**Vartopia Master Subscription Agreement - MVS**

This Agreement sets forth the terms and conditions that apply to Your access and use of the Internet Web site owned and operated by Vartopia, LLC, a Wyoming limited liability company (“Vartopia”), and located <http://my.vartopia.com> (“my.vartopia.com”). By using my.vartopia.com, You agree to be bound by the terms and conditions of this Agreement and Vartopia’s [Privacy and Security Policy](https://my.vartopia.com/anonymous/Privacy_and_Security_Policy.aspx), as they may be amended from time to time in the future.

1. [Definitions](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No1)
2. [Accepting the Terms](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No2)
3. [Purchased Service](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No3)s
4. [Use of the Service](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No4)
5. [Fees and Payment for Purchased Services](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No5)
6. [Proprietary Rights](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No6)
7. [Access and Interference](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No7)
8. [Confidentiality](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No9)
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12. [Term and Termination](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No13)
13. [Notices, Governing Law and Jurisdiction](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No14)
14. [Privacy and Your Personal Information](https://my.vartopia.com/anonymous/Terms_of_Service.aspx#No15)
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**1. DEFINITIONS**

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with You or Us.

"**Control**" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Confidential Information**" shall have the meaning set forth in Section 8.1.

**“Outside Account Information”** shall mean Your information that You direct Vartopia to electronically retrieve that is maintained online by Manufacturers.

"**Customer Information**" means information about You other than Outside Account Information that We obtain as a result of Your use of Our Service, including, by way of example and not limitation, Your User Information as well as anonymous usage statistics resulting from Your use of my.vartopia.com. Customer Information does not include information that You acquired independent of Your use of the Service, for example Your billing address.

"**Data**" means all electronic data or information submitted by You to Vartopia as well as Outside Account Information retrieved for You from 3rd-party systems.

"**Disclosing Party**" shall have the meaning set forth in Section 8.1.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or Malicious code, files, scripts, agents or programs.

“**MVS**” is Vartopia’s service offering that permits subscribing VARs to, among other things, view information related to registered deals with Manufacturers, register deals with Manufacturers, and select solutions offered to them through Vartopia.

"**Order Form**" means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

"**Outside Account Information**" shall have the meaning set forth in Section 3.4 of this Agreement.

"**Purchased Service**" means services rendered by Us under a subscription that You or Your Affiliates purchase from Us under an Order Form.

"**Receiving Party**" shall have the meaning set forth in Section 8.1.

"**Service**" shall have the meaning set forth in Section 3.1 of this Agreement.

**“Software”** shall mean the software programming and instructions that encompass the Service and that enable the Service to be provided to You.

"**Taxes**" shall have the meaning set forth in Section 5.6.

"**Users**" means individuals who are authorized by You to use the Service and who have been supplied User identifications and passwords or other authentication information by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents; or third parties with which You transact business.

“**User Information**” shall have the meaning set forth in Section 4.2.

**“VAR”** means value added re-seller of software and/or hardware products.

**“Manufacturer”** means a third party supplier of products and services whose products or services are re-sold by VARs and typically carry a brand of the Manufacturer as the primary brand and with whom You maintain Outside Account Information.

"**We,**" "**Us**" or "**Our**" means Vartopia, LLC, a Wyoming limited liability company.

"**You**" or "**Your**" means You, the company or other legal entity for which You are accepting this Agreement, and Affiliates of that company or entity.

**2. ACCEPTING THE TERMS**

THIS MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) GOVERNS YOUR USE OF THE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Service if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and Us as of the date of You accepting this Agreement.

**3.** **PURCHASED SERVICES**

**3.1. Description of the Service.** The Service is an online information management service for VARs that allows You to view, consolidate, submit, and track Your deal registration transactions through the use of the Web-based applications and platform provided by Us via my.vartopia.com and known as MVS.

**3.2. Transaction Subscriptions.** Unless otherwise specified in the applicable Order Form, The Purchased Service is provided on a transaction cost basis, as described in the order form (i) Service access privileges are limited to Your Users; (ii) Users may be added during the subscription term, and, depending on the purpose the User is added may require an Order Form accepted by US, and (iii) User access privileges shall terminate at the conclusion of the contract period outlined in the Order Form. User access privileges for a given User cannot be shared or used by a different User.

