



Email Marketing Services Agreement

## Email Marketing Services Agreement

Version 1.0

Between

**Instinctive Insights**

And

**[CLIENT]**

This Master Services Agreement is made on the \_\_\_\_\_ of \_\_\_\_\_ 2017, between:  
Version 1.0      Instinctive Insights | 8862 Whitney Drive | Lewis Center | Ohio | 43035

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## Email Marketing Services Agreement

(1) **Instinctive Insights**, a company incorporated in Lewis Center, whose registered office is 8862 Whitney Drive, Lewis Center, Ohio 43015 ("Instinctive Insights"), and

(2) \_\_\_\_\_, a company incorporated in \_\_\_\_\_ whose registered office is at

\_\_\_\_\_  
("Customer").

### BACKGROUND:

Instinctive Insights is a provider of Digital Marketing Services such as, but not limited to, email, landing pages, design and SMS.

Customer wishes to obtain, and Instinctive Insights is willing to provide, such services on the basis of and subject to the Terms and Conditions of this Master Services Agreement and of Addenda entered into.

NOW IT IS HEREBY AGREED AS FOLLOWS:

## 1. Definitions and Interpretation

- 1.1 In these Terms and Conditions, the following terms shall bear the meanings attributed to them below:
- 1.2 "Addendum" means an Addendum which invokes, and is properly executed by the parties under, these Terms and Conditions;
- 1.3 "Commencement Date" means the earlier of the date of (a) the contract start date as defined in the Contract, and (b) the date that Services commence;
- 1.4 "Customer Rights" means all Intellectual Property Rights subsisting in and in relation to Customer Content;
- 1.5 "Customer Content" means any information provided by or on behalf of the Customer for transmission by Instinctive Insights as part of the Services;
- 1.6 "Customer Data" means any personal data (a) contained in or relating to any message, (b) which is provided by the Customer or any of its direct or indirect customers;
- 1.7 "End-user" means any recipient of a message generated and delivered by Instinctive Insights on behalf of The Customer;



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- 1.8 "Intellectual Property Rights" means all copyright (including but not limited to rights in computer software), patents, trademarks, trade secrets, registered and unregistered design rights, database rights and topography rights, all rights to bring an action for passing off, all rights to apply for protection in respect of any of the above rights and all other forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
- 1.9 "Instinctive Insights Data" means data, excluding (for the avoidance of doubt) Customer Data, which is provided or generated in the course of Instinctive Insights provision of the Services;
- 1.10 "Instinctive Insights Rights" means all Intellectual Property Rights subsisting in and in relation to any aspect of the Services, the Platform or any device, software or data used in connection therewith, including without limitation the Instinctive Insights Data, but excluding (for the avoidance of doubt) Customer Data and Customer Rights;
- 1.11 "ISP" (or "Internet Service Provider") means a provider of website and email hosting services which is directly or indirectly engaged in the performance of any of the Services;
- 1.12 "Personal data" bears the meaning attributed to that phrase in the Data Protection Directive 95/46/EC (and any national implementation of that Directive) or any successor or supplement to that Directive or national implementation;
- 1.13 "Platform" means the messaging services platform, and associated systems and network connections, owned and operated by Instinctive Insights or by suppliers or partners of Instinctive Insights, which is used to provide the Services;
- 1.14 "Interface Specification" means the protocols to be used by the Customer in order to access the Services, as notified by Instinctive Insights to the Customer from time to time;
- 1.15 "Rights" means the Customer Rights and the Instinctive Insights Rights, respectively;
- 1.16 "Service" and "Services" mean services of provided by Instinctive Insights and defined in the relevant Service Specifications;
- 1.17 "Service Addendum" means an Addendum specifying Services and other matters pertaining to those Services;
- 1.18 "Service Interface" means the method to be used by the Customer to connect to the Platform;



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- 1.19 "Service Level Agreement" (or "SLA") means the document of that name attached to these Terms and Conditions as Schedule 1;
- 1.20 "Service Specifications" means Instinctive Insights' documentation detailing the features of Instinctive Insights' services, as such Service Specifications may be specified in an Addendum, and as they may be updated by Instinctive Insights from time to time;
- 1.21 "Subcontractor" means any client or other third party with which the Customer contracts for the provision of any or all of the Services;
- 1.22 "Taxes" mean any moneys imposed by a government agency.
- 1.23 "Term" means the duration as specified in this agreement, except as earlier terminated in accordance with the provisions of these Terms and Conditions; and
- 1.24 "Terms and Conditions" means the provisions of this Master Services Agreement, together with each of its Schedules and each Addendum entered into under it.
- 1.25 References in these Terms and Conditions to "Instinctive Insights" and "Customer" shall include their respective employees, agents, sub-contractors, consultants and permitted assigns.
- 1.26 Headings are included in these Terms and Conditions for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions. Unless the context otherwise requires, the singular includes a reference to the plural and vice versa.
- 1.27 Words and phrases defined in any part of these Terms and Conditions, being these operative provisions, its Schedules and the relevant Addendum shall bear that meaning throughout the other parts of these Terms and Conditions, except to the extent otherwise expressly provided therein.
- 1.28 References to Clauses and Paragraphs are, unless otherwise provided, references to the clauses and paragraphs of, these Terms and Conditions and paragraphs of the Schedules.
- 1.29 Unless the context otherwise requires, any reference in these Terms and Conditions to any specific statute shall include a reference to any amendment or revision thereof.



