SUBSCRIPTION SERVICES AGREEMENT

This Subscription Services Agreement ("<u>Agreement</u>") is effective as of the date of execution of the Order Form referencing the terms hereof ("<u>Effective Date</u>") by and between Lattice Engines, Inc. ("<u>Provider</u>") and the party identified as a Customer in the Order Form ("<u>Customer</u>"). By accepting this Agreement, either by clicking a box indicating acceptance or by executing an Order Form that references this Agreement, Customer agrees to be bound by all terms hereof.

This Agreement was last updated on January 1, 2015

1. DEFINITIONS

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

1.2. "<u>Customer Data</u>" means the electronic data, content, files, or information that is supplied by Customer or its Users as part of the Subscription consistent with the applicable Solution Sheet, including any third party data therein obtained by Customer from Customer's Data Supplier ("<u>Customer Third Party Data</u>"), but excluding any Provider Data and any Regulated Data.

1.3. "<u>Data Supplier</u>" means, generically a third party that licenses its data to Customer for inclusion in the Customer Data, or a third party that licenses its data to Provider for inclusion in the Provider Data.

1.4. "<u>Documentation</u>" means the online user instructions and help files made available by Provider as part of the user interface for the Provider Application, as updated from time to time.

1.5. "<u>Hosting Environment</u>" means the hardware, software, networks, and peripherals used by Provider or its third party hosting providers to host the Provider Applications.

1.6. "<u>Implementation Services</u>" means fee-based set-up, implementation, or other consulting services Provider may perform pursuant to either (i) the standard Solution Sheets for packaged services referenced in the Order Form and/or (ii) a mutually agreed to implementation plan ("<u>Implementation Plan</u>").

1.7. "<u>Order Form</u>" means the ordering documents issued pursuant to this Agreement that are executed by Provider and Customer, or between Provider and an Affiliate of Customer from time to time.

1.8. "<u>Provider Applications</u>" means the sales and lead generation business intelligence analytics and reporting platform and applications made available to Customers part of the Subscription as described in the applicable Solution Sheet, and any modifications, derivative works, optional modules, custom or standard enhancements, updates and upgrades thereof.

1.9. "<u>Provider Data</u>" means all data developed by Provider and/or third party data obtained by Provider from Provider's Data Supplier ("<u>Provider Third Party Data</u>"), that is either used by Provider to deliver the Subscription to Customer or to generate Reports, in each case as set forth in the applicable Order Form Solution Sheet, or Implementation Plan.

1.10. "<u>Regulated Data</u>" means any personally-identifiable information or data regarding an individual that describes a person's: (1) social security number, driver's license number or any other government-issued identification card number, (2) personal financial information such as bank account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, or any other information that would permit access to a individual's personal financial accounts, (3) personal medical or health records, including any information comprised of either "Protected

Health Information" subject to and defined by the Health Insurance Portability and Accountability Act.

1.11. "<u>Reports</u>" means any flat-file document that is either (i) prepared by Provider as a required in connection with Implementation Services supplied (such as a csv. file containing scored leads); or (ii) that is generated by Users by use of the reporting or scoring features and functions of the Provider Applications.

1.12. "<u>Solution Sheet</u>" means the standard offering descriptions released by Provider for either the Provider Application, the Implementation Services, or Provider Data, as such are in effect at the time of mutual execution of the Order Form.

1.13. "<u>Subscription</u>" means the hosting, and maintenance and support services supplied by Provider to make available the Provider Applications available via the Hosting Environment.

1.14. "<u>Subscription Term</u>" means the subscription period set forth in the Order Form during which Provider agrees to provide the Subscription to Customer.

1.15. "<u>Third Party Services</u>" means third party or Customer-maintained software applications that interoperate with the Provider Application, including but not limited to, Salesforce.com, Marketo, Eloqua.

1.16. "<u>User</u>" means individuals who are authorized to access and use the Provider Applications for Customer's benefit, and who have been supplied user identifications and passwords for the purpose of accessing the Provider Application. Users may include but are not limited to Customer's or its Affiliates' employees, consultants, contractors, and agents.

