forth at the beginning of this Agreement or to such other address as shall be advised by either party to the other in writing. Notices shall be effective as of the date of receipt.
- 9.6 *Third-Party Beneficiaries.* Shopperations' licensors shall be third-party beneficiaries under this Agreement for the limited purpose of protecting and enforcing intellectual property rights.
- 9.7 *Dispute Resolution.* Any claim or controversy arising out of or relating to this Agreement, including any anticipatory breach or disagreement as to interpretation of this Agreement, that is not resolved by the parties themselves or through mediation, shall be settled by binding arbitration in Cincinnati, Ohio, administered by Cincinnati Bar Association Arbitration Services pursuant to its rules and procedures in effect at the time the dispute is submitted. The arbitrator(s) shall decide all discovery issues. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs, except that the prevailing party shall be entitled to an award of reasonable attorney's fees.
- 9.8 *Governing Law.* This Agreement and any claim arising out of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding its conflict of laws principles. The United Nations Convention on Contracts of the International Sale of Goods shall not apply to this Agreement.
- 9.9 *Provisions Severable.* The provisions of this Agreement are severable. If any provisions are held to be invalid, unenforceable, or void, all other provisions shall remain valid.
- 9.10 *Entire Agreement.* This Agreement, and all present and future incorporated attachments, schedules, appendices, addenda, and written amendments, constitutes the entire agreement and understanding between the parties relating to the object and scope of this Agreement. Any representation, statement, or warranty not expressly contained in this Agreement shall not be enforceable by the parties. This Agreement may not be amended except by a writing that specifically references this Agreement and is signed by authorized representatives of the parties.

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