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### 2. The Services and Addenda

- 2.1 In consideration of the Customer satisfying its obligations under these Terms and Conditions, Instinctive Insights shall provide the Services in accordance with these Terms and Conditions from the Commencement Date until:
  - 2.1.1 the end of the term for those Services specified in the relevant Addendum;
  - 2.1.2 these Terms and Conditions as they relate to those Services are terminated in accordance with these Terms and Conditions;
- 2.2 Instinctive Insights shall provide to the Customer Services and the products in accordance with Schedule 1.
- 2.3 Instinctive Insights shall provide sufficient numbers of suitably skilled, experienced and competent persons to perform the Services.
- 2.4 The Customer may request additional or amended services by completing a Service Addendum. Notwithstanding signature of an Addendum the parties agree that the Customer is not obliged to purchase the additional or amended services until the Customer issues a Purchase Order.
- 2.5 Each Addendum that is accepted, agreed and signed by the Customer and Instinctive Insights will form part of these Terms and Conditions.
- 2.6 The Customer acknowledges and agrees that:
  - 2.6.1 the Services, and the terms and conditions which govern any of them, shall be subject to changes resulting from changes made by the relevant ISP to the corresponding services provided by the ISP to Instinctive Insights or the terms and conditions which govern such corresponding services; and
  - 2.6.2 in the event that any such change is made which has any effect upon the rights and obligations of the parties under these Terms and Conditions, then:
    - 2.6.2.1. such change shall be deemed automatically to bind the Customer; and
    - 2.6.3 Instinctive Insights will use its reasonable efforts to notify the Customer of relevant changes as soon as is reasonably practicable, provided that the Customer shall be entitled by no less than thirty days' notice in writing to Instinctive Insights to terminate any Addendum directly affected by the relevant change in the event that such change has a materially adverse commercial effect upon the Customer's business.



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- 2.7 To the extent of any conflict or inconsistency between an Addendum and the operative provisions of these Terms and Conditions, the Addendum shall take precedence in respect of the Services and other matters that are the subject of that Addendum. Each individual Addendum shall be distinct and shall relate only to the Services that are the subject of it, and accordingly the contents of any individual Addendum shall not affect the content of any other Addendum or the Services that are the subject of the latter Addendum except as may be expressly provided in either Addendum.

### 3. Customer Commitments

- 3.1 The Customer warrants and undertakes to Instinctive Insights as follows:
- 3.1.1 at all times to conform to the interface specification for the relevant Service Interface notified to the Customer by Instinctive Insights from time to time;
  - 3.1.2 to attempt to connect only to the Service Interface specified for the Customer's Services and use only the names and passwords notified to them by Instinctive Insights from time to time
  - 3.1.3 to nominate at least 2 weeks prior to the Commencement Date such employees of the Customer as may be required to act as technical coordinators and Instinctive Insights' contact points in order to coordinate delivery of the Services;
  - 3.1.4 to ensure that the technical coordinators and other staff of the Customer follow the service administration and fault reporting procedures notified to them by Instinctive Insights from time to time;
  - 3.1.5 to accept responsibility for, and pay in accordance with these Terms and Conditions, Instinctive Insights' charges, arising from the submission by the Customer to Instinctive Insights of messages for delivery, or for the use of any other agreed Instinctive Insights services products;
  - 3.1.6 to supply complete and accurate instructions, Customer Content and Customer Data to Instinctive Insights sufficient for the performance of the relevant Services, in accordance with such timescales as Instinctive Insights may reasonably require;



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- 3.1.7 that neither the Customer Content nor the Customer Data or its supply to or use by Instinctive Insights or any End-user shall infringe the rights of any third parties or any laws or regulations, including, without limitation, relevant US Federal State and/or Local regulations and any national implementations thereof, in any country where any message is originated, delivered or in respect of which any of the Services are performed.
- 3.1.8 to ensure that the Services are used for proper and lawful purposes only and in accordance with such reasonable instructions as Instinctive Insights may from time to time notify to the Customer; and
- 3.1.9 at its own expense, to comply with all requirements and conditions at any time imposed by law that are applicable to or affect the Services or the conduct of the Customer's business.
- 3.2 Without limiting Clause 3.1 above, the Customer undertakes not to use the Services or permit the Services to be used:
  - 3.2.1 for sending any communication which is defamatory, offensive or abusive or of an obscene or menacing nature;
  - 3.2.2 for the persistent sending of messages without a reasonable cause or for the purpose of causing annoyance, inconvenience or distress to any person;
  - 3.2.3 in any way that contravenes applicable law or regulation in any country where the Services are marketed or provided;
  - 3.2.4 in any way that may have a detrimental effect to the goodwill and good standing of any of the relevant ISP's;
- 3.3 Instinctive Insights may request:
  - 3.3.1 evidence from the Customer of compliance with Clauses 3.1 and 3.2 above, and
  - 3.3.2 the provision by the Customer of reasonable volume forecasts, customer support information and information concerning new services to be provided by means of the Services, and the Customer agrees to comply with any such request as soon as reasonably practicable, and with such degree of detail as Instinctive Insights may reasonably require on the condition that any forecasts given will not be contractually binding and/or oblige the Customer to purchase and/or order the Services, save as may be provided in the relevant Addendum.



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3.4 The Customer acknowledges that the ISP's have a base of End-users across all age groups. Customer shall be responsible for the Services delivered to End-users and shall take all appropriate measures to insure that the content of each of the Services is not inappropriate for the End-user.

3.5 The Customer agrees:

3.5.1 to comply, and to ensure that all of the Customer Content and its use of the Services complies, in all respects, with all relevant regulations, directions, codes of practice and other rules and guidelines, mandatory or otherwise, promulgated from time to time by Regulators (collectively, "Codes") including, without limitation, those of the **Direct Marketing Association (available at [www.thedma.org](http://www.thedma.org))**;

3.5.2 to ensure that all advertising of the Services complies with applicable advertising standards, regulations and codes;

3.5.3 to provide Instinctive Insights with, and notify Instinctive Insights of any subsequent changes to, the name, address and contact telephone number of Subcontractor, and in the event that Subcontractors are limited companies, their registered numbers, together with any **Allocated Numbers** allocated to such Subcontractors;

3.5.4 that where Instinctive Insights is advised in writing by a Regulator that the Customer is or has been in breach of any Code, Instinctive Insights shall be entitled to act on any request or recommendation by the Regulator for access to be barred to such Services as the Regulator may specify for such periods as the Regulator may specify;

3.5.5 to provide all reasonable assistance to Instinctive Insights in connection with Instinctive Insights' compliance with any requirements or conditions which are at any time imposed by law or any Regulator which are applicable to or affect the Services.

3.5.6 to provide the Regulator with such information or material relating to the Services or a future service as the Regulator may reasonably request in order to carry out any investigation in connection with (i) the Services or (ii) Customer's relationship with a Subcontractor

3.5.7 Instinctive Insights agrees to comply, and to ensure that its Service complies, in all respects, with all relevant regulations, directions, codes of practice and other rules and guidelines mandatory or otherwise, promulgated from time to time by Regulators.



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3.6 In the event that any ISP or Regulator:

3.6.1 makes a charge, fine, penalty or debit against Instinctive Insights, or any deduction from sums otherwise payable to Instinctive Insights for one or more actual or alleged events the liability for which (if proven) would have arisen out of a breach of this agreement or any addenda or constituted a breach of any of the Codes resulting from Customer's action or inaction,

3.6.2 then Instinctive Insights shall be entitled to recover from the Customer the amount thereof, plus any reasonable costs or expenses incurred by Instinctive Insights in connection with the incurring of such liability or the relevant charge, fine, debit or deduction, including reasonable attorney's fees and costs.

## 4. Price, Payment and Currency

4.1. The charges for the Services shall be as set out in the relevant Appendix, as adjusted from time to time pursuant to this Clause.

4.2. All amounts payable under these Terms and Conditions are exclusive of any Taxes that may be payable. The Customer will pay all such Taxes at the rate and in the manner required by law.

4.3. Where an invoice is issued for sums payable to Instinctive Insights by the Customer:

4.3.1. such sums shall be paid by the Customer within 30 days of the Customer being in receipt of Instinctive Insights' invoice notification email, providing the invoice has been submitted using a method agreed by Instinctive Insights and the Customer; and

4.3.2. unless otherwise specified in the relevant Addendum, Instinctive Insights will issue such invoices to the Customer on a monthly basis.

4.4. Unless otherwise agreed in writing between the parties;

4.4.1. all payments of charges by the Customer to Instinctive Insights and other allocations of funds between the parties required shall be made by bank transfer or check, and

4.4.2. all charges and fees relating to such transfers (including, without limitation, those levied by the paying and payee bank or other financial institution) will be borne by the Customer; Instinctive Insights will include the amount of such charges and fees in invoices and statements issued to the Customer under these Terms and Conditions.



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- 4.5. If an End-user contacts Instinctive Insights in relation to the Services Instinctive Insights shall redirect or transfer such End-user to the support facilities of the Customer, or, if such a transfer is not, in Instinctive Insights' opinion, reasonably practicable, for any reason (including, without limitation, by reason of any unwillingness by the End-user to be redirected to the Customer), then Instinctive Insights may itself provide an initial response to the query or complaint. Where Instinctive Insights receives more than 20 such contacts from End-users in any 7 day period, Instinctive Insights shall have the right to charge the Customer the sum of \$25.00 in respect of each individual telephone or other contact made by an End-user with Instinctive Insights or any agent of Instinctive Insights, except where (a) the proximate cause of the End-user making such contact is a breach of these Terms and Conditions, or a failure of the Services to perform in accordance with the Service Specifications, for which Instinctive Insights is responsible, or (b) the End-user's requirement to make contact with Instinctive Insights results either from (i) a failure on the part of Instinctive Insights to submit to the relevant ISP a Customer Care Form previously provided by the Customer containing the Customer's relevant contact information, or (ii) a failure of the relevant ISP to provide that contact information. Instinctive Insights does not warrant that any response it gives to End-users as provided in this Clause will be appropriate to the Services, or would be similar to the response that the Customer would give.
- 4.6. In the event that any payment due under these Terms and Conditions is not paid on the due date for payment then Instinctive Insights shall be entitled to charge interest thereon at the highest rate allowed by law from the date payment becomes due until payment in full. Such interest shall accrue daily.

## 5. Confidentiality

- 5.1 For the purpose of these Terms and Conditions, "Confidential Information" shall mean all Intellectual Property Rights, drawings, software, data, specifications, processes, testing procedures, customer information, financial information, product and services information and all other technical, business and other information and material relating or belonging to a party or its customers which is obtained by either party in relation to the other, either directly or indirectly.
- 5.2 Confidential Information shall not include:
- 5.2.1 information which was in the public domain at the time of disclosure;
  - 5.2.2 information which, though originally Confidential Information, subsequently falls into the public domain other than as a result of any breach of this Clause or any other obligation of confidentiality;



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- 5.2.3 information received by a party from a third party, or already known by such party, without any breach of this Clause or any obligation of confidentiality;
  - 5.2.4 information that is trivial or obvious; and
  - 5.2.5 information that is required to be disclosed by a government body or court of competent jurisdiction or by operation of law or in order to comply with the rules of a recognized stock exchange, but only to the extent so required.
- 5.3 Each party hereby agrees, other than as permitted by these Terms and Conditions, to keep the Confidential Information of the other in complete confidence and not to disclose the same to any third parties (except as set out above), nor use it for any purposes other than for the performance of its duties under these Terms and Conditions (the "Specific Purposes"). Either party may disclose the Confidential Information of the other to its employees but only to the extent reasonably necessary for the Specific Purposes and subject to the recipient being subject to obligations of confidentiality relating to that Confidential Information no less stringent than the requirements of this Clause. Each party hereby agrees to use reasonable efforts to ensure that all such employees do not disclose Confidential Information of the other party to third parties or use the same otherwise than as reasonably required for the Specific Purposes. The provisions of this Clause shall continue in full force and effect notwithstanding the termination of these Terms and Conditions for any reason whatsoever.

## 6. Warranties / Liability

- 6.1 Instinctive Insights warrants that the Services will be performed with reasonable care and skill with the objective of meeting the requirements of these Terms and Conditions, including (without limitation) the Service Specifications and the Service Level Agreement in Schedule 1.
- 6.2 Instinctive Insights shall be liable as expressly provided in these Terms and Conditions, but shall have no other obligation, duty or liability whatsoever in contract, tort (including negligence, breach of statutory duty and any other tort) or otherwise.
- 6.3 Nothing in these Terms and Conditions shall exclude or restrict Instinctive Insights' or the Customer's liability for death or personal injury resulting from its negligence.



