



MASTER SUBSCRIPTION & SERVICES AGREEMENT

This agreement is between Forecastable, Inc., a Delaware corporation (**Forecastable**), and the Customer agreeing to these terms (**Customer**). This agreement is dated as of the date of last signature below.

1. SOFTWARE SERVICE.

This agreement provides Customer access to and usage of a web-based software service, including, without limitation, its features, functions, and user interface, as specified on an order (**Service**). Implementation services (**Implementation Services**) may also be provided by Forecastable if specified under an order.

2. USE OF SERVICE.

- a. **Customer Owned Data.** All data uploaded by Customer or through any third-party site (as described in (f) below) to the Service remains the property of Customer, as between Forecastable and Customer (**Customer Data**). Customer grants Forecastable the right to use the Customer Data solely for purposes of performing under this agreement. During the term of this agreement.
- b. **Collaborators.** If Customer selects to use the collaboration feature of the Service, it may invite third party collaborators (**Collaborator**) to collaborate on sales opportunities within the Service. If Customer invites a Collaborator to collaborate, then Customer understands that Collaborator will have full access to the opportunity and its related data (including without limitation, buyer map, close plan, opportunity qualification and notes) and the ability to make modifications.
- c. **Access and Usage.** Customer may allow its contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its contractors.
- d. **Customer Responsibilities.** Customer: (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Forecastable promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's technical documentation and applicable law.
- e. **Forecastable Support.** Forecastable must provide Customer support for the Service under the terms of Forecastable's Customer Support Policy (**Support**).
- f. **Integrations with Third-Party Sites and Services.** In order to use or access certain parts of the Service, Customer may direct Forecastable to retrieve and manage Customer's own information maintained online by third parties (such as CRM services, Marketing Automation platforms or data information sources, with which Customer has relationships, or maintains accounts or engages in transactions and which are supported by the Service (**Account Information**)). Customer use of such Account Information is governed by Customer's contract with such third party. Forecastable will then connect directly, with Customer's cooperation, with Customer's online service providers to access this Account Information.
 - Forecastable is not responsible for the products and services offered by such third parties.
 - Forecastable does not assume responsibility for the timeliness, accuracy, deletion, non-delivery or failure to store any user data, communications or personalization settings on third party-sites.
 - Customer grants Forecastable permission to access and use its Account Information maintained by identified third parties, and the Service may make changes to this information as directed by Customer.
 - Forecastable is not liable if any Account Information is not available for any reason, however Forecastable will make commercially reasonable efforts to maintain a continuous connection to Customer's Account Information.

3. SERVICE LEVEL AGREEMENT & WARRANTY.

- a. **Warranty.** Forecastable warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of 98% in any given month (excluding maintenance outages, outages beyond Forecastable's reasonable control, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.
- b. **Implementation Services Warranty.** Forecastable warrants that, for a period of 30 days from delivery, it has performed the Implementation Services in conformance with generally accepted practices within the software services industry. To make a claim under this warranty, Customer must notify Forecastable of any breach of this warranty no later than 30 days after delivery of the Services. CUSTOMER'S EXCLUSIVE REMEDY AND FORECASTABLE'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR FORECASTABLE TO RE-PERFORM ANY NON-CONFORMING PORTION OF THE IMPLEMENTATION SERVICES, OR IF FORECASTABLE CANNOT REMEDY THE BREACH, THEN REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING PORTION OF THE SERVICES. THIS WARRANTY WILL NOT APPLY TO THE EXTENT CUSTOMER, ITS CONTRACTORS, OR AGENTS HAVE MODIFIED ANY ITEM.
- c. **DISCLAIMER.** FORECASTABLE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE FORECASTABLE TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, FORECASTABLE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.

4. PAYMENT.

Customer must pay all fees as specified on the order, but if not specified, then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT, and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, 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 (**Confidential Information**). Forecastable's Confidential Information includes, without limitation, the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below). Customer's Confidential Information includes, without limitation, the Customer Data.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care), and it may not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

d. Data Security Measures.

Security Measures. In order to protect Customer's Confidential Information, Forecastable: (i) implements and maintains all reasonable security measures appropriate to the nature of the Confidential Information including, without limitation, technical, physical, administrative, and organizational controls, and will maintain the confidentiality, security, and integrity of such Confidential Information; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks (collectively, **Security Measures**).

Notice of Data Breach. If Forecastable knows that Customer Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Forecastable will promptly alert Customer of any such data breach, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Forecastable will give highest priority to immediately correcting any data breach, and will devote such resources as may be required to accomplish that goal. Forecastable will provide Customer with all available information reasonably necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted, Customer may provide notice to any or all parties affected by any data breach. In such case, Forecastable will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. Forecastable will provide Customer with information about what Forecastable has done or plans to do to minimize any harmful effect of the unauthorized use or disclosure of, or access to, Confidential Information.

6. PROPERTY.

- a. **Reservation of Rights.** The Service and the Software and Documentation are the proprietary property of Forecastable and its licensors, and all right, title, and interest in and to the Service and the Software and Documentation, including all associated intellectual property rights, remain only with Forecastable. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. Forecastable reserves all rights unless expressly granted in this agreement.
- b. **Restrictions.** Customer *may not*: (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes.
- c. **Software and Documentation.** All software provided by Forecastable as part of the Service (for example, browser plugin), and the Service documentation and other materials provided by Forecastable (**Software and Documentation**) are licensed to Customer as follows: Forecastable grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service.
- d. **Statistical Information.** Forecastable may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Data, and there is no means to re-identify Customer Data. Forecastable retains all intellectual property rights in such information.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have expired or are terminated for material breach under **Section 7(b)**.
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c. **Return of Customer Data.**
 - *Within 30 days after termination,* upon request Forecastable will make the Service available for Customer to export Customer Data as provided in **Section 2(a)**.
 - *After such 30-day period,* Forecastable has no obligation to maintain the Customer Data and may destroy it.
- d. **Return Forecastable Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Forecastable for any unpaid amounts and destroy or return all property of Forecastable. Upon Forecastable's request, Customer will confirm in writing its compliance with this destruction or return requirement.
- e. **Suspension for Violations of Law.** Forecastable may temporarily suspend the Service and/or remove the applicable Customer Data if it in good faith believes that, as part of using the Service, Customer has violated a law. Forecastable will attempt to contact Customer in advance.
- f. **Suspension for Non-Payment.** Forecastable may temporarily suspend the Service upon electronic notice if Customer is more than 30 days late on any payment due pursuant to an order.

8. LIABILITY LIMIT.

- a. **Exclusion of Indirect Damages.** Forecastable is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.
- b. **Total Limit on Liability.** Except for Forecastable's indemnity obligations, Forecastable's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.

9. DEFENSE OF THIRD-PARTY CLAIMS.

- a. Forecastable will defend or settle any third-party claim against Customer to the extent that such claim alleges that Forecastable technology used to provide the Service violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Forecastable of the claim in writing, cooperates with Forecastable in the defense, and allows Forecastable to solely control the defense or settlement of the claim. *Costs.* Forecastable will pay infringement claim defense costs it incurs in defending Customer, Forecastable-negotiated settlement amounts, and court-awarded damages. *Process.* If such a claim appears likely, then Forecastable may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Forecastable determines that none of these are reasonably available, then Forecastable may terminate the Service and refund any prepaid and unused fees. *Exclusions.* Forecastable has no obligation for any claim arising from: Forecastable's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by Forecastable. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND FORECASTABLE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. If a third party claims against Forecastable that any part of the Customer Data infringes or violates that party's patent, copyright, or other right, Customer will defend Forecastable against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that Forecastable promptly notifies

Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

10. GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Florida (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Seminole County, Florida, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

11. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification or waiver of any term of this agreement is effective unless both parties sign it.
- b. **No Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the businesses or assets of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
- f. **No Additional Terms.** Forecastable rejects additional or conflicting terms of a Customer's form-purchasing document.
- g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h. **Survival of Terms.** Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Feedback.** If Customer provides feedback or suggestions about the Service, then Forecastable (and those it allows to use its technology) may use such information without obligation to Customer.

_____/Customer

Forecastable, Inc.

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Address:

Address: