

Terms of Service

BY CHECKING THE BOX OR CLICKING TO ACCEPT WHERE SUCH OPTION IS PRESENTED TO YOU, BY YOUR USE OF THE SERVICE (AS DEFINED BELOW) AT ANY TIME INCLUDING FOLLOWING OUR PUBLICATION OF A CHANGE NOTICE, REVISED TERMS AND CONDITIONS, OR REVISED DOCUMENTATION OR ANY POSTING OF SUCH ON THE WEBSITE LOCATED AT [HTTP://WWW.ITEMBASE.COM](http://www.itembase.com) (“ITEMBASE WEBSITE”), OR BY SIGNING A SERVICE ORDER FOR THE USE OF THE SERVICE (A “**SERVICE ORDER**”), YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, FULLY UNDERSTAND, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT (AS DEFINED BELOW).

Last modified: October 31, 2014

ITEMBASE API TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of Service (the “**Agreement**”) are between you, or if accepting on behalf of an entity, such entity (“**you**”, “**your**”, or “**Service Provider**”) and Itembase, Inc., a Delaware corporation (“**Itembase**”, “**we**”, “**us**” or “**our**”) and constitutes a legal agreement governing the “**Service**,” which consists of your access to and use of the Itembase application programming interface(s) (the “**API**”), together with any accompanying or related documentation, source code, executable applications and other materials and any updates, patches, bug fixes, or modifications made to any of the foregoing, as made generally available by us from time to time (collectively with the API, the “**Itembase APIs**”). The Services shall be used by you to obtain information and other associated data, including but not limited to names, addresses, phone numbers (“**Shop Data**”) from each shop (“**Shop**”) or shopping platform (“**Platform**”; the Shop or Platform, as the case may be, an “**End User(s)**”) with whom you enter into an agreement (each, an “**End User Agreement**”) that is collected and passed on to us by Itembase Registered Users to be used in connection with the provision of your services (the “**Service Provider Services**”) in accordance with the terms and conditions of your End User Agreements and the applicable terms of this Agreement.

1. Acceptance.

1.1 This Agreement constitutes a binding legal contract that governs your purchase and ongoing use of and access to the Service. If you are entering into this Agreement on behalf of a company or other entity, you represent and warrant that you have authority to bind such company or other entity to this Agreement. You must complete the service order and accept the terms of this Agreement before you may access or use the Service. You can accept the terms of this Agreement by either: (a) clicking to accept or agree where such option is made available to you; or (b) actually using or accessing the Service or Itembase APIs.

1.2 Your eligibility for use of and access to the Service and ongoing eligibility for such use or access is conditioned upon you meeting and continuing to meet the following minimum requirements (“**Eligibility Requirements**”), which you represent and warrant: (a) You have the

legal capacity to be bound by this Agreement; (b) You have the necessary rights and authority to enter into and perform the obligations required of you under this Agreement; (c) All information which you provide to us, including but not limited to information provided during registration, information about your business, all relevant payment information, is yours or within your right to use, and is and will remain accurate, complete and current; (d) You are in compliance with and will only use the Itembase APIs and Services in compliance with all applicable laws, including but not limited to all applicable laws and regulations pertaining to data privacy and laws, the import or export of data or software or local laws and you shall ensure that you and each End Users are in compliance with all applicable laws in each End User Agreement; (f) All websites, associated sub-pages, domains and/or mobile applications in connection with the Service Provider Services for which you seek to implement the Itembase APIs are owned by you; (g) None of the Shop Data or Content will contain any unlawful, defamatory, offensive, libelous, harassing, abusive, fraudulent, pornographic or obscene content or material; (h) Neither you nor any of your Service Provider Services are subject to any pending lawsuits, fines, or government or regulatory actions; and (i) You will provide us with any information, records, or materials that we request to verify your compliance with the Eligibility Requirements and the terms and conditions of this Agreement.

1.3 Only those Service Provider Services that have been approved by Itembase may access and use the Service. Itembase reserves the right to reject any Service Provider Services, for any reason, in its sole discretion, including but not limited to failing to meet the Eligibility Requirements identified in Section 1.2 above. If you do not agree with this Agreement, or you cannot abide by the representations set forth in Section 1.2 above and elsewhere in this Agreement, then you must not accept this Agreement and must not use the Service.

2. Modifications.

We reserve the right to amend or modify the terms of this Agreement at any time. You can find the most recent version of this Agreement at www.itembase.com with the date of last modification noted above. Such modifications shall become effective immediately upon the posting thereof. You are responsible for reviewing this Agreement on a regular basis to keep yourself apprised of any changes. If you do not agree to the revised terms and conditions, your sole recourse is to immediately cease all use of the Service. Your continued access or use of the Service will constitute your acceptance of the revised Agreement.

3. Use of the Itembase APIs.

3.1 License. Subject to your strict compliance with the terms of this Agreement, you shall, during the Term, have a non-exclusive, personal, non-transferable, non-sublicensable right to access, implement, use, and make calls to the Itembase APIs as permitted by this Agreement for purposes of providing the Service Provider Services to End Users.

3.2 Restrictions. You agree that you will not (and will not permit any third party to) directly or indirectly: (a) resell, rent, lease, loan, sublicense or otherwise distribute, transfer or make available the Service or Itembase APIs or any part thereof to any third party; (b) create an API client that functions substantially the same as the Itembase APIs; (c) make any use of the

Itembase APIs for any purpose independent of the Service Provider Services; (d) modify, adapt, alter, translate, or create derivative works of the Itembase APIs; (e) reverse engineer, decompile, decode, or disassemble the Itembase APIs; (f) misrepresent the source or ownership of the Itembase APIs or remove, obscure, or alter any copyright, trademark or other proprietary rights notices, falsify or delete any author attributions, legal notices or other labels of the origin or source of the Itembase APIs; (g) promote or facilitate unlawful online gambling or disruptive commercial messages or advertisements, (h) interfere with or disrupt the Itembase APIs or the servers or networks providing the Itembase APIs or Service or (i) circumvent or seek to circumvent this Agreement by connecting directly with any End User at any time (i) during the term of any agreement for Service Provider Services between You and such End User procured through Itembase's marketing and/or sales channels (each, an "**Itembase Procured Agreement**") or (ii) during the term any End User is a registered account holder with Itembase (an "**Itembase Registered User**") or during the term of any agreement between an Itembase Registered User and Itembase with respect to any services provided by Itembase (each, an "**Itembase Service Agreement**"). Furthermore, you will ensure that the Service Provider Services contain terms of service or use that are consistent with the terms of this Agreement.

3.3 APIs and Transaction Limits. In order to use the Itembase APIs, you must obtain API credentials (an "**API Key**") via the registration process. You are solely responsible for all usage associated with your API Key, regardless of whether you have knowledge of such usage. You shall not share your API Key with any third party, shall keep such API Key secure and shall use it as your sole means of accessing the Itembase APIs. We reserve the right to impose certain limits on your use of the Itembase APIs, including but not limited to limitations on frequency of access or calls to the Itembase APIs, which may be revised by us from time to time in our sole discretion ("**Transaction Limits**"). You shall comply with the Transaction Limits at all times.

3.4 User Feedback. We desire to continue to improve the Service and to keep it up to date. For purposes of this Agreement, "User Feedback" means collectively, any comments, suggestions, recommendations, or proposed corrections related to the Service from an End User, visitor, or any individual that has access to the Itembase APIs via the Service Provider Services. You agree that we will have the right to make any and all uses of the User Feedback, including but not limited to using and incorporating the User Feedback into the Service or with any of our other products and services.

3.5 Compliance. We reserve the sole right and discretion to determine whether your use of the Service is in compliance with this Agreement, including but not limited to, upon reasonable notice and during standard business hours, conducting an audit of your networks or systems connected to your use of the Service. Additionally, we reserve the right to remove any Content (as defined in Section 8 below) from the Itembase Website and/or the Services, and/or disclose Content or other information relating to your use of the Services (a) if required to do so by law or in the good faith belief that such action is necessary to conform to the edicts of the law or comply with legal process served on us or this web site; (b) to protect and defend the rights or property of Itembase; or (3) to act in urgent circumstances to protect the security or safety of any users of the Services, the Itembase Website or the public.

3.6 End User Registration. You acknowledge that, in order for you to use the Services and the API, each End User shall be required to register for an account with Itembase and become an Itembase Registered User. You will ensure that each End User Agreement shall require that such End User become an Itembase Registered User.

