



## LINKEDIN LEAD ACCELERATOR AGREEMENT

This LinkedIn Lead Accelerator Agreement (“**Agreement**”) is made and entered into by and between LinkedIn Ireland (“**LinkedIn**”), an Irish Company with its registered office at 70 Sir John Rogerson’s Quay, Dublin 2, Ireland and **Customer** (as defined in the applicable LinkedIn Service Order) (each a “**Party**” and collectively “**Parties**”). This Agreement governs the terms and conditions under which Customer may utilise the LinkedIn Marketing Platform (“**LMP**”) as set forth herein and as specified in one or more applicable LinkedIn Service Order(s) executed by Customer in connection herewith and incorporated herein (“**LinkedIn Service Order**”). The Parties agree as follows:

1. **DEFINITIONS.** Capitalised terms used in this Agreement but not otherwise defined herein have the following meanings:
  - 1.1 “**Account**” means a registered user access point for the Service.
  - 1.2 “**Active Contact**” means a contact associated with any Customer Campaign that is activated and nurtured for any period of time.
  - 1.3 “**Basic Cookie Pool**” means the set of Cookies that LinkedIn has matched to LinkedIn Data or Hashed Records via its third party data provider partners.
  - 1.4 “**Cookie**” means an alphanumeric identifier that is assigned to an Internet user’s computer when such computer is in communication with a server.
  - 1.5 “**Customer Campaign**” means an advertisement or set of advertisements that Customer distributes via the LTN by utilising the Service.
  - 1.6 “**Customer Custom Segment**” means an online targetable audience segment created by matching Customer Data to Targetable Users without using Personal Data.
  - 1.7 “**Customer Data**” means: a) data concerning the characteristics and activities of visitors to the Customer Site(s) that are collected through use of the LinkedIn Tags and then forwarded to and analysed by the Service, or b) any Non-Personal Data or Hashed Records provided by Customer to LinkedIn for the purpose of creating one or more Customer Custom Segments.
  - 1.8 “**Customer Site(s)**” means a A) Web page or group of Web pages owned and operated by Customer or B) one or more online advertisements that are linked to an Account and use the applicable LinkedIn Tags for tracking purposes.
  - 1.9 “**Data Cookie**” means a Cookie that is matched with Customer Data and placed by LinkedIn on an Internet user’s browser via the LTN, including but not limited to Cookies placed via third party LTN partners.
  - 1.10 “**Documentation**” means any accompanying proprietary documentation made available to Customer by LinkedIn for use with the Service, including any documentation available online or otherwise.
  - 1.11 “**Enhanced Cookie Pool**” means the Basic Cookie Pool plus the set of Cookies that LinkedIn has matched to Hashed Records via the Member Co-Op.
  - 1.12 “**Hashed Record**” means an e-mail address record that has been encrypted via SHA1 hash or other mutually agreeable encryption method to render such record Non-Personal Data.
  - 1.13 “**LinkedIn Connector**” means the proprietary software provided by LinkedIn to Customer which enables Customer to integrate the Service with a specified Marketing Automation Platform.
  - 1.14 “**LinkedIn Data**” means any data, LinkedInGraphic Data or other information owned by LinkedIn.
  - 1.15 “**LinkedInGraphic Data**” means the non-personally identifiable (“**Non-Personal Data**”) business demographics of a person which may include, but is not limited to job title, functional responsibility, company size, industry, geography, etc.
  - 1.16 “**LinkedIn Targeting Network**” or “**LTN**” means LinkedIn’s online advertising network and includes all Web sites on which LinkedIn is permitted to distribute Online Display Advertising.
  - 1.17 “**LinkedIn Tag(s)**” means the proprietary LinkedIn tracking code(s) provided by LinkedIn to Customer as a part of the Service, along with any fixes, updates and upgrades. Customer may install the LinkedIn Tags on the Customer Site(s) or distribute via outbound e-mails sent by Customer for the purpose of collecting Customer Data.

