



## General Terms & Conditions

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**Last Modified:** 3<sup>rd</sup> of April 2020

These General Terms and Conditions, together with a duly signed Order Form and any and all documents annexed thereto, constitute a binding agreement ("**Agreement**") between the purchasing entity indicated in an Order Form ("**Customer**") and the Falcon.io entity indicated in the same Order Form ("**Company**"), governing the use of certain services provided by Company to Customer as detailed in the Order Form. Customer and Company may each be referred to herein as a "**Party**" and collectively as the "**Parties**". By accepting this Agreement, either by signing an Order Form, by using the Platform or Services (including as part of a trial, pilot or otherwise) or by authorizing or permitting any individual to use or access the Platform or Services, Customer confirms that it has read, understand and agrees to be bound by this Agreement. If Customer does not agree to the terms of this Agreement, Customer must not accept this Agreement or use the Platform or Services.

### 1. Definitions

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

"**Beta Module**" means a feature, functionality or module that Company is testing and may make available to Customer to try at Customer's option, often at no additional charge, and is designated as beta, preview, early access or similarly described.

"**Company Data**" means proprietary information gathered or created by Company and provided to Customer as part of the Platform or Services, including Reports, but excluding Third-Party Content.

"**Confidential Information**" shall have the meaning set forth in Section 5 below.

"**Content**" means Company Data and Third-Party Content.

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

"**Covered Parties**" as applicable to either Company or Customer, means that Party and its Affiliates and each of their directors, agents, officers, employees, representatives, successors, and/or permitted assigns.

"**Customer Data**" means data and information in any format, including but not limited to text (including text provided by a third-party to or for Customer), files, images, and/or URLs, that is submitted by or for Customer to the Platform, or provided to Company by or for Customer in order for Company to provide Services, or collected and processed by or for Customer using the Platform, excluding Content.

"**Documentation**" means Company's online user guides, documentation, and help and training materials, as updated from time to time, accessible via the Platform.

"**GDPR Terms**" means the additional terms and conditions that are referenced in Section 5.5 below.

"**General Terms**" means the terms and conditions contained in the portion of this document entitled "General Terms & Conditions".



**"Intellectual Property Rights"** means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

**"Lite-User"** means a User whose access to the Platform is limited to the modules specified in an Order Form.

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, without limitation, software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs.

**"Order Form"** means an ordering document specifying the Platform or Services to be provided hereunder that is entered into between Customer and Company or any of its Affiliates (by entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto), including any addenda and supplements thereto.

**"Platform"** means the social media management, customer relationship management, media monitoring analytics and communications system made available online on a Software-as-a-Service basis by Company or any of its Affiliates and its underlying tools, databases, APIs, and software that make up the system, including any software or technology created by Company's Affiliates.

**"Reports"** means any analytic reports provided to Customer in connection with the Platform and/or Services, which may include data about Third-Party Content, Company's analysis of Third-Party Content, and excerpts, summaries of, and/or links to Third-Party Content.

**"Services"** means any custom professional services (e.g., Platform or strategic consultancy) that are provided to Customer as set forth in an Order Form. "Services" exclude Content.

**"Subscription"** means the products and Services ordered by Customer and set forth on an Order Form referencing this Agreement.

**"Subscription Period"** means the period during which Customer has agreed to subscribe to its Subscription.

**"Supplemental Terms"** means the additional terms and conditions that are (a) contained below in the portion of this document entitled, "Supplemental Terms & Conditions", or (b) included on or incorporated in an Order Form via URL or other reference.

**"Terms"** means these General Terms & Conditions, including the GDPR Terms and any applicable Supplemental Terms.

**"Third-Party Content"** means information obtained by Company from its content licensors or publicly available sources and provided to Customer (e.g., in connection with social listening).

**"Third-Party Services"** means services that are not provided by Company but that Customer may access or use in connection with the Platform, including social networks, such as Facebook, Instagram, WhatsApp, Twitter, LinkedIn and YouTube.

**"Usage Metric"** means the quantity of a specific category of usage (e.g., number of Users or social listening mentions, etc.) specified on an Order Form.

**"User"** means a named individual who is authorized by Customer to use the Platform, for whom Customer has subscribed to the Platform, and to whom Customer or Company has supplied a user identification and password (i.e., Users are "named users" and not "concurrent users" as such terms are commonly understood in the software industry). Users may include, for example, Customer's employees, consultants, contractors and agents.

## 2. Access and Use



**2.1 Access Rights.** Subject to compliance with this Agreement, Company grants Customer a limited, non-exclusive, revocable, non-transferable (other than as set forth in this Agreement), non-sublicensable right to allow Users to access and use the Platform, Content and/or Services for Customer's own internal business purposes in accordance with this Agreement and Customer's Subscription.

**2.2 Restrictions.** Except as may be expressly permitted by this Agreement, Customer shall not (a) license, sublicense, sell, resell, rent, transfer, assign, or otherwise commercially exploit or make the Platform or any Content available to, or use the Platform or any Content for the benefit of, any third party (including in a service bureau or outsourcing offering); or (b) access the Platform or Content (i) in order to build a competitive product or service, (ii) in order to build a product using similar features, functions or graphics of the Platform; (iii) in order to copy any features, functions or graphics of the Platform; or (iv) for any other competitive purposes.

**2.3 System Requirements.** Customer is responsible for meeting the then-current hardware, operating system, browser and other technical requirements necessary to properly use and access the Platform, which are described at Company's Online Help Center, <https://help.falcon.io/hc/en-us> ("Help Center").

**2.4 Usage Metrics.** Access to the Platform and Content may be subject to usage limits, including, for example, to the categories and quantities of Usage Metrics specified in the applicable Order Form. If a category of Usage Metric is not included in the Order Form, the default quantity is zero (0). Company may monitor Customer's usage and bill Customer for any usage beyond the Usage Metrics specified in the applicable Order Form, provided that Company shall notify the Customer in advance of any such billing.

**2.5 Users.** The Platform may be used solely by the number of Users specified in the applicable Order Form and may not be used by more than that number of Users concurrently. Each User account is personal to the individual to whom such account has been assigned (e.g., a User's password may not be shared with any other individual); however, a User seat may be reassigned to a new individual replacing one who no longer requires ongoing use of the Platform. For the avoidance of doubt, a generic User account, e.g., social@customer.com, even if only accessed by a single individual, is not a valid User account.

**2.6 Lite Users.** Lite-Users (if any) may only access the modules authorized in the applicable line-item in the Order Form and compliance with the foregoing is Customer's responsibility. Any Lite-Users accessing modules other than those authorized are deemed full Users. In the event of any non-compliance, Company may bill Customer for the difference in price between a Lite-User and full User following notification to Customer of non-compliance and Customer's failure to correct such non-compliance within 5 days of receipt of such notification.

**2.7 Customer Obligations.** Customer will (a) be responsible for Users' compliance with these Terms; (b) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data; (c) use commercially reasonable efforts to prevent unauthorized access to the Platform or use of Services and Content, and notify Company promptly of any unauthorized access or use; (d) use the Platform, Content and/or Services only in accordance with the Documentation and all applicable laws and government regulations, (e) comply with the terms of use of Third-Party Services Customer may connect to the Platform; (f) be solely responsible for usage of contact information (e.g. names, phone and facsimile numbers, e-mail addresses and physical addresses) in compliance with applicable laws and government regulations; and (g) be responsible for ensuring that processing of personal data by or using the Platform complies with applicable law. Customer is responsible for all actions taken via Customer's account, including protecting the confidentiality of Customer's passwords and User IDs, and maintaining updated contact information for such account. Customer is solely responsible for its own computer networks, systems, hardware, and software, including the storage, security and preservation of its own data, and the storage and use of any downloaded Content is solely at Customer's own risk.

**2.8 Acceptable Use.** Customer shall not (a) use the Platform to upload, store or transmit infringing, libelous, abusive, inflammatory, fraudulent, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, or otherwise unlawful or tortious material, including material harmful to children, or to upload, store or transmit material in violation of third-party privacy, publicity or intellectual property rights; (b) use the Platform to store or transmit Malicious Code; (c) interfere with or disrupt the integrity or performance of the Platform



or Content contained therein or any Third Party Services; (d) circumvent any limitations or security features included by Company in the use of the Platform or attempt to gain unauthorized access to any Platform, Services or Content or its related systems or networks; (e) permit direct or indirect access to or use of any Platform or Services in a way that circumvents a contractual usage limit; (f) copy, adapt, reproduce, translate or publicly distribute any Content except as permitted herein or in an Order Form or the Documentation; (g) frame or mirror any part of any Platform or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation; (h) use commenting or messaging functionality, functionality that allows posting or transmitting content to outward facing, social or public platforms available via the Platform to post content that violates any terms or conditions, policies, or guidelines of any social media platform or other platform or service to which it is posted; (h) use the Platform to transmit unsolicited commercial communications; (i) modify, create derivative works of, translate, reverse engineer, decompile, or disassemble the Platform or the Services or otherwise recreate or gain access to the source code (to the extent such restriction is permitted by law); or (j) use the Platform to perform systematic monitoring of individuals or groups of individuals for the purpose of intelligence collection for state or government purposes, including any state or governmental agencies.

**2.9 Removal of Content.** Company does not pre-screen or review any Content. If Company is required by a third party to remove any Content or receives information that Content provided to Customer may violate applicable law or third-party rights, Company will remove such Content from the Platform and may notify Customer and in such event, Customer will promptly remove such Content from its systems.

**2.10 Third-Party Services.** The Platform may be used for accessing, managing and obtaining information on Customer's accounts with Third-Party Services. If Customer enables the Platform to access any Third-Party Services, Customer does so at its own risk and acknowledges that its use of such Third-Party Services is governed solely by the terms of use and privacy policies of such Third-Party Services (including, but not limited to, the Facebook Terms of Service located at <https://www.facebook.com/terms.php>, the Twitter Terms of Service located at <https://twitter.com/en/tos>, the Twitter Privacy Policy located at <https://twitter.com/en/privacy>, the YouTube Terms of Service located at <https://www.youtube.com/t/terms> and the WhatsApp Business Solution Terms located at <https://www.whatsapp.com/legal/business-solution-terms/>). By enabling the Platform to access such Third-Party Services, Customer is expressly permitting Company to disclose Customer's login information and Customer Data to the Third-Party Services solely as and to the extent necessary to facilitate the use or enablement of such Third Party Services and granting the Third-Party Services permission to access or otherwise process the Customer's Data solely as and to the extent required for the operation of the Third-Party Services. Company does not endorse, is not responsible or liable for and makes no representations as to any aspect of such Third-Party Services, including, without limitation, the manner in which the Third-Party Services use, store or process Customer Data. Company is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Third-Party Services or Customer's reliance on the privacy practices, data security processes or other policies of such Third-Party Services, or for any changes to or deletion of Customer Data by the Third-Party Services. Customer understands that certain features and functionality of the Platform depend on the availability of Third-Party Services and the features and functionality made available to Company, which Company does not control and may change without notice to Company. Company cannot guarantee the continued availability of such features or functionality, and may stop providing access to them if, by way of example and without any limitation, access to Third-Party Services ceases to be available to Company altogether or on reasonable terms, as determined by Company in its sole discretion, without liability to Customer or any third-party for any such change or any errors, delays, downtime or nonperformance of the Services caused by the unavailability of the Third-Party Services. Customer irrevocably waives any Claim Against Company with respect to such Third-Party Services. To ensure optimal delivery and prevent unfair exploitation of the Platform, fair usage limits may apply to the number of accounts with Third-Party Services that Customer may manage via the Platform, as determined by Company in its reasonable discretion, taking into account the observed usage across Company's entire customer base; provided that Company shall notify the Customer in advance in the event that any such limits affect the Customer's costs or usage hereunder.

**2.11 Reports.** Company grants to Customer a non-exclusive, limited license to use, reproduce, display, perform, distribute copies of, and prepare derivative works of any Reports provided hereunder for use solely within Customer's organization in connection with its ordinary course of business. Customer acknowledges



and agrees that it will not and will not permit Customer Covered Parties to publish, sell, distribute, or provide, in full or part, the Reports to any third party without the prior written consent of Company, and in no event may Customer publish, sell, distribute, copy, or reproduce, in full or part, any Third-Party Content contained in a Report or otherwise provided to Customer by Company.

