



# Terms of Service

*Last Modified: October 6, 2016*

## PLEASE READ THESE CUSTOMER TERMS OF SERVICE CAREFULLY.

This is a contract between you (the Customer) & us (Marketware, Inc.). It describes the services we will provide to you, how we will work together, & other aspects of our business relationship. It is a legal document so some of the language is necessarily "legalese" but we have tried to make it as readable as possible. These terms are so important though that we cannot provide these services unless you agree to them. By using the Subscription Service or receiving the Consulting Services, you are agreeing to these terms.

We periodically update these terms, if you are a licensed user, we will let you know when we do through via email.

We have several different products, & there are some provisions that apply only to those products. In the 'General Terms' below, we have those that apply to all of our products, except as we explain in the 'Product Terms'. In the 'Product Terms' below, we have those that apply to our specific products. Please carefully review the 'Product Terms', as this section will control if there's any conflict between the 'General Terms' & the 'Product Terms'.

## GENERAL TERMS

### 1. Definitions

**"Agreement"** means these Customer Terms of Service & all materials referred or linked to in here. If you are keeping track, the Customer Terms of Service used to be called the Terms of Use.

**"Users"** means any individual that has a login to the Marketware Growth Suite Service.

**"Billing Period"** means the period for which you agree to pay fees under a Service Agreement, which will be the same as or shorter than the Subscription Term. For example, if you subscribe to the Subscription Service for a one (1) year Initial Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.

**"Communication Services"** means third-party forums, online communities, blogs, personal web pages, calendars, &/or other social media communication facilities (such as Facebook, Twitter & LinkedIn) linked to or from the Subscription Service that enable you to communicate with the public or with a private group.

**"Confidential Information"** means all information provided by you or us ("Discloser") to the other ("Receiver"), whether orally or in writing that is designated as confidential. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser or (ii) was known to the Receiver before receipt from the Discloser.

**"Contact"** means a single provider, health care professional, patient, customer, prospect, lead, or other individual (other than a User) whose Contact Information is stored by you in the Subscription Service.

**"Contact Information"** means the name, email address, phone number, online user name(s), telephone number, physical address, & similar information submitted by visitors to your landing pages on the Subscription Service or uploaded by you to the Subscription Service.

**"Consulting Services"** means the professional services provided to you by us, which may include training services, installation, integration or other consulting services.

**"Customer Data"** means all information that you submit or collect via the Subscription Service.

**"Customer Materials"** means all materials that you provide or post, upload, input or submit for display through the Subscription Service.

**"Marketware Growth Suite Content"** means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, & tags that we incorporate into the Subscription Service or Consulting Services.

**"Service Agreement"** means the contract you sign to begin using the Marketware Growth Suite. The purchase form may be referred to as a "Statement of Work" if you are purchasing only Consulting Services.

**"Sensitive Information"** means credit or debit card numbers; personal financial account information; Social Security numbers; passport numbers; driver's license numbers or similar identifiers; racial or ethnic origin; physical or mental health condition or information; or other employment, financial or health information, including any information subject to regulations, laws or industry standards designed to protect data privacy & security, such as the Health Insurance Portability & Accountability Act & the Payment Card Industry Data Security Standards.

**"Site Visit" or "Visit"** means interaction with your website by a single visitor in a single session.

**"Subscription Fee"** means the amount you pay for the Subscription Service.

**"Subscription Service"** means all of our web-based & mobile applications, tools & platforms that you have subscribed to by an Service Agreement or that we otherwise make available to you, & developed, operated, & maintained by us, accessible via <https://app.marketware.com> or another designated URL, & any ancillary products & services, that we provide to you.

**"Subscription Term"** means the Initial Subscription Term & all Renewal Subscription Terms.

**"Third-Party Products"** means non-embedded products & professional services that are provided by third parties which interoperate with or are used in connection with the Subscription Service. These products & services include external claims data & Tableau.

**"Users"** means your employees, representatives, consultants, contractors or agents who are authorized to use the Subscription Service for your benefit & have unique user identifications & passwords for the Subscription Service.

**"Marketware", "we", "us" or "our"** means the applicable contracting entity as specified in the 'Contracting Entity & Applicable Law' section of the 'General Terms'

**"You", "your" or "Customer"** means the person or entity using the Subscription Service or receiving the Consulting Services & identified in the applicable billing statement, subscription process, Service Agreement or Statement of Work as the customer.

## 2. The Subscription Service

- a) **Access.** During the Subscription Term, we will provide you access to use the Subscription Service as described in this Agreement.
- b) **Limits.** The limits that apply to you will be specified in your Service Agreement. You will be charged fees associated with all Users. For additional limits & terms that apply to specific products, see the 'Product Terms' section below.
- c) **Modifications.** We modify the Subscription Service from time to time, including by adding or deleting features & functions, in an effort to improve your experience. But we will not make changes to the Subscription Service that materially reduce the functionality of the Subscription Service provided to you during the Subscription Term. We might provide some or all elements of the Subscription Service through third party service providers.

## 3. Customer Support

- a) **Support.** Support is included in your Subscription. Phone support for the Subscription Service is available 7AM to 6PM Mountain Time (GMT-7), Monday through Friday, excluding US national holidays. We accept support questions 24 Hours per Day x 7 Days per Week at support@marketware.com. Responses are provided during phone support hours only. We attempt to respond to support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time. If you have a Service Level Agreement (SLA) as part of your Service Agreement, the terms & responsibilities outlined in that SLA overrule what is listed here.
- b) **Availability.** We try to make the Subscription Service available 24 hours a day, 7 days a week, except for planned downtime for maintenance, which always occurs after hours or on weekends.

#### 4. Consulting Services

You may purchase Consulting Services through a Statement of Work. Unless otherwise described in a Statement of Work or Order Form, the Consulting Services we provide will be delivered in English. Fees for these Consulting Services are in addition to your Subscription Fee. If you purchase Consulting Services that recur, they will be considered part of your subscription & will renew in accordance with the 'Renewal Subscription Term' section below. Unless otherwise agreed, all Consulting Services are performed remotely.

For Consulting Services performed on-site, you will reimburse us our reasonable cost for all expenses incurred in connection with the Consulting Services. Any invoices or other requests for reimbursements will be due & payable within thirty (30) days of the date of the invoice.

If there are a specific number of hours included in the Consulting Services purchased, those hours will expire as indicated in the applicable description, which expiration period will commence upon purchase (the "Expiration Period"). If there are deliverables included in the Consulting Services purchased, it is estimated that those deliverables will be completed within the time period indicated as the delivery period in the applicable description, which delivery period will commence upon purchase (the "Delivery Period"). If the Consulting Services provided are not complete at the end of the Delivery Period due to your failure to make the necessary resources available to us or to perform your obligations, such Consulting Services will be deemed to be complete at the end of the Delivery Period. If the Consulting Services provided are not complete at the end of the Delivery Period due to our failure to make the necessary resources available to you or to perform our obligations, the Delivery Period will be extended to allow us to complete such Consulting Services.

We might provide some or all elements of the Consulting Services through third party service providers. Consulting Services are non-cancellable & all fees for Consulting Services are non-refundable.

#### 5. Fees & Payments

- a) **Subscription Fees.** The Subscription Fee will remain fixed during the Subscription Term unless you (i) subscribe to additional features or products, including additional Claims or Market Data, (ii) require additional licensed users. Where a price change applies to you, we will charge or invoice you under the new price structure, starting with the next Billing Period in the Subscription Term, except as provided below under 'Fee Adjustments During a Billing Period'.
- b) **Fee Adjustments During a Billing Period.** The Subscription Fee will increase during the course of a Billing Period if you require additional users during a Billing Period. In this case, the Subscription Fee will increase to the price which corresponds with your new number of users for the current Billing Period. The Subscription Fee will also increase during a Billing Period if you add products or subscribe to additional features for use during the Billing Period.

- c) **Payment by ACH.** If you desire to make payments via ACH, please contact Accounts at [billing@marketware.com](mailto:billing@marketware.com).
- d) **Payment against invoice.** If you are paying by invoice, we will invoice you no more than forty-five (45) days before the beginning of the Initial Subscription Term & each subsequent Billing Period, & other times during the Subscription Term when fees are payable. All amounts invoiced are due & payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Service Agreement.
- e) **Payment Information.** You will keep your contact information, billing information & ACH information (where applicable) up to date. All payment obligations are non-cancelable & all amounts paid are non-refundable, except as specifically provided for in this Agreement. All fees are due & payable in advance throughout the Subscription Term. If you are a Marketware Growth Suite partner that purchases on behalf of a client, you agree to be responsible for the Service Agreement & to guarantee payment of all fees.
- f) **Sales Tax.** All fees are exclusive of taxes, which we will charge as applicable. You agree to pay any taxes applicable to your use of the Subscription Service & performance of Consulting Services. You shall have no liability for any taxes based upon our gross revenues or net income. If you are located in the European Union, all fees are exclusive of any VAT & you represent that you are registered for VAT purposes in your member state. At our request, you will provide us with the VAT registration number under which you are registered in your member state. If you are subject to GST, all fees are exclusive of GST. If you are required to deduct or withhold any tax, you must pay the amount deducted or withheld as required by law & pay us an additional amount so that we receive payment in full as if there were no deduction or withholding.

## 7. Subscription Term & Renewal

- a) **Initial Subscription Term.** The initial subscription term shall begin on the effective date of your subscription & expire at the end of the period selected during the subscription process ("Initial Subscription Term").
- b) **Renewal Subscription Term.** Unless one of us gives the other written notice that it does not intend to renew the subscription, this Agreement will automatically renew for the shorter of the Initial Subscription Term or one year ("Renewal Subscription Term"). Written notice of non-renewal must be sent no more than ninety (90) days but no less than forty-five (45) days in advance of the end of the Subscription Term, unless otherwise set forth in your Service Agreement. The Renewal Subscription Term will be on the current terms & conditions of this Agreement, & subject to the renewal pricing provided for in your Service Agreement. Should you decide not to renew, you may send the notice of non-renewal by email to [cs@marketware.com](mailto:cs@marketware.com).
- c) **End of Subscription Term.** The Subscription Term will end on the expiration date & cannot be canceled before its expiration.

## 8. Marketware Growth Suite's Proprietary Rights

This is an Agreement for access to & use of the Subscription Service, & you are not granted a license to any software by this Agreement. The Subscription Service & Consulting Services are protected by intellectual property laws, they belong to & are the property of us or our licensors (if any), & we retain all ownership rights to them. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the Marketware Growth Suite Content, the Subscription Service, or the Consulting Services in whole or in part, by any means, except as expressly authorized in writing by us.

We encourage all customers to comment on the Subscription Service or Consulting Services, provide suggestions for improving it, & vote on suggestions they like. You agree that all such comments & suggestions will be non-confidential & that we own all rights to use & incorporate them into the Subscription Service or Consulting Services, without payment or attribution to you.

## 9. Customer's Proprietary Rights

As between the parties, you own & retain all rights to the Customer Materials & Customer Data. This Agreement does not grant us any ownership rights to Customer Materials or Customer Data. You grant permission to us & our licensors to use the Customer Materials & Customer Data only as necessary to provide the Subscription Service & Consulting Services to you & as permitted by this Agreement. If you choose to use shortened URLs through the Subscription Service, you acknowledge that the data related to the number of clicks on a shortened URL may be publicly available & used by other parties. If you are using the Subscription Service or receiving Consulting Services on behalf of another party, then you represent & warrant that you have all sufficient & necessary rights & permissions to do so.

## 10. Confidentiality.

**The Receiver will:** (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care, (ii) not use any Confidential Information for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information to any third party (except our third party service providers), & (iv) limit access to Confidential Information to its employees, contractors, advisors & agents. Upon notice to the Discloser, the Receiver may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

## 11. Customer Responsibilities.

To realize the full value of the Subscription Service & Consulting Services, your participation & effort are needed. Resources that may be required from you include a Project Manager, one or more Content Creators, a Sales Sponsor, an Executive Sponsor & a Technical Resource. Responsibilities that may be required include data clean up, data migration, reporting, planning physician initiatives, setting

goals, planning of marketing programs; setting of a content creation calendar; creating blog posts, social media content, Calls-To-Action (CTAs), downloads, emails, nurturing content, & other materials; acting as internal liaison between physician relations & marketing; providing top level internal goals for the use of the Subscription Service; attending regular executive business review meetings; & supporting the use of the Subscription Service.

## 12. Publicity

You grant us the right to add your name & company logo to our customer list & website.

## 13. Customer Data

- a) **Limits on Marketware Growth Suite.** We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you direct or otherwise permit. We will use Customer Data only in order to provide the Subscription Service & Consulting Services to you & only as permitted by applicable law, this Agreement, & our Privacy Policy. We will not use Contact Information for our own marketing purposes.
- b) **Aggregate Data.** We may monitor use of the Subscription Service by all of our customers & use the data gathered in an aggregate & anonymous manner. You agree that we may use & publish such information.
- c) **Safeguards.** We will maintain commercially appropriate administrative, physical, & technical safeguards to protect Customer Data. You consent to the processing of Customer Data in the United States. Marketware Growth Suite, Inc. will comply with the U.S.-EU Safe Harbor Framework & the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, & retention of personal information from European Union member countries. In addition, for the purposes of Article 26(2) of Directive 95/46/EC, customers located in the European Union or the European Economic Area may enter into a Data Processing Agreement that includes the Standard Contractual Clauses adopted by the European Commission in order to further provide adequate safeguards with respect to the data processed under this Agreement. You acknowledge in all cases that Marketware Growth Suite acts as the processor of Customer Data & you remain controller of Customer Data for applicable European Union data protection regulations. If you are located in the European Union, you understand that if you give an integration provider access to your Marketware Growth Suite portal, you serve as the controller of such information & the integration provider serves as the processor for the purposes of those data laws & regulations that apply to you. In no case are such integration providers our subprocessors.
- d) **Sensitive Information.** You agree to use any sensitive data stored or processed in the Marketware Growth Suite Service in accordance with all appropriate laws including the Health Insurance Portability & Accountability Act (1996) & Health Information Technology for Economic & Clinical Health (HITECH) Act. We agree to transmit all data securely via SSL & keep all data encrypted at rest

at the server & database level.

#### 14. Use & Limitations of Use

- a) **Acceptable Use.** You will comply with our Acceptable Use Policy ("AUP").
- b) **Prohibited & Unauthorized Use.** You will not (i) use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser; (ii) use the Subscription Service in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Subscription Service; (iii) attempt to gain unauthorized access to the Subscription Service; (iv) access the Subscription Service other than through our interface; or (v) use the Subscription Service for any purpose or in any manner that is unlawful or prohibited by this Agreement.

You will notify us right away of any unauthorized use of your Users' identifications & passwords or your account by emailing [abuse@marketware.com](mailto:abuse@marketware.com)

#### 15. Indemnification

You will indemnify, defend & hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (& our officers, directors, employees, agents, service providers, licensors, & affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) unauthorized or illegal use of the Subscription Service by you; (b) your noncompliance with or breach of this Agreement, (c) your use of Third-Party Products, or (d) the unauthorized use of the Subscription Service by any other person using your User information. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; & provide you (at your expense) with any & all information & assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

#### 18. Disclaimers; Limitations of Liability

- a) **Disclaimer of Warranties.** WE & OUR AFFILIATES & AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICE, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICE, MARKETWARE GROWTH SUITE CONTENT, OR THE CONSULTING SERVICES FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE SUBSCRIPTION SERVICE, MARKETWARE GROWTH SUITE CONTENT & CONSULTING SERVICES ARE PROVIDED "AS IS" WITHOUT



WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES & CONDITIONS OF ANY KIND WITH REGARD TO THE SUBSCRIPTION SERVICE, & THE CONSULTING SERVICES INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE & NON-INFRINGEMENT.

- b) **No Indirect Damages.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES.
- c) **Limitation of Liability.** EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE 'INDEMNIFICATION' SECTION, & YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY WILL BE LIMITED TO THE LESSER OF FIVE THOUSAND DOLLARS OR THE TOTAL AMOUNTS YOU HAVE ACTUALLY PAID FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM.
- d) **Third Party Products.** WE DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.  
YOU UNDERSTAND & AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SUBSCRIPTION SERVICE TO YOU.

## 19. Termination, Suspension & Expiration

- a) **Termination for Cause.** Either party may terminate this Agreement for cause, as to any or all Subscription Services: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation or assignment for the benefit of creditors. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.
- b) **Suspension for Prohibited Acts.** We may suspend any User's access to any or all Subscription Services for: (i) use of the Subscription Service in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement, (ii) use of the Marketware Growth Suite email send service that results in excessive bounce-backs, SPAM notices or requests for removal from a mailing list by recipients, or (iii) repeated instances of posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity.
- c) **Suspension for Non-Payment.** We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of the Subscription Services ten (10) days after such notice. We will not suspend the Subscription Service while you are disputing the applicable charges reasonably & in good faith & are cooperating

diligently to resolve the dispute. If a Subscription Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Subscription Service.

- d) Suspension for Present Harm.** If your network, website, email, or other resources on, or use of, the Subscription Service: (i) is being subjected to denial of service attacks or other disruptive activity, (ii) is being used to engage in denial of service attacks or other disruptive activity, (iii) is creating a security vulnerability for the Subscription Service or others, (iv) is consuming excessive bandwidth, or (v) is causing harm to us or others, then we may, with electronic or telephonic notice to you, suspend all or any access to the Subscription Service. We will try to limit the suspension to the affected portion of the Subscription Service & promptly resolve the issues causing the suspension of the Subscription Service.
- e) Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, you will stop all use of the affected Subscription Service & Marketware Growth Suite Content, & if we request, you will provide us written confirmation that you have discontinued all use of external claims data (where applicable) If you terminate this Agreement for cause, we will promptly refund any prepaid but unused fees covering use of the Subscription Service after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.
- f) Retrieval of Customer Data.** As long as you have paid all fees owed to us, if you make a written request within thirty (30) days after termination or expiration of your Subscription, we will provide you with temporary access to the Subscription Service to retrieve, or we will provide you with copies of, all Customer Data then in our possession or control. If we provide you with temporary access to the portal, we may charge a re-activation fee. We may withhold access to Customer Data until you pay any fees owed to us. Thirty (30) days after termination or expiration of your Subscription, we will have no obligation to maintain or provide you the Customer Data & may, unless legally prohibited, delete all Customer Data in our systems or otherwise in our control.

## 20. General

- a) Amendment; No Waiver.** We may update & change any part or all of these Customer Terms of Service, including the fees & charges associated with the use of the Subscription Service (but, your fees & charges won't change during the Subscription Term except as we explain in the 'Fees & Payments' section above.) If we update or change these Customer Terms of Service, the updated Customer Terms of Service will be posted online & we will let you know through email. The updated Customer Terms of Service will become effective & binding on the next business day after it is posted. When we change these Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. We encourage you to review these Customer Terms of Service periodically.

If you do not agree with a modification to the Customer Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your

subscription will continue to be governed by the terms & conditions of the Customer Terms of Service prior to modification for the remainder of your current term. Upon renewal, the Customer Terms of Service published by us on our website will apply.

No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

- b) Contracting Entity & Applicable Law.** This Agreement is governed by the laws of the state of Delaware, U.S.A. without reference to conflicts of law principles. For contracts with Marketware, Inc., both parties consent to the exclusive jurisdiction & venue of the courts in Delaware, U.S.A. for all disputes arising out of or relating to the use of the Subscription Service or the Consulting Services.
- c) Force Majeure.** Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.
- d) Actions Permitted.** Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.
- e) Relationship of the Parties.** You & we agree that no joint venture, partnership, employment, or agency relationship exists between us.
- f) Compliance with Laws.** We will comply with all U.S. state & federal laws in our provision of the Subscription Service, the Consulting Services & our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use of the Subscription Service & Consulting Services, including any applicable export laws. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. You will not directly or indirectly export, re-export, or transfer the Subscription Service or Consulting Services to prohibited countries or individuals or permit use of the Subscription Service or Consulting Services by prohibited countries or individuals.
- g) Severability.** If any part of this Agreement or a Service Agreement is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision & the remainder of this Agreement will continue in effect.
- h) Notices.** Notice will be sent to the contact address set forth herein, & will be deemed delivered as of the date of actual receipt.

To Marketware Growth Suite, Inc., 6975 S Union Park Center, Suite 550, Cottonwood Heights UT 84047 Attention: General Counsel.

To you: your address as provided in our Marketware Growth Suite Subscription account information for you. We may give electronic notices by general notice via the Subscription Service & may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you. You must keep all of your account information current.

- i) **Entire Agreement.** This Agreement (including each Service Contract & Statement of Work), along with our Privacy Policy & AUP, is the entire agreement between us for the Subscription Service & Consulting Services & supersedes all other proposals & agreements, whether electronic, oral or written, between us. We object to & reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Subscription Service or dependent on any oral or written public comments made by us regarding future functionality or features of the Subscription Service. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship & the translated version is provided for convenience only & will not be interpreted to modify the English version of this Agreement.
- j) **Assignment.** You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, without our prior written consent, which will not be unreasonably withheld. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.
- k) **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- l) **Contract for Services.** This Agreement is a contract for the provision of services & not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights & obligations of the parties under this Agreement.
- m) **Authority.** Each party represents & warrants to the other that it has full power & authority to enter into this Agreement & that it is binding upon such party & enforceable in accordance with its terms.
- n) **Survival.** The following sections in the 'General Terms' shall survive the expiration or termination of this Agreement: 'Definitions', 'Fees & Payments', 'Marketware Growth Suite's Proprietary Rights',

'Customer's Proprietary Rights', 'Confidentiality', 'Publicity', 'Indemnification', 'Disclaimers; Limitations of Liability', 'Termination, Suspension & Expiration', & 'General'.

- o) Precedence.** In the event of a conflict between the terms of this Agreement & a Service Agreement or Statement of Work, the terms of the Service Agreement or Statement of Work shall control, but only as to that Service Agreement or Statement of Work.

## PRODUCT TERMS

### 1. Ascend

- a) Applicability.** If you use our PRM product offering (" Ascend "), the following additional terms apply. In the event of a conflict between the terms set forth in the 'General Terms' & the terms set forth in this 'Ascend' section, the terms in this 'Ascend' section will control with respect to your use of Ascend.
- b) Unified Database.** By using Ascend with other parts of the Subscription Service, you understand that all Contact Information will be stored in a unified database used throughout the each product (Ascend, Scout, & Centric), & that all workflows you use will pull from this unified database.
- c) Exchange/Google Integration.** Certain features of Ascend allow you to integrate your email account with Ascend. By enabling those features, you grant us access to your calendar to enable us to identify relevant appointments to be displayed within Ascend. We will also utilize your email account to send out meeting invites or emails regarding issues that the user has entered into the system. When an email is sent via Ascend it will be added to the sent items folder of the user for future reference & tracking.
- d) Amendment; No Waiver.** If we update or change these Customer Terms of Service, we will notify you via email message.
- e) Contracting Entity & Applicable Law.** You are contracting with Marketware, Inc. with respect to your use of the PRM.
- f) Survival.** The following sections in this 'Ascend' section shall survive the expiration or termination of this Agreement: 'Company Data', 'Contracting Entity & Applicable Law' & 'Survival'.

### 2. Scout

- a) Applicability.** If you use our Business Intelligence offering, known as Scout, the following additional terms apply. In the event of a conflict between the terms set forth in the 'General Terms' & the terms set forth in this 'Scout' section, the terms in this 'Scout' section will control with respect to your use of the Scout.
- b) Modifications.** We might make changes to the Scout that materially reduce the functionality of Scout provided to you during the Subscription Term.

- c) **Renewal Subscription Term.** Upon renewal, your subscription will be adjusted to match the number of Users actually assigned at the end of your then-current Subscription Term. Should you decide not to renew, you may send notice of non-renewal to [cs@marketware.com](mailto:cs@marketware.com)
- d) **Retrieval of Customer Data.** We will not provide any access to the Business Intelligence Product after the termination or expiration of your Subscription Term to retrieve, & we will not provide you with copies of, any Customer Data from Scout in our possession except in the instance where a Statement of Work is agreed upon & executed for us to perform the work.
- e) **Amendment; No Waiver.** If we update or change these Customer Terms of Service, this notification will be sent to all users via email message.
- f) **Scout Usage Restrictions.** You may not use Scout if you are legally prohibited from receiving or using Scout under the laws of the country in which you are resident or from which you access or use Scout. You agree not to use data from Scout in legal proceedings or otherwise as evidence.
- g) **Scout Product Data Use.** Scout uses data that is entered or imported in Ascend, imported from your Internal data sources such as your EMR/EHR or data purchased from third party sources such as external claims data.
- h) **Survival.** The following sections in this 'Business Intelligence Product' section shall survive the expiration or termination of this Agreement: 'Contracting Entity & Applicable Law', 'Business Intelligence Product Usage Restrictions' & 'Survival'.

### 3. Centric

- a) **Applicability.** If you use our Marketing Product offering ("Centric"), the following additional terms apply. In the event of a conflict between the terms set forth in the 'General Terms' & the terms set forth in this 'Centric section, the terms in this 'Centric' section will control with respect to your use of Centric.
- b) **Limits.** We may choose to apply limits to your use of certain features of Centric. These limits will be detailed in your Marketware Service Agreement. We may change these limits any time in our sole discretion.
- c) **Modifications.** We might make changes to Centric during the Subscription Term.
- d) **Support.** Support for Centric is offered via email or phone. We accept emails regarding support questions 24 hours per day, 7 days per week, but will respond during normal business hours.
- e) **End of Subscription Term.** If you wish to cancel your Centric account, you may contact us at [cs@marketware.com](mailto:cs@marketware.com).
- f) **Retrieval of Customer Data.** We will not provide any access to Centric after the termination or expiration of your Subscription Term to retrieve, & we will not provide you with copies of, any Customer Data from Centric in our possession except when there is a Statement of Work drafted & executed for work to be performed.

- g) **Amendment; No Waiver.** If we update or change these Customer Terms of Service, we will notify you via email or via an in-app notification.
- h) **Contracting Entity & Applicable Law.** You are contracting with Marketware, Inc. with respect to your use of Centric.
- i) **Survival.** The following sections in this 'Centric' section shall survive the expiration or termination of this Agreement: 'Contracting Entity & Applicable Law', 'Centric Usage Restrictions' & 'Survival'.

#### 4. Alpha/Beta Services

- a) **Applicability.** If you are given alpha or beta access to any features of the Subscription Service, the following additional terms apply. In the event of a conflict between the terms set forth in the 'General Terms' & the terms set forth in this 'Alpha/Beta Services' section, the terms in this 'Alpha/Beta Services' section will control with respect to your use of Alpha/Beta Services.
- b) **Alpha/Beta Services.** If we make alpha or beta access to some or all of the Subscription Service (the "Alpha/Beta Services") available to you (i) the Alpha/Beta Services are provided "as is" & without warranty of any kind, (ii) we may suspend, limit, or terminate the Alpha/Beta Services for any reason at any time without notice, & (iii) we will not be liable to you for damages of any kind related to your use of the Alpha/Beta Services. If we inform you of additional terms & conditions that apply to your use of the Alpha/Beta Services, those will apply as well. We might require your participation to be confidential, & we might also require you to provide feedback to us about your use of the Alpha/Beta Services. You agree that we own all rights to use & incorporate your feedback into our services & products, without payment or attribution to you.
- c) **Contracting Entity & Applicable Law.** You are contracting with the Marketware, Inc. entity as set forth in the 'Contracting Entity & Applicable Law' section in the 'General Terms'.
- d) **Survival.** The following sections in this 'Alpha/Beta Services' section shall survive the expiration or termination of this Agreement: 'Alpha/Beta Services', 'Contracting Entity & Applicable Law' & 'Survival'.

#### 5. Free Services

- a) **Free Trial.** If you register for a trial of the Free Services, we will make the Free Services available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period (if not earlier terminated) or (b) the start date of your paid subscription. If we include additional terms & conditions on the trial registration web page, those will apply as well. All of your data in the Subscription Service may be permanently deleted at the end of the trial, & we will not recover it.
- b) **Disclaimers; Limitations of Liability.** WE & OUR AFFILIATES & AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE FREE SERVICES FOR ANY PURPOSE.

APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE FREE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES & CONDITIONS OF ANY KIND WITH REGARD TO THE FREE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE & NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MARKETWARE, INC. BE LIABLE FOR ANY INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, MARKETWARE INC. IS DETERMINED TO HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY, THE PARTIES AGREE THAT MARKETWARE'S AGGREGATE LIABILITY WILL BE LIMITED TO ONE HUNDRED DOLLARS. WE DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT. YOU UNDERSTAND & AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE FREE SERVICES TO YOU. THIS 'DISCLAIMERS; LIMITATIONS OF LIABILITY' SECTION SHALL APPLY IN LIEU OF THE 'DISCLAIMERS; LIMITATIONS OF LIABILITY' SECTION IN THE 'GENERAL TERMS' WITH RESPECT TO YOUR USE OF OUR FREE SERVICES.

- c) **Suspension.** We may suspend, limit, or terminate the Free Services for any reason at any time without notice.
- d) **Contracting Entity & Applicable Law.** You are contracting with Marketware, Inc. with respect to your use of the Free Services.
- e) **Survival.** The following sections in this 'Free Services' section shall survive the expiration or termination of this Agreement: 'Definitions', 'Disclaimers; Limitations of Liability', 'Contracting Entity & Applicable Law', & 'Survival'.