- 1.18 **"LinkedIn Web Site"** means the Web site owned and operated by LinkedIn and made available at the following URL: <http://www.linkedin.com> or any successor site(s).
- 1.19 **"Marketing Automation Platform"** means an approved third party LinkedIn marketing automation platform partner with whom LinkedIn has integrated the Service.
- 1.20 **"Member Co-Op"** means the collection of companies that have agreed to contribute Hashed Records to the Enhanced Cookie Pool.
- 1.21 **"Monthly Active Contacts"** means the month-to-date average number of Active Contacts.
- 1.22 **"Non-Personal Data"** means data or information that is not connected, correlated, or able to be identified with any Personal Data (including information that is collected anonymously, is aggregated, or from which underlying information has been removed).
- 1.23 **"Online Display Advertising"** means static or dynamic display, text, video, social, mobile or any other forms of online advertising delivered via a Web-enabled device or browser.
- 1.24 **"Personal Data"** means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.
- 1.25 **"Report"** means the resulting analysis shown via the Service for an individual Account, although the number of charts, graphs, and statistics contained in a Report will vary depending upon the edition of the Service. Each Report is a material part of the Service.
- 1.26 **"Service"** means the complete LMP, including the LinkedIn Data, the Software and the functionality to support audience analytics, site optimisation and advertising campaign targeting, and distribution through the LTN.
- 1.27 **"Software"** means the LinkedIn Tags, LinkedIn Connector(s), Data Cookies and other code which are material parts of the Service.
- 1.28 **"Targetable User"** means an Internet user who has been matched to a Data Cookie for one or more Customer Custom Segments.
- 1.29 **"Visitor"** means any person or entity who/that clicks on an advertisement and/or enters Customers' website through a link from a publishers website, email, or other approved promotional channel.

## 2. SERVICE USAGE & LICENCES

- 2.1 **Account Password and Security.** Customer will protect its passwords and take full responsibility for use of Customer's Account(s). Customer is solely responsible for any and all activities that occur under such Account(s), except for any activities performed by LinkedIn as set forth herein. Customer agrees to notify LinkedIn immediately upon learning of any unauthorised use of a Customer Account or any other breach of security relating to the Service. From time to time, LinkedIn's support staff may log in to the Service under Customer's password in order to maintain or improve service, including providing Customer assistance with technical or billing issues. Customer hereby acknowledges and consents to such access.
- 2.2 **LinkedIn Licence.** Subject to the terms and conditions of this Agreement, LinkedIn hereby grants Customer, for the Term, a limited, revocable, non-exclusive, non-distributable, worldwide licence to use (and make a reasonable number of copies of the Report, to support its authorised use) the LinkedIn Data, Software, Reports or Documentation as necessary to use the Service for one or more Customer Sites. As between the Parties, LinkedIn owns and retains all right, title and interest, including all intellectual property rights, in the LinkedIn Data, Software, Reports and Documentation as well as the technology, infrastructure, methods or know-how used in implementing the Service. Customer will have no right to use the LinkedIn Data, Software, Reports and Documentation except as expressly set forth in this Agreement. Customer's licence to, use of and access to the LinkedIn Data, Software, Service, Reports and Documentation is further conditioned upon Customer's compliance with this Agreement, including the following:
- a. **Restrictions.** Customer will not, nor will it allow any third party to (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software except and only to the extent that it is expressly permitted by applicable law; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Software, the Documentation or the Service; (iv) remove any proprietary notices or labels on the Software or placed by the Service; or (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software.
  - b. **Internal Use.** Customer will use the Software, Service and Reports solely for Customer's own internal use, and will not make the Service available for timesharing, application service provider, service bureau, SaaS, cloud computing or other similar uses.
  - c. **Compliance with Laws.** Customer will comply with all applicable laws and regulations in Customer's use of and access to the Documentation, Software, Service, and Reports.

## 2.3 Customer Data Licence.

- a. **Matching Process.** LinkedIn will use commercially reasonable efforts to match the Customer Data with Data Cookies for each of the Customer Custom Segments and will tag each Targetable User with the applicable Customer Custom Segment ID(s).
- b. **Customer Data License.** Customer grants LinkedIn a worldwide, non-exclusive, non-sublicensable licence during the Term to: i) access and download the Customer Data; and ii) store, reproduce, modify and utilise Customer Data in connection with the matching and placement of Data Cookies.
- c. **Hashed Records.** In the event that the Customer Data includes Hashed Records, LinkedIn will not attempt to decrypt or decode such Hashed Records. In the event that Customer opts-out of the Member Co-Op (as provided for in the LinkedIn Service Order), then any Hashed Records provided by Customer will only be matched against the Basic Cookie Pool. Otherwise, Customer agrees to participate in the Member Co-Op and such Hashed Records will be matched against the Enhanced Cookie Pool.
- d. **Customer Data Use and Ownership.** LinkedIn may only use the Customer Data for the purposes expressly set forth in this Agreement. Customer owns and retains all right, title and interest in and to the Customer Data. OTHER THAN THE RIGHTS EXPRESSLY GRANTED UNDER THIS AGREEMENT, NO RIGHT, TITLE OR INTEREST IN ANY CUSTOMER DATA IS GRANTED OR TRANSFERRED TO LINKEDIN OR ANY THIRD PARTY.