2. PURCHASED SERVICES

2.1. <u>Provision of Subscription</u>. In accordance with this Agreement and the relevant Order Forms, Provider agrees to make the Provider Application available to Customer as part of the purchased Subscription for Customer's internal business use during the applicable Subscription Term. Where relevant, each Order Form or Implementation Plan will describe additional mutually agreed-upon limitations regarding the Subscription, such as geographic account limitations, sales play definitions, target market, data sources or integration points with third party accounts or systems used by Customer. Customer's request to expand the scope of use of the Provider Applications purchased with the Subscription (other than the purchase of additional Users) or the scope of Implementation Services will require that the parties issue a separate Order Form with mutually agreed-upon applicable fees for expanded scope. All Order Forms, including any Solution Sheets and/or Implementation Plans referenced therein, that are issued between the parties are deemed incorporated into this Agreement. If Customer's Affiliate executes an Order Form, all references in this Agreement to "Customer" shall be deemed to refer to such Affiliate. Customer agrees that Customer's purchases under this Agreement and each Order Form are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Provider regarding future functionality or features. Provider may update the functionality

and user interface of the Provider Applications, including the associated Solution Sheet, from time to time in its sole discretion as part of its ongoing mission to improve the Provider Application. Unless otherwise set forth in an Order Form, this Agreement will apply to new purchases or renewals subsequently made by Customer as part of any Subscription.

2.2. Implementation Services. Provider will perform Implementation Services set forth in the applicable Solution Sheet as set forth in the Order Form mutually executed by Provider and Customer. Implementation Services that supplement or vary the scope set forth in a Solution Sheet, will require an associated agreed-to Implementation Plan. Any other requests by either party to vary the foregoing shall require a mutually agreed-to and executed change order. All Solution Sheets and Implementation Plans are deemed part of and subject to this Agreement. Provider may update Solution Sheets from time to time in its sole discretion, provided, however, that no such change shall apply as to Implementation Services purchased by Customer or that are being delivered by Provider at the time the change goes into effect.

2.3. Customer Cooperation. Customer acknowledges that Provider's ability to timely implement, configure and deliver the Subscription and perform Implementation Services is dependent in part upon Customer's ongoing cooperation and assistance. Accordingly, Customer will supply to Provider, on a timely basis, all information, material and assistance reasonably necessary for Provider to provide the Subscription and Implementation Services, including but not limited to, (i) the Customer Data, or (ii) current User lists, (iii) business rules or other parameters required for configuration of the Provider Application, (iv) review of sample Reports or other materials submitted by Provider during initial implementation and configuration, and (v) such additional information, material and assistance identified in the applicable Order Form, Solution Sheet, or Implementation Plan. Provider's period of performance under this Agreement shall be appropriately and equitably extended to account for any delays that result from Customer's timely cooperation and participation as noted in this Section.

3. **TERMS OF USE**

3.1. Provision of Subscription Services. Provider will: (i) provide basic technical support for the Provider Applications as described at the URL http://www.lattice-engines.com/TechSupportPolicy.pdf, at no additional charge, and/or upgraded support if purchased; (ii) make the purchased Provider Applications available in accordance with the service level objectives described at the URL http://www.lattice-engines.com/ServiceLevelAgreement.pdf. The service levels as set forth in the foregoing referenced documents shall not be materially diminished by Provider during the Subscription Term.

3.2. Data Safeguards. At all times during a Subscription Term, Provider will implement and maintain, and require that its third party providers implement and maintain in the Hosting Environment, appropriate administrative, physical, and technical safeguards for the protection, security, confidentiality and integrity of Customer Data processed as part of the Subscription as further described at the URL http://www.lattice-engines.com/about-us/trust ("Data Safeguards").

3.3. Customer Data. Customer hereby grants Provider a limited, non-exclusive, royalty-free, license to access and use the Customer Data solely as necessary for Provider to provide the Services to Customer during a Subscription Term, including to prevent or address service or technical problems at Customer's request in connection with customer support matters. As between Provider and Customer, Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of all Customer Data supplied to Provider. Provider does not assume any duty or obligation to review, revise, cleanse, harmonize, optimize or otherwise correct or modify Customer Data. Customer understands and agrees that the Provider Application relies on Customer Data as supplied by Customer, and Provider is not liable to Customer for any errors, omissions or inaccuracies that are caused by errors, omissions or inaccuracies in the Customer Data provided by Customer. Provider may suspend or terminate the availability of Customer Third Party Data contained in the Customer Data as part of the Subscription at any time during the Subscription Term if Provider receives written notification from either Customer or the Data Supplier that the data licensing agreement between Customer and the Data Supplier for the Customer Third Party Data has terminated, expired, been suspended, or is the subject of a claim, legal process or dispute, for any reason. Provider shall be entitled to rely on any such notification without liability to Customer for doing the same, and shall have no liability to Customer as a result of the unavailability or removal of Customer Third Party Data resulting from its exercise of the suspension or termination rights noted in this Section.