**2.12 Beta Modules.** From time to time, Company may invite customer to try Beta Modules, which Customer may accept or decline in its sole discretion. Beta Modules are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms that will be provided to Customer. Beta Modules are not considered the "Platform" or "Services" hereunder and are provided solely and exclusively "AS IS" with no express or implied warranty of any kind; however, all restrictions, reservation of rights and the Customer obligations concerning the Platform, Content, Services and use of any Third Party Services shall apply equally to the Customer's use of Beta Modules. Company may discontinue the Beta Modules at any time in its sole discretion. Company does not promise or represent that Beta Modules will be made generally available. CUSTOMER ASSUMES AND UNCONDITIONALLY RELEASES COMPANY FROM ALL RISKS ASSOCIATED WITH THE USE OF ANY BETA MODULES.

**2.13 Future Functionality.** Customer acknowledges that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Company regarding future functionality or features.

**2.14 Modifications.** Company reserves the right to alter, delete, or replace Content or alter the functionality of the Platform.

**2.15 Support.** Customer support services will be provided by Company on terms outlined in the Company's standard Service Level Agreement ("Company SLA"), a current copy of which the Customer may obtain from the Customer's Company account representative.

**2.16 Supplemental Terms.** Additional terms applicable to specific Platform modules or Services are set forth below in the Supplemental Terms.

### 3. Intellectual Property Rights

**3.1 Reservation of Rights.** All rights not expressly granted by one Party to the other hereunder are expressly and unconditionally reserved by such Party and may not be implied by or inferred from any provision of this Agreement or by the conduct of the Parties.

**3.2 Company IP.** As between Company and Customer, Company owns all Intellectual Property Rights in the Content and Platform (including all derivatives or improvements thereof). Customer shall not remove or obliterate any copyright, trademark or proprietary rights notices from the Content and shall reproduce all such notices on all authorized copies of the Content or reports and materials generated using the Content. For the avoidance of doubt, any Third-Party Content contained within the Content is and shall remain the intellectual property of the underlying author and/or provider and is subject the copyrights of the underlying author and/or provider.

**3.3 Customer IP.** As between Company and Customer, Customer owns all Intellectual Property Rights in Customer Data. Customer grants Company a worldwide, non-exclusive, royalty-free license to use, host, copy, distribute, perform, transmit, display and prepare derivative works of the Customer Data solely for the purpose of providing Services and/or access to the Platform during the term of this Agreement.

**3.4 Company Affiliates & Third Parties.** Company may share Customer Data or Customer's Confidential Information (as defined below) with Company's Affiliates or third-party vendors ("Vendors") that work on Company's behalf or provide services to Company in relation to Company's provision of the Platform and/or Services to Customer, including but not limited to necessary hardware, software, networking, storage, and technologies required to run the Platform, solely as required in connection with the provision of the Platform and/or Services to Customer and provided those Affiliates or third-parties are subject to confidentiality restrictions regarding Customer Data and Customer's Confidential Information (as defined below) no less



stringent than those set forth herein. Customer hereby consents to such use of Customer Data and Customer's Confidential Information (as defined below) by Affiliates and third parties. For the avoidance of doubt, Company shall remain fully liable for all acts or omissions of any of its Affiliates or Vendors.

**3.5 Customer Feedback.** Customer grants to Company and its Affiliates a royalty-free, worldwide, transferable, sub-licensable, assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, and/or incorporate into the Platform any suggestion, enhancement request, recommendation, correction or other feedback relating to the Platform provided by Customer or Users.

**3.6 Statistical Information.** Company may collect, develop, create, extract, compile, synthesize, analyze and commercialize statistics, benchmarks, measures and other information related to the usage and performance of the Platform based on Aggregated Data (collectively, "Statistical Information"). Statistical Information will be owned solely by Company and may be used for any lawful business purpose, including, but not limited to, the provision and improvement of the Platform and Services. "Aggregated Data" means Customer Data that is: (a) anonymized and not identifiable to any person or entity; (b) combined with the data of other customers or additional data sources; and (c) presented in a manner that does not reveal Customer's identity.

**3.7 Customer Marks.** Company may use Customer's name and logo for the limited purpose of identifying Customer as a customer of Company.

## 4. Fees, Payment & Additional Ordering

**4.1 Fees.** Customer will pay all fees set forth on an Order Form. Except as otherwise specified in these Terms or on an Order Form, (a) fees are based on the Platform, Services and/or Content subscribed to and not actual usage; and (b) except as set forth in Section 6.5, payment obligations are non-cancelable and fees paid are non-refundable. Customer shall also pay for any additional usage charges that the Customer may incur related to the excess use of the Platform, as more fully set forth above. All payments will be made in the currency specified on the Order Form unless otherwise agreed to by the Parties in writing. Except as otherwise expressly specified on an Order Form, all fees set forth on an Order Form are payable in full, in advance.

**4.2 Invoicing and Payment.** Fees will be invoiced in advance or as otherwise set forth the applicable Order Form. Unless otherwise stated in the Order Form, fees are due thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Company and notifying Company of any changes to such information.

**4.3 Late Fees.** Any payment not received from Customer by the due date may accrue late fees at the rate of 1.5% of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Payment Disputes.** If Customer, in good faith, reasonably disputes any invoiced amounts, Customer may withhold such disputed amounts, provided that Customer (a) timely pays the undisputed portion of the invoice; and (b) provides Company with prompt written notice (which may be by email) of the dispute and commences discussion with Company to promptly resolve the dispute. Company will not exercise its rights under Section 6.4 below if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

**4.5 Taxes.** Fees are exclusive of all local, state, federal or foreign taxes, VAT, levies or duties of any nature. Customer is responsible for payment of all taxes due to a governmental authority, if any, except for taxes imposed on Company's net income. Customer shall provide to Company any certificate of exemption or similar document required to exempt any transaction under an Order Form from sales tax or other tax liability.

**4.6 Promotions.** Except as otherwise expressly specified on an Order Form, if Company offers Customer a promotion (e.g., promotional pricing) in connection with its Subscription, which Customer accepts, any such promotions shall only be applicable to the initial Subscription Period for which they are offered, and not to any future Subscription Periods.



**4.7 Upgrades.** If Customer chooses to upgrade its subscription during a Subscription Period, any incremental fees associated with such upgrades will be prorated over the remaining period of the then-current Subscription Period, billed to the Customer's account and due and payable upon implementation of such upgrades. In any future Subscription Periods, the fees billed Customer will reflect any such upgrades.

**4.8 Affiliate Ordering.** Company and a Customer Affiliate may mutually agree to execute an Order Form under which such Customer Affiliate may acquire access to and use of the Platform, Content and/or Services from Company. An executed Order Form between Company and a Customer Affiliate will constitute a separate contract between the applicable Customer Affiliate and Company incorporating all the terms and conditions of this Agreement, except that the term "Customer" will be construed to refer to the such Customer Affiliate. Any Customer Affiliate directly purchasing access to the Platform, Content and/or Services will be entitled to all of the rights and benefits afforded to Customer under this Agreement, but will be solely responsible for payment pursuant to the applicable Order Form.

## 5. Confidentiality, Security & Privacy

**5.1 Confidential Information.** For the purposes of this Agreement, "Confidential Information" means all information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), whether orally or in writing, that is designated as confidential or proprietary, or that reasonably should be understood to be confidential or proprietary given the nature of the information and the circumstances of disclosures, including but not limited to business and marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information of Customer includes Customer Data. Confidential Information of Company includes the Company Data, Documentation and the terms and conditions of this Agreement (including pricing). Confidential Information will not, however, include any information that (i) was publicly known or made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party other than as a result of a violation of this Agreement by the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party; (iv) is obtained by the Receiving Party from a third party without a breach of the third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. The Receiving Party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations under this Agreement, and shall take actions reasonably necessary and appropriate to prevent the unauthorized disclosure of the Confidential Information, at all times exercising the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care). Except as otherwise permitted herein, each Party agrees to restrict access to the Confidential Information of the other Party to those employees, advisors, agents and other representatives who require access in order to perform its obligations under this Agreement. Notwithstanding the foregoing, Receiving Party reserves the right to use or disclose Disclosing Party's Confidential Information if required by law and/or to comply with a judicial proceeding, court order, or legal process; provided, however, that in each instance, to the extent legally permissible, Receiving Party shall provide Disclosing Party with prior written notice (which may be by email) of such compelled disclosure.

**5.2 Security.** Access to the Platform is password-controlled. Customer is responsible for maintaining the security of user passwords and will instruct its Users as to the importance of maintaining the confidentiality of passwords and/or user identifications. Customer acknowledges that the security of its systems may be compromised if Users do not follow applicable security policies and procedures and take other appropriate steps to maintain the security of the Platform, including, without limitation, maintaining the confidentiality of user identifications and passwords, frequent changing of passwords and maintaining appropriate internal controls to monitor access to and use of the Platform. If Customer becomes aware of the unauthorized use of a password or other security breach, Customer will promptly notify Company in writing.

**5.3 Company Privacy Policy.** Company's Privacy Policy, available at <https://www.falcon.io/privacy-policy/>, ("Privacy Policy") applies to each individual User that accesses or uses the Platform.



**5.4 Customer Privacy Notices.** Customer acknowledges that it may receive contact details and other personal information of social media users from Company as part of the Content, and that Customer may use such details and information to contact social media users. In the event Customer contacts such social media users, Customer is responsible for providing appropriate privacy notices to social media users, including naming Company as a source of personal data in such notices.

**5.5 GDPR Terms.** Because the Platform is operated out of Denmark and therefore falls automatically within the territorial scope of the General Data Protection Regulation (EU) 2016/679 ("GDPR"), the Parties acknowledge that the additional terms governing the protection of personal data in connection with this Agreement and available at <https://www.falcon.io/wp-content/uploads/2020/02/GDPR-Terms-for-General-TCs.pdf> ("GDPR Terms") shall apply. In connection therewith, Customer shall forward Customer's contact details for privacy matters (e.g., email address of data protection officer and/or privacy team) to [privacy@falcon.io](mailto:privacy@falcon.io).

## 6. Subscription Period & Termination

**6.1 Subscription Period.** Customer's Subscription shall commence on the date specified on the Order Form and continue until the earlier of (a) expiration or non-renewal of all Subscription Periods, or (b) termination of this Agreement as more fully set forth below.

**6.2 Auto-Renewal.** Except as otherwise specified on an Order Form, Subscriptions will automatically renew for additional periods equal to the expiring Subscription Period (except that if the expiring Subscription Period is less than twelve [12] months, Subscriptions will renew for additional periods equal to twelve [12] months), unless either Party gives the other written notice of non-renewal at least ninety (90) days before the end of the then-current Service Period. If expressly stated on an Order Form, the fees for each renewal period shall automatically increase in accordance with the terms set forth on such Order Form, unless (a) the pricing in the expiring Subscription Period was promotional or one-time; (b) Customer subscribes to different and/or additional services; or (c) unless otherwise agreed to by the Parties in an Order Form. Discounts may not carry over from year to year.

**6.3 Termination for Breach.** If either Party believes that the other Party has failed in any material respect to perform its obligations under this Agreement, then that Party may provide written notice to the breaching Party describing the alleged failure in reasonable detail. If a breach has occurred and if the breaching Party does not cure or begin to cure the material failure within thirty (30) days after receiving such written notice, then the non-breaching Party may terminate this Agreement immediately by written notice to the breaching Party. Termination of this Agreement will be in addition to, and not in lieu of, other remedies available to the terminating Party. Notwithstanding the foregoing, Company may terminate this Agreement immediately if Customer or any Users breach Section 2.2, Section 2.8, Section 5.1 or Section 5.2 of this Agreement.

**6.4 Suspension.** In addition to those conditions, rights, and remedies set forth in this Agreement, Company may suspend access to the Platform under any Order Form if, in Company's reasonable determination: (a) Customer fails to pay an undisputed invoice within ten (10) days after Company gives Customer notice of such failure (which may be by email or telephone); (b) Customer's use of the Platform or Content violates applicable local, state, federal, or foreign laws or regulations; (c) Customer fails to use the Platform in accordance with this Agreement; (d) Customer's use of the Platform degrades performance of the Platform, or results in excessive bounce-backs, SPAM notices or requests for removal from mailing lists by recipients; or (e) there are repeated complaints of Customer posting or uploading material that infringes or is alleged to violate the intellectual property rights of any person or entity. Company will provide notice (which may be by email) of such suspension; and when commercially possible, will work in good faith with Customer to help Customer resolve the issue causing the suspension so that access to the Platform may be restored.

**6.5 Refund or Payment on Termination.** If this Agreement is terminated by Customer in accordance with Section 6.3 above, Company will refund Customer any prepaid fees covering the remainder of the Subscription Periods of all applicable Order Forms after the effective date of termination. If this Agreement is terminated by Company in accordance with Section 6.3 above, Customer will pay any unpaid fees covering the remainder of the Subscription Periods of all Order Forms. In no event will termination relieve Customer of its obligation to pay any fees due or payable to Company for the period prior to the effective date of termination.





**6.6 Effect of Termination.** Upon any expiration or termination of this Agreement: (a) Customer's right to use the Platform shall cease, and Company shall have no further obligation to make the Platform available to Customer; (b) except as otherwise expressly stated herein, all rights, licenses and/or access granted to Customer under this Agreement will immediately cease; (c) Customer shall return, delete or destroy any Content and shall certify in writing to Company that it has done so; and (d) Company will have no obligation to maintain or provide any Customer Data or other Content to Customer, and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control as provided in the Documentation or as Company routinely does such deletions and destructions in the ordinary course of its business (currently within fourteen [14] days following expiration of termination), unless legally prohibited from doing so.

**6.7 Survival.** All provisions of this Agreement relating to disclaimers of warranties, remedies, damages, confidentiality, payment obligations, restrictions on use, and any other terms that either expressly or by their nature should survive, shall survive any termination of this Agreement, and shall continue in full force and effect.

## 7. Representations & Warranties

**7.1 Mutual Representations.** Each Party represents that the individual executing an Order Form has full authority to (a) execute the applicable Order Form on behalf of his/her respective Party; and (b) bind the respective Party to this Agreement. Each Party further represents that (a) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement and (b) it shall comply fully with all applicable laws (including, without limitation, [i] export laws and regulations relating to use of the Platform in its place of business and [ii] privacy laws and regulations [e.g., the GDPR, the California Consumer Privacy Act, etc.]), regardless of country or jurisdiction.

**7.2 Customer Representations & Warranties.** Customer represents and warrants that (a) it has valid title or license to all Customer Data, (b) it has all rights necessary to grant Company the rights set forth in this Agreement, and (c) that Customer Data will not contain any content that is obscene, libelous, slanderous or otherwise defamatory, false or misleading or that violates any copyright, right of privacy or publicity or other right of any person or party.

**7.3 Company Warranties.** Company warrants that the Platform will (a) under normal conditions of use, perform materially in accordance with the applicable Documentation and (b) be available to Customer in accordance with the Company SLA.

**7.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE PLATFORM AND SERVICES ARE OFFERED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY EXPRESSLY DISCLAIMS, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE (INCLUDING NON-INFRINGEMENT), AND ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. COMPANY DOES NOT WARRANT THAT THE PLATFORM OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, AND NO INFORMATION OR ADVICE OBTAINED BY CUSTOMER FROM COMPANY OR THROUGH THE PLATFORM OR SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR ANY THIRD-PARTY SERVICES, INCLUDING THE FAILURE OF ANY SUCH THIRD-PARTY SERVICES. COMPANY DOES NOT MAINTAIN OR CONTROL THIRD-PARTY CONTENT OR THE CONTENT OF OTHER WEBSITES THAT MAY BE MADE AVAILABLE VIA THE PLATFORM OR SERVICES AND IS NOT RESPONSIBLE FOR THE AVAILABILITY, COMPLETENESS, TIMELINESS, FACTUAL ACCURACY, OR NON-INFRINGEMENT OF SUCH CONTENT. CONTENT IS PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. CUSTOMER ACKNOWLEDGES THAT COMPANY AND/OR THIRD-PARTY SOURCES MAY CHOOSE AT ANY TIME TO PROHIBIT THEIR CONTENT FROM BEING ACCESSED UNDER THIS AGREEMENT.

## 8. Indemnification



**8.1 Indemnification by Company.** Company will defend any Customer Covered Parties against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the Platform infringes or misappropriates such third party's intellectual property rights under the laws of the United States or Denmark (a "Claim Against Customer"), and will indemnify Customer Covered Parties from any damages, attorney fees and costs finally awarded against Customer Covered Parties as a result of, or for amounts paid by Customer Covered Parties under a court-approved settlement of a Claim Against Customer. Company's indemnification obligation does not cover third party claims arising from: (a) modifications to the Platform by anyone other than Company or its authorized agents and contractors; (b) use of the Platform by Customer in combination with other software or equipment not provided by Company where the Platform, but for such combination, would not be infringing; or (c) Customer's failure to use the Platform in accordance with the terms and conditions of this Agreement. If a claim regarding the Platform and alleging infringement is brought or is likely, in Company's sole opinion, to be brought, Company may, at its option and expense (x) obtain the right for Customer to continue using the Platform; (y) replace or modify the Platform so that it becomes non-infringing; or (z) upon notice to Customer, terminate this Agreement or Customer's use of the Platform or any portion thereof, provided that Company promptly refunds to Customer the prorated portion of any pre-paid annual subscription fees paid hereunder for the Platform. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer Data, Content, or Customer's breach of this Agreement.

**8.2 Indemnification by Customer.** Customer will defend any Company Covered Party against any claim, demand, suit or proceeding made or brought against such Company Covered Party by a third party alleging that the Customer Data, or Customer's use of any Platform, Service, or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property, proprietary or personal rights or violates applicable law, including violation of privacy or spamming laws or regulations (a "Claim Against Company"), and will indemnify the Company Covered Party from any damages, attorney fees and costs finally awarded against the Company Covered Party as a result of, or for any amounts paid by the Company Covered Party under a court-approved settlement of a Claim Against Company.

**8.3 Indemnification Requirements.** Indemnification by a Party is conditioned upon the following: (a) the indemnitee promptly notifying the other Party of any claim; (b) the indemnitor having sole control of the defense and all related settlement negotiations; and (c) the indemnitee cooperating, at the indemnitor's expense, in the defense and furnishing the indemnitor with all related evidence in its control.

**8.4 Exclusive Remedy.** This Section 8 states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of claim described in this section.

## 9. Limitation of Liability

**9.1 Exclusion of Damages.** IN NO EVENT WILL EITHER PARTY OR ANY OF THEIR DIRECTORS, AGENTS, OFFICERS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS OR AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY FOR (A) ANY CLAIMS OR DEMANDS OF THIRD PARTIES (OTHER THAN THOSE THIRD-PARTY CLAIMS COVERED BY SECTION 8); OR (B) ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR ANTICIPATED PROFITS, LOSS OF REVENUE, ECONOMIC LOSS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF EQUIPMENT, OR INTERRUPTION OF BUSINESS, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

**9.2 Limitation of Liability.** EXCEPT FOR A MATERIAL BREACH OF THE CONFIDENTIALITY PROVISIONS SET FORTH IN SECTION 5 OR CLAIMS RELATED TO PERSONAL INJURY OR PROPERTY DAMAGE CAUSED SOLELY BY COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, COMPANY'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING WITHOUT LIMITATION, BREACH OF WARRANTY AND NEGLIGENCE CLAIMS) SHALL BE LIMITED TO CUSTOMER'S ACTUAL, AWARDED DIRECT DAMAGES, NOT TO EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER



THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CAUSE OF ACTION AROSE.

**9.3 Basis of Bargain.** Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. Customer acknowledges and agrees that allocation is reflected in the pricing offered by Company to Customer and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement have failed of their essential purpose.

## 10. Governing Law & Disputes

**10.1 Falcon.io ApS.** If the Order Form to which these Terms are attached is between Customer and Falcon.io ApS, this Agreement and any disputes arising out of or related hereto, will be governed exclusively by the laws of Denmark. Any suit hereunder will be brought in the courts of Denmark, and the Parties submit to the personal jurisdiction thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**10.2 Falcon Social, Inc. d/b/a Falcon.io.** If the Order Form to which these Terms are attached is between Customer and Falcon Social, Inc. d/b/a Falcon.io, this Agreement and any disputes arising out of or related hereto, will be governed exclusively by the laws of the State of Delaware exclusive of its choice of law provisions. Any suit hereunder will be brought in the federal or state courts located in the State of Delaware, and the Parties submit to the personal jurisdiction thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement.

**10.3 Unmetric Technologies Pvt Ltd.** If the Order Form to which these Terms are attached is between Customer and Unmetric Technologies Pvt Ltd, this Agreement and any disputes arising out of or related hereto, will be governed exclusively by the laws of Chennai, India. Any suit hereunder will be brought in the courts of Chennai, India, and the Parties submit to the personal jurisdiction thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**10.4 Disputes.** Customer and Company agree that in the event of litigation, the prevailing Party shall have the right to collect from the other Party its reasonable costs and attorneys' fees. Except for actions for non-payment, breach of confidentiality, or indemnities under Section 8, no action, regardless of form, arising out of or related to this Agreement may be brought by either Party more than two (2) years after the accrual of the cause of action.

## 11. General Provisions

**11.1 Export Compliance.** The Platform and Content and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Company and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Platform or Content in a U.S.-embargoed country or in violation of any export law or regulation.

**11.2 OFAC.** Customer represents and warrants that neither it nor any of its employees is a person or entity with whom U.S. entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order or other governmental action.

**11.3 Government Customers.** If Customer is the U.S. Government or any agency or instrumentality thereof, then any software provided pursuant to this Agreement is delivered with RESTRICTED RIGHTS only. The use, duplication, or disclosure by the Government is subject to restrictions as set forth in FAR 52.227-19 Commercial Computer Software—Restricted Rights or DFAR 252.227-7013 Rights in Technical Data and Computer Software.



**11.4 Anti-Corruption.** Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify Company's Legal Department at [legal@falcon.io](mailto:legal@falcon.io).

**11.5 Force Majeure.** Except for Customer's obligation to pay for access to the Platform, and/or Content, and/or Services already performed or to which it had access, neither Party will be responsible for failure to perform contractual duties caused by events beyond such Party's reasonable control, including but not limited to: (a) failures of utility services or transportation networks; (b) acts of public enemies; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) a serious accident, strike, labor trouble, or work interruption; (h) compliance with any newly-enacted applicable law; or (i) any other events beyond a Party's reasonable control; provided, however, the affected Party provides the other with prompt notice thereof (which may be by email) and uses commercially reasonable efforts to promptly resume performance.

**11.6 Relationship of the Parties.** The Parties are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties.

**11.7 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**11.8 Assignment.** Customer may not assign this Agreement without Company's written consent, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties, their successors and permitted assigns.

**11.9 Notices.** All notices must be in writing and addressed to the other Party's legal department and primary point of contact. The email address for notices being sent to Company's legal department is [legal@falcon.io](mailto:legal@falcon.io). Notice will be treated as given on receipt as verified by written or automated receipt or by electronic log (as applicable). Notices to Customer other than notices of material breach of the Agreement, may also be sent via the Platform or to any email address provided by Customer in connection with Customer's account. E-mails sent to DO-NOT-REPLY e-mail addresses, or e-mail addresses prompting a MAILER DAEMON/BOUNCE message, are not considered valid notices.

**11.10 Waiver.** No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If either Party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement.

**11.11 Severability.** The provisions of this Agreement shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the Parties.

**11.12 Prevailing Language.** The English-language version of this Agreement shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

**11.13 Amendments.** Company may revise these Terms (including any terms or documents incorporated by reference in these Terms) from time to time, in its sole discretion, by posting the revised Terms at the link provided on the applicable Order Form, and the continued use of the Platform or Services after the effective date of the updated Terms shall constitute acceptance of the updated Terms. The updated Terms will be effective as of the time of posting, or on such later date as may be specified in the updated Terms, and will apply to use of the Platform and Services from that point forward. Except for revisions by Company as set forth in this Section 11.13, this Agreement may be modified only by a writing signed by both Parties.

**11.14 Entire Agreement.** This Agreement represents the entire agreement between Customer and Company with respect to the subject matter, superseding all previous or contemporaneous oral or written



communications, representations, or agreements or proposals, including but not limited to any Customer-issued purchase order or other Customer-issued order documentation (collectively, the "Customer Purchasing Documents"), and Customer acknowledges that it has not relied on any representation that is not expressly set forth in this Agreement. The Parties further expressly acknowledge and agree that any term or condition stated in any Customer Purchasing Documents is void, even if (a) submitted following the execution of this Agreement, (b) expressly stating otherwise, (c) Company accepts or does not otherwise reject the Customer Purchasing Documents, (d) Company accepts payment hereunder and/or (e) Company performs its obligations hereunder. For clarity, acceptance of this Agreement is expressly limited to the terms set forth herein and any additional or different terms contained in any Customer Purchasing Documents are rejected by Company. In the event of any conflict or inconsistency within the Agreement, the order of precedence shall be: (a) the applicable Order Form, (b) these Terms and (c) the Documentation.

## Supplemental Terms & Conditions

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The terms and conditions set forth above in the General Terms apply generally to the Platform and all Services. This portion of the document contains "Supplemental Terms" that apply in addition to the General Terms with respect to specific circumstances, products and/or services IF AND ONLY IF the specific condition set forth at the beginning of the applicable section below is satisfied. For clarity, if the specific condition set forth at the beginning of a particular section below is not met, the terms set forth in that section DO NOT APPLY to Customer or the Agreement.

### S-1. Agency Terms

If Customer is subscribed to the Platform as an agency that will use the Platform to render its own agency services to its clients ("Agency Clients"), the following terms and conditions shall apply.

**S-1.1** The maximum number of Agency Clients the Customer may service using the Company Services is indicated on the Order Form and referred to as "Agency Clients Managed". Unless Customer has purchased a separate environment for its Agency Clients ("Agency Client Environment"), Agency Clients do not have any separate access or use rights to the Platform or Services.

**S-1.2** Customer shall not co-mingle the data of all Agency Clients Managed in a single account (or "org"). Customer may request assistance from Customer Support when setting up new accounts for each Agency Client it wishes to service.

**S-1.3** If the Customer has purchased an Agency Client Environment, Customer may assign the Agency Client Environment to an Agency Client, provided that the Agency Client is bound by an agreement with Customer that is consistent with the terms and conditions of this Agreement. Subject to the conditions set forth in the General Terms, in an Agency Client Environment, (a) Customer may assign User seats to an Agency Client, and (b) an Agency Client is entitled to utilize the Usage Metrics specified on an Order Form. The maximum number of Users listed on an Order Form may be distributed freely between Customer and Agency Clients. Assignment of an Agency Client Environment to an Agency Client is irrevocable for the duration of the Subscription Period, but may be reassigned if the applicable Agency Client ceases to utilize the services of Customer. Customer shall have the same responsibility for the activities of any Agency Client as if the activities were directly those of Customer. Upon Company's written request, Customer shall provide to Company copies of its agreement with an Agency Client with respect to access to the Platform, Content and/or Services and any amendments thereto.

**S-1.4** To the extent permitted under applicable law, neither Agency Clients nor any of their Users shall be third-party beneficiaries to this Agreement.

**S-1.5** Customer shall indemnify Company from any and all claims and damages, arising out of, relating to or resulting from: (a) any breach of any of the Customer's representations, warranties or obligations with respect to its Agency Clients, or (b) any Agency Client's or any of its Users' breach of the terms this Agreement.



**S-1.6** Customer may not offer the Platform, Content or Services as a part of its own agency service offering to any existing Company customers.

**S-1.7** Unless otherwise specified on an Order Form, Usage Metrics are maximums available to Customer and all Agency Clients Managed collectively, which Customer may distribute freely across all accounts, subject to any minimums the Platform may require (e.g., if Customer has more than one Agency Client Managed, Usage Metrics must be distributed to all Agency Clients Managed, but not necessarily in equal quantities). Notwithstanding the foregoing, the number of ad accounts indicate on an Order Form is the amount available for each Agency Client Environment and not a maximum to be allocated across all Agency Client Environments.

**S-1.8** Customer must flow down to its Agency Client any restrictions regarding the use of Reports or Third-Party Content set forth in the Agreement.

## **S-2. Benchmark Module Terms**

If Customer's Subscription includes a Falcon Benchmark Package, the following terms and conditions apply.

**S-2.1** The benchmarking functionality of the Platform ("Benchmark Module") is provided by Unmetric Inc., a Company Affiliate.

**S-2.2** If the Customer has subscribed to the Platform as an agency, the Customer is hereby granted a non-exclusive, personal, non-transferable, non-sublicensable, limited and revocable license to access and use the Benchmark Module for its internal purposes in connection with its business of providing advertising and/or marketing services to its clients ("Customer's Business"). For the limited purpose of exercising the Customer's rights pursuant to the foregoing license, the Customer may copy, distribute, adapt or reproduce the Content for the sole purpose of the Customer's Business. Customer's clients shall have a non-exclusive, perpetual, non-transferable and non-sublicensable license to use any Content provided to them by the Customer, solely for their internal business purposes and Customer shall communicate the terms of this license to its clients while making the Content or any part thereof available to its client(s).

**S-2.3** Customer will receive login ID(s) and password(s) to activate its subscription. If Customer has subscribed to the Platform as an agency, the login ID will be Customer's Uber User sign-in name. If Customer becomes aware of any unauthorized use of its log in ID(s) or password(s) for the Benchmark Module, Customer must send a notification regarding such unauthorized use by e-mail addressed to [accounts@unmetric.com](mailto:accounts@unmetric.com) with the title "Unauthorized Use of User Name / Password" and new log in ID(s) and/or password(s) will be issued.

**S-2.4** By using the Benchmark Module, Customer consents to the use of any information and data that the Customer makes available to Unmetric Inc., either through the Benchmark Module or otherwise, in accordance with these Supplemental Terms and the Unmetric Privacy Policy, which can be viewed at <https://www.unmetric.com/privacy.php> ("Unmetric Privacy Policy"). For details of the data and information that is collected in connection with the Unmetric Services and how this information is used, please refer to the Unmetric Privacy Policy. If the Customer does not want to be contacted by Unmetric Inc. by telephone, mobile phone and or by email for marketing purposes, Customer may send an email to [support@unmetric.com](mailto:support@unmetric.com) indicating such desire at any time and Unmetric Inc. will thereafter not contact Customer for such purposes.

**S-2.5** With respect to warranties, Company warrants only that the Benchmark Module will under normal conditions of use, perform materially in accordance with the applicable Documentation.

## **S-3. Services Terms**

If Customer's Subscription includes Services, the following terms and conditions apply.

**S-3.1** Company shall provide the Customer with Services for the number of hours specified in an Order Form ("Hours"). Any time allocated by Company to providing Services to Customer, including, but not limited to, any time spent on calls, e-mails, meetings, drafting of documents, presentation and other preparatory work shall be deducted from Customer's allotted Hours. Time spent on normal platform training and support is not



deducted from the Customer's allotted Hours; provided, however, that Company reserves the right to charge a fee for training, with prior written notice, if the Customer repeatedly fails to attend its training session(s) or cancels them with short notice.

**S-3.2** "Deliverable" as used herein shall be understood any results, documents, works, materials or graphics which are to be developed specifically for the Customer (customized works), as a part of the Services.

**S-3.3** Unused hours or any portion thereof (a) do not carry over from one month to the next or from one Subscription Period to the next, (b) are not usable upon expiration or termination of this Agreement and (c) are not reimbursable upon expiration or termination of this Agreement except in the event of material breach.

**S-3.4** Customer shall provide Company with any information, feedback, materials, data and graphics as may be needed by Company in order to provide the Services and Deliverables. Customer shall make itself and necessary employees available to Company, to answer any reasonable inquiry and request for information without undue delay, which is needed for Company to deliver the Services and Deliverables. Failure by Customer to deliver information needed and requested by Company, may result in delays or deficiencies in the Services or Deliverables. Such omissions and delays shall be the sole responsibility of the Customer, and Company shall not be obligated to perform redelivery or remedy in such situations.

**S-3.5** Deliverables and Services that are dependent on access to metrics, data and projects from the Customer's account/environment on the Platform, are subject to the limitations of the Platform, and as otherwise set forth in the applicable Order Form. Company cannot guarantee access to data that belongs to periods prior to the limits set out in the Agreement, Company's technical documentation or Third Party Provider technical documentation and terms.

**S-3.6** Use of Hours in connection with Services will be coordinated with Customer, upon Customer's request. Company will use its reasonable efforts to meet Customer's preferred delivery date, but makes no warranties with respect thereto.

**S-3.7** Customer is not entitled to a reimbursement of Fee(s) in case of delays or incomplete Deliverables, where such can be attributed to Customer's non-fulfilment of its obligations under this Agreement.

**S-3.8** Company retains all rights in and to the Deliverables excluding any Customer Data contained therein.

**S-3.9** Company warrants that the Services will be performed in a professional manner consistent with general market standards for comparable services. This warranty does not apply in the event of the Customer's failure to uphold its obligations pursuant to Section S-3.4. above.

**S-3.10** Customer's sole remedy for a breach of the warranty in Section S-3.9 above is re-performance of the Services. Customer shall send a written notice claiming re-performance, and Company shall confirm in writing, if it accepts or disputes the claim. If Company accepts re-performance, it shall be performed within reasonable time from when a claim has been acknowledged, and re-performance shall not exceed the initial delivery time estimate agreed for the Services.

## **S-4. API Terms**

If Customer's Subscription includes Company API Access, the following terms and conditions apply ("API Terms").

**S-4.1** "API" as used herein, refers to Company's developer-facing application programming interface, consisting of tools, routines and protocols that facilitate a developer's development of applications (software) for an information system to which the API is connected. For the purpose of these API terms, the API will be connected to the Platform, or part hereof, allowing certain information being exchanged between Company and a Customer's information system. Functionality of an API is defined in the API Documentation.



**S-4.2** "API Integration" as used in these API Terms shall mean a piece of software/code developed by Customer, which utilises a Company API to exchange certain information between Company Services and the Customer's information system.

**S-4.3** "API Documentation" as used herein refers to Company's documentation defining the scope of the API, the technical functionality and limitations of the API and instructions on how to utilise the API.

**S-4.4** These API Terms govern Customer's rights to use and access any the API for the purpose of having certain content from the Platform, displayed in Customer's own IT systems. Unless otherwise agreed between Company and Customer, Customer is granted one API key for use within a single legal entity ("Organization") and such API key may only be shared within such Organisation. Notwithstanding the foregoing, Customer is entitled to share the API key with one of Customer's authorised third parties, who shall solely use such API key in connection with Customer's internal business purposes.

**S-4.5** Any API Integration developed by Customer or a third party on Customer's behalf, is governed by these API Terms and shall comply with such restrictions and obligations set forth herein, in addition to those set forth in the General Terms.

**S-4.6** Company may amend these API Terms at any time and shall notify Customer of same. Customer shall, within thirty (30) days from the date of first notice of any amendments(s) (or such shorter period of time specified in the notice of the amendments) (the "Conformance Period") comply with such amendment(s) by implementing and using the most recent version of the API and making any changes to the API Integration that may be required as a result of such amendment(s). Temporary acceptance of non-compliance of the amendment(s) within the Conformance Period shall not be construed as Company waiving any rights hereunder. Company shall have no liability of any kind to Customer or any user of the API with respect to such amendments or any adverse effects resulting from such amendments. Customer's continued access to or use of the API following the Conformance Period shall constitute binding acceptance of the amendment(s) at issue. Customer's sole remedy for non-acceptance of amendments is ceasing use of the API.

**S-4.7** Subject to Customer's compliance with these API Terms and the General Terms, the Customer is granted a time-limited, non-exclusive, revocable, non-transferable, non-sublicensable license to access and use the API in accordance with the specifications and requirements set forth herein ("API License").

**S-4.8** The API License is granted for the Subscription period set forth on an Order Form and will renew automatically for subsequent Subscription Periods in accordance with the General Terms.

**S-4.9** For the purposes of this Agreement, the API shall be deemed part of the Platform and all rights, restrictions, agreements and obligations (including, but not limited to, warranties, disclaimers and exclusions of liability) with respect to the Platform shall apply to the API. Notwithstanding the foregoing, (a) Company may terminate the API License, at any time, for any reason, or for no reason, and excluding cases as covered by Section S-4.10 below, Company shall reimburse the Customer a pro-rata portion of its pre-paid fees (if any) for the API License if Company terminates the API License for convenience, (b) in addition to Customer's indemnification obligations set forth in the General Terms, Customer shall indemnify Company from any and all claims from third parties resulting from the Customer's use of or access to the API or breach of any provisions of these API Terms, (c) Company's aggregate liability to the customer or any third party arising out of the use of the API, shall in no event exceed EUR 100, and (d) any claim by Customer arising out of or relating to the use of the API must be brought within one (1) year of the first event or occurrence giving rise to the claim.

**S-4.10** In the event of material breach of the API Terms by either Party, termination shall governed according to the provisions of the General Terms.

**S-4.11** In the event of any conflict or inconsistency among the documents identified in these API Terms, notwithstanding anything to the contrary set forth in this Agreement and solely with respect to the subject matter of these API Terms, the order of precedence shall be: (a) the API Documentation, (b) these API Terms and (c) the General Terms.

