

## TERMS AND CONDITIONS

Brandwatch LLC (“Company”) and the client counterparty (“Client”) named in the Order Form have entered into an agreement for the Company to provide the Service (defined below) and agree that the Order Form and the following terms and conditions constitute the exclusive and binding agreement (“Agreement”) between them. The Order Form shall incorporate by reference these terms and conditions and shall control in the event of any conflicting terms.

1. Definitions. Unless otherwise defined in the Order Form, the following terms have the meanings indicated as follows:

1.1. “Agency Client” is a client of the Company who subscribes to the Service for the purpose of sharing access to the Service with one or more Users.

1.2. “Brandwatch Application” is the Brandwatch social media monitoring tool that summarizes, analyzes and provides links to the Mentions relevant to all Queries that the Client has set up.

1.3. “Found Date” is the date when a webpage qualifies as a Mention, as determined by the Company through its technology.

1.4. “Intellectual Property Rights” means all trade secrets, patents and patent applications, trademarks and service marks (whether registered or unregistered and including any goodwill acquired in such trademarks and service marks), trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world .

1.5. “Mentions” are all the webpages or sections of webpages that meet the requirements set out in a Query; each Mention is associated with a single Found Date and a single Published Date. Mentions that the Company finds from before the Query Start Date are “Historic Mentions.” All other Mentions are Mentions that the Company finds from the Query Start Date .

1.6. “Mention-based Subscription” is a Service that provides the Client an unlimited number of Queries and where the total number of Retained Mentions in each and every calendar month is limited to the number stated in the Order Form.

1.7. “Published Date” is the date when a webpage was first published, as determined by the Company through its technology.

1.8. “Query” is a search string that the Client, or an agent acting for the Client, uses to define what words and phrases must be present on a webpage for the Company’s technology to be able to include that webpage in the Brandwatch Application.

1.9. “Query-based Subscription” is a Service that provides the Client either batches of Queries or individual Queries as set out in the Order Form and where Retained Mentions are subject to Fair Usage Limits (defined in Section 6.3.2).

1.10. “Query Start Date” is the date and time when a Query was created in the Brandwatch Application.

1.11. "Retained Mentions" are Mentions (including applicable Historic Mentions) made available to the Client in the Brandwatch Application.

1.12. "Service" is access to the Brandwatch Application, on either a Mention-based Subscription or a Query-based Subscription, and related services provided by the Company to the Client in accordance with the terms of this Agreement and any applicable Order Form.

1.13. "Supported Admin Users" are Client personnel who are permitted direct email or phone support from the account management or client services teams.

1.14. "User" is a customer of an Agency Client who is an authorized user of the Service under this Agreement.

2. Acceptance of Terms and Conditions. NO TERM OR CONDITION IMPLIED BY LAW, TRADE CUSTOM, PRACTICE OR COURSE OF DEALING OR STATED IN ANY SOLICITATION, ORDER, OR OTHER DOCUMENT OF THE CLIENT OR OTHERWISE NOT PROVIDED BY THE COMPANY SHALL BECOME PART OF THIS AGREEMENT OR BECOME BINDING ON THE COMPANY UNLESS EXPRESSLY AGREED TO BY THE COMPANY IN WRITING. THE CLIENT'S USE OF AND ACCESS TO THE SERVICE IS PERMITTED SOLELY ON THE CONDITION THAT THE CLIENT ACCEPTS AND AGREES TO THESE TERMS AND CONDITIONS.

3. The Company's Services. In consideration of the Client's acceptance of this Agreement and the Client's payment of the Fees as described in Section 7.2, the Company shall provide the Service described in the applicable Order Form. The Company shall assign a unique ID (which may include user names, passwords, etc., "Unique ID") to the Client to be used in conjunction with the Service. The Client shall use only the Unique ID, which it must keep safe and confidential. The Client is responsible for any and all use of the Service using the Unique ID, including payment of all Fees related to such use, and shall promptly notify the Company if the security of a Unique ID has been compromised.

#### 4. License.

4.1. Ultimate Service Provider. The Services are provided by Runtime Collective Limited, a company registered in the United Kingdom with company number 03898053. Company warrants that it is an authorized agent of Runtime Collective Limited, and has the necessary authority to enter into a contractual relationship on behalf of Runtime Collective Limited.

#### 4.2. Scope of License.

4.2.1. General. In consideration of the Client's acceptance of this Agreement and the Client's payment of the Fees described in Section 7.3, the Company grants the Client a personal, nonexclusive, revocable, and nontransferable license during the term of this Agreement to allow the Client (and Users where the Client is an Agency Client) to access and use the Service. The license is subject to compliance by the Client (and Users where the Client is an Agency Client) with the terms and conditions of this Agreement. Subject to Section 4.2, the Client (and Users where the Client is an Agency Client) shall use the Service, and may use all data which the Client (or Users, as applicable) receives through proper use of the Service, only as expressly permitted and solely for the Client's own

legitimate and lawful business purposes (and, where the Client is an Agency Client, for Users' own legitimate and lawful business purposes).

4.2.2. Users' Use. Where the Client is an Agency Client, the Client may allow Users to use the Service for the Users' own business purposes provided that the Client: (a) require any and all Users to comply with the terms of this Agreement in relation to their use of the Service as if the User were itself a party to this Agreement; and (b) indemnify the Company Indemnitees with respect to the Users' activities pursuant to Sections 18.1(b) through (d). Any use of the Service made by Users will constitute part of the Client's use under this Agreement, and any breach by any User will be deemed to be a breach of this Agreement by the Client. The Company reserves the right to require that the Client (i) obtain from each User a written agreement of compliance pursuant to clause (a) of this Section and (ii) provide such written agreement to the Company upon reasonable request.

4.3. Restrictions. The Client shall not, and shall not allow any third party to, in whole or in part: (a) alter, adapt, merge, modify, port, translate, decompile, disassemble, create derivative works from or reverse engineer the Service, or otherwise attempt to derive the source code or engage in any other activities to obtain underlying information that is not visible to a user in connection with normal use of the Service, or make any permanent copy of the Service or data in any form, or extract or re-utilize any such data; (b) transfer, sublicense, rent, lease, distribute, sell, or grant any rights to the Service to anyone, except as expressly permitted; (c) publicize or distribute any registration code algorithms, information or registration codes used by the Service or knowingly take any action that would cause any element of the Service to be placed in the public domain; (d) gain or attempt to gain unauthorized access to the Service; (e) remove any proprietary notices or marks from the Service; (f) use the Service for the business needs of another person or entity, except as expressly permitted; or (g) engage in any other activity reasonably determined by the Company to be in conflict with the intent of this Agreement; or (h) download Twitter material via the application programming interface (API). Agency may only export Tweet or User IDs via the API and only export Twitter data as a PDF, or spreadsheet by using 'save as' or similar functionality.

## 5. Use of the Service.

5.1. Computer System. The Client shall at all times provide and maintain in good working order its own Internet access and all necessary network and telecommunications equipment, hardware, software, devices and other materials and equipment necessary to access and use the Service.

5.2. Non-Infringement. The Client shall not access or use the Service in any way (a) that infringes, misappropriates or violates any Intellectual Property Rights or publicity, privacy or other right of any third party; (b) that violates any applicable local, state or federal laws, statutes, ordinances, rules or regulations or any judicial or administrative orders; or (c) that the Company reasonably determines is unacceptable, immoral or offensive, such as spamming, hacking, etc.

5.3. Non-Interference with Operations. The Client shall not engage in any activity that: (a) interferes or attempts to interfere with the proper functioning of the Service or disrupts, diminishes the quality of, interferes with the performance of or impairs the functionality of the Service; (b) circumvents, disables, or otherwise interferes with security-related features of the Service or features that enforce limitations on use of the Service; or (c)

imposes or may impose, in the Company's reasonable discretion, an unreasonable or disproportionately large load on the Service or the Company's infrastructure.

5.4. Use of the Company's Application Programming Interface. If the Client uses the Company's application programming interface ("API") to access, test, review or use in any way the Company's data, the Client shall conform to the Company's API usage policies available on request.

## 6. Service Accounts; Subscriptions; Upgrades.

6.1. Pro or Enterprise Account. The Company offers a Pro account or an Enterprise account for the Service.

6.1.1. A Pro account is a Mention-based Subscription. For a base Pro account, the Company provides Historic Mentions dating back to one month prior to the Query Start Date. Historic Mentions dating back to June 2010 are available as an upgrade.

6.1.2. An Enterprise account is available as either a Mention-based Subscription or a Query-based Subscription. For all Enterprise accounts, the Company provides Historic Mentions dating back to June 2010.

6.2. Mention-based Subscriptions. The Company will provide Retained Mentions up to the limit stated in the Order Form. The Company has no obligation to provide Retained Mentions above the monthly fixed limit that is stated in the Order Form.

### 6.3. Query-based Subscriptions.

6.3.1. Subject to Section 6.3.2 and except as otherwise stated in the Order Form, the Company will provide (a) Queries up to the Query limit specified in the Order Form and (b) unlimited Retained Mentions, with a limit of up to 100,000 Historic Mentions per Query per month.

6.3.2. The Company reserves the right to provide only a sample of Retained Mentions for a Query ("Fair Usage Limit") where a Query (a) is reasonably determined by the Company to be attempting to track all or a significant part of all of social media or (b) is being used to track multiple large brands or is in any other way so broad that, in the reasonable determination of the Company, the Query degrades the performance of the Service for the Client or for other clients of the Company. Examples of Queries for which the Company may apply a Fair Usage Limit include, but are not limited to, a Query that tracks all social media websites for common words like "the" or "lol," or a Query that tracks all European airline companies in a single Query. Where the Company has applied a Fair Usage Limit, it will make commercially reasonable efforts to inform the Client and discuss ways in which the Company can track all Mentions the Client is seeking.

6.4. Upgrades. Upgrades to an account are available at additional cost. The Client has the option to upgrade its account under the Service by selecting the appropriate upgrade option(s) in the Brandwatch Application or by informing the Client's account manager. The Client shall pay the corresponding price for an upgraded account.

6.5. Account Management/Client Services. Client must nominate 'Supported Admin Users' for their Brandwatch account. Only Client personnel who have attended core Brandwatch training can qualify as a Supported Admin User. No other Client personnel are permitted to contact the account management or support services teams. The number of permitted Supported Admin Users is defined by the type of Brandwatch

account, as described in this clause 6. Client will be allowed up to three (3) Supported Admin Users per Enterprise Account subscription, and one (1) Supported Admin User per Pro Account subscription. Additional Supported Admin Users may be added for an additional recurring fee, and existing Supported Admin Users can be replaced, with a maximum of one Supported Admin User replacement per month. If additional or replacement Supported Admin Users have not undergone core Brandwatch training, this will also be chargeable to qualify.

6.5.1. Notwithstanding the foregoing, there is no limit on the number of Client users permitted to access the Brandwatch Application under the license, nor any restriction on any user from submitting tickets for technical issues via the online support portal. Any non-Supported Admin User submitting a ticket that is not deemed 'technical', or contacting account management or client services directly, will be referred to a Supported Admin User for help.

## 7. Obligations of the Client.

7.1. General. The Client shall comply with all obligations under this Agreement and shall be responsible for any and all use of the Service under this Agreement.

7.2. Security. While the Company shall use commercially reasonable efforts to prevent the transmission to the Client of bugs or viruses via the Service, the Client is responsible for taking all appropriate measures to prevent harmful agents or components from entering its systems, and to ensure the security of the Client's access to and connection with the Service and the privacy and security of the Client's data. To the extent that the Company may be required, as part of the Service, to process any personal data on the Client's behalf, the Client is responsible for obtaining all necessary data protection registrations and consents to enable such processing. The Company shall maintain appropriate technical and organizational measures to act in accordance with the Client's instructions in relation to such processing and to prevent unauthorized processing of such data.

7.3. Payment. The Client shall pay the fees specified in the Order Form ("Fees") by the dates and methods specified in the Order Form. Fees payable upon invoice shall be paid within 30 calendar days after the date of the invoices. No deductions or offsets will be made to invoices. Additionally, the client shall pay any tax or other amounts that the Client is required to pay under applicable law (such as, but not limited to, foreign, national, state or local sales, use, withholding or other taxes, customs duties or similar tariffs and fees) (individually and together, a "Tax"). If at any time any taxing authority assesses a Tax on an invoice, the Client shall pay or reimburse the Company for the Tax. The Company reserves the right to charge interest on a daily basis at a rate of 1.0% per month on past due accounts. Any claim or dispute relating to an invoice must be made in writing within 30 calendar days of the date of the invoice. The Client shall pay all costs incurred by the Company in collecting any amounts due under this Agreement, including, without limitation, reasonable attorneys' fees and costs.

8. Right to Increase Fees. On the expiration of one calendar year from the Effective Date (defined in Section 9.1) of this Agreement and for every calendar year thereafter, the Company reserves the right to increase Fees by the greater of 3.5% or the Index Increase. The "Index Increase" is the percentage difference between (a) the Index for the month preceding the month in which the increase in Fees occurs and (b) the Index for the month thirteen months prior to the month in which the increase in Fees occurs. "Index"

means the Consumer Price Index, as published by the Bureau of Labor Statistics, U.S. Department of Labor, For All Urban Consumers, U.S. City Average, All Items, (1982-84=100) ("CPIU"). In the event the Bureau of Labor Statistics stops publishing the CPIU or substantially changes its content and format, the Company will substitute another comparable index published at least annually.

## 9. Term and Termination.

9.1. Term. This Agreement will be effective as of the date the Company receives a signed Order Form from the Client ("Effective Date") for an initial term specified in the Order Form. Unless otherwise stated in the Order Form, this Agreement shall automatically renew for successive terms of the same length as the initial term, unless terminated earlier or a party gives written notice of its election not to renew this Agreement at least 30 days prior to the end of the then-current term. Notice of non-renewal or termination must be sent via email to [cancellations@brandwatch.com](mailto:cancellations@brandwatch.com).

## 9.2. Termination.

9.2.1. Termination by Either Party. Either party may terminate this Agreement immediately upon written notice in the event: (a) that the other party makes an assignment for the benefit of creditors; (b) a trustee, receiver, or similar person is appointed for the other party or for a substantial part of the property of the other party, with or without that party's consent; (c) any bankruptcy, insolvency, reorganization, or liquidation proceedings is instituted against the other party, which proceedings are not dismissed within 60 days of filing; (d) that the other party fails generally to pay its debts or contractual monetary obligations as they become due; or (e) that the other party ceases, or threatens to cease, to do business. In addition, if a party is a partnership and any event described in Sections 9.2.1(a) through (c) occurs as against any partner of that partnership, the other party may immediately terminate this Agreement upon written notice.

## 9.2.2. Termination by the Company.

9.2.2.1. The Company may terminate this Agreement immediately, or suspend the Service, upon written notice to the Client if the Client (a) violates the scope or any restriction on the license granted under this Agreement; (b) breaches the confidentiality obligations under this Agreement; or (c) in the reasonable determination of the Company, threatens the integrity or security of the Service.

9.2.2.2. If the Client otherwise breaches this Agreement, the Company may terminate this Agreement by giving written notice of the breach and termination to the Client, which termination shall be effective 10 days after the date of the notice or at a later time as may be specified in the notice (the time period from the date of the notice of breach to the date of termination, the "Cure Period") unless the Client cures the breach prior to the expiration of the Cure Period. The Company may suspend the Service during the Cure Period.

9.2.3. Effects of Termination. Upon termination of this Agreement, all rights and obligations of the parties shall terminate. All licenses granted hereunder automatically will terminate, and the Company may immediately disable and discontinue the Client's access to and use of the Service without additional notice to the Client. The Client shall return to the Company or destroy all materials the Client acquired pertaining to the Service and any of the Company's Confidential Information. All of the Client's payment



obligations will become immediately due and payable and the Client shall remain liable to the Company for all charges under this Agreement and all the costs the Company incurs to collect these charges, including collection agency fees, reasonable attorneys' fees and arbitration or court costs. In the event of a suspension or early termination, the Client will not be eligible for any refunds of amounts paid or any waiver of amounts payable. Any termination shall not release a party from liability for a breach by that party of its obligations under this Agreement prior to or in connection with such termination.

10. Survival. Articles 12 (Confidentiality), 13 (Proprietary Rights), 15 (Representations and Warranties), 16 (Disclaimer), 17 (Limitation of Liability), and 18 (Indemnification); and Sections 20.1 (Governing Law) and 20.2 (Notices) shall survive the termination of this Agreement.

11. Force Majeure. The Company shall not be liable for any failure to perform or delay in the performance of its obligations under this Agreement due to any cause or event not reasonably within its control, including but not limited to acts of God, natural disasters, war, incidents of terrorism, labor disputes, failure of equipment, carriers, utilities or third parties, compliance with governmental authority, strikes or civil unrest.

12. Confidentiality.

12.1. Confidential Information. The terms of this Agreement, the existence of any business negotiations, discussions, or consultations in progress between the parties, any information that is marked as "confidential" or reasonably should be understood to be confidential or proprietary to the disclosing party, and any information and data that either party has received or will receive from the other party about matters relating to each party's respective business including, without limitation, (a) any technical and non-technical information, including Intellectual Property Rights, techniques, drawings, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services; (b) information concerning research, experimental work, specifications, engineering, financial information, customer/client lists, sales, merchandising, and marketing plans and data; and (c) information regarding customers/clients or customer/client prospects of a party and/or a party's business plans or goals, strategy or targets, are proprietary and confidential information of the disclosing party ("Confidential Information").

Confidential Information does not include any information that (a) was already lawfully in the receiving party's possession before receipt from the disclosing party; (b) is or becomes publicly available through no fault of the receiving party; (c) is rightfully received by the receiving party from a third party who possessed same information lawfully and without a duty of confidentiality; (d) is disclosed by, or with the permission of, the disclosing party to a third party without a duty of confidentiality on the third party; or (e) is independently developed by the receiving party without a breach of this Agreement.

12.2. Duty of Confidentiality. Subject to the Company's right to disclose that the Client is a client of the Company pursuant to Article 14, during the term of this Agreement and at all times thereafter, neither party will (a) disclose Confidential Information of the other party except to employees, agents, and advisors who (i) have a need to know in order to fulfill their responsibilities in connection with this Agreement and (ii) are subject to obligations of confidentiality no less restrictive than those in this Agreement or (b) use Confidential Information of the other party except to fulfill obligations under this

Agreement. Each party will take reasonable measures to protect the confidentiality of Confidential Information disclosed to it by the other party, including, at a minimum, those measures that it takes to protect its own Confidential Information of a similar nature but in no event less than a reasonable measure of care. If a party becomes legally compelled to disclose any Confidential Information, it shall promptly notify and assist the other party to seek a protective order or other appropriate remedy before making disclosure. Whether or not a protective order or other remedy is obtained, the party compelled to disclose may furnish only those portions of Confidential Information which it is legally required to disclose as advised by legal counsel and shall exercise reasonable efforts to obtain reliable assurances that Confidential Information will be treated confidentially.

12.3. Return of Confidential Information. Upon request, and no later than termination of this Agreement, each party will deliver to the other, or certify destruction of, any and all documents and materials constituting Confidential Information of the other party.

### 13. Proprietary Rights.

13.1. The Company. The Service, all Intellectual Property Rights contained in or used by the Service, the Company's Confidential Information, and all other materials provided by the Company or accessible to the Client and Users are and will remain the exclusive property of Runtime Collective Limited and its affiliates or any of their licensors, as applicable. The Client only has a limited license as described in Article 4. The Client shall not challenge or contest the rights to or ownership of the Service by Runtime Collective Limited and its affiliates, or otherwise attempt to assert any proprietary rights in the Service.

13.2. The Client. The Client shall retain all Intellectual Property Rights in information that it submits to the Service.

14. Publicity. Subject to its confidentiality obligations under Section 12.2, the Company may at its sole discretion issue a public statement or communication or otherwise disclose that the Client is a client of the Company. Unless the Client has notified the Company in writing that it does not wish to do so, the Client grants the Company a license to use the Client's name, logo and trademarks for public relations activities, including without limitation, on the Company's client list and website.

### 15. Representations and Warranties.

15.1. Mutual Representations and Warranties. Each party represents and warrants that:

15.1.1. it has the legal capacity and authority to enter into this Agreement, to perform the obligations and to consummate the transactions contemplated under this Agreement;

15.1.2. this Agreement is valid and binding upon and enforceable against it;

15.1.3. its execution and performance of this Agreement will not result in the violation of any provision of any other agreement or applicable law or any judgment or decree binding upon it; and

15.1.4. it is not the subject of any pending or, to the best of its knowledge, threatened claim, action, judgment, order, or investigation that could adversely affect its ability to perform its obligations under this Agreement or the business reputation of the other party.

15.2. The Company's Representations and Warranties. The Company represents and warrants that it is an authorized licensee of the Brandwatch Application and has the



authority to provide the Service and the associated limited sublicense to the Client in accordance with this Agreement.

16. DISCLAIMER. THE COMPANY PROVIDES THE SERVICE “AS IS” AND WITHOUT WARRANTY OF ANY KIND. EXCEPT FOR THE WARRANTIES SET FORTH IN ARTICLE 15, THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, AND NON-INFRINGEMENT. THE COMPANY DOES NOT WARRANT AGAINST HUMAN AND MACHINE ERRORS, OMISSIONS, DELAYS, INTERRUPTIONS OR LOSSES, INCLUDING LOSS OF DATA, OR ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, OR OTHER CODE THAT MANIFEST CONTAMINATING OR DESTRUCTIVE PROPERTIES. THE COMPANY MAKES NO WARRANTY THAT THE SERVICE WILL MEET THE CLIENT’S REQUIREMENTS OR THAT THE OPERATION, ACCESS, USE OR FUNCTIONS OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. THE COMPANY DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICE OR ANY INFORMATION, TEXT, GRAPHICS, LINKS OR OTHER ITEMS CONTAINED WITHIN THE SERVICE WITH RESPECT TO THEIR PERFORMANCE, ACCURACY, RELIABILITY, COMPLETENESS, SECURITY CAPABILITY OR OTHERWISE. THE ENTIRE RISK ARISING OUT OF THE USE OF THE SERVICE REMAINS WITH THE CLIENT.

17. LIMITATION OF LIABILITY. IN NO EVENT WILL THE COMPANY OR ANY OF ITS AFFILIATES BE LIABLE (A) TO THE CLIENT OR ANY THIRD PARTY AND/OR USERS WITH RESPECT TO CLAIMS ARISING IN CONNECTION WITH ANY USE OF THE SERVICE OR ANY DATA, INCLUDING, BUT NOT LIMITED TO, ERRORS OR OMISSIONS CONTAINED THEREIN, DECISIONS MADE BASED ON USE OF THE SERVICE OR ANY DATA, LIBEL, INFRINGEMENTS OF INTELLECTUAL PROPERTY, PUBLICITY OR PRIVACY RIGHTS, LOSS OF PRIVACY, MORAL RIGHTS, DISCLOSURE OF CONFIDENTIAL INFORMATION, BREACH OF SECURITY, WORKFLOW DISTURBANCES, OR ACCESS OR INTERNET CONNECTIVITY PROBLEMS; (B) FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR OTHER DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF INCOME, PROFITS OR GOODWILL, BUSINESS INTERRUPTION, CORRUPTION OR LOSS OF DATA, AND THE LIKE), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING FROM THIS AGREEMENT OR OUT OF THE USE OR INABILITY TO USE THE SERVICE OR RESULTING FROM USE OF OR RELIANCE ON ANY DATA (EVEN IF THE COMPANY OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE); OR (C) TO ANY PARTY FOR ANY AGGREGATE AMOUNT GREATER THAN THE AMOUNT THE CLIENT PAID UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE DATE ON WHICH THE UNDERLYING CLAIM ACCRUED.

18. Indemnification.

18.1. The Client’s Indemnification. The Client shall indemnify and hold harmless the Company, its officers, directors, employees, representatives, agents, contractors, affiliates and licensors (collectively, “Company Indemnitees”) from any and all claims, actions, losses, damages, demands, liabilities, costs and expenses, including reasonable

attorneys' fees and expenses ("Claims"), whether a suit or other proceeding is initiated or not, which may arise from: (a) this Agreement; (b) the use, operation or misuse by the Client (or a User where the Client is an Agency Client) of the Service or any component thereof; (c) any error, omission, or negligent or intentional act by the Client (or a User where the Client is an Agency Client) relating to this Agreement; or (d) any breach or alleged breach of this Agreement by the Client (or a User where the Client is an Agency Client).

18.2. The Company's Indemnification. The Company shall indemnify and hold harmless the Client, its officers, directors, employees, representatives, agents, contractors, affiliates and licensors from any Claim, whether a suit or other proceeding is initiated or not, that the Client's use of the Service in accordance with this Agreement infringes the intellectual property rights of any third party; provided that the Client shall promptly notify the Company of any such Claim, provides all cooperation reasonably requested by the Company, and gives sole control to the Company to defend against such Claim. The Company may settle any such Claim at its sole option.

19. Independent Contractor Relationship. Each party will act as an independent contractor under this Agreement. This Agreement does not create any actual or apparent agency, partnership, franchise, joint venture, or common undertaking, co-ownership, or relationship of employer and employee between the parties for any purpose whatsoever. Neither party will exercise control over the activities and operations of the other party. Each party will conduct all of its business in its own name and as it deems fit, provided it does not contravene this Agreement. Neither party will engage in any conduct inconsistent with its status as an independent contractor, have authority to bind the other with respect to any agreement or other commitment with any third party, or enter into any commitment on behalf of the other.

## 20. Miscellaneous.

20.1. Governing Law; Exclusive Forum. This Agreement shall be governed by, interpreted, construed and enforced under and in accordance with, the laws of the State of New York, without regard to choice of law principles thereof. Any controversy or claim arising out of or relating to this Agreement shall be heard exclusively in the courts of the State of New York, County of New York, and the parties waive any objections to the venue of such courts.

20.2. Notices. Any notice, request, consent, demand, offer or other communication required or permitted to be given or made under this Agreement shall be in writing and either delivered personally or sent by e-mail, facsimile, overnight courier, regular mail or certified mail, postage prepaid and, in all cases, addressed and sent to the respective parties at an address as a party may specify in writing from time to time. The foregoing communications shall be deemed given: (a) if delivered personally or by overnight courier, upon delivery as evidenced by delivery records, (b) if by e-mail or facsimile transmission, upon successful delivery of the transmission as evidenced by transmission records, or (c) if sent by regular mail or certified mail, postage prepaid, five days after the date of mailing.

20.3. Amendment. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party.

20.4. Assignment. The Client may not, without the Company's prior written consent, assign its rights or delegate its duties hereunder.

20.5. Waiver. Any party may waive compliance by another party with any provision of this Agreement. The failure of a party to insist on strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. No waiver of any provision shall be construed as a waiver of any other provision. Any waiver must be explicitly set forth in writing and signed by the party waiving compliance. Any single or partial exercise of any right, remedy, power or privilege hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20.6. Entire Agreement. This Agreement contains, and is intended as, a complete statement of all the terms of the arrangements between the parties with respect to the matters provided for, supersedes any previous agreements and understandings between the parties with respect to those matters.

20.7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors, except as expressly otherwise provided in this Agreement.

20.8. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. If any court determines that any provision of this Agreement or any part thereof is invalid or unenforceable because of the duration, geographic scope or otherwise, the court shall limit or modify the provision to the minimum extent necessary to permit enforcement to the greatest extent permitted by law, and the provision, as modified, shall then be enforced.

20.9. Remedies. Any remedy specified in this Agreement will be in addition to and not in lieu of, and will be without prejudice to, any other rights and remedies which a party may have under this Agreement or under applicable law.

20.10. Headings. The headings in this Agreement are solely for convenience of reference and shall not affect its interpretation.

20.11. Joint Drafting. For purposes of interpreting this Agreement, both parties shall be deemed to have drafted this document jointly. The parties acknowledge that each has had an opportunity to fully consider the terms of this Agreement, that each has been advised by this writing to consult with an attorney in connection with the terms of this Agreement and that each has independently chosen either to follow or to disregard the advice of the party's own attorney.