

## KARROT CLIENT SERVICES AGREEMENT

Last Updated: June 30, 2022

This KARROT Client Services Agreement constitutes a binding agreement (the **“Agreement”**) between Karrot Rewards, Inc. (**“KARROT”**), and you or the legal entity you represent (**“Client”**).

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS YOUR USE OF THE SERVICES (DEFINED BELOW). BY COMPLETING THE REGISTRATION PROCESS, OR ACCESSING OR USING ANY OF THE SERVICES, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH KARROT, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THE AGREEMENT PERSONALLY OR ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE USER, AND TO BIND THAT ENTITY TO THE AGREEMENT. THE TERM **“CLIENT”** REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED FOR THE SERVICES. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICE.**

**1. DEFINITIONS.** Capitalized terms will have the meanings set forth in this Section 1, or in the section in which they are first used.

**1.1 “Access Protocols”** means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Client or any Authorized Users to access the KARROT Platform.

**1.2 “Aggregate and Anonymized Data”** means aggregated, anonymized or deidentified data or information of similar form that does not permit the identification of Client, any Authorized User, any Program Participant, or other individual.

**1.3 “Authorized User”** means each of Client’s employees, agents, and independent contractors who are authorized to access the KARROT Platform pursuant to Client’s rights under this Agreement.

**1.4 “Client Content”** means any and all content and information provided or submitted by, or on behalf of, Client or its Authorized Users for use with the Services, including without limitation content provided by Client to populate the Program Participant Portal.

**1.5 “Intellectual Property Rights”** means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

**1.6 “KARROT Platform”** means a KARROT software-as-a-service application selected by Client on the Website that allows Authorized Users to access certain features and functions through a web interface to develop and provision the Reward Program to Program Participants.

**1.7 “Program Participant”** means any individual user of the Program Participant Portal who uses the Program Participant Portal pursuant to the terms and conditions of the Program Participant Terms.

**1.8 “Program Participant Data”** means the information collected from Program Participants and stored by KARROT as a result of such participant’s use of the Program Participant Portal. Program Participant Data may include a Program Participant’s full name, email address, and birthdate.

**1.9 “Program Participant Portal”** means the Program Participant facing application made available by KARROT which allows Program Participants to view Client’s specific offers and Rewards in connection with Client’s Reward Program.

**1.10 “Program Participant Terms”** means an end user license agreement, terms of use, or other “clickwrap” agreement entered into between Program Participants and KARROT.

**1.11 “Rewards”** means the rewards offered to Eligible Program Participants participating in the Reward Program.

**1.12 “Reward Program”** means Client’s reward program (incentives, rewards, calls to action) created and managed by Client through the KARROT Platform and made available to Program Participant’s via the Program Participant Portal.

**1.13 “Services”** means any services provided by KARROT to Client under this Agreement, including, but not limited to, the KARROT Platform and the Program Participant Portal.

**1.14 “Website”** means the <https://www.thekarrot.com/> website, or any other website that links to this Agreement on which you can purchase access to the Services.

## **2. PROVISION OF SERVICES**

**2.1 Access.** Subject to Client’s payment of the fees (“**Fees**”), KARROT will provide Client with access to the KARROT Platform for the duration selected by Client on the Website (the “**Subscription Term**”). On or as soon as reasonably practicable after the date the parties enter into this Agreement, KARROT will provide to Client the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Client and its Authorized Users to access the KARROT Platform in accordance with the Access Protocols. Client will use commercially reasonable efforts to prevent unauthorized access to, or use of, the KARROT Platform, and notify KARROT promptly of any such unauthorized use known to Client. In addition to its other rights under this Section 2.1, KARROT may suspend or terminate Client’s and/or Client’s Authorized Users’ access to the KARROT Platform upon written notice in order to: (a) prevent damage to or degradation of, the KARROT Platform caused by Client; or (b) comply with any law, regulation, court order, or other governmental request or order which requires immediate action. If suspended, KARROT will promptly restore use to Client as soon as the event giving rise to the suspension has been resolved to KARROT’s satisfaction.

**2.2 Support Services.** Subject to the terms and conditions of this Agreement, KARROT will exercise commercially reasonable efforts to (a) provide support for the use of the KARROT Platform to Client, and (b) keep the KARROT Platform operational and available to Client, in each case in accordance with its standard policies and procedures.

**2.3 Hosting.** KARROT will, at its own expense, provide for the hosting of each of the KARROT Platform and the Program Participant Portal, provided that nothing herein will be construed to require KARROT to provide, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Client or any Authorized User or Program Participant to access the KARROT Platform or the Program Participant Portal from the Internet.

**2.4 Reward Program Fulfilment.** In connection with Program Participants’ participation in the Reward Program offered via the Program Participant Portal, certain Program Participants may be eligible to earn Rewards if such Program Participant’s complete certain tasks as may be required by any documentation or instructions provided in the Program Participant Portal (such Program Participants, “**Eligible Program Participants**”). Rewards must be issued to Eligible Program Participants in the form of a gift card, or any other Reward in KARROT’s

acceptable reward catalog. If requested by Client and agreed to by KARROT in writing, KARROT may facilitate Reward fulfillment to Eligible Program Participants. KARROT expressly disclaims any responsibility in connection with Reward fulfillment, including, but not limited to, failure by KARROT or Program Participant to upload accurate and complete contact information as required to distribute the Reward or any other errors or complications in connection with Reward fulfillment.

### **3. KARROT PLATFORM AND KARROT INTELLECTUAL PROPERTY**

**3.1 License Grant.** Subject to the terms and conditions of this Agreement, KARROT grants to Client a non-exclusive, non-transferable (except as permitted under Section 13.7) license during the Subscription Term, solely for Client's internal business purposes and in accordance with the limitations set forth in this Agreement, to access and use the KARROT Platform in accordance with the terms of this Agreement. Client may permit any Authorized Users to access and use the features and functions of the KARROT Platform as contemplated by this Agreement.

**3.2 Restrictions.** Client will not, and will not permit any Authorized User or other party to: (a) allow any third party to access the KARROT Platform except as expressly allowed herein; (b) modify, adapt, alter or translate the KARROT Platform; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the KARROT Platform for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the KARROT Platform, except as permitted by law; (e) interfere in any manner with the operation of the KARROT Platform or the hardware and network used to operate the KARROT Platform; (f) modify, copy or make derivative works based on any part of the KARROT Platform; (g) access or use the KARROT Platform to build a similar or competitive product or service; (h) attempt to access the KARROT Platform through any unapproved interface; or (i) otherwise use the KARROT Platform in any manner that exceeds the scope of use permitted under Section 3.1 or in a manner inconsistent with applicable law or this Agreement.

**3.3 Ownership.** The Services and all worldwide Intellectual Property Rights in the Services, are the exclusive property of KARROT and its suppliers. All rights in and to the Services not expressly granted to Client in this Agreement are reserved by KARROT and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Client regarding the Services or any part thereof.

**3.4 Open Source Software.** Certain items of software may be provided to Client with the KARROT Platform and are subject to "open source" or "free software" licenses ("**Open Source Software**"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Sections 3.1 or 9. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Client's rights under, or grants Client rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, KARROT makes such Open Source Software, and KARROT's modifications to that Open Source Software, available by written request at the notice address specified below.

### **4. FEES AND EXPENSES; PAYMENTS**

**4.1 Fees.** In consideration for the access rights granted to Client under this Agreement, Client will pay to KARROT the Fees as set forth on the KARROT Pricing webpage ([www.thekarrot.com/pricing](http://www.thekarrot.com/pricing)) Except as otherwise provided herein, all Fees will be paid by credit card (e.g., Visa, MasterCard, or any other issuer accepted by KARROT). KARROT will accept and process such Fees (including renewals) from Client based on the then-current credit card information provided by Client to KARROT. Client's credit card agreement governs its use of the designated credit card or account. By providing KARROT with credit card information, Client agrees that KARROT

is authorized to invoice and charge Client's account for all Fees due and payable to KARROT and that no additional notice or consent is required. If Client's credit card issuer rejects any amount charged on Client's credit card, then KARROT will notify Client thereof and Client will pay the Fees by check or wire transfer within thirty (30) days of the date of the notice. KARROT reserves the right (in addition to any other rights or remedies KARROT may have) to discontinue the KARROT Platform and suspend all Authorized Users' and Client's access to the Services if any Fees are more than thirty (30) days overdue until such amounts are paid in full. Client will maintain complete, accurate and up-to-date Client billing and contact information at all times. All Fees are fully earned and non-refundable. Payments will be made without right of set-off or chargeback. All dollar amounts referred to in this Agreement are in United States Dollars. KARROT reserves the right to change the Fees or its pricing model at any time during the Term. Any such change to Fees, rates or pricing shall go into effect no earlier than thirty (30) days after the change is posted to the KARROT Pricing webpage.

**4.2 Taxes.** The Fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Client will be responsible for payment of all such taxes (other than taxes based on KARROT's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of the Services, or the license of the KARROT Platform to Client. Client will make all payments of Fees to KARROT free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to KARROT will be Client's sole responsibility, and Client will provide KARROT with official receipts issued by the appropriate taxing authority, or such other evidence as the KARROT may reasonably request, to establish that such taxes have been paid.

**4.3 Interest.** Any amounts not paid when due will bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, from the due date until paid.

## **5. CLIENT CONTENT AND RESPONSIBILITIES**

**5.1 License; Ownership; Data Ingestion.** Client is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Client Content. Client will obtain all third party licenses, consents and permissions needed for KARROT to use the Client Content to provide the Services, and to exercise the licenses granted herein. Client grants KARROT a non-exclusive, worldwide, royalty-free and fully paid license during the Term (a) to use the Client Content as necessary for purposes of providing the Services to Client (including, without limitation, to use the Client Content as uploaded by Client to the KARROT Platform to provision the Program Participant Portal to Program Participants), (b) to use the Client trademarks, service marks, and logos as required to provide the Services to Client, and (c) use the Client Content to: (i) improve the Services and KARROT's related products and services; (ii) provide analytics and benchmarking services (without disclosing Client Content); and (iii) generate and disclose Aggregate and Anonymized Data. For clarity, KARROT owns all Aggregate and Anonymized Data and KARROT may freely and perpetually use Aggregate and Anonymized Data, during and after the term hereof, for commercial uses including e.g., developing aggregate statistical analyses, improving the Services, and sharing with third parties. Client also hereby grants to KARROT a non-exclusive, sub-licensable, royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to: use or incorporate into the Services any suggestions, ideas, feedback, recommendations or other information provided by Client or its Authorized Users with respect to the Services ("**Feedback**") and to reproduce, distribute, modify, create derivative works of, publicly perform and display, and sub-license Feedback. Aggregate and Anonymized Data and Feedback are not Confidential Information of Client. The Client Content, and all worldwide Intellectual Property Rights in it, is the exclusive property of Client. All rights in and to the Client Content not expressly granted to KARROT in this Agreement are reserved by Client. Without limiting the generality of Section 5.1, Client will facilitate and allow KARROT's access to Client Content in the manner(s) necessary for the effective ingestion of the Client Content into the KARROT Platform as determined by KARROT in order to populate the Program Participant Portal.

**5.2 Client Content Warranty.** Client represents and warrants that any Client Content will not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage KARROT's system or data; and (e) otherwise violate the rights of a third party. KARROT is not obligated to back up any Client Content; the Client is solely responsible for creating backup copies of any Client Content at Client's sole cost and expense. Client agrees that any use of the KARROT Platform contrary to or in violation of the representations and warranties of Client in this Section 5.2 constitutes unauthorized and improper use of the KARROT Platform.

**5.3 Responsibility for Data and Security.** Client and its Authorized Users will have access to the Client Content and will be responsible for all changes to and/or deletions of Client Content, and the security of all passwords and other Access Protocols required in order to access the KARROT Platform. Client will have the ability to export Client Content out of the KARROT Platform and is encouraged to make its own back-ups of the Client Content. Client will have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Content.

## **6. PROGRAM PARTICIPANT DATA.**

**6.1** Collection and use Program Participant Data used or transmitted by a Program Participant to the Program Participant Portal is governed by KARROT'S Privacy Policy and Program Participant Terms. KARROT grants Client a non-exclusive, worldwide, royalty-free and fully paid license during the Term to use the Program Participant Data solely as necessary for Client's provision and facilitation of the Reward Program to Program Participants. The Program Participant Data, and all worldwide Intellectual Property Rights in it, is the exclusive property of KARROT. All rights in and to the Program Participant Data not expressly granted to Client in this Agreement are reserved by KARROT.

**6.2 Data Sharing.** If KARROT provides Client with access to Program Participant Data, then Client agrees to the following:

(a) Client will protect all Program Participant Data in a secure location and prevent unauthorized usage or copying of the Program Participant Data. Without limiting the foregoing, Client will implement a system of controls designed to: (i) protect the integrity of the Program Participant Data; (ii) control access to the Program Data; and (iii) ensure that the usage of the Program Participant Data is solely to provision access to the Reward Program and to distribute Rewards earned in connection with Program Participant's participation in the Reward Program.

(b) Client agrees to abide by all applicable laws and regulations in connection with Client's use and disclosure of Program Participant Data.

(c) Client agrees not to retain, use or disclose any Program Participant Data obtained herein (i) outside the direct relationship between Client and KARROT, and (ii) for any purposes other than for providing the services specified in the Agreement. Upon receipt of a Program Participant's written request, and subject to and in accordance with all applicable laws, Client agrees to promptly delete any and all Program Participant Data in its possession, custody or control.

## **7. REPRESENTATIONS AND WARRANTIES.**

**7.1 By Client.** Client represents and warrants that: (a) Client has the requisite power and authority to enter into, deliver and perform the obligations under this Agreement; (b) this is a valid and legally binding Agreement enforceable against Client and Client's business; (c) Client will comply with all applicable laws and

regulations, including the CAN-SPAM Act of 2003 and the Telephone Consumer Protection Act of 1991 and the terms of this Agreement; and (d) Client has obtained all rights, licenses, consents and releases that are necessary to display the Client Content and Rewards as part of the Reward Program offered through the Program Participant Portal.

**7.2 By KARROT.** KARROT represents and warrants that: (a) KARROT has the requisite power and authority to enter into, deliver and perform the obligations under this Agreement; (b) this is a valid and legally binding Agreement enforceable against KARROT and its business; and (c) KARROT will comply with all applicable laws and regulations and the terms of this Agreement in hosting and managing the operation of the Services.

## **8. DISCLAIMERS**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED “AS IS,” AND KARROT MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. KARROT DOES NOT WARRANT THAT ANY ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE KARROT PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE. KARROT EXPRESSLY DISCLAIMS ANY LIABILITY FOR CLIENT CONTENT, INCLUDING CLIENT CONTENT UPLOADED TO THE KARROT PLATFORM FOR USE IN CONNECTION WITH THE PROGRAM PARTICIPANT PORTAL. KARROT FURTHER DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR REWARD FULFILLMENT, INCLUDING, BUT NOT LIMITED TO, DISTRIBUTION OF REWARDS.

## **9. LIMITATION OF LIABILITY**

**9.1 Types of Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**9.2 Amount of Damages.** THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, INCLUDING THE PERFORMANCE OF KARROT’S INDEMNIFICATION OBLIGATIONS, WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CLIENT TO KARROT DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL KARROT’S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY’S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF A PARTY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY.

**9.3 Basis of the Bargain.** The parties agree that the limitations of liability set forth in this Section 9 will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

**10. CONFIDENTIALITY. Confidential Information.** “Confidential Information” means any nonpublic information of a party (the “Disclosing party”), whether disclosed orally or in written or digital media, that is identified as “confidential” or with a similar legend at the time of such disclosure or that the receiving party (the “Receiving party”) knows or should have known is the confidential or proprietary information of the Disclosing party. The Services, and all enhancements and improvements thereto, will be considered Confidential Information

of KARROT. Each party (as **“Receiving Party”**) will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the disclosing party (the **“Disclosing Party”**) for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

## **11. INDEMNIFICATION**

**11.1 By KARROT.** KARROT will defend at its expense any suit brought against Client, and will pay any settlement KARROT makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the KARROT Platform infringes such third party’s patents, copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America. If any portion of the KARROT Platform becomes, or in KARROT’s opinion is likely to become, the subject of a claim of infringement, KARROT may, at KARROT’s option: (a) procure for Client the right to continue using the KARROT Platform; (b) replace the KARROT Platform with non-infringing software or services which do not materially impair the functionality of the KARROT Platform; (c) modify the KARROT Platform so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused prepaid Fees for the remainder of the term then in effect, and upon such termination, Client will immediately cease all use of the KARROT Platform. Notwithstanding the foregoing, KARROT will have no obligation under this Section 11.1 or otherwise with respect to any infringement claim based upon (i) any use of the KARROT Platform not in accordance with this Agreement; (ii) any use of the KARROT Platform in combination with other products, equipment, software or data not supplied by KARROT; or (iii) any modification of the KARROT Platform by any person other than KARROT or its authorized agents (collectively, the **“Exclusions”** and each, an **“Exclusion”**). This Section 11.1 states the sole and exclusive remedy of Client and the entire liability of KARROT, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

**11.2 By Client.** Client will defend at its expense any suit brought against KARROT, and will pay any settlement Client makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim arising out of or relating to (a) an Exclusion, (b) any Reward offered and/or redeemed in connection with the Reward Program, or (c) Client’s breach or alleged breach of Section 5.2. This Section 11.2 states the sole and exclusive remedy of KARROT and the entire liability of Client, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for the claims and actions described herein.