3.4. Provider Data. Provider hereby grants Customer a limited, non-exclusive license to use Provider Data solely as necessary for Users to view results displayed through the Provider Application during a Subscription Term. Customer acknowledges and agrees that: (i) the foregoing license does not grant Customer any right to directly access Provider's database ("Lattice Data Cloud") or its Data Supplier's independent databases that host or maintain Provider Data or to extract any Provider Data in whole from such databases; (ii) Provider Data may be combined with Customer Data for purposes of creating Reports and/or displaying results based on the applicable features, functions and/or configurations of the Provider Application; (iii) Customer may not analyze or otherwise use Provider Data to familiarize itself with the nature, character or quality of the Provider Data in connection with the creation, testing, enhancement, promotion, marketing, selling and/or licensing of products or services that directly compete with those of Provider or the Data Supplier; (iv) Customer shall not directly contact the Data Supplier in connection with any support services related to the Provider Third Party Data; (v) Provider Data may not be reproduced, distributed, resold, sublicensed to third parties in whole or in part by Customer or Users; (vi) Provider Data may not be used independently of the Provider Applications, and any Reports that display the Provider Data may only be used for Customer's lawful business purpose; (vii) Provider may change Data Suppliers for the Provider Third Party Data during the Subscription Term, provided that such change shall not materially diminish the type, attributes, or nature of the Provider Third Party Data; (viii) Customer may not use the Provider Data as a factor in establishing an individual's eligibility for employment or credit or insurance to be used primarily for personal, family or household purposes and Customer may not use Provider Data as the sole factor in Customer's credit, insurance, marketing or other business decisions; (ix) Customer shall only use Provider Data in compliance with all applicable federal, state and local laws and regulations applicable to Customer and shall not use the Provider Data to engage in unfair or deceptive trade practices. Additional restrictions regarding the use of Provider Data, if any, will be set

forth in the pertinent Order Form in which the Provider Data is ordered.

3.5. Third Party Services. Provider does not warrant or support any Third Party Services or other non-Provider products or services. If Customer installs or enables a Third Party Service for use with the Provider Application, Customer grants Provider permission to allow the provider of that Third Party Service to access Customer Data as required for the interoperation of that Third Party Service with the Provider Application. Provider is not responsible for any disclosure, modification or deletion of Customer Data after such is accessed by a Third Party Service.   The Provider Application may contain features designed to interoperate with Third Party Services. To use such feature, Customer may be required to obtain access to Third Party Services from their providers, and may be required to grant Provider access to Customer account(s) on the Third Party Services. If Provider requires information to establish an integration with Customer's accounts on a Third Party Service, any such information made available to Provider will constitute Customer's Confidential Information hereunder and will be used by Provider solely as necessary to provide the Subscription to Customer subject to this Agreement. Customer acknowledges and agrees that, during a Subscription Term and subject to the remaining terms in this Section, Customer Data or Provider Data may be displayed on one or more Third Party Services authorized by Customer as a result of such integration. Customer Data displayed as permitted by the preceding sentence will be subject to the terms, conditions and privacy policy of the applicable Third Party Service provider and not this Agreement.   Any data exchange between Customer and the Third Party Service provider is solely between Customer and the applicable third party provider. If the provider of a Third Party Service suspends or ceases to make the Third Party Service available for interoperation with the corresponding Provider Application features, Provider may cease providing those Provider Application features to Customer without entitling Customer to any refund, credit, or other compensation.

3.6. Customer's Responsibilities. Customer is responsible for its Users' use of the Provider Application and Provider Data consistent with this Agreement. Customer will not: (i) make the Provider Applications or the Provider Data available to anyone other than Users; (ii) sell, resell, rent, lease or otherwise distribute the Subscription or Provider Data; (iii) use the Provider Applications, to send or store (a) infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material or communications, including material that violates applicable law or third party privacy rights, or (b) any Regulated Data; (iv) use the Provider Applications other than in accordance with the Documentation or in a manner that interferes with, unduly burdens, or disrupts the integrity, performance or availability of the Subscription or other users' receipt of the Subscription; (v) attempt to gain unauthorized access to the Provider Application, the Provider Data, or the Hosting Environment; (vi) access or use the Provider Applications or the Provider Data for the purpose of building a similar or competitive product or service, monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or (vii) copy, modify, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Provider Applications or Provider Data, or any part thereof, or otherwise attempt to discover its source code.

3.7. Virus and Malware Detection. Each party agrees on an ongoing basis to implement and maintain reasonable and commercially-available technical safeguards to detect and prevent the introduction into the other party's systems or devices used as part of the Subscription of computer viruses, Trojan Horses, cancelbots, or other unauthorized computing routines designed to disable, erase, damage or corrupt software, hardware or data.

