

## BRANDWISE ELECTRONIC SOFTWARE LICENSE AGREEMENT

THIS ELECTRONIC SOFTWARE LICENSE AGREEMENT (the "Agreement"), is by and between Brandwise, a MarketTime Company, located at 2050 N Stemmons Fwy Ste 139-4, Dallas, TX 75207 ("Company"), and the counterparty ("Customer"). Customer is defined as the person(s) purchasing or using the licensed software and/or services from the Company. Company and Customer may be referred to as a "Party" or the "Parties."

**PLEASE CAREFULLY READ THE TERMS OF THE AGREEMENT. IF CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THE AGREEMENT, CLICK ON THE BOX AT THE BOTTOM OF THIS PAGE LABELED "I ACCEPT" AT WHICH TIME CUSTOMER WILL BE PERMITTED TO USE THE SOFTWARE ON THE TERMS HEREOF. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THE AGREEMENT, CUSTOMER SHOULD CLICK ON THE BOX AT THE BOTTOM OF THIS PAGE LABELED "I DO NOT ACCEPT" AT WHICH POINT THE SOFTWARE MAY NOT BE USED BY CUSTOMER. IF CUSTOMER ACCESSES OR USES THE SOFTWARE IN ANY WAY WITHOUT CLICKING ACCEPT, SUCH ACCESS OR USE SHALL BE DEEMED ACCEPTANCE OF THIS AGREEMENT.**

### RECITALS

WHEREAS, Customer desires to license Company's software and/or services ("Software") as defined in Customers executed Brandwise System Proposal ("Purchase Agreement") with Company, solely for Customer's internal business purposes, and Company desires to provide such license, subject to the following terms and conditions.

WHEREAS, Customer assumes sole responsibility for the selection of the Software to achieve Customers intended results and for the use of and results obtained from the Software.

WHEREAS, Company does not warrant that the operation of the Software will be uninterrupted or error-free or that all defects will be corrected.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals and the Parties' mutual covenants, and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### 1. LICENSE; PAYMENT.

(a) During the License Term as outlined in the Purchase Agreement and subject to the terms and conditions hereof, Company hereby grants to Customer a non-exclusive, non-transferable, revocable, limited license to access and use the Software solely for the internal business purposes of Customer. Customer shall not: (i) alter, modify, copy, make derivative works from, adapt or translate the whole or any part of the Software or documentation in any way whatsoever; (ii) permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs; (iii) decompile, disassemble or reverse engineer the Software; or (iv) permit third parties or affiliates to use or benefit from the Software or otherwise use the Software in a service bureau.

(b) In exchange for the license herein, Customer agrees to pay to Company the stated monthly license fee in accordance with the Purchase Agreement.

2. LICENSE TERM. The "License Term" shall commence upon the execution of the Purchase Agreement and shall remain in effect thereafter unless otherwise terminated by the provisions of that Agreement or: (i) Customer's failure to pay the monthly license fee for any month, (ii) Customer's breach of this Agreement. Upon expiration or termination of the License Term, this Agreement shall terminate and Customer shall immediately provide written notice to Company confirming they have discontinued access and use of the Software, have erased all copies of the licensed software, destroyed all User Documentation and destroyed all usernames and passwords associated with such access. Company reserves all its rights and remedies under this Agreement and applicable law, irrespective of termination of this Agreement. Sections 3 - 7 shall survive the termination or expiration of the Agreement by either party for any reason. Payment obligation will survive any merger or acquisition of Customer, and in the event of insolvency, Company will be deemed to be a preferred creditor for any disbursements of past due invoices.

3. OWNERSHIP. The Software, and related documentation supplied by Company, all patent rights, copyrights, trademarks, trade secrets and other intellectual property rights contained therein or associated therewith, all modifications, enhancements, derivatives thereof or changes thereto, and all copies thereof, shall remain the sole and exclusive property of Company, and shall not be used in any way other than as allowed by this Agreement.

4. CONFIDENTIALITY. Any software, documentation or other information, whether disclosed orally, electronically or in writing, of any nature in any form, provided by Company to Customer, including without limitation, the Software, documentation, hardware, notes, passwords & user names, plans, financial, technical and business information, know-how and all other trade secrets, shall be deemed "Confidential Information" of Company. All Confidential Information shall remain the property of Company, shall be used solely in furtherance of the performance of this Agreement, shall not be used for any other purpose without the prior written consent of Company, and shall, if in a tangible form, be returned to Company at its request. Upon receiving Confidential Information, Customer shall keep in strict confidence and not disclose to any person or entity not bound by this Agreement any Confidential Information. Confidential Information shall not include information that: (a) is in or enters the public domain, other than by breach of this Agreement; or (b) can be demonstrated by Customer that Customer knew such information prior to any disclosure by Company and without duties of confidentiality.

5. LIMITED SOFTWARE WARRANTY. Company's only obligation with respect to the Software provided by Company to Customer shall be to use commercially reasonable efforts to assist in resolving any material failure of the Software to substantially conform to the User Documentation and to assist Customer with its use of the Software. Company's sole liability, and CUSTOMERS SOLE AND EXCLUSIVE REMEDY, with respect to the Software is limited to the following: (a) In the event that the Software is, in Company's good faith determination, unusable for any period over 72 consecutive hours, then Company shall refund to Customer a prorated portion of the monthly license fee as outlined in the Purchase Agreement, for the period during which the Software was unusable.

6. DISCLAIMER OF ALL WARRANTIES. COMPANY PROVIDES THE SOFTWARE AND DOCUMENTATION "AS IS", AND OTHER THAN THE FOREGOING LIMITED SOFTWARE WARRANTY, CUSTOMER UNDERSTANDS THAT IT ASSUMES ALL RISKS OF ITS USE, QUALITY, AND PERFORMANCE. COMPANY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, WHETHER EXPRESSED OR IMPLIED, INCLUDING SPECIFICALLY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY'S ONLY OBLIGATION TO ADDRESS ANY DEFECTS OR PROBLEMS WITH THE SOFTWARE IS AS DESCRIBED IN THE FOREGOING LIMITED SOFTWARE WARRANTY AND ANY GENERAL MAINTENANCE COMPANY PERFORMS ON ITS SOFTWARE.

7. LIMIT OF LIABILITY. CUSTOMER AGREES AND ACKNOWLEDGES THAT COMPANY SHALL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER FOR ANY PROBLEMS IN OR CAUSED BY THE SOFTWARE AND DOCUMENTATION, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS AND LOST DATA). IN NO EVENT SHALL COMPANY'S MAXIMUM LIABILITY, UNDER OR RELATED TO THIS AGREEMENT, EXCEED AMOUNTS PAID TO COMPANY BY CUSTOMER HEREUNDER IN THE THREE MONTHS PRECEDING THE CLAIM, AND NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY UPON THE TERMINATION OF THIS AGREEMENT EXCEPT THAT AN ACTION FOR NON-PAYMENT WILL BE LIMITED ONLY BY THE STATUTE OF LIMITATIONS FOR THE STATE OF TEXAS.

8. **GENERAL PROVISIONS.**

(a) Customer may not assign this Agreement by express assignment or by operation of law to any other person, persons, firms, or corporation without the express written consent of Company. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas. In respect of any claim, dispute, or controversy under or related to this Agreement, each party irrevocably consents to the jurisdiction of the state and federal courts located in Dallas County Texas and such venue is convenient. Each party is acting as an independent contractor and not as an agent, partner, or joint venture with the other party for any purpose. Customer agrees that Company shall be entitled to preliminary and permanent injunctive relief in Dallas District Court, without the necessity of proving actual damages, as well as an equitable accounting of all earnings, profits and other benefits arising from any alleged violation of this Agreement, which rights shall be cumulative and in addition to any other rights or remedies to which Company may be entitled. Customer irrevocably and unconditionally agrees that any suit, action or other legal proceeding arising out of this Agreement, including without limitation, any action commenced by Company for preliminary or permanent injunctive relief or other equitable relief, may be brought in the Dallas District Court. In the event of any proceeding to enforce, construe, or to determine validity of this Agreement, the non-prevailing party shall pay the reasonable expenses of the prevailing party, including reasonable attorney's fees and costs. Each party is acting as an independent contractor and not as an agent, partner, or joint venture with the other party for any purpose. Neither party shall have any right, power, or authority to act or to create any obligation, expressed or implied, on behalf of the other. In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, then such provision will be considered separate and apart from the remainder of this Agreement which will remain in full force and effect. The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement. No provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement, and no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. The parties have read this Agreement and agree to be bound by its terms, and further agree that the Agreement constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the license and to the subject matter hereof.

(b) Indemnity. Customer agrees to indemnify and hold harmless Company from all claims, causes of action, injury, loss, damages (whether direct, indirect, special, consequential or of whatever nature), costs and expenses (including attorney and legal process fees and expenses) which results from the use or operation of the Licensed software and/or services by the Customer.

(c) Company from time to time provides data to various industry associations and publications to demonstrate overall industry trending and does not include Customer specific data elements. Company may decide to enter into agreement(s) with various venues or market centers to provide aggregate data in order to integrate with retailer registration and entry systems at such venues in order to provide rapid order entry and retailer validation. Additional data points may also be included in order to provide relevant, noncompetitive information back to the Customer regarding certain retailer activity within the market center and/or in your leased space within the market center or other relevant venue.

IN WITNESS WHEREOF, if Customer agrees to be bound by this ELECTORIC SOFTWARE LICENSE AGREEMENT, an authorized representative of Customer shall select "I ACCEPT" in the form provided.