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- 6.4 Subject always to Clause 7.5, either Party shall be liable for direct loss or damage only, whether in contract, tort (including negligence, breach of statutory duty or other tort) or otherwise, and whether caused by its act or omission or that of its employees, agents or subcontractors. Instinctive Insights' aggregate liability during any successive period of twelve months, the first of which shall be deemed to begin on the Commencement Date (each a "Year") shall be limited to the lesser of:
- 6.4.1 \$500,000 (five hundred thousand dollars) or
  - 6.4.2 the value of the Customer's contract with Instinctive Insights;
- 6.5 Neither party shall be liable to the other or any other person or entity, whether in contract, tort (including negligence, breach of statutory duty or other tort) or otherwise:
- 6.5.1 for any loss of revenue, business, anticipated savings or profits, or
  - 6.5.2 for any indirect, special or consequential loss damage, costs or other claims, howsoever caused or arising, whether through non-supply or late supply of Services or other nonperformance of these Terms and Conditions or otherwise.
- 6.6 Except as expressly stated elsewhere in these Terms and Conditions, all representations, warranties, conditions and other terms, whether express or implied (by common law, statute, collaterally or otherwise) are hereby excluded, save in the case of fraud. **Specifically, the Customer acknowledges and agrees that there are no implied warranties of either merchantability or fitness for a particular purpose. There are no warranties which extend beyond the description on the fact of this agreement.**
- 6.7 Instinctive Insights shall have no liability to the Customer or any other person for or in respect of any Customer Content, Customer Data or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other act or omission of the Customer
- 6.8 Instinctive Insights will use reasonable endeavors to meet any dates agreed between the parties in writing for the commencement of the Services.



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6.9 If Instinctive Insights shall fail to meet any service level or other requirement specified in the Service Level Agreement, then Instinctive Insights' entire liability, and the Customer's entire remedy, shall be (a) for Instinctive Insights to use reasonable endeavors to correct such failure in future deliveries of the affected Services; and (b) termination of the relevant Service Addendum and the Services provided there under, subject to and in accordance with the Service Level Agreement in Schedule 1.

6.10 The provisions of this Clause 6 shall survive the termination or expiry of these Terms and Conditions.

## 7. Intellectual Property Rights

7.1 Ownership of all Instinctive Insights Rights shall vest in and remain with Instinctive Insights. As between the parties, ownership of all Customer Rights shall vest in and remain with the Customer.

7.2 Instinctive Insights shall license to the Customer such use of Instinctive Insights Rights as is necessary to use the Services (including any related documentation or software which Instinctive Insights makes available to the Customer) in accordance with these Terms and Conditions.

7.3 The Customer shall license to Instinctive Insights the Customer Rights only for the purpose that Instinctive Insights is enabled to provide the Services in accordance with these Terms and Conditions.

7.4 Any license granted under this Clause 7 shall be non-transferable, non-sub licensable, nonexclusive and royalty-free except as provided herein and shall be limited to the Term in respect of the Services to which the license relates and shall be granted only for the purpose of fulfilling the respective party's rights and obligations under these Terms and Conditions.

7.5 Each party warrants to the other that it is the owner of its respective Rights or is entitled to license its respective Rights as provided under Clauses 7.2 or 7.3, as applicable.

7.6 Neither party shall reverse engineer, decompile or disassemble any software included in the other party's Rights except to the extent expressly permitted by applicable law.



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### 8. Non-Solicitation of Employees

- 8.1 Both parties agree, during the Term and for a period of six (6) months thereafter, not directly or indirectly (other than by general advertising) to solicit employ or engage, or endeavor to do so, any employees of, or any contractors used by the other party in the performance of its obligations under these Terms and Conditions without the prior written consent of the latter party.

### 9. Assignability and Third Party Rights

- 9.1 Each party ("non-assignor") acknowledges that the other party ("assignor") shall be entitled, by notice in writing to the non-assignor, to assign any or all of its rights and obligations under these Terms and Conditions to another entity:
- 9.1.1 within its group of companies as part of a bona fide reconstruction of that group; or
  - 9.1.2 which acquires all or substantially all of the assignor's assets entailed in the performance of the Services,
  - 9.1.3 for which assignments, non-assignor hereby provides its irrevocable consent. Any other assignment of assignor's rights and obligations under these Terms and Conditions shall be conducted only with the written consent of the non-assignor, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, any assignment of obligations under this Clause shall be without prejudice to the continuation of the assignor's obligations existing prior to the effective date of such assignment.
- 9.2 The parties to these Terms and Conditions do not intend that any terms of these Terms and Conditions should be enforceable by any person or entity who or which is not a party to these Terms and Conditions.

### 10. Indemnity

- 10.1 Each party ("indemnifier") shall respectively, as provided below, indemnify the other party ("indemnified") against all costs, claims, expenses and liabilities arising out of any action, demand, allegation or proceeding by any person or entity (including, without limitation, any Regulator) based on an allegation that:
- 10.1.1 Where Instinctive Insights is the indemnifier, the use or possession by Instinctive Insights of the Platform in connection with these Terms and Conditions infringes the Intellectual Property Rights of any third party;



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10.2 Indemnification under Clause 10.1 is conditional upon the indemnified:

10.2.1 notifying the indemnifier promptly upon being notified or becoming aware of any matter which may be indemnifiable by the indemnifier under that Clause;

10.2.2 not making any admission, denial or statement in relation to such matter;

10.2.3 giving to the indemnifier the entire control of the defense and settlement of such matter;

10.2.4 providing to the indemnifier (at the indemnifier's expense) all reasonable assistance requested by indemnifier in connection with such defense and settlement, including (without limitation) by executing documents.

## 11. Suspension and Termination

11.1 Instinctive Insights may in its sole discretion suspend provision of the Services at any time in the event that:

11.1.1 Instinctive Insights terminates these Terms and Conditions;

11.1.2 Instinctive Insights is obliged or advised to comply with an order, instruction or request of the government, Regulator, court or other competent authority;

11.1.3 the services of one or more of the Network Operators upon which the provision of Services hereunder is dependent suspends its provision of those services to Instinctive Insights under the terms of its or their relevant agreement(s) with Instinctive Insights; or

11.1.4 any payment due to Instinctive Insights hereunder is outstanding after the due date for payment.

11.2 Where Instinctive Insights determines in its discretion it is practicable to do so, then Instinctive Insights shall affect any such suspension only in respect of those Services which are affected by the matters referred to in the above sub-Clauses. Instinctive Insights will notify Customer in advance of any suspension of the Services affected under these Terms and Conditions.



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11.3 These Terms and Conditions may be terminated prior to expiration of the Term by notice in writing as follows:

11.3.1 by either party in the event that the other has failed to perform any material obligation required to be performed under these Terms and Conditions and such failure is not corrected within thirty (30) days from receipt of written notice advising of such failure from the other party, which notice shall make reference to this Clause;

11.3.2 by the Customer in respect of any specific Service Addendum and the Services which are the subject thereof (but, for the avoidance of doubt, not any other Service Addendum or Services):

11.3.3 where the Service Level Agreement expressly permits termination in respect of the relevant Service Addendum and Services; or

11.3.4 by Instinctive Insights by immediate notice in the event that one or more of the Network Operators upon which the provision of Services hereunder is dependent terminates its provision of those services to Instinctive Insights under the terms of its or their relevant agreement(s) with Instinctive Insights; or

11.3.5 by Instinctive Insights, in respect of any specific Service Addendum and the Services which are the subject of it (but, for the avoidance of doubt, not any other Service Addendum or Services), any change in any law, regulation or code of conduct makes the provision of such Services illegal or contrary to such law, regulation or code of conduct, prohibitively difficult, or prohibitively expensive for Instinctive Insights;

11.3.6 by either party by immediate written notice in the event that the other party is in material breach of its obligations in this agreement and the breach is not cured within 30 days.

11.3.7 by either party in the event that the other party (being a company) presents a petition or has a petition presented by a creditor for its winding up, convenes a meeting to pass a resolution for voluntary winding up or enters into liquidation (other than for the purposes of a bona fide reconstruction or merger), enters into a voluntary arrangement with its creditors, has a receiver, administrative receiver or administrator of all or any of its undertakings or assets appointed, or is deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or (files or has filed against it a bankruptcy petition or shall suffer anything analogous to these matters;



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- 11.3.8 by either party in the event that the other party is prevented from performing its obligations under these Terms and Conditions pursuant to Clause 15.1 for a period of 30 days or more; or
- 11.3.9 by either party in the event that any payment due hereunder is not paid by the other party within 30 days following the date when it is required to be paid in accordance with these Terms and Conditions.
- 11.4 Upon termination or expiration of these Terms and Conditions the Customer shall deliver to Instinctive Insights all material containing any of the Confidential Information of Instinctive Insights within fourteen (14) days of such termination or expiration or (at the option of Instinctive Insights a statement confirming that such copies have been destroyed) and Instinctive Insights shall return to the Customer within fourteen (14) days all material provided in documentary form by the Customer to Instinctive Insights containing information in the nature of Confidential Information of the Customer which it holds; provided that (a) Either party shall not be obliged to return such material to the other party where doing so would be likely to compromise the confidentiality of any other person's confidential information; and (b) Instinctive Insights shall be entitled to retain and use all Confidential Information of the Customer including but not limited to MSISDN numbers provided by the Customer to Instinctive Insights as part of the Customer Data or Customer Content notwithstanding termination of these Terms and Conditions for so long and to the extent required for the performance by Instinctive Insights of obligations owed to ISP's or Regulators or in order to satisfy legal or regulatory requirements.
- 11.5 Notwithstanding any other provision of this Agreement, if Instinctive Insights terminates this agreement as a result of entering into liquidation and providing the Customer is not in breach of this agreement, Instinctive Insights will provide the Customer within 7 days all of the Source Code relating to the Licensed Program Materials, and all associated schemas, designs, make files and other materials necessary to maintain, support, compile and configure the Licensed Program Materials, and all relevant passwords, user names and access credentials.

## 12. Term

- 12.1 These Terms and Conditions shall continue in force until the expiration or termination of the entire Schedule.
- 12.2 Unless earlier terminated in accordance with these Terms and Conditions, each Schedule or Addendum shall continue until:
- 12.2.1 such date, or the expiration of such period, as is specified in the Addendum; or, in the absence thereof



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12.2.2 the service by either party of at least ninety (90) days written notice to the other party, such notice to expire no earlier than 6 months following the Commencement Date.

### 13. Announcement

The Parties shall agree any public announcement regarding these Terms and Conditions and/or the subject matter of these Terms and Conditions in writing in advance.

### 14. Data Protection

14.1 The Customer warrants and undertakes that:

14.1.1 if any of the Customer Data or other data made available by or on behalf of the Customer to Instinctive Insights amounts to personal data, it shall comply with all applicable laws and regulations in relation to the provisions of it services.

14.2 Instinctive Insights warrants and undertakes that:

14.2.1 subject to these Terms and Conditions and any legal or regulatory requirements, it will act as a data processor in accordance with Clause 14.1.1 above; and

14.2.2 without prejudice to any duties it may owe to other customers, or rights it may otherwise have acquired, it will not use Customer Data (or Customer Content) other than for the purposes expressed in, and in accordance with, these Terms and Conditions.

### 15. Force Majeure

15.1 Either party's performance of any part of these Terms and Conditions, other than payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by:

15.1.1 the acts or omissions of the other party or any Network Operator;

15.1.2 flood, fire, hurricane, earthquake, strike or riot; act of war or terrorism, act of God or

15.1.3 any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of that party (collectively referred to as "force majeure conditions" below).



## Email Marketing Services Agreement

15.2 If any such force majeure condition occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of any such condition and the extent of the delay, and shall make reasonable, good faith efforts to resume performance as soon as possible.

## 16. General

16.1 These Terms and Conditions including their Schedules and each Addendum constitutes the entire agreement between the parties relating to the subject matter thereof, and supersedes any prior discussions, representations (other than fraud or fraudulent representations), understandings and agreements between the parties in relation thereto.

16.2 Subject to Clause 2.5, any amendment to these Terms and Conditions must be in writing signed by or on behalf of both parties.

16.3 No waiver of any provision of these Terms and Conditions by either party shall be effective unless made in writing. Any waiver made by such party of any term or condition of these Terms and Conditions shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.

16.4 The laws of Ohio shall govern these Terms and Conditions.

16.5 Any notice under these Terms and Conditions shall be in writing and sent:

16.5.1 where the notice is served pursuant to any other provision of these Terms and Conditions, by certified mail to the address for such party set out at the beginning of these Terms and Conditions or to such other address as such party has for the time being notified to the other in accordance with this agreement.

16.5.2 If any portion of these Terms and Conditions is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of these Terms and Conditions shall remain in effect in accordance with its terms as modified by such deletion.



## Email Marketing Services Agreement

### 17. Agreement

Signed for and agreed on behalf of:

Instinctive Insights LLC

Printsource

By:

By:

Print Name: Jeramy Fishel

Print Name:

Title: Co-Founder

Title:

Date: 8/10/2017

Date:



## Email Marketing Services Agreement

### Schedule 1

#### 1. Intro

- 1.1 Instinctive Insights will provide the Customer with access to the self-service control panel with the minimum possible downtime in accordance with section 4 below.
- 1.2 Where applicable, Instinctive Insights will provide the Customer with support via email for any questions relating to integration and use.
- 1.3 Where applicable, the Customer is granted a license to make use of the developer interface to communicate directly with the solution. It is the Customers responsibility to ensure integration projects are debugged and tested. It is also the Customers responsibility to ensure the data being captured through integration is as intended.
- 1.4 It is the responsibility of the Customer to ensure that integrated applications are secure and that usage of the developer interface is granted only where permitted by the Customer.

#### 2. Support Requests

- 2.1 The Customer will log submit all support requests via email to Instinctive Insights at [support@instinctiveinsights.com](mailto:support@instinctiveinsights.com).
- 2.2 Instinctive Insights shall ensure that support emails are monitored during all regular business hours, which are defined in section 5 below.
- 2.3 In cases of emergency or issues of a highly critical nature the Customer can call Instinctive Insights at 614.500.4070. Instinctive Insights shall ensure that the Support Line telephone number will have a voicemail facility.
- 2.4 Instinctive Insights shall be entitled to change the domain name of the online support ticketing system from time to time upon reasonable prior written notice to the Customer.
- 2.5 A support specialist will respond to support requests during office hours, which are defined in section 5 below, not later than one-business day after:
  - 2.5.1 in the case of receiving an email; and
  - 2.5.2 in the case of telephone calls, the earlier of the voicemail system logging the call or the support specialist receiving the call.