**3.3. Provision of Purchased Services.** We shall make the Purchased Service available to You and all Users who have been granted access privileges in accordance with the terms of this Agreement and the relevant Order Forms. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features. Your access and use of my.vartopia.com may be interrupted from time to time for any of several reasons, including, without limitation, the malfunction of equipment, periodic updating, maintenance or repair of my.vartopia.com or other actions that Vartopia, in its sole discretion, may elect to take. Vartopia will use its best commercially reasonable efforts to minimize any such interruptions.

**3.4. Outside Account Information from Third Party Sites.** With the Service, You may direct Vartopia to electronically retrieve Your information maintained online by Manufacturers (“Outside Account Information”). Vartopia makes no effort to review the Outside Account Information for any purpose, including but not limited to accuracy, legality or non-infringement of third party intellectual property. It is Your responsibility to ensure that all Outside Account Information retrieved by Vartopia is accurate, legal, and non-infringing, and that You have the right to cause Vartopia to retrieve it, prior to Using the Service to retrieve and display such information. Further, You acknowledge that Vartopia is not responsible for the products and services offered by or on third-party sites. In the event Vartopia receives notice that any of Your Outside Account Information infringes upon the rights of a third party or that its use or display violates applicable law, Vartopia reserves the right to remove such information without prior notice.

Vartopia cannot always foresee or anticipate technical or other difficulties, which may result in failure to obtain data or loss of data, personalization settings or other service interruptions. Vartopia cannot assume responsibility for the timeliness, accuracy, deletion, non-delivery or failure to store any User data, communications or personalization settings. For example, when displayed through the Service, Outside Account Information is only as fresh as the time shown, which reflects when the information is obtained from such sites. Such information may be more up-to-date when obtained directly from the relevant sites. You can refresh Your Outside Account Information through the Service, in the manner prescribed in the associated instructions.

**4. USE OF THE SERVICE**

**4.1. Your Responsibilities.** You shall (i) be responsible for Your Users’ compliance with this Agreement, (ii) be solely responsible for providing accurate Manufacturer information which enables Vartopia to provide the Service to You, (iii) provide true, accurate, current and complete Outside Account Information, as requested in our “add Vendor” setup forms, and You may not misrepresent Your User Information; (iv) keep Your User Information up to date and accurate in order for the Service to function effectively; (v) use reasonable commercial efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use; and (vi) use the Services only in accordance with the guidelines and instructions provided through the Service and applicable U.S. laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

**4.2. Your User Information.** Vartopia will not disclose Your password, LoginID e-mail address, or other authentication information to any third party. You agree and understand that within Your organization, You are responsible for maintaining the confidentiality of Your password which, together with Your LoginID e-mail address, allows You to access the Service. Your “User Information” consists of Your Login ID and password, together with any mobile number or other contact information You provide. By providing Us with Your e-mail address, You agree to receive all required notices electronically, to that e-mail address. It is Your responsibility to update or change that address, as appropriate. Notices will be provided in HTML (or, if Your system does not support HTML, in plain-text) in the text of the e-mail or through a link to the appropriate page on our site, accessible through any standard, commercially available Internet browser. If You become aware of any unauthorized use of Your User Information, You agree to notify Vartopia immediately at the email address – [support@vartopia.com](mailto:support@vartopia.com).

It is Your sole responsibility to deactivate or transfer User accounts and permissions when a particular User is no longer entitled to access the Service. Vartopia shall not be liable for any actions taken by a User for whom You had granted access and did not deactivate in a timely manner.

**4.3. Alert Disclaimer.** You understand and agree that any alerts provided to You through the Service may be delayed or prevented by a variety of factors. Vartopia does its commercially reasonable best to provide alerts in a timely manner with accurate information. However, we neither guarantee the delivery nor the accuracy of the content of any alert. You also agree that Vartopia shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by You or any third party in reliance on an alert.

**4.4. Rights You Grant to Us**. By submitting information, data, passwords, Usernames, PINs, other log-in information, materials and other Data to Vartopia through the Service, You are licensing that content to Vartopia solely for the purpose of providing the Service. Vartopia may use and store the content, but only to provide the Service to You. By submitting this content to Vartopia, You represent that You are entitled to submit it to Vartopia for use for this purpose, without any obligation by Vartopia to pay any fees or other limitations. By using the Service, You expressly authorize Vartopia to access Your Outside Account Information maintained by identified third parties, on Your behalf as Your agent. When You use the “Activate Vendor Connections” feature of the Service, You will be directly connected to the website for the third party You have identified. Vartopia will submit information including Usernames and passwords that You provide to log You into the site. You hereby authorize and permit Vartopia to use and store information submitted by You to the Service (such as account passwords and User names) to accomplish the foregoing and to configure the Service so that it is compatible with the third party sites for which You submit Your information. For purposes of this Agreement and solely to provide the Outside Account Information to You as part of the Service, You appoint Vartopia as Your agent, for the limited purpose of accessing third party sites to access, submit, retrieve and display such information using the Service, with the full power and authority to do and perform each thing necessary in connection with such activities, as directed by You. YOU ACKNOWLEDGE AND AGREE THAT WHEN VARTOPIA IS ACCESSING AND RETRIEVING Outside ACCOUNT INFORMATION FROM THIRD PARTY SITES, VARTOPIA IS ACTING AS YOUR AGENT FOR THE LIMITED PURPOSE NOTED ABOVE, AND NOT AS THE AGENT OF OR ON BEHALF OF THE THIRD PARTY. Vartopia’s duties as Your agent are expressly limited to those set forth in the terms and conditions set forth in this Agreement. All implied duties are expressly disclaimed to the fullest extent allowed by law.

**5.** **FEES AND PAYMENT FOR PURCHASED SERVICES**

**5.1. Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars, (ii) fees are based on Services purchased and actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable. You may increase the use of the system to provide You with additional transactions or other services by submitting an Order Form and attaining Our approval of that form.

**5.2. Invoicing and Payment.** You will provide Us with a valid Order Form for Our approval. We will invoice You in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 15 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Services.

**5.3. Overdue Payments.**  If any payments are not received from You by the due date, then at Our discretion, (a) such payments may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

**5.4. Suspension of Service and Acceleration.** In addition to Section 5.3 (Overdue Payments), if any amount owing by You under this or any other agreement for Our Service is 30 or more days overdue, We may, without limiting Our other rights and remedies, suspend Our services to You until such amounts are paid in full and accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable.

**5.5. Payment Disputes.** We will not exercise Our rights under Section 5.3 (Overdue Payments) or 5.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

**5.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. However, if We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced by Us to You and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against US based on Our income, property and employees.

**6. PROPRIETARY RIGHTS**

**6.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

The contents of my.vartopia.com, including its “look and feel” (*e.g*., text, graphics, images, logos and button icons), photographs, editorial content, notices, Software (including html-based computer programs) and other material are protected under both United States and other applicable copyright, trademark and other laws. The contents of my.vartopia.com belong or are licensed to Vartopia or its software or content suppliers.

Vartopia grants You the right to view and use my.vartopia.com subject to the terms of this Agreement. You may download or print a copy of information provided on my.vartopia.com for Your personal and internal business use only. Any distribution, reprint or electronic reproduction of any content from my.vartopia.com in whole or in part for license, resale or any other purpose is expressly prohibited without our prior written consent.

**6.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services other than making reports for Your own internal business purposes, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics based on Your use of the Services.

**6.3. Data Ownership.** All Data input by You and that which can be identified as Yours, is Your property. You hereby grant Vartopia a nonexclusive, royalty-free, revocable license to use Your Data in connection with the Service.

You hereby grant Vartopia the right to use the data for marketing and other purposes provided we remove all reference to your company or your customers or any information that would indicate that this was your data.

All such cleansed and aggregated data sets shall be deemed to be the sole and exclusive property of Vartopia and no longer Your Data. You acknowledge that Vartopia may use the anonymous information for any purpose. Vartopia will use best commercially reasonable efforts to make Your Data anonymous such that Your Data cannot be identified from the aggregated data.

**6.4. Suggestions.** You hereby release and relinquish all right, title, and interest in and to suggestions, enhancement requests, recommendations, or other feedback provided to Us by You or Users utilizing Your account, and acknowledge that Vartopia has the right to incorporate any of the same into the Service without obligation to You or any User utilizing Your account. All such information shall be deemed to be our sole and exclusive property. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as assigning to Vartopia or licensing to Vartopia any rights under any intellectual property owned by or licensed to You.

**7. Access and Interference**

You agree that you will not (i) use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology to access, acquire, copy or monitor my.vartopia.com or any portion of my.vartopia.com, without Vartopia’s express written consent, which may be withheld in Vartopia’s sole discretion; (ii) use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search my.vartopia.com, other than the search engines and search agents available through the Service and other than generally available third-party web browsers (such as Microsoft Explorer); (iii) post or transmit any file which contains viruses, worms, Trojan horses or any other contaminating or destructive features to my.vartopia.com, or that otherwise interfere with the proper working of my.vartopia.com or the Service; or (iv) attempt to decipher, decompile, disassemble, or reverse-engineer any of the Software.

**8. Confidentiality**

**8.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data. Our Confidential Information shall include, without limitation, Customer Information, usage statistics, anonymous and aggregated information, and other information accessible through the Service that can only be accessed by subscription, and any other information that we disclose along with an indication that we consider it to be our confidential and proprietary information. Notwithstanding the generality of the above, the term “Confidential Information” shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without confidentiality obligation and without breach of any obligation owed to the Disclosing Party (provided, however, that Outside Account Information received as Your agent from third parties shall not be deemed to have been received without confidentiality obligation), or (iv) was independently developed by the Receiving Party.

**8.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The foregoing obligation shall be and remain in effect at all times with respect to any given item of Confidential Information from the date of its disclosure until it loses its character as Confidential Information as a result of one or more the exclusions set forth in Section 8.1. Nothing herein shall be construed as prohibiting the Receiving Party from making any disclosure that is mandated as contemplated by Section 8.3, or as directed by the Disclosing Party.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**9. Disclaimer of Representations and Warranties**

**9.1. Representations and Warranties.** THE CONTENT AND ALL SERVICES AND PRODUCTS ASSOCIATED WITH VARTOPIA.COM OR PROVIDED THROUGH THE SERVICE (WHETHER OR NOT SPONSORED) ARE PROVIDED TO YOU ON AN “AS-IS” AND “AS AVAILABLE” BASIS. VARTOPIA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE CONTENT OR OPERATION OF VARTOPIA.COM OR OF THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. VARTOPIA MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, RELIABILITY OR COMPLETENESS OF THE CONTENT ON VARTOPIA.COM OR OF THE SERVICE (WHETHER OR NOT SPONSORED), AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY.

**9.2. Supplier Rules and Restrictions.** Manufacturers, from whose websites Vartopia will be retrieving Outside Account Information, will each likely have terms and conditions governing Your right to access their systems. Please read their terms and conditions carefully. You agree to abide by the terms and conditions imposed by any Manufacturer with whom You elect to deal, including, but not limited to, completeness of information, compliance with the Manufacturer’s rules, and restrictions regarding minimum deal size and advanced submission date. By instructing Us to act as Your agent in accessing any Manufacturer Website, You represent and warrant that such action by Us does not violate the terms and conditions of the Manufacturer’s Website. You further understand that any violation of any such Manufacturer’s rules and restrictions may result in delayed approval, rejection, or cancellation.

**10. Indemnification**

**10.1. Indemnification by Vartopia.** Vartopia shall indemnify and hold You harmless from and against any and all claims, costs, damages, losses, liabilities, expenses (including attorneys’ fees and costs), and settlement costs (collectively “Claims”) as incurred, arising out of or in connection with any (i) act or omission of Vartopia (including its Subcontractors) in the performance of the Service; or (ii) any infringement (or claim of infringement) of a third party’s intellectual property rights or any other rights.

**10.2. Indemnification by You.** You shall be responsible for the accuracy, completeness, and propriety of information concerning Your organization, products, and services. Accordingly, You shall indemnify and hold Vartopia harmless from and against any and all Claims made or brought against Vartopia based upon or arising out of or in connection with any (i) use of Your products or services in connection with the Service; (ii) use of information or materials provided by You to Vartopia; or (iii) infringement or claims of infringement of any third party’s intellectual property rights arising out of Vartopia’s adherence to Your written instructions.

**10.3. Indemnification Procedure.** The indemnified party will provide the indemnifying party with prompt written notice of the Claim and permit the indemnifying party to control the defense, settlement, adjustment, or compromise of any Claim; provided, however, that the indemnifying party will have no authority to settle any Claim on the indemnified party’s behalf or that would adversely impact the indemnified party without the indemnified party’s prior written consent. Nothing in this section shall limit the right of the indemnified party to employ counsel at its own expense to assist it with respect to any Claim.

**10.4. Vartopia’s Efforts.** In addition to its obligations set forth in Section 10.1 above, if the reproduction, use, or distribution of the Service is enjoined or becomes the subject of a claim of infringement, Vartopia shall use its best commercially reasonable efforts to obtain such licenses, or make such replacements or modifications, as are necessary to permit You to continue use of the Service without infringement and in compliance with this Agreement and any Order Form. If, despite its efforts, Vartopia is unable to achieve either of the foregoing within 30 days (or such longer period as You may determine in good faith) after a holding of infringement or the entry of an injunction, as applicable, Vartopia will promptly refund to You a pro-rata amount, based on the remaining time in Your subscription, paid by You for any Service for which the use is legally prohibited.

**10.5.** **Exclusive Remedy**. This Section 10 (Indemnification) states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of Claims described in this section.

**11. Limitation of Liability**

**11.1. Limitation of Liability.** EXCEPT WITH RESPECT TO EITHER PARTIES’ OBLIGATIONS UNDER SECTION 6 (PROPRIETARY RIGHTS), SECTION 8 (CONFIDENTIALITY), SECTION 10 (INDEMNIFICATION), AND SECTION 14 (PRIVACY AND PERSONAL INFORMATION), IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF $10,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).

The limitation of liability reflects the allocation of risk between the parties. The limitations specified in this section will survive and apply even if any limited remedy specified in these terms is found to have failed of its essential purpose. The limitations of liability provided in these terms inure to the benefit of You, Vartopia, and its 3rd-party suppliers.

**11.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER, OR TO ANY USER HAVING ACCESS TO THE SERVICE THROUGH YOU, FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. FOR AVOIDANCE OF DOUBT, THIS PROVISION DOES NOT PREVENT A PARTY FROM SEEKING DAMAGES NOT EXCLUDED UNDER THIS SECTION 11.2 BASED ON A PARTY’S BREACH OF ITS OBLIGATIONS UNDER SECTION 6 (PROPRIETARY RIGHTS), SECTION 8 (CONFIDENTIALITY), SECTION 10 (INDEMNIFICATION), AND SECTION 14 (PRIVACY AND PERSONAL INFORMATION).

**11.3. Limited Liability for use of Vartopia.** EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 10.1 ABOVE, WE HAVE NO LIABILITY REGARDING YOUR USE OF VARTOPIA.COM, INCLUDING YOUR RELIANCE ON THE ACCURACY OF CONTENT PROVIDED BY OTHER USERS OF VARTOPIA.COM OR ANY DISRUPTION IN THE SERVICE.

**12. Term and Termination**

**12.1. Term of Agreement.** This Agreement commences on the date provided below above the Parties’ signatures (the “Effective Date”) and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

**12.2. Term of Purchased Subscriptions.** Subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue: i) Perpetual subscriptions with no fixed term may be cancelled if either party gives the other notice of cancellation with at least 30 days written notice ii) for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

**12.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**12.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term after the effective date of termination of all Order Forms. In no event shall any termination relieve You of the obligation to pay any accrued fees payable to Us for the period prior to the effective date of termination.

**12.5. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Purchased Service subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and may thereafter, unless legally prohibited, delete all of Your Data and Customer Information in Our systems or otherwise in Our possession or under Our control.

**13. Notices, Governing Law and Jurisdiction**

**13.1. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, (iv) the first business day after sending by email, or (v) in the case of notices by Vartopia, immediately upon being viewed upon login by You when posted to Your account for viewing upon login. Notices to You sent by mail, facsimile, or email shall be addressed to the system administrator designated by You for Your Service account, or in the case of billing-related notices, to the relevant billing contact designated by You.

**13.2. Agreement to Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of New Hampshire, without application of choice of law or conflicts of law rules that would result in the application of the laws of any other state.

Without limiting Company's right to seek injunctive or other equitable relief in court, either party may elect (by written notice given prior filing a complaint or, in the case of the defendant, prior to answering a complaint) to resolve a dispute by binding arbitration in the English language in New Hampshire under the Rules and Procedures of the Judicial Arbitration and Mediation Service, Inc.; the decision of the arbitrator will be enforceable in any court.

You hereby submit to the personal jurisdiction of the courts in the State of New Hampshire, and agree that courts located in Rockingham County, New Hampshire shall have exclusive jurisdiction over any actions between the parties hereto or any User obtaining rights through You. You understand that, in return for agreement to this provision, Vartopia is able to offer the Service at the terms designated and that Your assent to this provision is an indispensable consideration to this Agreement.

**13.3. Waiver of Jury Trial and other rights.** Each party hereby waives its right to a trial by jury, in any lawsuit arising out of or relating to Your use of the Service or this Agreement.

**14. Privacy and Your Personal Information**

To the extent any information provided by You to Vartopia constitutes personal information within the meaning of applicable law, such information will be handled in accordance with Vartopia’s Privacy and Security Policy, the terms and conditions of which are hereby incorporated by reference. For more information, please click on the following link: [Privacy and Security Policy](https://my.vartopia.com/anonymous/Privacy_and_Security_Policy.aspx). This policy explains how Vartopia treats Your personal information when You access my.vartopia.com and use the Service. The policy may be updated from time to time at our discretion. Changes will be effective upon posting to the site and notice to You. If You disagree with a change in the policy, You may terminate this Agreement and shall be entitled to a pro-rata refund based on the remaining term of Your subscription at the time of termination.

**15. General Provisions**

**15.1. Compliance.** Each party shall comply with all laws and regulations governing the provision and use of the Service. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from transacting business with U.S. entities, and (ii) You represent that You will not permit Users to access or use the Service in violation of any U.S. law or regulation.

**15.2. Relationship of the Parties.** The relationship between the parties is that of a supplier/customer and agent /principal. Vartopia is an independent contractor. Nothing in this Agreement shall be construed as creating a partnership, franchise, joint venture, or employment relationship between the parties.

**15.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**15.4. Force Majeure.** Neither Party will have liability for any delays or failures in the performance of this Agreement to the extent that such delay or failure is caused by any cause not within such Party’s direct control, such as fire, flood, acts of God, natural disaster, war, terrorism, Internet outages, power outages and the like, other than financial inability.

**15.5. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**15.6. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**15.7. Recovery of Attorneys’ Fees and Costs.** In the event that either party prevails in any proceeding or lawsuit brought by the other party in connection with this Agreement, the prevailing party will be entitled to receive its reasonable attorney fees and other costs incurred.

**15.8. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party’s sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party’s election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**15.9. Surviving Provisions.** Sections 5 (Fees and Payment for Purchased Service), 6 (Proprietary Rights), 8 (Confidentiality), 9 (Disclaimer of Representations and Warranties), 10 (Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Your Data), 13 (Notices, Governing Law and Jurisdiction), 14 (Privacy and Your Personal Information), and 15 (General Provisions) shall survive any termination or expiration of this Agreement.

**15.10.** **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. A facsimile or electronic transmission of a signed copy of this Agreement shall be as valid as if the original and the undersigned hereby stipulate that each signature hereon shall be deemed to be an “electronic signature” under applicable law.

**15.11. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all documentation evidencing Your acceptance, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail.

**IN WITNESS WHEREOF**, the parties hereby execute this Agreement effective as of the \_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_ 2013.

Vartopia, LLC X:

Signature:  Signature

Printed Name  Printed Name:

Title:  Title:

Date:  Date: