



Terms and Conditions

1. SERVICES

1.1 Provision of Service/Cooperation. TrendKite offers a proprietary media analytics service, as updated from time to time, that is intended for the purpose of searching and analyzing traditional press and popular forms of social media and providing reporting and monitoring capabilities ("Service"). TrendKite will: (a) make the Services available to Customer pursuant to this Agreement and a TrendKite Order Form and (b) provide Customer with standard support for the Services at no additional charge. Services are provided as a subscription. Additional subscriptions may be added to this Agreement during the term pursuant to pricing quoted by TrendKite on a TrendKite Order Form. The Service Period defined in an Order Form or Renewal Confirmation shall commence on the date of the last signature on the respective Order Form or Renewal Confirmation. The Service or some aspects thereof may not be available in all languages or in all countries. TrendKite may impose limits on the use or access to the Service as required by law. Customer agrees to cooperate with TrendKite as may be reasonably required to enable the provision of the Service hereunder.

1.2. Authorized Use and Restrictions. Customer may allow Customer's employees or authorized independent contractors to use the Service on behalf of Customer ("Authorized Users") in the amount identified in the TrendKite Order Form. Customer shall immediately notify TrendKite in the event that Customer or an Authorized User becomes aware of any violation of the terms of this Agreement. Customer shall be liable for any breach of the Agreement by any Authorized User.

1.3. Restrictions on Use of the Service. Customer may internally use the Services and the data generated thereby solely for its intended purpose set forth in Section 1 and in accordance with this Agreement. Only Authorized Users may use the Services and only with the account issued to such individual users. Customer may not rent, lease, lend,

sell, redistribute, reproduce or sublicense the Services. Customer may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Services, or any part thereof. Customer shall not exploit the Services in any unauthorized way whatsoever, including, but not limited to, attempting to gain unauthorized access to any Services or its related systems or networks, interfering with or disrupting the integrity or performance of any Services or third-party data contained therein. Use of the Services is void where prohibited by law. Customer uses the Services at its own risk and is responsible for compliance with any applicable laws.

2. FEES AND PAYMENT TERMS

2.1 Fees and Payment Terms. Applicable fees and pricing for the Service, ("Fees") are set forth in the Order Form. Unless otherwise specified in the Order Form, Customer shall provide TrendKite with valid and updated credit card information. Customer authorizes TrendKite to charge such credit card for all purchased Services listed in the TrendKite Order Form for the initial term and any renewal. Such charges shall be made in advance of any Services provided hereunder. All Fees shall be paid in U.S. dollars and are non-refundable (except to the extent set forth herein) and are exclusive of all taxes, including any applicable sales, excise, use or similar taxes. Customer shall pay all such taxes directly or to us, as required by applicable law.

3. PROPRIETARY RIGHTS AND LICENSES

3.1 Data Ownership and License. Customer shall own all right, title, and interest in and to any data that is collected by TrendKite from Customer or Authorized Users in connection with their use of the Service ("Data"). Customer grants and agrees to grant to TrendKite a perpetual, non-exclusive, transferable, sublicensable, royalty free license to use such Data in order to provide the Service to Customer and the Authorized Users and as necessary to monitor and improve the Service.

Additionally, Customer agrees that TrendKite may use the Data to collect, develop, create, extract or otherwise generate statistics and other information and to otherwise compile, synthesize and analyze such Data (“Blind Data”). Notwithstanding anything in this Agreement to the contrary, to the extent that TrendKite collects or generates Blind Data, such Blind Data will be owned solely by TrendKite and may be used for any lawful business purpose without a duty of accounting to Customer, provided that such data is not personally identifiable and does not identify the source of such data. It is Customer’s sole responsibility to back-up the Data during the Term and Customer agrees and acknowledges that post termination or expiration it may not have access to the Data via the Services

3.2 Confidentiality. The parties acknowledge that the Service, the terms of this Agreement, and any other proprietary or confidential information provided by one of the parties to the other party, whether orally or in writing shall be considered “Confidential Information”, except to the extent such information (i) is available in the public domain; (ii) is independently developed by TrendKite without access to or use of any Confidential Information; or (iii) is lawfully obtained by TrendKite from a third party without violation of a confidentiality obligation to the Company. Each party agrees to preserve the confidential nature of the other party’s Confidential Information by retaining and using the Confidential Information in trust and confidence, solely for its internal use except as provided herein, and by using the same degree of protection that such party uses to protect similar proprietary and Confidential Information, but in no event less than reasonable care. Each party shall have the right to obtain an injunction (without having to post a bond) to prevent any breach or continued breach of this section.

3.3 Reservation of Rights. Subject to the limited rights expressly granted hereunder, TrendKite and its licensors reserve all of right, title and interest in and to the Services and including all of related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

3.4 License to Use Customer Feedback. Customer grants to TrendKite a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction

or other feedback provided by Customer or Authorized Users relating to the operation of the Services.

4. TERM AND TERMINATION

4.1 Term of Purchased Subscriptions. The term of this Agreement shall continue for as long as an Order Form for Services is effective or unless earlier terminated pursuant to this section 4.

4.2 Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. As a sole and exclusive remedy of Customer in the event of termination by Customer due to breach by TrendKite, Customer shall be entitled to a pro-rata reimbursement of fees paid in advance by Customer for Services not yet provided by TrendKite.

4.3 Effect of Termination. Upon termination of the Agreement, Customer shall immediately cease all use of and all access to the Service. Sections 2 (as to amounts due as of termination), and Sections 3, 4, 6 and 7 shall survive any termination or expiration. All other rights and obligations shall be of no further force or effect.

5. WARRANTIES

5.1 Warranties. Each party represents that it has validly entered into this Agreement and has the legal power to do so. All Services provided hereunder shall be provided “AS IS” without any warranty.

5.2 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,”

EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

6. LIMITATIONS OF LIABILITY

6.1 Limitation of Liability. NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 2 (FEES AND PAYMENT FOR PURCHASED SERVICES).

6.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, 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.

7. GENERAL PROVISIONS

7.1 Export Compliance. The Services, other technology TrendKite makes available, and derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Data in a U.S.-embargoed country, currently Cuba, Iran, North Korea, Sudan or Syria, and as amended by the US Government from time to time or in violation of any U.S. export law or regulation.

7.2 Customer References. During the term of this Agreement, TrendKite may include the name, logo

of and success stories of Customer in TrendKite's website, press releases, promotional and sales literature, and lists of customers.

7.3 Force Majeure. Neither party shall be in default for failing to perform any obligation hereunder, other than the payment of monies, if such failure is caused solely by supervening conditions beyond the parties' respective control, including without limitation acts of God, civil commotion, strikes, terrorism, failure of third party networking equipment, illegal acts of third parties, failure of the public internet, internet service provider or changes in the accessibility of third party websites, power outages, failure of Service due to cyber breach, labor disputes or governmental demands or restrictions ("Force Majeure Event").

7.4 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

7.5 Miscellaneous. The laws of the State of Texas, excluding its conflicts of law rules, govern this Agreement and Customer's use of the Service. Use of the Service may also be subject to other local, state, national, or international laws. This Agreement constitutes the entire agreement between us regarding use of or access to the Service. TrendKite's failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: 1) the applicable TrendKite Order Form; 2) this Agreement; and 3) the Documentation. This Agreement may be executed in two counterparts and facsimile signatures shall be binding.