4. Payment.

4.1 Subscription Plan. The Itembase APIs are made available on a subscription basis. The fees applicable for the Itembase APIs ("**Fees**") will include but not be limited to the subscription fees, and can be found at www.itembase.com (the "**Fee Schedule**") You agree to pay all Fees incurred in connection with the Services and your Itembase account. You will be charged (i) a one (1) time connection fee, (ii) a monthly or annual connection and maintenance fee, as applicable and (iii) any applicable service fees, in each case as set forth in the Fee Schedule or in your Service Order. Itembase will bill the monthly or yearly fees associated with your account to the credit card you provide to us during registration (or to a different credit card if you change your account information) or as otherwise agreed in the Service Order. All fees are exclusive of taxes, which we will charge as applicable, and are payable on the due date therefor. Any amounts not paid when due shall accrue interest at the rate of 1.5% per month or the highest amount permitted by law, whichever is lower.

4.2 No Refunds. All Fees are non-refundable. You understand and acknowledge that you will not be issued any credits, refunds or pro-rated discounts for unused amounts, even if prepaid via a subscription plan (whether monthly or annual).

4.3. Revenue Sharing Arrangements. You acknowledge and agree that you shall be liable to and shall pay Itembase for the fees and other revenue sharing arrangements relating to any Itembase Procured Agreement in accordance with the Itembase terms and conditions governing revenue sharing and/or in any Revenue Sharing Agreement between you (or your affiliates) and Itembase.

5. Updates and Service Level Agreements.

We may, in our sole discretion, update or modify the Service for any and all reasons, including for purposes of improving the performance of the Itembase APIs. You agree to the terms of the service level agreements governing the Services, which can be found at: www.itembase.com (the "**Service Level Agreements**"). Except as set forth in the Service Level Agreements relating to the Service, if you are dissatisfied with any aspect of the Itembase APIs at any time, your sole and exclusive remedy is to cease using the Itembase APIs and terminate this Agreement as set forth in Section 12 below.

6. Confidentiality.

All technical and non-technical information concerning or related to the Service or any part thereof, including any source code, documentation, product roadmaps, business and marketing plans, and any information related to the foregoing constitutes our confidential information and property ("**Confidential Information**"). You agree to (i) use the Confidential Information only in connection with fulfilling your rights and obligations under this Agreement; (ii) hold the

Confidential Information in strict confidence and exercise due care with respect to its handling and protection, consistent with your protection of your own confidential information but not less than reasonable care, (iii) not disclose the Confidential Information except for disclosures to employees who have a bona fide need to know the Confidential Information and who have entered into written confidentiality obligations no less stringent than those contained in this Agreement. You agree that any unauthorized disclosure of the Confidential Information would cause us irreparable harm, and that in the event of any breach or threatened breach of the above confidentiality obligations, we shall be entitled to seek equitable relief in addition to any other remedy available to us at law or in equity.

7. Privacy Policy.

We may collect registration and other information about you or your End Users, as well as the Shop Data, through our Services. Our collection and use of this information is governed by our Privacy Policy, available here: www.itembase.com. You are solely liable for the protection and use of Shop Data and any registration and other information about us or the End Users collected by you or provided to you through the API or otherwise under this Agreement and you will protect user information collected or received by you, including personally identifiable information ("**PII**"), from unauthorized access or use and will promptly report to End Users any unauthorized access or use of such information. You will comply with all privacy laws and regulations including those applying to PII. You will provide and adhere to a privacy policy for your End Users that clearly and accurately describes to users of the Service Provider Services what user information you collect and how you use and share such information (including the Shop Data), whether for advertising or otherwise, with Itembase and third parties. If your privacy policy is used to comply with the EU Data Protection Directive, then it must adhere to the US Safe Harbor principles of Notice, Choice, Onward Transfer, Security, Data Integrity, and Access at http://www.export.gov/safeharbor/eu/eg_main_018475.asp. You agree that Itembase does not endorse any Shop Data or any opinion, recommendation, or advice expressed therein, and Itembase expressly disclaims any and all liability in connection with Shop Data. You further agree that nothing contained herein shall make Itembase responsible for the legality, review or substance of any Shop Data. You agree that, when an End User's Shop Data is obtained through the Itembase API, you may not expose that Shop Data to any third parties without explicit consent from such End User through an End User Agreement or otherwise.

