

BY INSTALLING, DOWNLOADING, COPYING OR OTHERWISE USING THE SERVICES AND SOFTWARE (AS BOTH ARE DEFINED BELOW), YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL, DOWNLOAD, COPY OR USE THE SOFTWARE OR SERVICES.

This End User License Agreement (the “*Agreement*”) is made between Megaventory Inc., a Delaware corporation (“*Megaventory*”), and Customer (as defined below).

RECITALS

- A. Megaventory has developed certain software applications and platforms that it makes available to subscribers via the Internet, namely Megaventory.com, on a pay-per-use basis.
- B. The Customer wishes to use Megaventory’s Services (as defined below).
- C. Megaventory has agreed to provide and the Customer has agreed to use Megaventory’s Services subject to the terms and conditions of this Agreement.

DEFINITIONS

1.1 As used in this Agreement, the following terms shall have the meaning as set forth below:

“*Authorized Users*” shall mean those employees, agents and independent contractors of the Customer who are authorized by the Customer to use the Services and the Documentation, as further described in Section 2.2(d).

“*Business Day*” shall mean any day which is not a Saturday, Sunday or a public holiday in the United States of America.

“*Change of Control*” shall mean the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

“*Confidential Information*” shall mean information that is proprietary or confidential and is either clearly labeled as such or identified as Confidential Information as detailed in Section 11.5 and 11.6.

“*Customer*” shall mean the legal entity or individual that enters into this Agreement on the Electronic Registration Form.

“*Customer Data*” shall mean the data inputted by the Customer, Authorized Users, or Megaventory on the Customer’s behalf for the purpose of using the Services or facilitating the Customer’s use of the Services.

“*Documentation*” shall mean the information made available to the Customer by

Megaventory online via <http://www.megaventory.com/inventory/Help/Help.aspx> or such other web address that sets out a description of the Services and the user instructions for the Services.

“Effective Date” shall mean the date of this Agreement when signed or executed by Customer.

“Initial Subscription Term” shall mean the initial term of this Agreement as set out in Schedule 2 attached hereto.

“Normal Business Hours” shall mean 8:00am to 6:00pm Greenwich Mean Time (United Kingdom time) time, each Business Day.

“Renewal Period” shall mean the period described in Section 14.1.

“Services” shall mean Megaventory’s online subscription services as described on Megaventory’s websites and provided by Megaventory to the Customer under this Agreement via Megaventory.com, or any other website notified to the Customer by Megaventory from time to time, as more particularly described in the Documentation.

“Software” shall mean the online software applications provided by Megaventory as part of the Services.

“Subscription Fees” shall mean the subscription fees payable by the Customer to Megaventory for the User Subscriptions, as set out in <http://www.megaventory.com/>

“Subscription Term” shall have the meaning given in Section 14.1.

“Support Services Policy” shall mean Megaventory’s policy for providing support in relation to the Services as made available at <http://www.megaventory.com/inventory/Help/Help.aspx> or such other website address as may be notified to the Customer from time to time.

“User Subscriptions” shall mean the user subscriptions purchased by the Customer pursuant to Section 9.1 that entitle Authorized Users to access and use the Services and the Documentation in accordance with this Agreement.

“Virus” shall mean any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

USER SUBSCRIPTIONS

2.1 **User Subscriptions.** Subject to the Customer purchasing the User Subscriptions in accordance with Section 3.3 and 9.1, the restrictions set out in this Section and the other terms and conditions of this Agreement, Megaventory hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorized Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

2.2 **Authorized Users.** In relation to the Authorized Users, the Customer understands and agrees that:

(a) the maximum number of Authorized Users that it authorizes to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

(b) it shall permit Megaventory to audit the Services in order to establish the name and password of each Authorized User. Such audit may be conducted no more than once per calendar quarter, at Megaventory's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

(c) if any of the audits referred to in Section 2.2(b) reveal that the Customer has underpaid Subscription Fees to Megaventory, the Customer shall pay to Megaventory an amount equal to such underpayment as calculated in accordance with the prices set out in <http://www.megaventory.com/> within 5 Business Days of the date of the relevant audit.

2.3 **Prohibited Actions.** The Customer shall not run harmful scripts to access data that are not made available to him under normal operation. If the client comes across any vulnerabilities of the software/application he should report those immediately to Megaventory and not proceed further accessing this vulnerabilities. Moreover, the Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or

(e) causes damage or injury to any person or property;

Megaventory reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 **Limited Use.** The Customer shall not:

(a) except as may be allowed by any applicable law that is incapable of exclusion by Agreement between the parties:

(i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Services and Documentation in order to build a product or service that competes with the Services and/or the Documentation; or

(c) use the Services and/or Documentation to resell similar services to third parties; or

(d) subject to Section 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorized Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Section; and

2.5 **Unauthorized Access.** The Customer shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify Megaventory.

2.6 **Customer Only.** The rights provided under this Section are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, unless otherwise agreed to in writing.

ADDITIONAL USER SUBSCRIPTIONS

3.1 **Additional User Subscriptions Purchases.** Subject to Section 3.2 and 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in <http://www.megaventory.com/> and Megaventory shall grant access to the Services and the Documentation to such additional Authorized Users in accordance with the provisions of this Agreement.

3.2 **Notification.** If the Customer wishes to purchase additional User Subscriptions, the Customer shall do this via his account profile from within the Megaventory application. This is an automated process.

3.3 **Payment.** Customer shall pay to Megaventory the relevant fees for such additional User Subscriptions as set out in <http://www.megaventory.com/> and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable). Megaventory shall not be responsible for any delays of payment from third-party intermediaries (i.e. Paypal).

SERVICES

4.1 **Provision of Services.** Megaventory shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 **Service Level Agreement.** Megaventory shall use commercially reasonable endeavors to make the Services available pursuant to the terms of the Service Level Agreement attached hereto as Schedule 1.

4.3 **Customer Support.** Megaventory will, as part of the Services and at no additional cost to the Customer, provide the Customer with Megaventory's standard customer support services during Normal Business Hours in accordance with Megaventory's Support Services Policy in effect at the time that the Services are provided. Megaventory may log into Customer's account or any Authorized User's account for maintenance, troubleshooting, or support purposes. Megaventory may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Megaventory's then current rates.

CUSTOMER DATA

5.1 **Ownership.** The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 **Archiving.** Megaventory shall store Customer Data but shall bear no responsibility for Customer Data loss or damage. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Megaventory to use reasonable commercial endeavors to restore the lost or damaged Customer Data.

THIRD PARTY PROVIDERS

6.1 **Third Party Providers.** The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Megaventory makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party.

Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Megaventory. Megaventory recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Megaventory does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

MEGAVENTORY'S OBLIGATIONS

7.1 **Obligations.** Megaventory undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 **Limitation of Obligations.** The undertaking of Section 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Megaventory's instructions, or modification or alteration of the Services by any party other than Megaventory or Megaventory's duly authorized contractors or agents. If the Services do not conform with the foregoing undertaking, Megaventory will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Section 7.1. Notwithstanding the foregoing, Megaventory:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 **Non-Exclusivity.** This Agreement shall not prevent Megaventory from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.4 **Warranties.** Megaventory warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

CUSTOMER'S OBLIGATIONS

8.1 **Obligations.** The Customer shall:

(a) provide Megaventory with (i) all necessary cooperation in relation to this Agreement; and (ii) all necessary access to such information as may be required by Megaventory, in order to render the Services, including but not limited to Customer Data, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Megaventory may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorized Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorized User's breach of this Agreement;

(e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for Megaventory, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

(f) ensure that its network and systems comply with the relevant specifications provided by Megaventory from time to time; and

(g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Megaventory's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

CHARGES AND PAYMENT

9.1 Subscription Fees. The Customer shall pay the Subscription Fees to Megaventory for the User Subscriptions in accordance with this Section and <http://www.megaventory.com/>.

9.2 Payment Information and Authorization. The Customer shall on the Effective Date provide to Megaventory (via its service provider – Paypal) valid, up-to-date and complete credit card details or approved purchase order information acceptable to Megaventory (or Paypal) and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

(a) its credit card details to Megaventory (or the service provider such as Paypal – See above), the Customer hereby authorizes Megaventory (or such service provider) to bill such credit card:

(i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

(ii) subject to Section 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;

(b) its approved purchase order information to Megaventory, where Megaventory shall invoice the Customer:

(i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

(ii) subject to Section 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period, and the Customer shall pay each invoice within 30 days after the date of such invoice.

9.3 Non-Payment. If Megaventory has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Megaventory:

(a) Megaventory may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services, including but not limited to the Customer Data, and Megaventory shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on such due amounts at an annual rate equal to 12% per annum, commencing on the 30 days after the due date and continuing until fully paid, whether before or after judgment.

9.4 Currency; No Refunds. All amounts and fees stated or referred to in this Agreement (i) shall be payable in U.S. Dollars, and (ii) are non-cancelable and non-refundable if payment has been made 30 or more days ago.

9.6 Increases in Fees. Megaventory shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to Section 3.3 at the start of each Renewal Period upon 30 days' prior notice to the Customer.

INTELLECTUAL PROPERTY RIGHTS

10.1 Ownership of Megaventory. The Customer acknowledges and agrees that Megaventory (or its licensors) owns all intellectual property rights with respect to the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licenses with respect to the Services or the Documentation.

CONFIDENTIALITY

11.1 Confidential Information. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Nondisclosure and Nonuse. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

11.3 Security. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

11.4 Limitations. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5 Megaventory Confidential Information. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Megaventory's Confidential Information.

11.6 Customer Confidential Information. Megaventory acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 Survival. This Section shall survive termination of this Agreement, however terminated.

INDEMNITY

12.1 Customer Indemnity. The Customer shall defend, indemnify and hold harmless Megaventory against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services or Documentation.

12.2 Megaventory Indemnity. Megaventory shall, subject to Section 12.5, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts

awarded against the Customer in judgment or settlement of such claims.

12.3 Replacement Services. In the defense or settlement of any claim, Megaventory may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 3 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 Limitation of Indemnity. In no event shall Megaventory, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a) a modification of the Services or Documentation by anyone other than Megaventory; or

(b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Megaventory; or

(c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Megaventory or any appropriate authority.

12.5 Exclusive Remedy. The foregoing states the Customer's sole and exclusive rights and remedies, and Megaventory's (including Megaventory's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

LIMITATION OF LIABILITY

13.1 Scope. Subject to the provisions of Section 12.2, this Section sets out the entire financial liability of Megaventory (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of this Agreement;

(b) any use made by the Customer of the Services and Documentation or any part of them; and

(c) any representation, statement or tortuous act or omission (including negligence) arising under or in connection with this Agreement.

13.2 Limitation of Liability. Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Megaventory shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Megaventory by the Customer in connection with

the Services, or any actions taken by Megaventory at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

(c) the Services and the Documentation are provided to the Customer on an "as is" basis.

(d) THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY THE SUPPLIER. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED ABOVE (IF ANY), THE SERVICES AND DOCUMENTATION ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES OR THE DOCUMENTATION IS SUFFICIENT FOR CUSTOMER'S PURPOSES. SUPPLIER DOES NOT WARRANT THAT USE OF THE SERVICES OR THE DOCUMENTATION WILL BE ERROR-FREE OR UNINTERRUPTED. THE SUPPLIER IS NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY CUSTOMER OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

13.3 **Extent of Liability.** Subject to Section 13.2:

(a) Megaventory shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

(b) Megaventory's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

TERM AND TERMINATION

14.1 **Term.** This Agreement shall, unless otherwise terminated as provided in this Section, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive similar periods (each a "**Renewal Period**"), unless:

(a) either party notifies the other party of termination, in writing, at least 10 days before the end of the Initial Subscription Term or any Renewal Period, in which case this

Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- (b) otherwise terminated in accordance with the provisions of this Agreement.

The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the “*Subscription Term*”.

14.2 Termination. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;

- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party;

- (d) a receiver is appointed of any of the other party’s assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party’s assets;

- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

- (f) there is a change of control of the other party;

14.3 Post-Termination Actions. On termination of this Agreement for any reason:

- (a) all Services, Documentation, and licenses (if applicable) granted under this Agreement shall immediately terminate;

- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

- (c) Megaventory may destroy or otherwise dispose of any of the Customer Data in its possession; and

- (d) the accrued rights of the parties as at termination, or the continuation after

termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

MISCELLANEOUS

15.1 **Force Majeure.** Megaventory shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Megaventory or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15.2 **Waiver.** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

15.3 **Severability.** If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15.4 **Entire Agreement.** This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

15.5 **Assignment.** The Customer shall not, without the prior written consent of Megaventory, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Megaventory may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

15.6 **No Joint Venture.** Nothing in this Agreement is intended to or shall operate to create a joint venture or partnership between the parties, or authorize either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.7 **Third Parties.** This agreement does not confer any rights on any person or party, other than the parties to this Agreement and, where applicable, their successors and permitted assigns.

15.8 **Notices.** Unless otherwise provided for via a Megaventory website, any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9:00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

15.9 **Governing Law.** This Agreement and performance hereunder shall be governed by the laws of the State of Delaware.

15.10 **Headings and Titles.** The headings and titles of this Agreement are not part of this Agreement, but are for convenience only and are not intended to define, limit or construe the contents of the various Sections.

SCHEDULE 1

“SERVICE LEVEL AGREEMENT”

1. **Performance Management.** The Services and Documentation shall be available to Authorized Users 365 days a year, 7 days a week, 24 hours a day and shall be available 99.9% of the time (see Section 4 below), excluding planned downtime (the “*Availability Commitment*”). Megaventory shall have no liability for any failure to meet the service levels set forth herein to the extent such failure would not have occurred but for: acts or omissions of Customer inconsistent with the advice or instructions of Megaventory, acts or failures to act by the Internet, ISPs, or any third party service providers, any failure by Customer to provide detailed information to assist in diagnosing problems with the Services or Documentation, availability of bandwidth to Authorized Users or any other cause beyond the reasonable control of Megaventory and without its fault or negligence; provided, that the foregoing shall not diminish the obligations of Megaventory set forth herein or in the Agreement. Megaventory shall ensure that it will support and scale the Services and Documentation accordingly to support the traffic or other burden encountered by the Services or Documentation as necessary to satisfy the requirements as set forth in this Service Level Agreement.

2. **Operational Service Support.** Incident action times measures Megaventory’s responsiveness to reported incidents, as such it is measured from the time either Customer reports or Megaventory knows of the incident, whichever comes first. Customer should raise all incident reports by contacting the first Megaventory escalation contact listed in the chart below. Customer understands that the Customer escalation contact may need to be reached in the agreed upon time frame for Megaventory to maintain the service level herein.

RESPONSE AND RESOLUTION TIMES

INCIDENT	IMPACT	FIRST RESPONSE	COMPLETION STATUS/FIX
Major	A complete functional or operational Services outage occurs.	Immediate	Megaventory will exercise commercially reasonable efforts to find and implement a solution within 12 hours of first response.
Minor	Incident only impacting a few Authorized Users or affecting only some functionality of the Services and not having an immediate impact on the ongoing operation of the Services as a whole.	Immediate	Megaventory will exercise commercially reasonable efforts to find and implement a solution within 2 Business Days of first response.

3. **Maintenance or Service Outages.** Megaventory will notify Customer via Customer-supplied e-mail address of any operational or functional Services outage exceeding 2 hours. Megaventory will notify Customer by email or via Megaventory's websites (<http://www.megaventory.com/inventory/default.aspx> or <http://megaventory.blogspot.com>) no less than 2 Business Days before a scheduled maintenance event ("**Scheduled Maintenance**"). Scheduled Maintenance shall not be considered an operational or functional Services outage, provided such downtime is reasonable and conducted at customary times and days of the week.

4. **Service Level Uptime.** Megaventory guarantees 99.9% web site availability for the Services per calendar month, which allows for 44 minutes of non-consecutive service outage per month. For the purpose of this Service Level Agreement, only outages lasting a minimum of 10 consecutive minutes are considered a service outage for calculating availability and/or uptime. This Service Level Agreement is subject to the following conditions and exclusions below. Should Services availability drop below 99.9%, the Customer will be eligible for the following Services credits (and not any cash refund), provided Customer follows the provisions set forth in Section 5 below, and to be added to the end of the Customer's term, based on the chart below:

<u>Services Availability</u>	<u>Services Credits</u>
98.0% - 99.8%	1 day of Services
97.9% or below	2 days of Services

5. **Services Credits.** To receive an Services Credit, the Customer must notify Megaventory by email within 10 Business Days that the Customer's Services was not available. Each request must include the dates and times of the Services unavailability and other required information. The applicable Services Credit adjustment will be made to the Customer's account after confirmation of the Services outage.