

## **BRANDWATCH SERVICES TERMS AND CONDITIONS – Last updated 31 March 2016**

This agreement consists of: these Services terms and conditions (“**T&Cs**”), the Service Level Agreement (“**SLA**”), and an ordering document and/or web-based interface specifying the Services that we will provide to you (“**Order Form**”) (collectively, the “**Agreement**”). You are the party identified on an Order Form as a client or customer and we refer to you and/or your Affiliates as “**you**”. We are Runtime Collective Limited (doing business as Brandwatch), and we refer to ourselves as “**we**”, “**us**”, “**our**” or “**Brandwatch**”. Our registered office address is at Sovereign House, Church Street, 1<sup>st</sup> Floor, Brighton, BN1 1UJ, United Kingdom. Our company number is 03898053 and our VAT number 754 7507 10.

### **1. DEFINITIONS**

1.1. Capitalised terms are defined below or otherwise in-line in this Agreement.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity where "control," means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Applicable Law**” means any applicable statutes, laws, rules, regulations, codes and ordinances, any judicial or administrative court rulings or judgments that have binding precedent, or any other binding requirement or duty applicable to a party.

“**Analysis**” means our analytic insights about Brandwatch Data and/or Your Data, including a Mention’s sentiment, an author’s or website’s ranking, or any other analyses.

“**Brandwatch Analytics**” means our social media intelligence application that allows you to create and save Queries and that displays data and Analysis.

“**Brandwatch Data**” means any Mention, any other information relating to or about a Mention, or any other information within our database that forms part of or is related to the Services (but excluding Your Data).

“**Brandwatch Vizia**” means our customizable application that displays and visualizes Brandwatch Data and/or other Data.

“**Documentation**” means our online user guides, documentation, help and training materials, and rules and restrictions, as updated by us from time to time.

“**Mention**” means a specific piece of information that satisfies a Query, including a blog entry, a Tweet, or a Facebook post.

“**Query**” means a combination of words, phrases, categories, and/or search operators used to define a search of our database.

“**User**” means an individual you have authorised to use the Services, including any individual whom your Affiliates or Agency Clients have so authorised.

“**Your Data**” means data that you import into the Services.

## 2. WHAT YOU CAN EXPECT FROM US

2.1. **The Services:** We will provide to you the Brandwatch services set out in an agreed Order Form (“**Services**”) in accordance with our standard [SLA](#), subject to this Agreement’s terms and conditions.

2.2. **Types of account:** Your account type will be either a “**Brand Account**” or a “**Brandwatch for Agencies Account**”. A Brand Account permits your use of the Services for your own commercial purposes (but not for re-sale to third parties). A Brandwatch for Agencies Account permits you to use the Services for your own commercial purposes and either: (a) for you to use the Services for your clients (each an “**Agency Client**”) for their commercial purposes; or (b) for use directly by your Agency Client.

2.3. **Offer and Third Party Services:** An Order Form is an offer by us to provide you the Services set out on that Order Form. The Order Form may be sent by us or by one of our authorised resellers or marketing agents (each being an “**Authorised Reseller**”). An Order Form may contain obligations on us to provide you with our Services and obligations on an Authorised Reseller to provide you with that Authorised Reseller’s products and/or services (“**Third Party Services**”). The obligations to provide Services always give rise to a contract between us (as principal) and you (to provide Services to you on the terms of these Brandwatch T&Cs). The obligations to provide Third Party Services always give rise to a contract between the Authorised Reseller (as principal) and you (to provide Third Party Services to you on the terms that are in place between you and the Authorised Reseller) – we are not part of this contract in any way. We are only responsible to you for our Services and not any Third Party Services. This Agreement is formed and effective when we, or the Authorised Reseller, receive the signed and/or agreed Order Form from you. Each Order Form you and we enter into is a separate contract.

2.4. **Processing of Your Data:** We will maintain appropriate administrative, physical, and technical safeguards for protecting the security, confidentiality, and integrity of Your Data. Those safeguards will include reasonable measures for preventing access, use, modification, or disclosure of Your Data by our personnel except: (a) to provide the Services and prevent or address service problems; (b) as compelled by Applicable Law; or (c) as you expressly permit in writing.

2.5. **Warranties and exclusions:** We warrant that we will provide the Services with reasonable skill and care and maintain all licences, consents, and permissions necessary to perform our obligations under this Agreement. Other than as set out elsewhere in this Agreement, to the maximum extent allowed by Applicable Law, we exclude all other warranties, conditions, representations, or other terms (whether express or implied).

2.6. **Fair Use:** All Queries are subject to fair use limits, which we reasonably define from time to time in our sole discretion. For example, you will violate fair use limits if we believe a Query tracks all, or a significant part, of our database (for example, searching for all English football clubs in one Query). Where we reasonably believe a Query has violated these fair use limits, we reserve the right to prevent the Query or only return a sample of Mentions.

2.7. **Regional restrictions:** An Order Form may designate a particular region or territory (“**Region**”) in which we are to provide the Services. The Fees are based on the Services provided in that Region only. We reserve the right to limit Users who are outside of the

Region from using or accessing some or all of the Services, or to charge you additional Fees for such use or access.

### 3. WHAT WE EXPECT FROM YOU

3.1. **Responsibility:** You: (a) are responsible for any use you and your Users make of the Services and for you and your Users' compliance with the Documentation and this Agreement; (b) warrant that you have the authority to enter into this Agreement; (c) will ensure that in respect of data (including Brandwatch Data) you export or otherwise use or download from the Services ("**Exported Data**"), your use of such Exported Data complies with Applicable Law and this Agreement; and (d) will comply with the Twitter Terms of Service, usually at <http://twitter.com/tos>.

3.2. **Cooperation:** In respect of customised reports by our professional services team (each a "**Deliverable**"), any timeline we provide to you for completion of a Deliverable is an estimate only and, in any event, is subject to your good faith cooperation with us. If you fail to timely provide us with any information or resources we reasonably need to complete your Deliverable, there may be delays in performance, for which we exclude all liability.

3.3. **Password protection:** You are solely responsible for ensuring that the user IDs and passwords that may be required for your Users to use Services are kept safe and confidential. You will promptly notify us upon discovery if the security of a user ID or password is, may have been, or may be compromised.

3.4. **Data processing.** You will, and you will procure that all Users, comply with Applicable Law, including Applicable Law relating to or about data protection, privacy and information security, whether now or in the future, when processing any data in connection with the Services (including in respect of any Exported Data and Your Data).

3.5. **You agree not to do any of the following:** You will not use the Services: (a) other than as permitted elsewhere in this Agreement, to: (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any part of the Services in any form or media or by any means; (ii) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part of the Services; or (iii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, create derivative works of, or commercially exploit or make available the Services to a third party (save as expressly permitted by us elsewhere in this Agreement in respect of a Brandwatch for Agencies Account); (b) for any purpose which infringes a third party's rights (including a third party's privacy rights or intellectual property rights); (c) to violate Applicable Law; (d) to communicate any material which is illegally or unlawfully obscene, defamatory, offensive or abusive; (e) for spamming, hacking or similar activities; and/or (f) for any other use which we may determine, within our reasonable discretion, may be detrimental to us or our customers' business operations, reputation, and/or goodwill.

3.6. **Contacting us:** You may identify a certain number of Users, as set out on an Order Form, who may contact us (each a "**Key Supported User**"). We reserve the right to refer you to a Key Supported User if a non-Key Supported User contacts us for any reason via any method.

3.7. **Brandwatch for Agencies restrictions:** This section 3.7 applies only if you have a Brandwatch for Agencies Account. You will: (a) unless otherwise permitted by us, not permit a User to use the Services who is not your employee (irrespective of whether that individual works for an Affiliate); (b) only permit Users of Agency Clients to use the Services pursuant to an executed Order Form setting out that Agency Client; (c) only permit access to the Services in the location set out on an Order Form; and (d) comply with the advertising and marketing materials provided by us from time to time related to your use and description of our Services and our intellectual property rights ("**Advertising Instructions**").

#### 4. FEES

4.1. **Paying the Fees:** You must pay us the fees for our Services ("**Fees**") as set out in an applicable Order Form. If you sign and/or agree to an Order Form with an Authorised Reseller, you will pay the Fees in respect of our Services directly to the Authorised Reseller, who will collect them on our behalf and remit them to us. If you have a Brandwatch for Agencies Account, you are responsible for paying the Fees in respect of use by Users of your Agency Clients. If you delay providing us with a purchase order number, or your payment of the Fees is otherwise late, we reserve the right to charge you interest equal to 1.5% over the applicable base rate of our principal bankers compounded monthly or such greater amount as allowed by Applicable Law. An Authorised Reseller may also reserve the right to charge you interest on late fees owed in respect of Third Party Services.

4.2. **Services upgrade:** You may be able to incrementally upgrade the Services during the term of this Agreement. If you request upgraded Services via any method, including via email, such request is also an agreement by you to pay any additional Fees associated with such upgraded Services. Although you can upgrade the Services at any time, you cannot downgrade the Services or the Fees during the term of this Agreement.

4.3. **Taxes:** The Fees are exclusive of any legally applicable taxes, levies, duties or similar governmental assessments of any nature, including goods and services, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). If we have the legal obligation to pay or collect Taxes for which you are responsible, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorised by the appropriate taxing authority.

4.4. **Increases:** On or after each anniversary of the effective date of this Agreement, we reserve the right to increase the Fees by the greater of: (a) the most commonly accepted measure (as determined by us in good faith) of inflation of the currency of the Fees at the date of the increase; or (b) 3.5%.

4.5. **Enforcement Costs:** To the maximum extent allowed by Applicable Law, we reserve the right to collect from you our reasonable costs and necessary disbursements and legal and attorney's' fees incurred in enforcing this Agreement, including any costs for the collections of Fees from you.

#### 5. CONFIDENTIAL INFORMATION

5.1. **Confidential Information:** Confidential Information means any information that is disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**") that is expressly marked as confidential or that a reasonable person under the circumstances

would understand to be confidential. Our Confidential Information includes Brandwatch Data, trade secrets, non-public copyrighted materials, including the source and object code for the Services, other non-public technical information about the Services, business or financial information, information about upcoming service releases, our product roadmap, and (subject to our rights under section 10.4) this Agreement. 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 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 breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.

5.2. **Strict confidence:** Each party will hold in strict confidence, and will not use other than for the purposes of performing its obligations under this Agreement and/or using the Services, all Confidential Information of the other party. Nothing in this section 5 prevents the Receiving Party from disclosing the Confidential Information of the Disclosing Party to its Affiliates, legal advisers, accountants, or other professional advisers, where required, provided that the party so disclosing will remain responsible for its obligations and for the use (and any disclosure) of the Confidential Information made by its Affiliates, legal advisers, accountants, or other professional advisers.

## 6. INTELLECTUAL PROPERTY

6.1. **Our intellectual property rights:** We, or our licensors, own all intellectual property rights in the Services, including Brandwatch Analytics, Brandwatch Vizia, Brandwatch Data, Analysis and Queries (whether written by you or us). Except as expressly stated otherwise in this Agreement, you are not granted any intellectual property rights of any kind.

6.2. **Your intellectual property rights.** You grant to us a non-exclusive, non-transferable, royalty-free licence to process Your Data for the purposes of providing you with the Services. You will have the necessary rights and consents in Your Data so that, as processed by us, such data will not infringe, misappropriate, or otherwise violate any intellectual property rights or other rights of any third party or violate any Applicable Law.

6.3. **Deliverables and Exported Data licence:** Upon your payment of the Fees and your acceptance of any Deliverables, we grant to you a worldwide, perpetual, exclusive, non-transferable, royalty-free licence to copy, maintain and use, solely for your internal business purposes, any Deliverables. In respect of Exported Data, we grant to you a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free, licence to use the Exported Data in accordance with the terms of this Agreement.

6.4. **Brandwatch for Agencies licence:** If you have Brandwatch for Agencies Account, we grant to you a non-exclusive, non-transferable and non-sublicensable licence to display our trade names, trademarks, service marks, logos, and domain names only for the purposes of promoting our Services in the location(s) set out in an Order Form; and, in any event, in accordance with our Advertising Instructions.

6.5. **Licence to use your feedback:** You grant to us, and you will procure that your Users grant to us, a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by you or your Users arising out of, related to, or in

connection with the Services. If we incorporate any such feedback into our Services, neither you nor your Users will not have any rights to any part of the Services.

## 7. TERM AND TERMINATION

7.1. **Term:** The “Initial Term” of this Agreement will be, from the effective date, the period designated as such on the Order Form, unless terminated earlier in accordance with this Agreement. After the Initial Term, the Agreement automatically renews for successive periods equal to the Initial Term (each a “**Renewal Term**”) unless a party gives at least 30 days notice of intent to terminate prior to the expiration of the then-current Initial Term or Renewal Term (as applicable), such notice to be effective at the end of the then-current term.

7.2. **Mutual termination:** A party may terminate this Agreement by written notice to the other party at any time if: (a) the other party is in material breach and, if remediable, following being notified in writing of such breach, the breach is not remedied within 30 days; or (b) if the other party becomes the subject of a petition in liquidation or any other proceeding relating to insolvency, receivership, administration, liquidation or assignment for the benefit of creditors.

7.3. **Our termination rights:** Notwithstanding anything else in this Agreement, we reserve the right, within our sole discretion, to suspend or terminate this Agreement immediately upon written notice if: (a) you fail to pay any Fees, whether to us or an Authorised Reseller, by their due date and the default in payment lasts more than 30 days after being notified in writing of the default; (b) we determine that you are purposefully delaying providing us or an Authorised Reseller with a purchase order number; (c) you breach any of section 3.5; or (d) we have good faith concerns about your financial solvency.

7.4. **Accrued rights and liabilities:** Termination of this Agreement, however arising, does not affect the accrued rights and liabilities of the parties as at termination. In respect of Brandwatch for Agencies Accounts, if the Initial Term or Renewal Term of this Agreement expires or terminates, for whatever reason, any Agency Client whose contract term with you (“**Agency Client Term**”) continues: (i) for less than one year beyond the date of expiry or termination of this Agreement, such Agency Client will continue to receive the Services until the expiry of their Agency Client Term; and (ii) for more than one year beyond the date of expiry or termination of this Agreement, such Agency Client will continue to receive the Services for one year and any period of time thereafter will be cancelled, unless we agree otherwise in writing. During the Agency Client Term, you will have no right to use the Services yourself, but will remain responsible for all Fees in respect of Agency Clients whose Agency Client Term continues.

7.5. **Early termination:** Unless you terminate this Agreement in accordance with section 7.2(a), you will remain responsible for paying all of the Fees until the end of the Initial Term or Renewal Term (as applicable) as if the Agreement were still in force. Subject to the preceding sentence, any such unpaid Fees become immediately due as of the date of notice of termination. Unless this Agreement is terminated by you in accordance with section 7.2(a), irrespective of the reason for termination, you have no right to a refund of any Fees you have already paid.

7.6. **Surviving termination:** The following sections survive termination of this Agreement: 1, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.5, 5, 6, 7, 8, and 9.

## 8. EXCLUSION AND LIMITATION OF LIABILITY

8.1. **What we're liable for:** Nothing in this Agreement excludes or limits our liability for any liability that cannot be excluded or limited under Applicable Law (such as fraud).

### **\*\*\*IMPORTANT: PLEASE READ SECTIONS 8.2-8.4 CAREFULLY AS THEY EXCLUDE AND/OR LIMIT OUR LIABILITY TO YOU\*\*\***

8.2. **Losses we're never liable for:** Subject to section 8.1, each party excludes all liability, whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation, restitution or otherwise, direct or indirect, whether foreseeable, known, foreseen, or otherwise, for any: (a) loss of revenue or profits (of any kind); (b) loss of goodwill; (c) loss of business; (d) failure to process data adequately; (e) loss or corruption of data or information; or (f) for any special, indirect, or consequential loss, costs, damages, charges, or expenses, however arising.

8.3. **Other important exclusions of loss:** Subject to sections 2.5 and 8.1, we make no warranties or representations: (a) about the truth or accuracy of our Analysis or that the Services will result in any positive benefit to you, your customers, or any other third party; (b) that the Services may enable or assist you to access third party sites and we have no liability or obligation whatsoever, in respect of the same; (c) that, since the Services are dependent on information obtained via the Internet, the Internet will be available when needed, and we therefore exclude all liability due to Internet outages or other failures in communications networks and/or facilities; and (d) that the content and functionality of the Services we offer will not change and, so long as any change we make does not materially decrease the functionality or performance of the Services, we reserve the right to make changes from time to time to the Services, including offering new or changing existing Analysis or adding or removing websites or data from our database.

8.4. **Liability cap:** Subject always to sections 8.1, 8.2, 8.3 and 10.10, each party's total liability, however arising, will under no circumstances exceed in aggregate, the greater of: (1) £30,000; or (ii) 110% of the total amount of Fees paid or payable to us pursuant to this Agreement for the 12 months immediately preceding the date any first claim arose.

## 9. MUTUAL INDEMNITIES

9.1. **When you indemnify us:** You agree to defend, indemnify and hold us, our officers, directors, employees, agents, and Affiliates, harmless against any claims, demands, actions, proceedings, losses, liabilities, damages, expenses and costs (including court costs and reasonable attorneys' fees), whether direct or indirect (collectively "**Losses**"), arising out of, related to, or in connection with, any breach, act, omission, or non-compliance by you (including by your Users or Agency Clients) of any of the provisions of sections 3.5(a), 3.5(c), 3.5(e), 5, 6.2, or 6.4.

9.2. **When we indemnify you:** We agree to defend, indemnify and hold you harmless against any Losses arising out of, related to, or in connection with, a claim against you that

your use of the Services infringes the Intellectual Property Rights of a third party (“**IP Indemnity**”). The IP Indemnity is subject to you: (a) giving us prompt notice of any such claim; (b) giving us the sole authority to determine whether to defend the claim ourselves, permit you to defend the claim, or settle the claim; and (c) if we permit you to defend the claim, not settling the claim without our prior written approval of the proposed settlement.

9.3. **When the IP Indemnity does not apply and remedies:** The IP Indemnity does not apply to the extent that the claim is based on: (a) a modification of the Services by anyone other than us; (b) your use of the Services in a manner contrary to your obligations under this Agreement or our reasonable instructions; or (c) your continued use of the Services after we have notified you of the alleged or actual infringement and requested you to stop using the Services. In the defence or settlement of any claim relating to the IP Indemnity, we may: (i) procure the right for you to continue using the Services; (ii) replace or modify the Services so that they become non-infringing; or (iii) if (i) and (ii) are not reasonably available to us, we may terminate this Agreement (in whole or in part) on 30 days’ notice to you and refund you any prepaid Fees covering the remainder of the term of the terminated Services.

## 10. GENERAL

10.1. **Privacy:** We reserve the right to monitor your use of the Services at any time. Our [Privacy Statement](#) has additional information about our data privacy practices.

10.2. **Rules of interpretation:** The following rules of interpretation apply to this Agreement: (a) the words “include”, “including”, “in particular” or “for example” are deemed to have the words “without limitation” following them; (b) references to the singular include the plural and vice versa; and (c) for the avoidance of doubt, references to “will” are deemed to place a legal obligation on a party to do, or not to do, whatever follows “will”.

10.3. **Force Majeure:** Neither party is liable for a breach caused by an event beyond its reasonable control, including a natural disaster, disease outbreak, war, riot, terrorist action, civil commotion, malicious damage, government action, industrial action or dispute, fire, flood, storm, or failure of third party telecommunications, or other services (“**Force Majeure**”).

10.4. **Publicity:** We will not issue a public statement or communication, or otherwise disclose that you are a customer, without your prior written consent.

10.5. **Invalidity:** If any term of this Agreement is found invalid, illegal or unenforceable, the rest of the Agreement remains in effect.

10.6. **No waiver:** Either party’s delay or failure to enforce a term of the Agreement is not a waiver of that right and does not prevent that party from later enforcing that or any other term.

10.7. **Notice:** Each party will deliver all notices in respect of legal service or material breach by recorded delivery: in respect of Brandwatch, to our registered office address as set out above; and in respect of you, to your address as set out in an Order Form. Any notices in respect of any matter other than legal service or material breach may be delivered in accordance with the previous sentence or by email. If sent by email, you will send such notices to [legalnotices@brandwatch.com](mailto:legalnotices@brandwatch.com) and we will send such notices to you to via an



email address listed in any Order Form. Notice sent by recorded delivery is received three London, UK business days after posting and email notice is received 24 hours after it is sent.

10.8. **Assignment:** You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with this Agreement or any right, benefit or interest under it, nor transfer or novate (or sub-contract any of your obligations under it) (each of these, an "Assignment") without our prior written consent, and any Assignment without our prior written consent is null and void.

10.9. **Anti-bribery:** The parties will: (i) comply with all Applicable Law relating to anti-bribery or anti-corruption; (ii) not engage in any act which, if it had occurred in the United Kingdom or the United States would have violated Applicable Law relating to anti-bribery or anti-corruption; and (iii) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

10.10. **Entire agreement:** This Agreement, including materials incorporated herein by reference, constitutes the complete and exclusive statement of agreement and understanding between the parties, which supersedes and excludes all prior or contemporaneous proposals, understandings, agreements, or representations, whether oral or written, with respect its subject matter. You acknowledge and agree that no representations were made prior to the entering into of this Agreement and that, in entering into this Agreement, you do not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out or referred to in this Agreement. Nothing in this Agreement will exclude or limit our liability for fraudulent misrepresentations or will exclude (but this Agreement does limit) our liability for any fundamental misrepresentation. The only remedy available to you for breach of this Agreement will be for breach of contract under the terms of this Agreement.

10.11. **Order of priority:** If there is a conflict between any part of this Agreement: an Order Form prevails over these T&Cs, which prevails over the SLA. The English version of these T&Cs prevails over any non-English version.

10.12. **Third party rights:** Nothing in this Agreement creates or confers any rights or other benefits in favour of any person other than the parties to this Agreement even if that person has relied on any such term or has indicated to any party to this Agreement its assent to any such term.

10.13. **No agency:** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

10.14. **Waiver of Jury Trial: This is important, please read:** each party waives all rights to jury trial in any legal proceedings arising out of or relating to this Agreement (if any).

10.15. **Governing law and jurisdiction:** Each party agrees to the applicable governing law and to the exclusive jurisdiction of the applicable courts, set out in the table below.

<b>If you are domiciled in:</b>	<b>The governing law is:</b>	<b>The courts having exclusive jurisdiction are:</b>
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Australia, New Zealand, or a country in Europe, the Middle East, Africa, Central America, South America, or the Caribbean	English	English
United States of America or Canada	New York and controlling United States federal law, without regard to choice or conflicts of law rules	New York City
A country in Asia or the Asia Pacific region	Singapore	Singapore