



## **DEEPTARGET TERMS AND CONDITIONS** (Effective as of July 9, 2018)

**PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY. THESE TERMS AND CONDITIONS OF USE MAY HAVE CHANGED SINCE YOUR LAST REVIEW ON THIS WEBSITE AND USE OF THE PRODUCTS. YOU AGREE TO CHECK FOR UPDATES TO THESE TERMS AND CONDITIONS OF USE.**

**BY USING THIS WEBSITE OR THE PRODUCTS, YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS OF USE. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS OF USE, THEN YOU MAY NOT USE THIS WEBSITE OR THE PRODUCTS.**

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### **1. Products**

DeepTarget, Inc. ("DeepTarget," "we" or "us") provides financial institutions and businesses with a variety of products, including:

- DeepTarget OLB (the "OLB" or "Online Banking" Product)
- DeepTarget Extensions for eLerts and eStatements
- DeepTarget Email (the "Email Marketing" Product)
- DeepTarget Mobile (the "Mobile" Product);

In addition to the products described above, we provide a variety of related offerings and services, including, without limitation, banner creation, customization, updating of rules, data processing, hosting, setup, implementation and other professional services. All of these products and services and any related offerings and services are referred to in these Terms and Conditions of Use as the "Products."

We reserve the right to modify or revise any Product in whole or in part, either temporarily or permanently, with or without notice and you acknowledge that we are not obligated to support or update the Products in any manner. We also reserve the right to discontinue any Product in whole or in part, either temporarily or permanently, and you acknowledge that we are not obligated to support or update the Products in any manner. If we suspend or discontinue any Product, we will provide you with advance notice. In the event we discontinue a product, we will provide you with an opportunity to cancel your subscription of that product.

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## **2.General Terms and Conditions**

### **2.1. General**

This website and our Products are provided subject to these Terms and Conditions of Use, as they may be amended by us, and any guidelines, rules or operating policies that we may post on this website, including, without limitation, our [Anti-Spam Policy](#) and our [Privacy Policy](#), which are specifically incorporated herein by reference (collectively, the "Agreement"). We may amend this Agreement from time to time due to changes to our Products, to account for developments under the law, or for any other commercially reasonable reason. Future performance by us of our obligations under this Agreement is sufficient consideration for any such amendment. Any amendment will only become effective upon notification to you (by email or by posting on our website) and, if you do not want to agree to any such amendment, you should contact us to cancel your account. By checking the box next to the "Do you agree?" button on the sign-up page, by manually signing your agreement, by logging in to your DeepTarget account, by accessing this website or by accessing any of our Products by means of any API interface, you accept this Agreement.

Any terms and conditions that may be contained in any acknowledgement, invoice, purchase order or other form you provide are specifically null and void.

### **2.2. Legally Binding Contracts**

This website and the Products are available only to persons or organizations that can form legally binding contracts under applicable law. Without limiting the foregoing, this website and the Products are not available to individuals under the age of 18. If you do not qualify, you are not permitted to use this website or the Products. If you are using this website or the Products on behalf of an organization, you represent and warrant that you have the ability to bind such organization by your use of this website and the Products.

### **2.3. Registration**

You agree to provide true, accurate, current and complete information about yourself and your organization, as applicable, as requested in the registration form, as requested in any other form or correspondence, and elsewhere on this website, and agree to update such information if it changes.

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### **3.Communication with You**

We reserve the right to send messages to you to inform you of:

- changes or additions to this website or the Products;
- changes to this Agreement or any of the Fee Schedules (defined below),
- violations of this Agreement or cancellation, suspension, termination or other action respecting your privilege to access and use this website or the Products; or
- any other matter related to this website, the Products or this Agreement.

Nothing in this provision shall require or obligate us to send any notice if no notice is required or mandated elsewhere in this Agreement

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### **4.Copyright and Trademark Information**

Copyright © 2009-2013 DeepTarget, Inc.

This website and the information they contain, are the property of DeepTarget and its affiliates and licensors, and are protected by United States and international intellectual property laws.

"DeepTarget," the DeepTarget logo and "Insight Driven Digital Marketing," are registered trademarks or trademarks of DeepTarget in the United States and other countries. This is not intended as a complete list of our trademarks and other DeepTarget product or service names or logos appearing in this website may be trademarks of DeepTarget or its affiliates.

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### **5.Fees and Payment; Fee Schedule; Promotions.**

#### **5.1. Promotion Period**

If you participate in a promotional offer, upon completing that promotional time period or exceeding any promotional limits, you will be subject to subscription fees in accordance with the fee schedule for the related product or service.

## **5.2. Fees for the DeepTarget OLB Product**

The fees for this product can be found in the DeepTarget OLB Section of the **DeepTarget OLB Product Schedule**.

## **5.3. Fees for the DeepTarget Email Product**

The fees for this product can be found in the DeepTarget Email Section of the **DeepTarget Email Product Schedule**.

## **5.4. Fees for Additional Products**

The fees for this product can be found in the DeepTarget Additional Section of the **DeepTarget Other Products Schedule**.

## **5.5. Fees for Additional Services**

The fees for this product can be found in the DeepTarget Additional Services Section of the **DeepTarget Other Products Schedule**.

## **5.6. Billing and Payment**

1. DeepTarget will invoice Client in accordance with invoice terms established in the DeepTarget Product Schedule for products and services purchased. Fees are payable in U.S. dollars only.
2. Client will remit payment to DeepTarget within 15 days of invoice receipt.
3. DeepTarget reserves the right to assess a late payment fee of the lesser of 1.5 percent (1.5%) interest per month on any outstanding account balance or the maximum permitted under applicable law, on overdue invoices until paid in full. However, such interest shall not be applied to sums not paid that are the subject of a bona fide dispute between the parties about which DeepTarget Inc. has received prior written notification unless it is determined that such sums are due and payable. In that event, the interest will be applied retroactively to the date the sums first became due and payable.
4. If we are required to collect and remit sales tax from our customers located in certain state and local jurisdictions, including those jurisdictions where software delivered as a service is taxable and where we maintain a physical presence, this amount will be added to your invoice. We determine your local taxing jurisdiction based on the billing address that you provide to DeepTarget. You agree to be responsible for and to pay any sales, personal property, use, VAT, excise, withholding, or any other taxes that may be imposed, based on this Agreement, use or possession of this website or the Products, excluding taxes based on net income payable by us.

## **5.7. General Fee Schedules and Discounts**

You are responsible for reviewing the applicable Fee Schedules from time to time and remaining aware of the fees charged by us and any applicable discounts. The Fee Schedules, including subscriber or contact levels, online banking levels, and any discounts, are subject to change at any time at our sole discretion. Such changes will not apply during the currently active term and pricing of the license but will be applicable during license renewal. If you do not agree to any such changes, you should contact us to cancel your account.

We will use good faith efforts to notify you prior to the effectiveness of any significant change to the Fee Schedules. If you receive special discounts through one of our marketing partners, those discounts may not be available if you cease to continue to be a customer of the marketing partner, in which case our standard rates will apply. We may rely on information provided by the applicable marketing partner, if any, with respect to the status of your DeepTarget account.

Any disputes about any charges to you under this Agreement must be submitted to us in writing within 60 days of the date such charges are incurred. You agree to waive all disputes not brought within the 60 day period, and all such charges will be final and not subject to challenge.

If DeepTarget makes an error in billing by either charging a lesser amount or no charge at all, DeepTarget will not retroactively bill the Customer unless the error was found within sixty (60) days of the bill's presentation to Customer. DeepTarget agrees to waive all disputes regarding underpayment not brought within the 60 day period and the customer will not be responsible for such unchallenged charges.

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## **6. Use of the Products**

### **6.1. General**

Subject to all the terms, covenants, conditions, and limitation set forth in this Agreement, DeepTarget Inc. hereby grants to Customer a non-exclusive, non-transferable, indivisible, and revocable right and license ("the License") to use software and related services ("Services") described in the Product Schedule.

All programs, documentation, and material supplied under the License shall be kept in a secure place, under access and use restrictions satisfactory to DeepTarget Inc. which shall not be less strict than those applied to Customer's most valuable and sensitive documents and software programs. The Customer may use Services for its own business and internal use only and may not be shared with any third party in substance or by shared usage. No access to Services, documentation or other material supplied under the License may be provided to any third party unless specifically agreed to in writing by DeepTarget Inc.

## **6.2. Conditions**

This License is granted based upon Customer's Certification that it sponsors a suitable web site defined as an informational web site designed for use primarily by Customer's members or clients. This Agreement shall terminate should Customer discontinue utilization of a suitable web site and this License shall terminate with no reimbursement to Customer of any monthly fees or charges. DeepTarget Inc. shall not be obligated to purchase or install any software, hardware, or peripherals not described herein. Customer is responsible for the purchase of all necessary software, hardware, or peripherals that are required to operate Products and Services described in Product Schedule.

The Products may not be used for the sending of unsolicited email messages (sometimes called "spam"). All messages sent by means of the Products shall be in compliance with our Anti-Spam Policy.

We prohibit the use of this website or the Products by any person or organization that engages in any illegal, libelous, defamatory, scandalous, threatening, or harassing activity or introduces viruses, worms, Trojan horses, spyware or other harmful code.

## **6.3. Use of the Products**

You agree to comply with the following in connection with your use of this website and the Products:

- You shall not knowingly interfere with or disrupt this website or any related DeepTarget websites or servers or networks connected to this website or any Products.
- You shall not knowingly restrict or inhibit any other user from enjoying and using this website or the Products.
- You shall not use the Products in violation of applicable law or third party rights (including third party terms of service), and shall not use the Products for hosting content (for example, image and documents) that infringes on the intellectual property rights of others.
- You shall not copy any of our templates or any other features or functionality from the Products or use them for any purpose other than through your use of the Products themselves. This restriction also applies to customized templates prepared by our professional services group.
- You may not use documents and images hosted by us on servers controlled by us for any purpose whatsoever other than in connection with the Products.

#### **6.4. Privacy**

You shall agree to and comply with the [Privacy Policy](#), which may be modified by us from time to time (the "[Customer Privacy Policy](#)"), with respect to your marketing activity conducted through this website or our Products. You acknowledge that the [Customer Privacy Policy](#) is provided as a convenience to you and that it is not intended to and does not constitute legal advice and that no attorney-client relationship is formed. We do not warrant or guarantee that compliance with the [Customer Privacy Policy](#) will be sufficient to comply with your obligations hereunder, under applicable law or with third party rights.

#### **6.5. Footers**

For every email message sent via the Products or distributed via the Products, you agree that we may add a link to our website and a statement such as "Email Marketing by DeepTarget" or "Powered by DeepTarget" in the footer or other similar location that does not unreasonably obscure the message, or campaign.

#### **6.6. Remote Access**

You may from time to time provide our personnel or agents with remote access to your computers and other systems for the purpose of troubleshooting issues that arise in your use of the Products. You hereby waive any claim for damages from any problems that may arise from such access, including without limitation any disruption or damage caused by us or our personnel or agents.

#### **6.7. Gramm-Leach-Bliley Act Compliance**

DeepTarget shall take reasonable measures to maintain the confidentiality of any nonpublic personal information on, about or concerning any consumer or credit union member ("Personal Information") that we acquire while performing the services required under this Agreement. DeepTarget warrants that our officers, employees and agents will (a) hold Personal Information in the strictest confidence; (b) not use Personal Information for any purpose other than providing the services required under this Agreement; (c) not provide Personal Information to any third party, except as permitted or required by applicable federal and state laws and regulations; (d) maintain adequate technical, procedural and physical safeguards to ensure the security of any such information; and (e) ensure that all Personal Information is disposed in accordance with applicable law. It is the express intent of the Parties that these warranties of confidentiality be construed broadly and comprehensively. All warranties set forth in in this Section 6.7, shall survive the termination of this Agreement.

You shall have the right, at your sole expense, to conduct an audit of DeepTarget's compliance with the confidentiality obligations in this Section 6.7, with at least seven (7) days' advance written notice. Such audit shall take place during DeepTarget's normal business hours at its offices in Madison, Alabama. In the event that an audit reveals that DeepTarget is in breach of its confidentiality obligations, DeepTarget shall have thirty (30) days in which to cure such breach. If, at

the expiration of the 30 day period, the breach is not cured to your reasonable satisfaction, then you may terminate this Agreement in accordance with Section 8 hereof.

It is agreed that the unauthorized disclosure or use of any Personal Information may cause immediate or irreparable injury to you, and that you may not be adequately compensated for such injury in monetary damages. DeepTarget therefore acknowledges and agrees that, in such event, you shall be entitled to seek any temporary or permanent injunctive relief necessary to prevent such unauthorized disclosure or use.

## **6.8. Data Breach**

In the event of an actual or suspected data breach, We agree that we will provide you with immediate notice of the breach, but no later than ten (10) days following the determination of the breach of security or reason to believe such breach occurred, including the names and information of your members who are or could be affected. We will provide you all necessary information for you to (1) ascertain for itself the likelihood which members' information may have been compromised, (2) determine which members may or will need to be notified and (3) ongoing information to monitor affected members' accounts and information. We agree that, if notice to such members is required in your reasonable opinion, then we will reimburse you for the cost of preparation and mailing the necessary notices to members. Notwithstanding the foregoing, in the event that We are directed to delay notification by a law enforcement agency that We reasonably believe to have proper jurisdiction, such action shall not be a breach of this Section 6.

## **6.9. Data Destruction**

We agree that any of your data in our possession or control at contract termination or expiration that is not to be returned to you shall be handled in a manner consistent with the Federal Trade Commission's final regulation on consumer information and records disposal, 16 CFR 682.

For the purposes of this section, the term "data", when referring to your data, shall be understood to include but not be limited to nonpublic personal information on, about or concerning any consumer or credit union member. All warranties set forth in this section shall survive the termination of the Agreement.. All warranties set forth in this section shall survive the termination of the Agreement.

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## **7.Restrictions and Responsibilities**

### **7.1. No Rights in Software**

No right, title or interest in or to the Products is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the Products not expressly permitted by these Terms and Conditions is a breach of these Terms and Conditions and may violate copyright, trademark and other laws. You will not, directly or indirectly, reverse engineer, decompile,



disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Products or any software, documentation, or data related to the Products ("Software"); remove any proprietary notices or labels from the Products or any Software; modify, translate, or create derivative works based on the Products or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Products or any Software.

## **7.2. Permitted Use of the Products**

The Products shall be used for your personal or internal business (which includes civic or charitable) purposes only, in compliance with this Agreement (including, without limitation, Section 6 hereof) and you shall not use the Products or any Software for timesharing or service-bureau purposes or otherwise for the benefit of a third party. Unless you are an authorized reseller of the Products, you may not display, copy, reproduce, or distribute the Software, any component thereof, any documentation provided in connection with the Products or the Software, or any content, including but not limited to newsletters, distributed to you by us in connection with the Products.

## **7.3. Compliance with Laws; Monitoring**

The Products shall only be used for lawful purposes and you shall use the Products only in compliance with this Agreement, the CAN-SPAM Act and regulations thereunder and all other applicable U.S., state, local and international laws in your jurisdiction (including but not limited to Canada's Anti-Spam Legislation and any other policies and laws related to unsolicited emails, spamming, privacy, obscenity, or defamation, copyright and trademark infringement and child protective email address registry laws). Although we have no obligation to monitor the content provided by you or your use of the Products, we may do so and may block any messages or campaigns, remove any content, including surveys, event registrations or social campaigns, or prohibit any use of the Products that we believe may be (or is alleged to be) in violation of the foregoing or any other provision of this Agreement. In no case will such monitoring or related action make us responsible or liable for compliance with any such laws or obligations, for which you remain solely responsible and liable.

## **7.4. Your Information**

In using the varied features of the Products, you may provide information about yourself or your employer (such as name, contact information, or other registration information) to us. We may use this information and any technical information about your use of the Products in accordance with our Privacy Policy and relevant "just-in-time" notices, if any, provided at the point of information collection or use. However, we will not use or provide a third party (unless required by law) any information regarding your members. We may provide your information, including your contact and account information, to courts, law enforcement authorities and/or other relevant third parties, when such disclosure is necessary or advisable, at our sole discretion, to conduct an investigation, respond to a third party or law enforcement subpoena or court order, bring legal action or pursue other relief when you or a third party are or may be: (i) violating our terms and conditions of use; (ii)

causing injury or other harm to, or otherwise violating our property or other legal rights, or those of other users or third parties; or (iii) violating federal, state, local, or other applicable law.

We will also obtain any information that you provide to us in connection with the use of the Products (such as contact lists, account data, and end user provided data obtained through means such as our Landing Pages feature). We acknowledge your ownership rights in such contact lists, account data, and end user provided data. We will never sell or rent your contact lists, content or phone numbers to anyone without your express written permission, and will never use your contact lists, content or phone numbers for internal marketing or promotional purposes or for any purpose other than providing our products and services. In the event we amend or revise the policy described in the immediately preceding sentence, we will provide advance notice of such amendment or revision.

## **7.5. Intellectual Property Matters**

You agree that you will not submit, upload or transmit any contact lists, information or content of any type to this website or in connection with the Products or by email to us that infringe, misappropriate or violate any of our rights, any rights of any third party or applicable law. If you submit any suggestions, business information, ideas, concepts or inventions or content to us through this website, in connection with a Product or by email ("Submissions"), you agree such Submission is non-confidential for all purposes and you automatically grant, or warrant that the owner of such content or intellectual property has expressly granted, us a non-exclusive, royalty-free, perpetual, irrevocable, worldwide license, with the right to sublicense, to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display such Submission in any manner or in any media now known or hereafter created.

The license granted in the paragraph immediately above shall not apply to your contact lists and the content you deliver to or through the Products ("Customer Information") and you hereby separately grant to us a revocable, non-exclusive, royalty-free, worldwide license, with the right to sublicense, to use, reproduce, publish, distribute, perform and display the Customer Information only as required by us to offer and operate the Products and related services, including available offerings from third parties. You are solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Information, and you are responsible for maintaining, securing and storing all Customer Information in accordance with applicable law and any contractual obligations you may have (including pursuant to this Agreement). To the extent you use images or templates provided by us, we hereby grant to you a revocable, non-exclusive, royalty-free, worldwide license to use, reproduce, publish, distribute, perform and display the images in an unaltered state solely in connection with your use of the Products.

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## 8. Term

This contract is effective as of the earliest of the following:

1. The "Effective Date" or signature date referenced on any Product Schedule, Agreement, or other document where these Terms and Conditions were accepted.
2. The date when a checkbox was checked or electronic signature was provided by you for the purpose of accepting these Terms and Conditions.
3. The date when the products were first accessed by you.

The initial term length of the License for each Product and/or Service in the Product Schedule is found on the agreement or product schedule document, or if no term is specified there, the initial term is for a period of twelve (12) months. The commencement date of the term will be the actual Go Live date (the date when setup of the product or service is completed), or 60 days after the Effective Date, whichever comes first. The term will be in force so long as Customer is not in breach of, or in default under, this Agreement. Thereafter, this Agreement shall renew automatically after the initial term for continuous periods equivalent to the initial term unless either party furnishes written notice of its intention not to renew to the other party at least ninety (90) days prior to the date of expiration. The renewal rate will be subject to change based on the current number of online bankers of Customer, if that number is different from original signing or last renewal. Customer agrees to provide access to its internal systems for the sole purpose of permitting DeepTarget Inc. to delete Services following the termination of this entire Agreement or any specific Product Schedule.

Either party upon material breach of the other party may terminate this Agreement. The party claiming such breach shall so notify the other party in writing and provide a thirty (30) day cure period. If such cure is not completed to the satisfaction of the other party, the Agreement and License shall terminate. If Customer is in breach, it shall remain liable for all remaining unpaid fees set forth in the Product Schedule.

Upon termination, both parties shall be subject to all other termination obligations set forth in the Agreement.

The parties agree that, upon termination or expiration of this Agreement, no deconversion fee or charge shall be due from you, not including any damages for breach or early termination.

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## **9. Indemnification**

You hereby agree to defend, indemnify and hold harmless us and our business partners, third-party suppliers and providers, licensors, officers, directors, employees, distributors and agents from and against any damages, losses, liabilities, penalties, settlements and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that (i) arises from any actual or alleged breach by you of this Agreement; (ii) arises from the content or effects of any messages you distribute, events you host, surveys you administer, social media campaigns you publish, Promotions you offer, or products or services you sell (including, without limitation, claims relating to defective products or services or unclaimed property); (iii) arises from your activities or postings in any; (iv) arises from your use of any Third Party Service (as defined below); or (v) otherwise arises from or relates to your use of the Products.

