Capterra Master PPC Service Agreement

This Master PPC Service Agreement (“Agreement”), including the [Guidelines for Product Listings](https://www.capterra.com/legal/listing-guidelines), constitutes the complete agreement between Capterra, Inc. (“Capterra”) on behalf of itself and its affiliates and Beamery Inc. (“Software Vendor”), dated effective as of July \_\_\_, 2022 (“Effective Date”) for the Services (as defined below). This Agreement supersedes the General Vendor Terms included on the Capterra website.

# SERVICES

From time to time, Capterra and Software Vendor may execute Insertion Orders (each, an “IO”) pursuant to which, subject to the terms of this Agreement, Capterra will provide web-based lead generation services to Software Vendor that allow potential buyers to click through Software Vendor’s product listing on the Capterra website or Capterra partner websites (the “Services”). IOs are incorporated by reference into this Agreement. In the event of a conflict between a term in this Agreement and a term in an IO, the term in the IO will take precedence for the duration of that IO.

# PAYMENT TERMS

Software Vendor shall be responsible for all fees resulting from Software Vendor’s bids set and the resulting click activity received from the time a campaign is started until the campaign is turned off; and Software Vendor shall pay all fees in accordance with the payment terms agreed in the IO. Fees are solely based on Capterra’s reasonable, good faith measurements of click actions or other applicable metrics generated in the month preceding the invoice, unless otherwise agreed to in writing by Capterra.

Payment must be in U.S. Dollars or in such other currency as agreed to in writing by the parties. If Capterra has not received payment within 30 days of Software Vendor’s receipt of a validly issued, undisputed invoice, it shall promptly notify Software Vendor **(“Late Payment Notice”).** If such payment remains outstanding thirty (30) days from the date of the Late Payment Notice, Capterra may charge interest at the rate of 1.5% per month. Fees are exclusive of taxes.

# TERMINATION

Software Vendor may cancel the Service at any time without penalty. Notice of cancellation must be made by email. Cancellation will occur within two business days of receipt of cancellation email. All click activity up until the date of cancellation is the responsibility of the Software Vendor. Capterra shall invoice for any outstanding fees immediately upon cancellation and Software Vendor shall pay such valid invoice within thirty days of its receipt.

Capterra may terminate Software Vendor’s access to the Service for material breach by Software Vendor, upon 30 days prior written notice, if the breach is not cured within the notice period; provided, however, that Capterra may suspend or discontinue Software Vendor’s access to the Services if Software Vendor is knowingly using or attempting to use the Services in violation of this Agreement (including without limitation tampering, hacking, data scraping, modifying or otherwise corrupting the security or functionality of the Services).

Capterra may terminate Software Vendor’s access to the Service for any reason upon 90 days prior written notice

# INTELLECTUAL PROPERTY RIGHTS

Capterra grants to Software Vendor a worldwide, royalty-free, non-exclusive license to access and use the Services in accordance with this Agreement. Capterra retains all right, title and interest in and to the product listing (the “Product Listing”) that it creates from publicly available content (excluding any intellectual property owned by Software Vendor) and may use, modify and share the Product Listing in its sole discretion in the ordinary course of its business. Capterra grants to Software Vendor the right and license to update and modify its Product Listings, provided that such updates and modifications comply with the [**Guidelines for Product Listings**](https://www.capterra.com/legal/listing-guidelines).

Software Vendor retains all right, title and interest in and to the content it submits to Capterra for its Product Listings, as well as to its logos, trademarks, videos and screenshots (collectively, “Software Vendor IP”). Software Vendor grants to Capterra a worldwide, revocable, royalty-free, non-exclusive license to use the Software Vendor IP to identify, advertise, market, promote and publicize Software Vendor in connection with the Services for the Term of this Agreement. Capterra warrants and undertakes to Software Vendor that it will use Software Vendor IP: (a) in accordance with any brand guidelines or instructions provided by Software Vendor provided that such guidelines or instructions do not conflict with Capterra’s standard delivery of the Service; (b) in good faith; and (c) in compliance with applicable laws, regulations and policies.

# DATA PROTECTION

Each of Capterra and Software Vendor agrees, in fulfilling its respective obligations under this Agreement, to comply with all applicable data privacy legislation and with the terms of Capterra’s [**Privacy Policy**](https://www.capterra.com/legal/privacy-policy) . By communicating with Capterra via e-mail or by submitting content, including product information or any other transactional exchange in connection with Capterra’s Services, Software Vendor consents to receive e-mail or other electronic communications from Capterra and its affiliates.

# REPRESENTATIONS & WARRANTIES

Software Vendor represents and warrants to the best of its knowledge: (i) that it has all necessary right, power and authority to enter into this Agreement; and to fulfill its contractual obligations hereunder and that the content that it shares with Capterra will be accurate and free of third party encumbrances; (ii) that the content it shares with Capterra is free from any viruses or malware that are known to or should be known by Software Vendor; and (iii) that it shall, in using the Service, comply with applicable laws.

Capterra represents and warrants to the best of its knowledge: (i) that it has all necessary right, power and authority to enter into this Agreement; (ii) that its Services are accurate and free of third party encumbrances; (ii) that the Service is free from any viruses or malware; (iii) that its provision of the Service will be in accordance with applicable laws; (iv) it will deliver the Service with the t level of care, skill and diligence in accordance with industry standard

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# DISCLAIMER OF WARRANTIES

Other than as set out herein, the Services are provided on an "as is" and "as available" basis, without warranties of any kind, express or implied, including without limitation: any implied warranties of merchantability, fitness for a particular purpose or accuracy of informational content or system integration. Capterra does not warrant that Capterra’s sites will be available or operate in an uninterrupted or error-free manner.

# LIMITATION OF LIABILITY

# Neither party will be liable for any consequential, special, indirect, exemplary or punitive damages arising out of or in any way related to this Agreement, including without limitation loss of profits, revenue, interest, goodwill, loss or corruption of data or other interruption of business (whether in contract, tort or under other legal theory), even if advised of the possibility of such damages.

Except for breach of the indemnification sections hereunder, gross negligence or fraud or willful misconduct, each party’s aggregate liability to the other for direct damages under these General Software Vendor Terms is limited to the greater of (i) an amount equal to twelve (12) times the monthly fees paid or payable in the one (1) month period preceding a claim, or (ii) an amount equal to the fees paid or payable in the twelve (12) month period preceding a claim.

**9. INDEMNIFICATION**

The parties agree to indemnify, defend and hold harmless the other party and its affiliates (and their respective employees, directors and representatives) (in its capacity as "Indemnitee”) from and against any and all third party claims, liabilities, losses and expenses (including reasonable legal costs) to the extent that such is arising out of a claim that the Services or Product Listing (for which Capterra is the indemnifying party), or Software Vendor content (for which Software Vendor is the indemnifying party) infringes the intellectual property rights of a third party.

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# GOVERNING LAW

This Agreement is governed by the laws of the State of New York except for its conflicts of interest principles. All claims arising out of or relating to this Agreement will be litigated exclusively in the federal or state courts of New York and each of Capterra and Software Vendor consents to personal jurisdiction in those courts.

# WAIVER & SEVERABILITY

Capterra’s failure to act with respect to a breach will not constitute a waiver and does not waive Capterra’s right to act with respect to subsequent or similar breaches. If any of these General Software Vendor Terms shall be deemed invalid, void, or for any reason unenforceable under applicable law, then that term shall be deemed severable and shall not affect the validity and enforceability of any remaining term or provision of these General Software Vendor Terms.

1. **AUTHORIZATION**

**Software Vendor Capterra, Inc.**

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| Signature: Name:  | Signature: Name:  |
| Title:  | Title:  |
| Date:  | Date:  |

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