2.4 **Service Licences.** Subject to the terms and conditions of this Agreement, LinkedIn grants Customer the rights and licenses to access and use the Services for the functionalities set forth in the applicable LinkedIn Service Orders.

2.5 **Capacity Level.** For each type of functionality specified in Section 2.4, the applicable LinkedIn Service Order will specify a maximum level of usage ("**Capacity Level**") based on the applicable metrics. LinkedIn will provide usage reports to enable Customer to monitor its usage. Customer assumes full responsibility for capacity utilisation, and LinkedIn makes no guarantee that the selected Capacity Level will be fully utilised. In the event that Customer exceeds the selected Capacity Level, additional charges may apply, as set forth in the applicable LinkedIn Service Order. Under all circumstances, unless otherwise specified in the applicable LinkedIn Service Order, LinkedIn will not serve more than an average of twenty (20) Online Display Advertising impressions per Active Contact per month ("**Frequency Cap**").

2.6 **Supplemental Functionalities; Auto-Fill.** The parties agree that an Auto-Fill functionality will be set up by Customer. All data associated with such Auto-Fill functionality will be imported from LinkedIn public profile information. Further, Customer shall provide prominent and clear notice (a) stating that the data associated with the Autofill functionality comes solely from LinkedIn public profile information (b) stating the purpose of collecting the Auto-Fill data by the Customer; and (c) a link to Customers' privacy policy and terms and conditions.

3. **ADVERTISING CAMPAIGNS.** In the event that Customer utilises the Service to execute Online Display Advertising through the LTN, Customer will comply with the following terms:

3.1 **Campaign Activation.** Customer may activate a Customer Campaign through the Service, and such activation is construed as an acceptance by Customer of all the terms and conditions under which advertising is sold by LinkedIn and such activated Customer Campaign will be governed by this Agreement (in addition to such terms).

3.2 **Creative.** Through the Service, Customer will provide all creative and substantive materials ("**Creative**") required for delivering the Customer Campaign. Customer is solely responsible for the Creative and all substantive content of such Creative. LinkedIn is not liable for errors of any kind in the Creative, as provided by Customer.

3.3 **Modifications.** As indicated on the applicable LinkedIn Service Order, LinkedIn will provide minor modifications ("**Modified Creative**") to the specified number of Customer's Creative ad units. Each Modified Creative will include up to four of the following ad unit sizes: leaderboard; medium rectangle; wide skyscraper and Facebook newsfeed. For the purpose of this Agreement, Modified Creative is considered Creative and subject to all rights and licences set forth in this Agreement.

3.4 **Creative Licence.** Customer hereby grants to LinkedIn and its third party publishers a non-exclusive, worldwide, royalty-free licence to market, display, perform, copy, transmit, distribute, use, and promote the Creative in connection with the conduct of the Customer Campaign(s) and the performance of its obligations under this Agreement. As between the parties, Customer owns all right, title and interest in and to the Creative.

3.5 **Media.** LinkedIn will utilise commercially reasonable and industry standard practices to identify suitable media inventory for the Customer Campaign(s). Customer understands and accepts that LinkedIn cannot monitor all such media websites for appropriate content.

3.6 **Right to Pause/Cancel.** LinkedIn reserves the right to pause or cancel any Customer Campaign that does not meet, or satisfy LinkedIn's performance expectations, operational requirements or for any other reason or no reason. If Customer has made a pre-payment to LinkedIn for any cancelled Campaign, LinkedIn will credit Customer the pro-rata unused portion of such prepayment, if any.

**3.7 Reservation of Rights.** Any advertising or marketing rights not specifically granted to Customer herein are specifically reserved by LinkedIn. Without limiting the generality of the foregoing, LinkedIn expressly reserves the right to and Customer explicitly agrees that LinkedIn may at its discretion and without liability to the Customer: (i) refuse or cancel any Customer Campaign that does not completely conform to every material detail, instruction, method, or guidelines set forth by LinkedIn or that LinkedIn deems, in its sole discretion, inappropriate for any reason or no reason; (ii) refuse at any time to publish or transmit any copy, photograph or illustration of any kind for any reason including those that it believes, in its sole discretion, are an invasion of privacy, are degrading, libelous, unlawful, profane, obscene, pornographic, tend to ridicule or embarrass, are in bad taste, or which in its sole discretion are an infringement on a trademark, trade name, copyright or other intellectual or proprietary right of others; or (iii) refuse or cancel any Customer Campaign which redirects traffic to a website other than the website of Customer specifically identified in the Customer Campaign activation process. Customer acknowledges that LinkedIn has no obligation to monitor Customer Campaigns for compliance with the foregoing requirements, but that it reserves the right to do so from time to time.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This Agreement commences upon the Order Date set forth on the first LinkedIn Service Order executed between the Parties and continues in full force and effect until the termination or expiration of all applicable LinkedIn Service Order(s) (“Term”).

**4.2 Termination.** This Agreement or any applicable LinkedIn Service Order may be terminated as follows:

- a. Material Breach.** Either Party may terminate this Agreement if the other Party commits a material breach of the Agreement and, where such breach is capable of being cured, fails to cure such breach within thirty (30) days after receipt of written notice thereof.
- b. Insolvency.** Either Party may terminate this Agreement if the other Party is involved in insolvency proceedings, receivership, examinership, administration, bankruptcy, or assignment for the benefit of creditors (or other equivalent process or proceedings in any jurisdiction).

**4.3 Obligations.** Upon expiration or termination of this Agreement: (a) Each Party will promptly return to the other all of the Confidential Information of the other Party in its possession or control; (b) Customer will cease use of the Service and will delete copies of the LinkedIn Tags from the Customer Site(s); (c) Termination of this Agreement will not relieve Customer from its obligation to pay to LinkedIn any fees that have accrued prior to the date of termination; and (d) Customer’s historical Report data will no longer be available to Customer unless a purchase or professional services agreement for the exchange and transfer of such data is entered into as a component of termination.

**4.4 Survival.** Sections 4.3, 4.4 and 5 through 10 inclusive will survive any termination or expiration of this Agreement.

#### **5. FEES AND BILLING**

**5.1 Fees.** Customer must pay all Fees specified in each LinkedIn Service Order in accordance with the terms set forth in such LinkedIn Service Order.

**5.2 Dispute Resolution.** In the event of a dispute between Customer and LinkedIn regarding amounts due, Customer agrees that LinkedIn’s tracking count will be applied. Customer understands and agrees that in no event, and under no circumstance, will data provided by any LinkedIn representative constitute final billing numbers. Only invoices sent directly to Customer are to be construed as representative of billable amounts. In the event that LinkedIn does not receive a written notification of a disputed bill, with detailed rationale supporting the dispute, within fifteen (15) days from the date of the invoice, such invoice will be deemed valid and payable and may not thereafter be disputed. Customer specifically agrees that this provision is reasonable and that LinkedIn will rely upon this provision in making revenue sharing payments to participants in the LTN.

**5.3 Collections.** LinkedIn will be entitled to recover all reasonable costs of collection (including agency fees, legal costs, in-house counsel costs, expenses and costs) incurred in attempting to collect payment from Customer. Any outstanding balance becomes immediately due and payable upon termination of this Agreement for any reason and any collection expenses (including legal costs) incurred by LinkedIn will be included in the amount owed, and may be charged to the credit card or other billing mechanism associated with Customer’s Account.

**5.4 Taxes.** LinkedIn’s fees exclude, and Customer is solely responsible for all sales, use, VAT and other taxes and similar charges based on or arising from this Agreement or any LinkedIn Service Order. In the event Customer payment is subject to applicable withholding tax regulations, Customer shall provide LinkedIn with copies of documentation related to any such withholding. Nothing in this section requires either party to pay income taxes or similar charges of the other party. If Customer is required to withhold or deduct any portion of the payments due to LinkedIn, Customer will increase the sum payable to LinkedIn by the amount necessary so that LinkedIn receives an amount equal to the sum it would have received had Customer made no withholdings or deductions.

#### **6. INTELLECTUAL PROPERTY**

**6.1 General.** Both Parties may only use the other Party’s intellectual property as expressly set forth herein. Nothing in this Agreement will be construed in any manner to affect or modify either Party’s ownership rights in any pre-existing or future works,

trademarks, copyrights or technologies developed or created by either Party, including their respective proprietary software used in connection with the development and provision of their respective Web sites, databases, systems, products or services. Unless specifically agreed by the Parties in writing, all intellectual property, including information that could become the subject of a patent, copyright or trade secret, developed by a Party in the context of performing its obligations under this Agreement will be exclusively owned by that Party and the other Party will cooperate with any reasonable requests to execute documents confirming such ownership.

**6.2 Proprietary Rights Notice.** The Service and all intellectual property rights in the Service are, and will remain, the property of LinkedIn. All rights in and to the Service not expressly granted to Customer in this Agreement are hereby expressly reserved and retained by LinkedIn without restriction. Without limiting the generality of the foregoing, Customer agrees not to (and to not allow any third party to): (a) sublicense, distribute, or use the Service outside of the scope of the licence granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Service or otherwise attempt to discover any source code or trade secrets related to the Service except and only to the extent that it is expressly permitted by applicable law; (c) use the trademarks, trade names, service marks, logos, domain **names** and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of LinkedIn; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with LinkedIn; or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service.

## **7. PRIVACY**

**7.1 General Privacy.** The Parties acknowledge that Personal Data privacy is of paramount importance to both Parties. Both Parties will comply with all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, security and protection of Personal Data including, without limitation the EU Data Protection Directive 95/46/EC as amended and as implemented in the various European Economic Area (EEA) countries or any similar legislation enacted outside of the EEA, including the recommendations of the relevant data protection authorities, and security breach notification laws ("**Data Protection Law**"). Without limiting the foregoing, both Parties will have a posted privacy statement and enhanced notice, accessible by direct link from their respective Web sites that reflect current, established industry standards regarding privacy, including opt-out instructions or a direct link to an industry-standard Web opt-out site (e.g. a site like [www.AboutAds.info](http://www.AboutAds.info)). Customer will not use the Service to track or collect Personal Data of any users. Furthermore, in the event that Customer intends to associate LinkedIn Data or Customer Data with the Personal Data of a Targetable User, or use any Personal Data for targeting purposes, Customer must, in all such instances, request and receive explicit Opt-In consent from such user before doing so.

**7.2 Data Protection.** In the event that Personal Data of individuals located in the EEA or in any other country with similar legislation is processed by the Parties, this section 7.2 will apply to both Parties. If Personal Data is disclosed, received or otherwise processed by LinkedIn in providing the Services, Customer hereby represents and warrants that it is a data controller (as defined in the Data Protection Law) and that it will fully comply with the Data Protection Law and with any other relevant privacy laws with similar requirements of each country in which individuals are located. Customer instructs LinkedIn to process Personal Data for the purpose of the Service, including sub-processing as necessary and relevant to provide the Service. LinkedIn will only act on behalf and under the instructions of the Customer to provide the Service, and will implement appropriate technical and organisational measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access. LinkedIn complies with the U.S.-E.U. and U.S.-Swiss Safe Harbor Frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of Personal Data from European Union member countries and Switzerland. Customer will indemnify LinkedIn pursuant to Section 8.5 regarding any claim by a third party that may arise from Customer's failure to comply with its obligations under Data Protection Law or this Section 7.2.

### **7.3 European Cookies Law.**

**a.** In the event that Customer is obligated to comply with the E-Privacy Directive, this Section 7.3 will apply to Customer. EU Directive 2002/58/EC as amended and as implemented in the various EU countries ("**E-Privacy Directive**") creates certain obligations, including the obligation to obtain individuals' consent, on operators of web sites that place cookies, store information, or gain access to information already stored on the computers or devices of users of those sites. Customer hereby represents and warrants that it will fully comply with the E-Privacy Directive and any other privacy related laws of each country in which it has such users.

**b.** Customer represents and warrants that with respect to all Customer Campaigns the application and/or landing page for each Customer Campaign (i.e., the Customer's website page where a Visitor is directed when the Visitor clicks on the advertisement, fills in a registration form or takes a similar action) will contain a prominent link to Customer's privacy policy, which policy is easy to understand and which provides, **at a minimum**, adequate notice, disclosure and choices to Visitors regarding Customer's and its third parties' use, collection, disclosure and security of their information and offers the Visitor an opportunity to opt out from such collection and use of the information whether by following opt-out instructions on the party's website or by accessing a direct link to an industry-standard web opt-out site (e.g. a site like [www.AboutAds.info](http://www.AboutAds.info)) which is in compliance with the 2013 Network Advertising Initiative Code of Conduct, as amended.

**c.** For any advertisements with respect to any Customer Campaign, and where applicable, Company shall have the right to place the Advertising Option Icon on the Ad and display enhanced notice and choice in order to comply with EU Self-Regulatory Principles on OBA, as administered by the European Interactive Digital Advertising Alliance ("**EDAA**") found at <http://edaa.eu/european-principles/> [www.aboutads.info](http://www.aboutads.info) ("**EDAA Principles**").

- d. Customer will indemnify LinkedIn pursuant to Section 8.5 regarding any claim by a third party that may arise from Customer's failure to comply with its obligations under the E-Privacy Directive or this Section 7.3.

## 8. REPRESENTATIONS, WARRANTIES, INDEMNIFICATION AND LIABILITY

- 8.1 By LinkedIn.** LinkedIn represents and warrants that: (i) the Service will be provided in accordance with, and will not violate applicable laws or regulations; and (ii) by using the Service in accordance with this Agreement, Customer will not violate or in any way infringe upon the personal or proprietary rights of any third party, (iii) to its knowledge, the Software/Service does not contain any virus, worm, Trojan horse, time bomb or similar contaminating or destructive feature; and (iv) LinkedIn holds all necessary rights to permit the use of the Service and all components thereof provided to Customer under this Agreement.
- 8.2 By Customer.** Customer represents and warrants that: (i) it holds all necessary rights to permit the use of all Creative provided to LinkedIn under this Agreement; (ii) the use, reproduction, distribution, transmission or display of any Creative and any materials to which users can link, or any products or services made available to users through the Creative will not (A) violate any law, give rise to criminal or civil liability or infringe any copyright, patent, trademark or service mark, trade secret rights or any other personal, moral, contract, property or privacy right of any third party (collectively "**Unlawful Conduct**"); (B) contain or promote viruses, obscene, abusive, violent, bigoted, hate-oriented, cracking, hacking or infringing content or conduct (collectively "**Offensive Conduct**"); or (C) encourage conduct that would constitute Unlawful Conduct or Offensive Conduct; (iii) it has a reasonable basis for all claims made within the Creative, possesses appropriate documentation to substantiate such claims and will fulfill all commitments made in any Customer Campaigns; (iv) the landing page for each Customer Campaign (i.e., the Customer Site page where a user is directed when the user clicks on the Creative, fills in a registration form or takes a similar action) contains a prominent link to Customer's privacy policy, which provides, at a minimum, adequate notice, disclosure and choices to consumers regarding Customer's use, collection, disclosure and security of their Personal Data; (v) all consumer data collected pursuant to this Agreement will only be used for legal purposes; (vi) no Customer Campaign will be targeted to children under the age of thirteen (13) or offers products or services that are illegal for minors to buy, possess or participate in; (vii) prior to loading any computer program onto an individual's computer, including programs commonly referred to as adware or spyware but excluding Cookies (provided that Cookies are disclosed in Customer's privacy policy), Customer will provide notice to and will obtain the express consent of such individual; (viii) any business demographic data received pursuant to this Agreement will only be used for any Customer Campaign and will not be collected, stored, compiled or reverse engineered; and (ix) all Customer Data provided to LinkedIn pursuant to this Agreement will be Non-PI Data.
- 8.3 By Both.** LinkedIn and Customer both represent and warrant that (i) each has full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms; and (iii) entering into this Agreement will not violate any laws, regulations or third party contracts.
- 8.4 By Agency.** Any agency executing this Agreement on behalf of Customer represents and warrants that it has the authority to bind Customer to the terms stated herein and remains jointly and severally liable for all obligations of Customer under this Agreement.
- 8.5 Indemnification.**
- a. By Customer.** At Customer's cost, Customer agrees to indemnify, hold harmless and defend LinkedIn against any cost, loss or expense (including legal costs) resulting from any claims by third parties [or otherwise incurred by LinkedIn] for loss, damage or injury arising out of or relating to (i) Customer's breach of any term or condition of this Agreement, (ii) Customer's Creative, or (iii) Customer's violations of applicable laws, rules or regulations in connection with the Service. In each such case, LinkedIn will provide Customer with written notice of such claim, suit or action. LinkedIn will cooperate as fully as reasonably required in the defence of any claim. LinkedIn reserves the right, at its own expense, to assume the exclusive defence and control of any matter subject to indemnification by Customer. Notwithstanding the foregoing, unless the settlement involves no cost, loss or continuing liability to LinkedIn, Customer will not settle any claim, action or demand without the written consent of LinkedIn, such consent not to be unreasonably withheld.
- b. By LinkedIn.** At LinkedIn's cost, LinkedIn agrees to indemnify, hold harmless and defend Customer against any cost, loss or expense (including legal costs) resulting from any claims by third parties for loss, damage or injury arising out of or relating to (i) LinkedIn's breach of any term or condition of this Agreement, (ii) LinkedIn's violation of any third party rights in connection with the Service or (iii) LinkedIn's violations of applicable laws, rules or regulations in connection with the Service. In each such case, Customer will provide LinkedIn with written notice of such claim, suit or action. Customer will cooperate as fully as reasonably required in the defence of any claim. Customer reserves the right, at its own expense, to assume the exclusive defence and control of any matter subject to indemnification by LinkedIn. Notwithstanding the foregoing, unless the settlement involves no cost, loss or continuing liability to Customer, LinkedIn will not settle any claim, action or demand without the written consent of Customer, such consent not to be unreasonably withheld.
- 8.6 Disclaimer.** THE SERVICE, THE SOFTWARE, THE LINKEDIN DATA, THE DOCUMENTATION AND THE REPORTS, THEIR USE AND THE RESULTS OF SUCH USE ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, LINKEDIN PROVIDES NO WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT), GUARANTEES, REPRESENTATIONS, PROMISES, STATEMENTS, ESTIMATES, CONDITIONS, OR OTHER INDUCEMENTS, EXPRESS, IMPLIED, ORAL, WRITTEN, OR OTHERWISE EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8. LINKEDIN DOES NOT WARRANT OR GUARANTEE CONVERSION RATES, RESPONSE RATES OR ABILITY TO CONVERT THE RESPONSES INTO SALES. LINKEDIN DOES NOT WARRANT OR GUARANTEE THE PROFILE OR DEMOGRAPHICS OF A RESPONDENT.

## 8.7 Limitation of Liability.

- a. **Exclusion of Certain Losses.** NEITHER LINKEDIN NOR CUSTOMER WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD-PARTY CLAIMANT FOR ANY:
- (i) INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL LOSS OR DAMAGES; OR
  - (ii) ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS OR CUSTOMERS, LOSS OF DATA COLLECTED THROUGH THE SERVICE OR LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL,
- IN EACH CASE, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF THE PARTY OR ITS SUBSIDIARIES AND AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. **Limitation of Liability.** EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE CUMULATIVE FEES PAID OR PAYABLE BY CUSTOMER TO LINKEDIN IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.
- c. **Exclusions Not Applicable.** THE FOREGOING EXCLUSIONS AND LIMITATIONS UNDER SUB-SECTIONS 8.7 (a) AND (b) WILL NOT LIMIT A PARTY'S (i) PAYMENT OBLIGATIONS UNDER THE AGREEMENT; (ii) INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.5; (iii) LIABILITY FOR ANY BREACH OF ITS PRIVACY OR DATA PROTECTION OBLIGATIONS UNDER SECTION 7; (iv) LIABILITY FOR ANY BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9; OR (v) LIABILITY FOR ITS INFRINGEMENT OR MISAPPROPRIATION OF ANY PROPRIETARY RIGHTS OF THE OTHER PARTY. NOTHING IN THIS AGREEMENT WILL BE CONSTRUED AS EXCLUDING OR LIMITING A PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE OR ITS LIABILITY FOR FRAUD.

8.8 **Essential Element.** The provisions of this Section 8 are an essential element of the benefit of the consideration reflected in this Agreement.