8. Ownership.

We shall own and retain all right, title, and interest in and to the Service, Itembase APIs, and Confidential Information, including all intellectual property rights contained therein. You shall not remove or destroy any copyright notices, proprietary markings or confidential legends placed upon or contained within the Service or Itembase APIs, or any copies thereof. Except for the express licenses granted in Section 3.1, no other licenses are granted by us hereunder whether by implication, estoppel or otherwise, and we hereby reserve all rights not expressly granted herein. You retain ownership of all intellectual property rights in any content submitted by you in the course of using the Service ("**Content**"). Itembase does not claim ownership over any of your Content. This Agreement does not grant us any licenses or rights to your Content except for the limited rights needed for us to provide the Services to you. If you provide us with any ideas,

suggestions or recommendations regarding the Service (“*Input*”), we shall be free to retain, use and incorporate such Input in our products and/or services (including but not limited to the Service), without payment of royalties or other consideration to you. Unless expressly permitted by the End User, content owner or by applicable law, you agree that you will not, and will not permit your end users to, do the following with any Shop Data returned from the API:

1. Scrape, build databases or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
2. Copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display or sublicense to any third party;
3. Misrepresent the source or ownership; or
4. Remove, obscure, or alter any copyright, trademark or other proprietary rights notices, falsify or delete any author attributions, legal notices or other labels of the origin or source of material.

You acknowledge that some of the software required by or included in the Itembase APIs may be offered under an open source license. There may be provisions in the open source license that expressly override some of these terms, and in those cases, the overriding provisions apply. The Itembase APIs may contain some third party content (such as text, images, videos, audio, or software). This content is the sole responsibility of the person that makes it available. We may sometimes review content to determine whether it is illegal or violates our policies, and we may remove or refuse to display such content.

9. Disclaimer.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE SERVICE IS PROVIDED “AS-IS,” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND. WE DO NOT WARRANT THE COMPREHENSIVENESS, CORRECTNESS, LEGALITY, OR ACCURACY OF THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM OUR SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SERVICE SHALL BE AT YOUR SOLE RISK.

10. Indemnification.

You will indemnify, defend, and hold us, our affiliates, and each of our and their respective officers, directors, employees, agents, contractors, licensors, partners and suppliers (collectively the “Suppliers”) harmless from and against any and all liabilities, damages, losses, costs and expenses (including but not limited to reasonable attorneys’ fees) arising out of or related to:(a) your use of the Itembase APIs; (b) Shop Data or Content; (c) your Service Provider Services; or (d) any non-compliance with this Agreement by you. You will cooperate as reasonably required

in the defense of any claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

11. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ITEMBASE AND ITS SUPPLIERS AND LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF THE ITEMBASE APIS OR SHOP DATA, INCLUDING ANY LOSS OF REVENUE, BUSINESS OPPORTUNITIES OR DATA, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, BUT NOT BE LIMITED TO: CONTRACT, TORT, COMMON LAW, OR STATUTORY), WHETHER OR NOT ITEMBASE OR ITS SUPPLIERS HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES. IN NO EVENT WILL ITEMBASE'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID BY YOU FOR THE SERVICE DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM. NOTHING IN THESE TERMS LIMITS YOUR RESPONSIBILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. IN ALL CASES, ITEMBASE, AND ITS SUPPLIERS AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

12. Term; Termination; Suspension.

This Agreement will remain in effect until terminated by either you or us as set out below ("**Term**"). You may terminate this Agreement upon thirty (30) days' written notice to us, provided, however, that, unless we otherwise expressly agree with you in writing, you may not terminate this Agreement (or the Fees payable hereunder) if you are providing any Service Provider Services to an Itembase Registered User during the term of any Itembase Service Agreement, regardless of whether you are using the API or Services to provide such Service Provider Services. We may terminate this Agreement and your rights to access and use the Service upon notice to you upon a failure to pay Fees owed or any other breach of this Agreement, without liability, in our sole discretion at any time. In addition, without limiting the foregoing termination rights, we reserve the right, at any time, with or without notice to you, and in our sole and absolute discretion, to temporarily suspend access to the Itembase APIs or availability of the Service for: (a) scheduled or unscheduled maintenance; (b) purposes of maintaining the security and/or integrity of our network, hardware, or associated systems or those of our third party providers; (c) unplanned technical problems or outages; or (d) the actual or suspected violation of the terms of this Agreement by you or any of your End Users. Upon termination, you will immediately cease any and all use of the Service and Itembase APIs. Sections 3.2, 3.3, 3.5, 4.3, and 6 through 13 will survive termination of this Agreement or any discontinuation of the offering of the Service or any part thereof.

13. General.

13.1 Relationship of the Parties. You acknowledge and agree that you and Itembase are operating as independent contractors and not as partners, agents or joint venturers. Neither party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so. You understand that we reserve the right to provide the Service to other companies, partners, or individuals, in our sole discretion.

13.2 Publicity. During the Term, you may promote your use of the Service to your users, so long as you do so truthfully and without implying that your use is endorsed or supported by us. For example, you may factually state that your Service Provider Services use the Itembase APIs. However, you may not use our name, logo or trademarks in any advertisement, marketing collateral or otherwise issue any public announcements or press releases regarding this Agreement or your use of the Service without our prior written consent in each instance.

13.3 Marketing and Promotional Use. In the course of promoting, marketing, or demonstrating the Itembase APIs or our other products or services, we may publicize that you are using the Itembase APIs, including but not limited to using your name or logo in presentations, marketing materials, or customer lists or creating marketing materials that show screenshots of the Itembase APIs as used on your Service Provider Services. You grant us all necessary rights for the foregoing purposes.

13.4 Assignment. You may not assign this Agreement or any rights or obligations without our prior written consent and any attempt to do so will be null and void. We may assign this Agreement (in whole or in part) to any entity, for any reason, without notice and without your consent.

13.5 Force Majeure. You understand and agree that we will not be liable to you for any delay or failure to perform hereunder due to circumstances beyond our reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), Internet or other service disruptions involving hardware, software or power systems not within our possession or reasonable control, and denial of service attacks.

13.6 Governing Law. This Agreement will be governed and construed under the laws of the State of California without regard to conflicts of law provisions. The parties agree that any suit or proceeding arising out of or relating to this Agreement will be brought in the federal and/or state courts, as applicable, in San Francisco County, California, and each party irrevocably submits to the jurisdiction and venue of such courts. Notwithstanding this, you agree that we will be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

13.7 Export Compliance. The Itembase APIs are subject to applicable U.S. export laws and regulations. Without limitation, you must not export the Itembase APIs or any part thereof, directly or indirectly, to any country for which the United States requires an export license or other governmental approval. In particular, you acknowledge that the Itembase APIs or any part thereof may not be exported or re-exported to, or otherwise used in, any U.S.-embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals

or the U.S. Department of Commerce's Denied Persons or Entity List. By using the Itembase APIs, you represent and warrant that you are not located in any such country or on any such list.

13.8 Waiver. No provision of this Agreement will be waived by any act, omission or knowledge of ours or our agents or employees except specifically in a writing signed by us.

13.9 Severability. If any provision or part of a provision in the Agreement is held to be illegal, invalid, or unenforceable by a court or other decision making authority of competent jurisdiction, then the remainder of the provision will be enforced so as to effect the intention of the parties, and the validity and enforceability of all other provisions in the Agreement will not be affected or impaired.

13.10 Notices; Electronic Communications. By registering for the Service and accepting this Agreement, you consent to receiving and we reserve the right to send you communications or information regarding the Service, including but not limited to (i) notices about your use of the Service, including any notices concerning violations of use, (ii) updates, and (iii) promotional information and materials regarding our products and services, via electronic mail. In the event that we send such communications, you will have the opportunity to opt-out of receiving future messages.

13.11 Entire Agreement. This Agreement constitutes the whole legal agreement between the parties in connection with your use of the Service, and governs such use. This Agreement completely replaces and supersedes any prior agreements between the parties, whether written or oral, in connection with the Itembase APIs. Except pursuant to Section 2 (Modifications), any modification of or changes to this Agreement must be in a writing duly authorized by an authorized representative of ours.

If you have any questions about the Itembase APIs or this Agreement, you may contact us at: support@itembase.com.