In addition, you acknowledge and agree that we have the right to seek damages when you use the Products for unlawful purposes, in an unlawful manner, or in a manner inconsistent with the terms of this Agreement, and that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages. In the event that we are required to respond to a third party or law enforcement subpoena or court order that is related to your use of the Products, we may, in our sole discretion, require you to reimburse us for our reasonable expenses associated with complying with such subpoena or order.

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## **10. Warranty Disclaimer; Remedies; Release**

### **10.1 Warranty of Authority**

We warrant that we have (i) all requisite legal and corporate power to execute and deliver this Agreement, including each schedule, addendum, amendment and exhibit; (ii) taken all corporate action necessary for the authorization, execution and delivery of this Agreement; (iii) no agreement or understanding with any third party that interferes with or will interfere with its performance of its obligations under this Agreement; (iv) obtained and shall maintain all rights, approvals and consents necessary to perform its obligations and grant all rights and licenses granted to you under this Agreement; and (v) taken all action required to make this Agreement a legal, valid and binding obligation of us, enforceable against us in accordance with its terms.

### **10.2 Anti-Virus Confirmation**

We confirm that we use industry standard virus protection software to avoid the introduction of destructive elements in our programs, applications, services, software products, releases, new versions, enhancements, interfaces and deliverables provided to you.

### **10.3 Warranty of Title**

We warrant that we have full right and title to the intellectual property licensed or provided to you free of claim of infringement.

### **10.4 Warranty Disclaimer**

YOU EXPRESSLY AGREE THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE PRODUCTS AND ANY RELIANCE BY YOU UPON THE PRODUCTS, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT THE USE OF ANY PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SAME. EXCEPT AS SET FORTH IN 10.3 ABOVE, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US IN ANY MEANS OR FASHION SHALL CREATE ANY WARRANTY NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT.

YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE PRODUCTS IN COMPLIANCE WITH THE LICENSE AND/OR TERMS AND CONDITIONS OF ANY THIRD PARTIES OR THIRD PARTY SERVICES (INCLUDING YOUR EMAIL AND/OR SOCIAL NETWORKING PROVIDERS), AND WE SHALL HAVE NO LIABILITY OF ANY NATURE WHATSOEVER FOR YOUR COMPLIANCE WITH OR BREACH OF THE SAME.

WE DO NOT ENDORSE AND ARE NOT RESPONSIBLE FOR (i) THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE OR STATEMENT MADE BY ANYONE OTHER THAN US, (ii) ANY CONTENT PROVIDED BY ANY THIRD PARTY OR (iii) ANY EVENT HOSTED, THE RESULTS OF ANY SURVEY, OR ANY PRODUCT OR SERVICE PURCHASED OR OTHERWISE OBTAINED FROM ANY THIRD PARTY, INCLUDING OUR CUSTOMERS. IT IS YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH THE PRODUCTS OR OBTAINED FROM A THIRD PARTY.

NO CLAIM MAY BE ASSERTED BY YOU AGAINST US MORE THAN 12 MONTHS AFTER THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NONPERFORMANCE OF THE PRODUCTS SHALL BE FOR US TO USE COMMERCIALY REASONABLE EFFORTS TO ADJUST OR REPAIR THE PRODUCTS. TO THE EXTENT THE LAW PERMITS, YOU RELEASE US FROM ANY CLAIMS OR LIABILITY RELATED TO ANY CONTENT POSTED ON YOUR SITE OR IN ANY MATERIALS YOU SEND USING OUR PRODUCTS AND FROM ANY CLAIMS RELATED TO THE CONDUCT OF ANY OTHER CUSTOMERS OF OURS OR THEIR RESPECTIVE SUBSCRIBERS. YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 (IF YOU ARE A CALIFORNIA RESIDENT), AND ANY SIMILAR PROVISION IN ANY OTHER JURISDICTION (IF YOU ARE A RESIDENT OF SUCH JURISDICTION).

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## **11. Limitation of Liability**

EXCEPT FOR LIABILITY ARISING OUT OF DEEPTARGET'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THE CONFIDENTIALITY OBLIGATIONS OF SECTION 6.7, DEEPTARGET SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF DEEPTARGET HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. DEEPTARGET'S LIABILITY TO CUSTOMER HEREUNDER, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID HEREUNDER BY CUSTOMER.

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## **12. Other**

### **12.1. Full Force and Effect**

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

### **12.2. Entire Agreement**

We and you agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

### **12.3. Assignment**

You may not assign any of your rights hereunder. We may assign all rights to any other individual or entity in our sole discretion.

### **12.4. Further Assurances**

You agree to execute any and all documents and take any other actions reasonably required to effectuate the purposes of this Agreement.

### **12.5. Third Party Beneficiaries**

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective permitted successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

## **12.6. Titles**

The titles of the paragraphs of this Agreement are for convenience only and have no legal or contractual effect.

## **12.7. No Agency**

No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind us in any respect whatsoever.

## **12.8. Attorney Fees**

In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

## **12.9. Governing Law and Legal Actions**

The Agreement shall be governed by the laws of the State of Alabama, USA without regard to its choice or law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in Huntsville, Alabama.

## **12.10. Additional Information**

If you have any questions about the rights and restrictions above, or would like to report any inaccuracies or errors, please contact us by email at [info@deeptarget.com](mailto:info@deeptarget.com).

## **12.11. Force Majeure**

DeepTarget Inc. shall not be liable to Customer during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; strike or other labor dispute; riot; misadventure of the sea; inability to secure materials and/or transportation; or a restriction imposed by legislation or an order or a rule or regulation of a governmental entity. If such a circumstance occurs, DeepTarget Inc. shall undertake reasonable action to notify Customer of the same. However, Customer shall not be responsible for any payment of fees until DeepTarget Inc. can fully perform.

## **12.12 Reasonable Efforts**

In all cases, the parties agree to use all reasonable efforts to carry out the letter and spirit of this Agreement and to use good faith and commercial reasonableness in their deadlines with one another.

### **12.13 Future Consulting by DeepTarget Inc.**

In the event Customer requests consulting support from DeepTarget Inc., this consulting will be billable at the then current pricing.

### **12.14 Marketing and Public Relations**

Customer agrees to be a named customer of DeepTarget Inc. on the customer section of the company web site, in press releases and other reasonable and customary marketing efforts. In addition, DeepTarget results for Customer e.g. return on investment or other data, may be used in demonstrating DeepTarget benefits, as long as such use does not specifically divulge the name of the Customer. Marketing plans of DeepTarget Inc. that require additional data or information, including customer testimonials and quotes, will require specific acceptance and approval by Customer.

### **12.15 Hosting**

Upon request, DeepTarget Inc. will provide Customer, at no cost, an electronic copy of the letter from the SSAE 16 Type II SOC 1 or SOC 2 Type II (previously SAS 70) auditor certifying that the hosting site for all user data processing is in compliance with SSAE 16 Type II SOC 1 or SOC 2 Type II. If required, DeepTarget Inc. will facilitate the provision of an electronic copy of the SSAE 16 Type II SOC 1 or SOC 2 Type II report when required by Customer prior to implementation. DeepTarget shall not be required to provide the letter or facilitate the provision of the report more than once in a twelve-month period. This information can and always should be considered sensitive information. Therefore, this report will be made available only on the basis of signing by Customer of the provided Non-disclosure and Confidentiality agreement and acceptance of the request by the hosting site. This report can only be provided once a contract is signed and Customer becomes an active customer of DeepTarget Inc.

### **12.16 System Support and Maintenance**

During the term hereof, DeepTarget Inc. shall provide Customer with technical support services, unless specifically excluded in the Product Schedule, as long as the Customer is current with its monthly fee payments. For use of the OLB product, Customer agrees to provide at least one (1) test member IDs and passwords for the Customer's online banking service for the purpose of testing, providing support and upgrading. Routine support and over the phone training is provided at no additional cost. Additional onsite training may also be provided at the then current fee plus expenses.

DeepTarget Inc. will provide to the Customer at no cost to the Customer, all releases, changes, modifications, and enhancements that DeepTarget Inc. makes available to its general customer base that DeepTarget Inc. elects to incorporate in Services provided that the Customer is current on all of its obligations under this Agreement.

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