## 9. CONFIDENTIALITY

- 9.1 **Terms of this Agreement.** Each Party will keep the specific terms of this Agreement confidential, including the contents of the schedules, exhibits, or any LinkedIn Service Orders and not disclose any portion of them to any third party (other than to its lawyers, accountants, advisors and potential investors who are bound to keep such information confidential) without the other Party's prior written consent, except as required by law.
- 9.2 **Non-Use.** In addition, in connection with the negotiation and performance of this Agreement, a Party ("**Receiving Party**") may receive information from the other Party ("**Disclosing Party**") which is confidential or proprietary in nature, including without limitation information about a Party's products, systems and services ("**Confidential Information**"). The Receiving Party agrees that, during the term of this Agreement and for a period of five (5) years thereafter, it will keep the Confidential Information in strictest confidence and protect such Confidential Information by similar security measures as it takes to protect its own Confidential Information of a similar nature, but in no event will the Receiving Party take less than reasonable care with the Confidential Information of the Disclosing Party. The Receiving Party also agrees that it will not use any Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.
- 9.3 **Exclusions.** The term "Confidential Information" will not include information which is or becomes generally available to the public without breach of this Agreement, is in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, becomes available from a third party not in breach of any obligations of confidentiality, is independently developed by the Receiving Party, or is required to be disclosed by the Receiving Party pursuant to law, rule, regulation, subpoena or court order.
- 9.4 **Injunctive Relief.** The Parties recognise that the disclosure or use of a Disclosing Party's Confidential Information by the Receiving Party in violation of the provisions of this Section 9 may cause irreparable injury to the Disclosing Party; therefore, in the event either Party breaches the provisions of this Section 9, the other Party, in addition to any other remedies it may have, will be entitled to seek preliminary and permanent injunctive relief without the necessity of posting a bond.

## 10. MISCELLANEOUS

- 10.1 **General.** If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. A waiver of any default is not a waiver of any subsequent default. The relationship between LinkedIn and Customer is one of independent contractors, not partnership, joint venture or agency. This Agreement will be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

The Software may be controlled by U.S. Export Regulations, and it may not be exported to or used by embargoed countries or individuals.

- 10.2 Entire Agreement.** This Agreement and the accompanying LinkedIn Service Order(s) and Campaign Activation(s), together, constitute a valid and binding agreement between the Parties. This Agreement and the accompanying LinkedIn Service Order(s) and Campaigns Order(s), together, are intended to be the Parties' complete, integrated expression of the terms of their agreement with respect to the Service and the Campaigns specified in the LinkedIn Service Order(s) and Campaign Activation(s), if any, and any prior agreements or understandings with respect to such subject matter are superseded hereby and fully merged herein. In the event of a conflict between this Agreement and any LinkedIn Service Orders, the terms of this Agreement will prevail.
- 10.3 Assignment.** Neither Party will assign this Agreement in whole or in part to any third party without the prior written consent of the other Party; provided, however, either Party may assign this Agreement without such consent to any subsidiary or parent company of such Party or sale of all or substantially all of the assets of such Party or to an entity that assumes, by sale, licence or otherwise, the business activities that are the subject of this Agreement, provided that such subsidiary or parent company or successor assumes or is otherwise fully bound by all of the obligations of the assigning Party under this Agreement.
- 10.4 Marketing Materials & Communications.** Customer agrees that LinkedIn may utilise Customer's trademark or trade name solely to identify it as a LinkedIn Customer on the LinkedIn Web site, in client lists and other marketing materials. Any other uses of Customer's name or logo (other than as included in the Creative or other items furnished to LinkedIn by Customer) will require Customer's prior written consent.
- 10.5 Jurisdiction.** This Agreement will be governed by the laws of Ireland. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the Irish courts.
- 10.6 Force Majeure.** If the performance of this Agreement or any obligations hereunder is prevented or interfered with by reason of fire or other casualty or accident, strikes or labour disputes, war or other violence, any law, proclamation, regulation, or requirement of any government agency, or any other act or condition beyond the reasonable control of a Party hereto, that Party upon giving prompt notice to the other Party will be excused from such performance during such occurrence.
- 10.7 Notices.** All notices, requests, or other communications between the Parties that are required or permitted hereunder will be in writing and will be given by: (a) delivery in person or by prepaid courier service with an internationally recognized courier company, (b) delivery by registered or certified post, postage prepaid, return receipt requested, (c) by confirmed fax or email to the email address or fax number set forth in the applicable LinkedIn Service Order. A Party may change the street or email address or fax number to which notice is to be sent by giving written notice of such change. Notices will be deemed given when received as evidenced by verification from the courier company, the mail or email receipt or fax confirmation.
- 10.8 Interpretation.** The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders. Any reference to any agreement, document or instrument will mean such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Whenever the words "hereunder," "hereof," "hereto," and words of similar import are used in this Agreement, they will be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof. The word "or" is used in the inclusive sense of "and/or." The terms "or," "any" and "either" are not exclusive.