3.8. Accuracy of Customer's Contact Information; Email Notices. Customer agrees to provide accurate, current and complete account and User information as necessary for Provider to issue or terminate User login credentials, communicate with Customer from time to time regarding the Subscription, issue invoices, accept payment, or for other account-related purposes. Customer agrees to accept emails issued by Provider containing business and product-related communications relevant to the Subscription at the e-mail address specified by its Users. Provider may provide account notices, statements, and other communications arising under this Agreement (other than legal notices of termination, material breach, force majeure, or indemnification actions) to Customer through either e-mail, posting on the Provider Application or other electronic transmission. In addition, Customer agrees that Provider may rely and act on all information and instructions provided to Provider by Users from the above-specified e-mail addresses.

3.9. Temporary Suspension. Except for suspensions for nonpayment under Section 4.5 below, Provider may immediately suspend Customer's or its Users' access to the Provider Application if either Customer or a User is engaged in, or Provider in good faith suspects is engaged in, any conduct constituting a violation of the terms of this Agreement, applicable law or third party right, including the terms of any agreement between Customer and the Data Supplier governing Customer Third Party Data or the terms of any Third Party Service on which its use of the Provider Application relies. In addition, Provider shall be entitled to remove or suspend the supply of any Provider Data or Customer Data if: (a) Provider determines that retrieval or processing of such Customer Data or Provider Data violates any law, rule, regulation or court order, (b) Provider receives notice or demand from the Data Supplier responsible for such Provider Data or Customer Data that threatens legal action based on continued retrieval or processing of the same; (c) the Provider Data or Customer Data is delayed, becomes technically unavailable or inaccessible or unusable through no fault of Provider. Provider will contact Customer prior to or contemporaneously to such suspension. Customer agrees that Provider will not be liable to Customer, any User, any Affiliate or any other third party if Provider exercises its suspension rights as permitted by this Section. Provider shall use diligent efforts to limit suspension only to affected Users or portions of the Provider Applications, Customer Data or Provider Data, as applicable, and to promptly restore access to the same as soon as the issue giving rise to such suspension has been resolved.

4. **FEES AND PAYMENT TERMS**

4.1. Fees. Customer will pay all undisputed fees specified in all Order Forms hereunder. Except as otherwise expressly specified in this Agreement or in an Order Form, (i) fees are quoted and payable in United States dollars, (ii) fees are based on Subscriptions purchased, (iii) payment obligations are non-cancelable and fees paid are non-refundable. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

4.2. User Subscriptions. Subscriptions are purchased for designated Users only and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former

Users who no longer require ongoing use of the Provider Application.

4.3. <u>Invoices and Payment</u>. Fees will be invoiced in accordance with the applicable Order Form. Unless otherwise set forth in the applicable Order Form, Customer agrees to pay all invoiced amounts within thirty (30) calendar days of the invoice date.

4.4. <u>Suspension of Service for Nonpayment</u>**.** If any amounts owed under this Agreement are overdue from the due date, Provider may, without limiting Provider's other rights and remedies, suspend Customer's and its Users' access to the Subscription or use of any Provider Application until such amounts are paid in full, but provided that (i) Provider has first given Customer prior notice that its account is overdue in accordance with the notice provisions in Section 3.8 above, and (ii) Customer fails to initiate payment within ten (10) business days from the date of Provider's notice of overdue payments.

4.5. <u>Payment Disputes</u>**.** Provider agrees that it will not exercise its rights under Section 4.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

4.6. <u>Taxes</u>. Customer is solely responsible for the payment of all taxes, assessments, tariffs, duties or other fees imposed, assessed or collected by or under the authority of any governmental body (collectively, "<u>Taxes</u>") arising from Provider's provision of the Provider Applications and/or Services hereunder, except any taxes assessed upon Provider's net income. If Provider is required to directly pay Taxes related to Customer's use of the Provider Applications or receipt of any Services hereunder, Customer agrees to promptly reimburse Provider for any amounts paid by Provider.

5. **PROPRIETARY RIGHTS**

5.1. <u>Customer Ownership</u>. As between Provider and Customer, Customer exclusively owns all right, title and interest in and to all Customer Data, and subject to the rights expressly granted hereunder, Customer and its suppliers and licensors retain all right, title and interest in and to the Customer Data and Customer's other Confidential Information, including all related intellectual property rights. No rights are granted to Provider hereunder other than as expressly set forth in this Agreement.

5.2. <u>Provider Ownership</u>**.** As between Provider and Customer, Provider and its suppliers (including Data Suppliers of Provider Third Party Data) and licensors exclusively own all right, title and interest in and to the Provider Applications, Provider Data, the Hosting Environment, Product Usage Information, and Provider's other Confidential Information, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement. Neither Customer nor any Users will delete or in any manner alter the copyright, trademark, and other proprietary notices of Provider, if any, appearing on any Provider Application or Documentation.

5.3. <u>Suggestions</u>**.** Provider shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Provider Applications any suggestions, enhancement requests, recommendations or other feedback provided by Customer or any Users relating to the Provider Applications ("<u>Product Feedback</u>"). Customer acknowledges and agrees that any Provider Application incorporating such Product Feedback shall be the sole and exclusive property of Provider and all such Product Feedback shall be free from any confidentiality restrictions that might otherwise be imposed upon Provider pursuant to Section 6 below. Product Feedback used by Provider will never identify Customer or Users, or contain Customer Data.

5.4. <u>Product Usage Information.</u> Provider monitors all use of the Provider Application and the Hosting Environment for security and operational purposes. Such activity is collected and maintained internally in an aggregated and de-identified manner for Provider's legitimate business purposes, including but not limited to compiling statistical and performance information related to the provision and operation of the Subscription, service levels, usage levels, peak usage, feature usage and other similar technical monitoring ("<u>Product Usage Information</u>"). Customer agrees that Provider may make such Product Usage Information publicly available, provided that such information does not incorporate any Customer Data, Customer's Confidential Information, and/or identify Customer or its Users.

6. **CONFIDENTIALITY**

6.1. <u>Definitions.</u> "<u>Confidential Information</u>" means all confidential or proprietary information of a party or its Affiliates ("<u>Disclosing Party</u>") disclosed to the other party ("<u>Receiving Party</u>"), whether orally or 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, including the terms and conditions of this Agreement, each Order Form, and any discussions between the parties regarding an existing or prospective purchase of the Services. Confidential Information of Provider shall specifically include, but is not limited to, non-public business information of Provider and its employees, providers or suppliers, the Provider Applications, the Hosting Environment, Provider Data, Documentation, Provider's roadmap, Provider's marketing plans, or Provider's client lists, Provider's non-public financial or business information. Customer's Confidential Information includes, but is not limited to, Customer Data, User lists, Customer's marketing or sales plans, and Customer's non-public financial or business information.

6.2. <u>Treatment of Confidential Information</u>. The Receiving Party shall not use or disclose any Confidential Information of the Disclosing Party for any purpose other than to perform an obligation or exercise a right as expressly permitted or required by this Agreement, except with the Disclosing Party's permission. The Receiving Party shall only disclose the Confidential Information of the Disclosing Party to its employees, contractors, service providers, and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information and who are bound by an obligation of confidence no less restrictive than those set forth herein ("Representatives"), and provided further that the Receiving Party shall remain liable for the acts or omissions of such Representatives to the same extent assumed for itself hereunder.

6.3. <u>Permitted Disclosure</u>. The obligation of nondisclosure set forth herein shall not apply to any Confidential Information that: (i) is or becomes publicly available without a breach of any obligation owed by the Receiving Party to the Disclosing Party; (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party; (iii) following its disclosure to the Receiving Party, is received by the Receiving Party from a third

party without breach of any obligation owed to the Disclosing Party; or (iv) is authorized for disclosure by the Disclosing Party or the legal owner of such information, if the Disclosing Party is not the legal owner of such; (v) independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information; or (vi) the Receiving Party is required to disclose by any applicable law, by any rule or regulation of any court or government agency of competent jurisdiction, or pursuant to legal process; provided that the Receiving Party provides the Disclosing Party with prompt written notice of the requirement to disclose, reasonable assistance in the opposing or limiting of such disclosure and limits such disclosure to that strictly required by such court, government agency or legal process.

6.4. <u>Notification of Unauthorized Disclosure</u>. The Receiving Party shall promptly inform the Disclosing Party of any verified unauthorized disclosure of the Disclosing Party's Confidential Information, including any verified breach of security of the Provider Applications or Hosting Environment resulting in the unauthorized disclosure of Confidential Information, Customer Data, or Provider Data. The parties shall cooperate diligently to implement prompt measures to mitigate further unauthorized disclosures. Provider may, without requiring Customer's consent, communicate with law enforcement personnel, service providers, insurance providers, and other relevant personnel required to immediately take action to resolve or address such incident, but shall not issue communications to Users or customers of Customer without prior notification to and approval of Customer. Customer shall not make any public statement or issue any public communication regarding any incident described in this Section, without Provider's prior written consent, except as strictly required by law.

6.5. <u>Injunctive Relief</u>. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

7. **WARRANTIES; DISCLAIMERS**

7.1. <u>Warranties</u>. Each party warrants that it has the power to enter into this Agreement and that doing so will not violate any other agreement to which the contracting party is bound. Provider warrants to Customer that (i) during the Subscription Term, the Provider Applications will perform in all material respects the features and functions described in the accompanying Documentation, (ii) Provider's personnel will act and perform its duties, including Implementation Services, in a professional and workmanlike manner in conformance with generally accepted industry standards and applicable law.

7.2. <u>General Disclaimers</u>. EXCEPT FOR EXPRESS WARRANTIES MADE BY PROVIDER OR CUSTOMER TO THE OTHER UNDER THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, NEITHER PARTY (NOR THEIR RESPECTIVE DATA SUPPLIERS) MAKES ANY OTHER WARRANTIES TO THE OTHER, IMPLIED OR STATUTORY. EACH PARTY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY AND NONINFRINGEMENT.

7.3. <u>Provider-Specific Disclaimers</u>. Except as expressly warranted in Section 7.1 above, Provider does not warrant that the Provider Application, Provider Data, the Hosting Environment or the Subscription (i) meets or will meet Customer's or its Users' specific needs, (ii) are error-free, or (iii) are not susceptible to intrusion, attack or computer virus infection. The Provider Data is provided to Customer strictly on an "as is" basis without warranty of any kind and Provider and its Data Suppliers disclaim all warranties, express or implied, including any warranties of accuracy, completeness, correctness, merchantability or fitness for a particular purpose related to the Provider Data. Customer also acknowledges that every business decision involves the assumption of a risk and that, in furnishing the Provider Data to Customer, neither Provider nor its Data Suppliers underwrite such risk in any manner whatsoever. Customer therefore agrees that neither Provider nor its Data Suppliers will be liable to Customer for any loss, damage or injury arising out of or caused in whole or in part by business decisions made Customer on the basis of Provider Data. Customer understands and agrees that Provider assumes no liability with respect to security incidents or errors in the Provider Applications caused by: (a) Users' disablement or incorrect configuration of security or other features within the Provider Applications, the Third Party Service, or any other system or software not supplied by Provider as part of the Subscription, (b) Users' failure to update or implement Provider Application security policies when prompted (for example, updating a password, or establishing password security questions), (c) Users' failure to maintain the confidentiality of their passwords, (d) the provider of the Third Party Service or service providers employed by Customer, (e) unforeseen events not reasonably preventable by Provider notwithstanding the use of the Data Safeguards. In addition, Provider assumes no obligation or liability whatsoever with respect to Customer Data that constitutes Regulated Data, or that is lost, modified, erased or corrupted as a result of actions initiated by Users in their use of the Provider Applications or Third Party Service.

7.4. <u>Non-GA Services</u>. From time to time Provider may invite Customer to try, at no charge, Provider products or services that are not generally available to Provider's customers ("<u>Non-GA Services</u>"). Customer may accept or decline any such trial in its sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Non-GA Services are not considered "Services" hereunder and are provided solely and exclusively "AS IS" with no express or implied warranty. Provider may discontinue Non-GA Services at any time in its sole discretion and may never make them generally available.

8. **INDEMNIFICATION**

8.1. <u>Indemnification by Provider.</u> Provider, at its expense, will defend and pay any awarded damages, settlement amounts, and litigation costs and expenses (including reasonable attorneys' fees) arising out of any third party claim, suit or proceeding alleging that the Provider Application, Implementation Services, or Provider Data supplied by Provider violates the rights of privacy or publicity of such third party under applicable law, or infringes such third party's copyright, patent or trademark rights. The foregoing obligation will not apply with respect to any claim if such claim is caused by: (i) Customer's misuse of the Provider Application or Provider Data, Customer's supply of infringing or unauthorized Customer Data, or Customer's supply of Regulated

Data, (ii) any modification or alteration or integration of the Provider Application (other than by Provider), (iii) Customer's breach of this Agreement not caused by Provider, Customer's independent violation of applicable law or the rights of third parties. If any claim of infringement which Provider is obligated to defend has occurred, or in Provider's determination is likely to occur, Provider may, in its sole discretion and at its option and expense either: (a) obtain for Customer the right to use the allegedly infringing item, (b) substitute a functionality equivalent, non-infringing replacement for such item, (c) modify such item to make it non-infringing and functionally equivalent, or (d) terminate the Agreement and refund to Customer fees paid to Provider for the infringing items in an amount prorated to reflect the period of time from the date Customer was unable to use the infringing items due to such claim.

8.2. <u>Indemnification by Customer</u>. Customer, at Customer's expense, will defend and pay any awarded damages, settlement amounts, and litigation costs and expenses (including reasonable attorneys' fees) arising out of any third party claim, suit or proceeding: (i) alleging that Customer Data or Confidential Information used or supplied by Customer violates applicable law or the rights of privacy or publicity of a third party; (ii) resulting from Customer's supply of Regulated Data; (iii) resulting from Customer's misuse of Provider Data or the Provider Applications. The foregoing obligation will not apply with respect to any claim if such claim is caused by: (i) Provider's unauthorized use or disclosure of Customer Data or Confidential Information, (ii) any claim giving rise to Provider's indemnification obligation under Section 8.1 above, or (iii) Provider's breach of this Agreement not caused by Customer or Provider's independent violation of applicable law or the rights of third parties.

8.3. <u>Conditions</u>. The parties' obligations under this Section are contingent upon the indemnified party (i) giving prompt written notice to the indemnifying party of any claim under this Section, (ii) giving the indemnifying party sole control of the defense or settlement of the claim, and (iii) cooperating in the investigation and defense of such claim(s). The indemnifying party shall not, without the prior express written consent of the indemnified party, not to be unreasonably conditioned, delayed or withheld, settle or consent to an adverse judgment in any such claim that entails either public disclosure of the terms of a settlement or an admission of fault of the indemnified party, requires that the indemnified party pay damages or monies for which the indemnifying party is not responsible, or that imposes additional obligations on the indemnified party,. The rights and remedies set forth in this Section are subject to the limitations and exclusions set forth in Section 9 below, and are the sole obligations of the indemnifying party and exclusive remedies available to the indemnified party in the event of an applicable third party claim.

9. **LIMITATION OF LIABILITY**

9.1. <u>Limitation of Liability</u>. In no event will either party be liable to the other for damages arising out of or related to this Agreement in amounts which, in the aggregate, exceed the total amounts paid or payable by Customer in the twelve (12) months preceding the date of the claim. The limits on damages in this Section apply regardless of the theory of liability asserted, be it in contract, tort or under any other theory of liability. The essential purpose of this provision is to limit the potential liability of the parties arising from this Agreement. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees charged in connection with the Subscription and

Implementation Services and that, were Provider to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

9.2. <u>Exclusion of Other Damages</u>. In no event will either party be liable to the other for damages other than direct damages, including, without limitation: any indirect, special, incidental, consequential, exemplary or punitive damages, whether in tort, contract, or otherwise; or any damages arising out of or in connection with any malfunctions, regulatory non-compliance, delays, loss of data, lost profits, lost savings, interruption of service, loss of business or anticipatory profits, whether or not the party has been advised of the possibility of such damages ("<u>Indirect Damages</u>"). For clarity, the exclusion of Indirect Damages shall not apply with respect to awarded damages or settlement amounts which the indemnifying party is obligated to pay to the prevailing third party claimant in connection with a claim for which an indemnity is owed pursuant to Section 8 above.

10. **TERM AND TERMINATION**

10.1. <u>Term</u>. This Agreement is effective on the Effective Data and shall continue in full force and effect until terminated in accordance with the provisions herein. Subscriptions begin on the start date specified in the relevant Order Form and continue for the Subscription Term. Implementation Services begin on the start date specified in either the Order Form or Implementation Plan and continue for the periods noted therein, or completion of the Implementation Services, whichever is earlier.

10.2. <u>Termination for Cause</u>. This Agreement and an Order Form may be terminated by either party for cause as follows: (i) upon thirty (30) days written notice if the other party breaches or defaults under any material provision of this Agreement or Order Form, as applicable, and does not cure such breach prior to the end of such thirty (30) day period, (ii) effective immediately if the other party is declared insolvent, ceases to do business, or otherwise terminates its business operations, except as a result of an assignment permitted hereunder.

10.3. <u>Expiration and Effect of Termination</u>. If Provider and Customer have issued multiple Order Forms pursuant to this Agreement, termination of one Order Form will not terminate any other Order Form. In the event of termination of an Order Form or this Agreement, upon Customer's written request, Provider shall continue to make available the Customer Data in the current format in which it is stored in the Provider Application for thirty (30) days following termination, during which Customer shall be solely responsible for retrieving the Customer Data. After such thirty (30) day period, Provider shall have no obligation to maintain or provide any Customer Data, and may thereafter unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control in accordance with its data policies and procedures. Customer's right to use Reports that are exported by Customer out of the Provider Application during the Subscription Term, shall survive termination or expiration of this Agreement indefinitely. Except for the foregoing, all other rights and licenses granted by one party to the other under this Agreement shall immediately terminate. In the event of termination of Implementation Services due to termination of the Agreement or the Order Form (other than termination as a result of Provider's breach), Customer agrees to pay Provider all fees due, and unreimbursed out-of-pocket expenses incurred by Provider for the ordered

Implementation Services up to the date of termination or expiration of such Implementation Services.

10.4. Survival. Except to the extent expressly provided to the contrary herein, Sections 5, 6, 7.2, 7.3, 9, 10 and 11 shall survive the termination of this Agreement.

11. GENERAL

11.1. Relationship. The relationship between the parties created by this Agreement is that of independent contractors. Neither party will be deemed to be or hold itself out as a partner, joint venturer or agent of the other party. This is a non-exclusive arrangement.

11.2. Entire Understanding. This Agreement (including any exhibits, ordering documents or URLs incorporated by reference herein) states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or in any other ordering documentation (excluding Order Forms) are or will be deemed incorporated into or form any part of this Agreement, and all such terms or conditions are null and void.

11.3. Modification and Waiver. Except as expressly set forth in this Agreement, no modification of this Agreement, and no waiver of any breach of this Agreement, is legally binding against the other party unless in writing and signed by both parties. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement. A determination that any provision of this Agreement is invalid or unenforceable will not affect the other provisions of this Agreement.

11.4. Governing Law and Venue. This Agreement is governed by and construed under the laws of the State of California excluding its conflict of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The state and federal courts located in San Mateo, California, will have exclusive jurisdiction to adjudicate any dispute relating to this Agreement. Each party hereby irrevocably consents to the exclusive jurisdiction of such courts.

11.5. Insurance. Provider currently maintains and agrees to maintain during each Subscription Term the minimum insurance coverages set forth in the URL http://www.lattice-engines.com/insurance.pdf . Provider will obtain such insurance policies from insurance companies rated not less than A-VIII by the most recent A.M. Best report. Upon request, Provider will furnish Customer with certificates evidencing such coverage. Provider will inform Customer in writing if the policies set forth herein are materially diminished, discontinued by Provider, or if the carrier initiates termination other than in connection with Provider's purchase of an equivalent policy from an alternate carrier that meets the requirements of this Section.

11.6. Publicity. Provider may include the Customer company logo and profile on Provider's website to identify Customer as a subscriber to the Subscription. Within thirty days (30) from Provider's request, Customer agrees to provide a quote from an executive to support a Provider press release and within ninety days (90) from Provider's request, Customer will support a success story case study. Except as set forth in this Agreement, all marketing activities are subject to approval by both Customer and Provider.

11.7. Assignment. Either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Provider shall refund to Customer any prepaid fees covering the remainder of the Subscription Terms after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. There are no third party beneficiaries to this Agreement.

11.8. Notices. Except for email notifications as permitted in Section 3.8 above, all other legal notices required to be sent hereunder must be in writing and will be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and to the attention of the parties accepting this Agreement and the relevant Order Form, with a copy to its General Counsel, or to such other address or individual as the parties may specify from time to time by written notice to the other party. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

11.9. Export; Anti-Corruption. Each party agrees, in connection with its obligations hereunder, to comply with all applicable export and re-export control laws and regulations. Customer will not permit Users to access or use the Subscription in a U.S.-embargoed country or in violation of any U.S. export law regulation. Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from a Provider employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify Provider (businessops@lattice-engines.com).

11.10. Staffing. Provider shall be responsible for staffing decisions with respect to its personnel and the provision of any Services under this Agreement, and shall have the right to assign, remove or replace any of its personnel assigned to perform any Services under this Agreement.

11.11. Force Majeure. Except for performance of a payment obligation, neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. If the force majeure continues for more than thirty (30) calendar days, then either

party may terminate the Agreement for convenience upon written notice to the other party.

11.12. <u>Severability</u>. If any provision of this Agreement is declared invalid or unenforceable by a court or administrative agency of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and this Agreement shall be construed and performed as if it did not contain the invalid or unenforceable provision.

11.13. <u>Counterparts; Electronic Signatures</u>. This Agreement may be executed in one or more counterpart copies, each of equal validity, which when joined, shall together constitute one Agreement. It is expressly agreed that, once this Agreement or any counterpart has been fully executed by a duly authorized individual on behalf of each party, any photocopy, facsimile, or electronically-executed version of this Agreement or any such counterpart shall be deemed the equivalent of an original. In the event that the parties do execute this Agreement by exchange of facsimile signed copies, the parties agree that, upon being signed by all parties, this Agreement shall become effective and binding and that facsimile copies will constitute evidence of the existence of this Agreement.