## Email Marketing Services Agreement

- 2.6 The Customer shall give reasonable notice to Instinctive Insights if they are expecting the requirement for out of office hour's support to ensure Instinctive Insights can arrange for the appropriate support resources to be made available.
- 2.7 Instinctive Insights is not responsible for responding to support calls or messages placed other than via email, or in the case of emergency, through the Support Line telephone number.

### 3. Errors & Corrections

- 3.1 During the Term of this Agreement, Instinctive Insights will use reasonable efforts to correct all reproducible errors reported by the Customer through the Support Line in accordance with the following terms and conditions;
- 3.2 Immediately after reviewing a report of an error from the Customer, Instinctive Insights will, acting reasonably, with the co-operation of the Customer, categorize the error as either level 1, level 2 or level 3 and thereafter will commence and diligently seek an appropriate error correction by:
- 3.2.1 for all errors, promptly answering the Customer's questions and diagnosing errors during the Service Hours by telephone;
  - 3.2.2 for all errors, promptly troubleshooting and diagnosing errors during the Service Hours by telephone, modem or other remote connection (except that the Customer shall be responsible for providing the specified equipment for the use of such devices and for implementing any temporary procedures requested by Instinctive Insights while a permanent solution is sought); and
  - 3.2.3 if an appropriate error correction is not found by the first and second line support referred to above and the error cannot reasonably be dealt with remotely, providing on-site service for the Software or the user interface during Office Hours, which are defined in section 5 below.
- 3.3 Instinctive Insights will use all reasonable efforts to resolve errors within the following resolution time periods:
- 3.3.1 level 1 errors, within 24 hours;
  - 3.3.2 level 2 errors, within 48 hours; and
  - 3.3.3 level 3 errors, within 5 business days.



## Email Marketing Services Agreement

- 3.4 Notwithstanding the response times indicated above, Instinctive Insights will endeavour to reduce the response and resolution time when the Customer has properly indicated that an error correction is urgently needed, and shall continue efforts to resolve errors beyond the target resolution times if necessary.
- 3.5 In determining which level is appropriate the following criteria shall be applied:
- 3.5.1 level 1—an error that results in the loss of a facility or function material to the proper operation of the software and critical to the Customer's software implementation operation;
  - 3.5.2 level 2—an error that results in loss or interrupted provision of a facility or function material to the proper operation of the software including (without limitation) an error that results in cosmetic errors on-screen but does not prevent the Customer from carrying out his business;
  - 3.5.3 level 3—an error that results in a minor loss of facility or functionality.

## 4. Downtime

- 4.1 Where Instinctive Insights recommends and the Customer agrees that the best method of error correction involves an interruption of the live operation of the software, Instinctive Insights shall use all reasonable endeavours to perform the support in accordance with the Customer's direction as to the timing of downtime and shall seek to minimize business disruption so far as is reasonably practicable.

## 5. Office Hours

- 5.1 Instinctive Insights will provide office hours support for the software to the Customer. Under the terms of this agreement office hour's support is defined as:
- 5.1.1 Monday to Friday 9am – 5.00pm Eastern Standard Time (except holidays)
- 5.2 In the event of an extended period of outage that is outside of office hours the Customer will be informed by email and provided with an estimated resolution timescale.
- 5.3 In the event of errors that cause the software to fail, Instinctive Insights shall use its reasonable efforts to restore the solution to its proper operating condition promptly and shall notify the Customer as soon as reasonably practicable after the solution is available for use again.

Version 1.0 Instinctive Insights | 8862 Whitney Drive | Lewis Center | Ohio | 43035

Page | 23 Phone: 614.500.4070 | Fax: 614.848.5620 |

Email: [info@instinctiveinsights.com](mailto:info@instinctiveinsights.com) | Web: [www.instinctiveinsights.com](http://www.instinctiveinsights.com)



## Email Marketing Services Agreement

# CLIENT

### Pricing Breakout Appendix A

#### Price List

Monthly Service fee: \$200.00

CPM: \$ 5.00 per thousand records

\* aggregated count of emails sent, events triggered, requests forwarded and API impressions

#### Optional Set-up Costs

Per Dedicated Delivery Server: \$20,000.00

Per Dedicated IP Address (setup fee) \$600.00

Per Dedicated IP Address (monthly fee) \$30.00

Payment Terms: 30 days net invoice date.