**11.3 Procedure.** The indemnifying party’s obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## **12. TERM AND TERMINATION**

**12.1 Term.** This Agreement will begin on the date Client accepts it (in accordance with the preamble) and continue in full force and for a period of two (2) years, unless earlier terminated in accordance with the

Agreement (the “**Term**”). Thereafter, the Term will automatically renew for additional terms of one (1) calendar year unless either party gives written notice of non-renewal to the other party prior to the expiration of the then-current term.

**12.2 Termination for Breach.** Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

**12.3 Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all licenses granted hereunder will immediately terminate; (b) promptly after the effective date of termination or expiration each party will return all Confidential Information of the other party; and (c) any amounts owed to KARROT under this Agreement will become immediately due and payable. Sections 1, 2.4, 3.2, 3.3, 3.4, 4- 11, 12.3 and 13 will survive expiration or termination of this Agreement for any reason.

### **13. MISCELLANEOUS**

**13.1 Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Illinois, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Client hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Chicago, Illinois for any lawsuit filed there against Client by KARROT arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**13.2 Dispute Resolution; Arbitration.** In the event of any dispute hereunder, the parties shall engage in informal, good faith discussions to resolve it. If the parties are unable to resolve the dispute, then the parties agree to comply with the following procedures: Except for any claims for equitable relief, all disputes, claims or controversies arising from or relating to this Agreement, the breach of this Agreement, or the relationships that result from this Agreement, including but not limited to any dispute regarding the validity of this arbitration clause or the entire Agreement, shall be resolved by binding arbitration administered by the American Arbitration Association (“**AAA**”) under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The arbitrator(s) must be practicing attorneys in good standing with no actual or potential conflicts of interest. To the extent practicable, the arbitrator(s) must have relevant business or legal experience. The arbitrator(s) must be independent of all parties, witnesses and legal counsel. The arbitration hearing shall be conducted in Cook County, Illinois. Any judicial challenge to the arbitration award shall be filed in a court sitting in Cook County, Illinois. Notwithstanding the foregoing, either party shall be entitled to seek injunctive relief under this Agreement in any court having jurisdiction, as well as such further relief as may be granted by such court.

**13.3 Government End-Users.** The Services are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Thin Client by the U.S. Government shall be governed solely by the terms of this Agreement. This product was developed fully at private expense. All other use is prohibited.

**13.4 Export Compliance.** Client acknowledges that the Services may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. Client shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Services: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department’s Table of Denial Orders or U.S. Treasury Department’s list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental

approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Client agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list.

**13.5 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**13.6 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**13.7 No Assignment.** Client may not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that Client may assign this Agreement to an affiliate or in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent KARROT. KARROT may freely assign, subcontract, delegate or otherwise transfer this Agreement. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns.

**13.8 Compliance with Law.** Client will always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services.

**13.9 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of Fees owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, pandemic, epidemic, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**13.10 Independent Contractors.** Client's relationship to KARROT is that of an independent contractor, and neither party is an agent or partner of the other. Client will not have, and will not represent to any third party that it has, any authority to act on behalf of KARROT.

**13.11 Notices.** All notices required or permitted under this agreement must be delivered in writing, if to KARROT, at 35 East Wacker Drive, Suite 3900, Chicago, IL 60601, Attention: LEGAL, or by emailing legal@karrotrewards.com, and if to Client, by emailing the Client Point of Contact email address last made available by Client, provided, however, that with respect to any notices relating to breaches of this agreement or termination, a copy of such notice will also be sent in writing to the other party by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Each party may change its email address and/or address for receipt of notice by giving notice of such change to the other party.

**13.12 Precedence.** To the extent that a conflict arises between the terms and conditions of this Agreement or any other written instrument executed between the parties, the terms and conditions of this Agreement will govern, except to the extent that such written instrument, expressly states that it supersedes specific language in the Agreement.

**13.13 Modifications of this Agreement.** KARROT may modify this Agreement in its sole discretion, at any time. When changes are made, KARROT will make a new copy of the Agreement available on its website and update the Last Updated date above. KARROT will also email Client at the last email address Client provided to KARROT. Unless otherwise specified in KARROT's notice, any changes will become effective within thirty (30) days of KARROT's provision of notice of such updates. KARROT may require Client to provide consent to the updated Agreement in a specified manner before further use of the KARROT Service is permitted.

**13.14 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters.