

# Terms and Conditions

Please read this information carefully as it contains the legal terms and conditions which you may accept as set forth below.

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LEADASSIST , Inc. (“LEADASSIST ”) and the licensee which has signed below (“Licensee”) agree as follows:

## 1. DEFINITIONS; DELIVERY OF LICENSED MATERIALS; LICENSE

### 1.1 Definitions.

(a) “Agreement” means: these Standard Terms and Conditions; any additional terms specifically set out in writing in the document(s) (if any) to which these Standard Terms and Conditions are attached or in which they are incorporated by reference, and, if applicable, any additional terms specifically set out in writing in any Schedule or Exhibit attached hereto, including any Republication Rights Agreement,

(b) “Licensed Materials” means any newsletter, report, database, survey, or other similar resource, and all lodging industry data contained therein, which has been created by LEADASSIST and provided to Licensee hereunder.

1.2. Delivery. Following payment of fees due under this Agreement, LEADASSIST shall deliver the Licensed Materials to Licensee in no fewer than forty-eight (48) hours.

1.3 Grant of License. Subject to the terms and conditions of this Agreement, and except as may be expressly permitted or limited elsewhere in this Agreement, LEADASSIST hereby grants to Licensee a non-exclusive, non-transferable, indivisible, non-sublicensable license to use, copy, manipulate and extract data from the Licensed Materials for its own INTERNAL business purposes only.

1.4 No Service Bureau Use. Except as may be expressly permitted or limited elsewhere in this Agreement, Licensee is prohibited from using the Licensed Materials in any way in connection with any service bureau or similar services. “Service bureau” means the processing of input data that is supplied by one or more third parties and the generation of output data (in the form of reports, charts, graphs or other pictorial representations, or the like) that is sold or licensed to any third parties.

1.5 No Distribution to Third Parties. Except as may be expressly permitted or limited elsewhere in this Agreement, Licensee is prohibited from distributing, republishing or otherwise making the Licensed Materials or any part thereof (including any excerpts of the data and any manipulations of the data) available in any form whatsoever to any third party, other than Licensee's accountants, attorneys or other professional advisors who are bound by a duty of confidentiality not to disclose such information.

1.6 Reservation of Rights. Licensee has no rights in connection with the Licensed Materials other than those rights expressly enumerated in the Agreement. All rights in the Licensed Materials not expressly enumerated herein are reserved to LEADASSIST .

1.7 Security and Confidentiality. Licensee agrees that the Licensed Materials contain confidential information and that it will distribute Licensed Materials only to those officers, directors, employees, agents, affiliates or subsidiaries who have a need to know such information or who have a right to access such information under applicable law. Licensee shall use commercially reasonable efforts to protect against unauthorized access to and to maintain the confidentiality of Licensed Materials. This provision shall survive indefinitely the termination of this agreement

## 2. EXCLUSIONS DISCLAIMERS AND LIMITATIONS OF LIABILITY

2.1 Disclaimer. THE LICENSED MATERIALS ARE PROVIDED TO THE LICENSEE ON AN "AS IS" AND "AS AVAILABLE" BASIS. LEADASSIST MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, THE SERVICES PROVIDED OR THE RESULTS OF USE THEREOF. WITHOUT LIMITING THE FOREGOING, LEADASSIST DOES NOT WARRANT THAT THE LICENSED MATERIALS, THE SERVICES PROVIDED OR THE USE THEREOF ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. LEADASSIST MAKES NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE OR OTHERWISE.

2.2 Limitations of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW LEADASSIST SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF LEADASSIST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, LEADASSIST

SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM RELATING IN ANY WAY TO (i) ANY DECISION MADE OR ACTION TAKEN BY LICENSEE IN RELIANCE UPON THE LICENSED MATERIALS. FURTHERMORE, LEADASSIST 'S TOTAL LIABILITY TO LICENSEE FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, INFRINGEMENT, BREACH OF CONTRACT, NEGLIGENCE, LEADASSIST ICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, SHALL BE LIMITED TO ALL FEES PAID TO LEADASSIST BY THE LICENSEE DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE ON WHICH SUCH CAUSE OF ACTION FIRST AROSE.

### 3. MISCELLANEOUS

3.1 Liquidated Damages. In the event of a disclosure or distribution of the Licensed Materials by Licensee that violates the terms of this Agreement, Licensee shall be required to pay LEADASSIST an amount equal to the sum of (i) the highest aggregate price that LEADASSIST , in accordance with its then-current published prices, could have charged the unauthorized recipients for the Licensed Materials that are the subject of the violation, and (ii) the full price of the lowest level of republishing rights that Licensee would have been required to purchase from LEADASSIST in order to have the right to make the unauthorized distribution, regardless of whether Licensee has previously paid for any lower level of republishing rights. This provision shall survive indefinitely the expiration or termination of this Agreement for any reason and does not waive either Party's right to seek equitable or injunctive relief as may be available from any court of competent jurisdiction to restrain the other from breaching or threatening to breach this Agreement.

3.2 Term. Where client has purchased a twelve (12) month subscription to Licensed Materials, either party may terminate this Agreement, prior to the end the subscription period, at any time with thirty (30) days written notice to the other party. If LEADASSIST terminates the subscription, then LEADASSIST shall refund Licensee any fees paid on a pro-rata basis. No fees will be refunded to Licensee where Licensee terminates the Agreement.

3.3 Obligations upon Termination. Within thirty (30) days of the termination or expiration of this Agreement for any reason, Licensee shall cease all use of the Licensed Materials and shall return or destroy, at LEADASSIST 's option, all copies of the Licensed Materials and all other information relating thereto in Licensee's possession or control as of the such date.

3.4 Governing Law: Jurisdiction and Venue. This Agreement shall be governed by the substantive laws of the State of Tennessee, without regard to its or any other jurisdiction's laws governing conflicts of law. Action from or relating to this Agreement shall be brought only in the

federal or state courts having jurisdiction in Tennessee. The parties also expressly waive any objections to venue.

3.5 Sales Tax. The license fees do not include sales, use, excise or any other taxes or fees now or hereafter imposed by any governmental authority with respect to the Licensed Materials. LEADASSIST will charge applicable taxes or fees based on Licensee's billing location and all such taxes or fees are payable to LEADASSIST upon invoicing.

3.6 Assignment. Licensee is prohibited from assigning this Agreement or delegating any of its duties under this Agreement without the prior written consent of LEADASSIST .

3.7 Independent Relationship. The relationship between the parties is that of an independent contractor. Nothing in this agreement shall be deemed to create an employer/employee, principal/agent, partnership or joint venture relationship.

3.8 Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given i) when delivered in person, at the time of such delivery; ii) when delivered by facsimile transmission or e-mail, at the time of transmission (provided, however, that notice delivered by facsimile transmission shall only be effective if such notice is also delivered by hand or deposited in the mail, postage prepaid, registered, certified or express mail or by courier service within two (2) business days after its delivery by facsimile transmission); iii) when delivered by a courier service or by express mail, at the time of receipt; or iv) five (5) business days after being deposited in the mail, postage prepaid, registered or certified mail, addressed (in any such case) to the addresses listed on the first page of this Agreement or to such other address as either party may notify the other in writing.

3.9 Waiver. No waiver of any breach of this Agreement will be deemed to constitute a waiver of any subsequent breach of the same or any other provision.

3.10 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding in all respects any and all prior proposals, negotiations, understandings and other agreements, oral or written, between the parties, with the exception of the [www.LeadAssist.com](http://www.LeadAssist.com) Terms of Use and Privacy Policy.

3.11 Amendment. This Agreement may be amended only by the written agreement of both parties.

3.12 Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs

incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

3.13 Notice of Unauthorized Access. Licensee shall notify LEADASSIST immediately upon Licensee's becoming aware of any facts indicating that a third party may have obtained or may be about to obtain unauthorized access to the Licensed Materials, and shall fully cooperate with LEADASSIST in its efforts to mitigate the damages caused by any such breach or potential breach.

3.14 Conflicting Provisions. In the event that any provision of these Standard Terms and Conditions directly conflicts with any other Schedule or Exhibit attached hereto, the conflicting terms of such other document shall control.

3.15 Remedies. In addition to any other rights or remedies that either party may have under applicable law for material breach of this Agreement, in the event of any material breach of this Agreement by either party, and following notice to the breaching party by the non-breaching party, the non-breaching party's obligations under this contract shall terminate.

3.16 Indemnification. Licensee shall indemnify, defend and hold LEADASSIST harmless against any claims, actions, losses, liabilities, damages and expenses (including reasonable attorneys fees and court costs) brought against LEADASSIST by any third party that relates to or arises out of Licensee's unauthorized disclosure of, misuse of or misrepresentation of the Licensed Materials.

3.17 Website. Licensee acknowledges that it is subject to the Terms of Use and Privacy Policy governing the use of [www.LeadAssist.com](http://www.LeadAssist.com), the terms of which are fully incorporated herein. In the event of any conflict between any provision of the Terms of Use or Privacy Policy and any provision of this Agreement, the terms of such Terms of Use or Privacy policy shall control.