



Brandlive Services Agreement

WHEN YOU CLICK A BOX INDICATING ACCEPTANCE OF THIS AGREEMENT OR WHEN YOU EXECUTE AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU, THE COMPANY ENTERING THIS AGREEMENT (“**CLIENT**”), AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ACCEPT THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.

IF CLIENT PREVIOUSLY EXECUTED A SUBSCRIPTION FORM OR AN ORDER FORM (OR ENTERED INTO ANY OTHER ORDER DOCUMENT IN ELECTRONIC OR HARD COPY FORM) FOR SERVICES OR SOFTWARE, CLIENT AGREES THAT UPON ACCEPTING THE TERMS OF THIS AGREEMENT, WHETHER BY CLICK THROUGH OR BY ORDER FORM REFERENCING THIS AGREEMENT, THIS AGREEMENT SUPERSEDES ANY AND ALL PRIOR TERMS AND CONDITIONS ASSOCIATED WITH PREVIOUS ORDER FORM(S), AND SUCH PREVIOUS ORDER FORM TERMS AND CONDITIONS ARE OF NO FORCE OR EFFECT, EXCEPT THAT THE “**EFFECTIVE DATE**” OF CLIENT’S AGREEMENT IS THE DATE ON WHICH CLIENT FIRST EXECUTED AN ORDER FORM FOR SERVICES OR SOFTWARE, AND THE TERM OF CLIENT’S AGREEMENT FOR ALL SERVICES OR SOFTWARE WILL CONTINUE TO RENEW ON THE ANNIVERSARY OF THAT EFFECTIVE DATE, BUT ACCORDING TO THE RENEWAL TERMS OF THIS AGREEMENT.

This Brandlive Services Agreement (the “**Agreement**”) constitutes a binding agreement between Brandlive Inc. (“**Brandlive**”) and the Client identified in an order document that references this Agreement (“**Order Form**”), or the Client who accepts the terms of this Agreement via click-through acceptance. Client agrees that the terms of this Agreement will govern Client’s use of the Services (as defined in Section 1).

This Agreement includes four parts: (1) the legal terms that are included in this “Brandlive Services Agreement”, (2) the terms that are specific to each service included in the “Service Specific Terms”, (3) the description of what is included with each service in “Service Descriptions”; and (4) the Acceptable Use Policy (or “**AUP**”).

1. Services.

- 1.1. **Brandlive Services.** Brandlive will provide the Services specified in each Order Form (“**Services**”), according to the Agreement, the Service Specific Terms (including the applicable Service Level Agreement(s)), and the Service Descriptions, which describe the features and functionality of each Service. The Service Specific Terms and Service Descriptions are located at www.brand.live/legal.
- 1.2. **Brandlive’s Limited License to Client.** Brandlive grants Client a revocable, non-exclusive, non-transferable, limited license to access and use the Services purchased by Client during the Term (as defined in Section 5) subject to the terms of this Agreement. The license granted hereby is subject to the restrictions and limitations set forth in this Agreement, the Service Specific Terms, the Service Descriptions, and the AUP. Client’s licensed use of the Services is limited to the Services to which Client has subscribed, as described in any Order Form.
- 1.3. **Client’s License to Brandlive.** Subject to this Agreement, Client hereby grants to Brandlive a worldwide, non-exclusive, royalty-free license during the Term to use, reproduce, store, archive, and index Client Content (as defined in Section 3.5) to effectively provide Services. Brandlive’s license right does not extend to the sub-license or resale of Client Content or any component

thereof. In addition, Client grants to Brandlive a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Brandlive's services any suggestion, enhancement request, recommendation, correction or other feedback provided by Client or Authorized Users (as defined in Section 1.10) relating to the operation of Brandlive's software.

- 1.4. Ownership of Content Created under this Agreement.** Client will own exclusively all right, title and interest in and to any deliverables upon payment in full pertaining to such Deliverables. All Deliverables, in whole and in part, will be delivered to Client by Brandlive, along with their corresponding Intellectual Property, and the copyright will belong solely to Client. To the extent that any such Deliverables do not fall within the specifically enumerated works that constitute "works made for hire" under the United States copyright laws, and to the extent that any Deliverables include materials subject to copyright, patent, trade secret or other proprietary right protection, Brandlive shall irrevocably assign to Client all its right, title and interest that it may be deemed to have in and to any and all inventions, copyrights, patents, trade secrets and other proprietary rights therein (including renewals thereof). Brandlive will obtain, at its expense, such assignments to Client from Brandlive's employees, agents, contractors, or third parties as are necessary to effectuate the purposes of the previous sentence.
- 1.5. Brandlive's Preexisting Works.** Notwithstanding any other provision of this Agreement, Brandlive shall retain all right, title and interest in and to, including without limitation any intellectual property rights with respect to, (i) any source code, object code, inventions, know-how, materials and information created by Brandlive prior to the date of this Agreement (and any derivative works, modifications and enhancements thereto); (ii) any source code, object code, inventions or know-how created by Brandlive in connection with the Services (or partially in connection with the Services) which is generally applicable, non-specific to Client Content; and (iii) the know-how, business intelligence, software elements and methods utilized by Brandlive in performing the Services. Third party software tools, if any, included in the Services are licensed by the original firms and not by Brandlive. The property rights for those third party development tools are as outlined in those licenses, and Brandlive will notify Client in advance if any third party software tools are recommended or required which will be installed and licensed by Client.
- 1.6. Client Feedback to Brandlive.** Brandlive may solicit, or Client may decide to provide, feedback, comments and suggestions about improvements to the Brandlive Site and Services ("**Feedback**"). Such Feedback will be the sole and exclusive property of Brandlive and Client hereby irrevocably assigns to Brandlive all right, title, and interest in and to all Feedback. Brandlive will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such Feedback as it sees fit, entirely without obligation or restriction of any kind.
- 1.7. Aggregate Data and Performance Metrics.** Brandlive monitors, stores, analyzes, and reports various datasets and performance metrics for clients and for its own internal performance monitoring. Client acknowledges and agrees that such data is an integral component of the Service, and that Client has no license to such data except as provided in this Agreement. Brandlive hereby grants to Client a limited, nonexclusive, royalty-free license to such data, reports, and analysis, for Client's internal use in measuring the success of distributed Client Content. Brandlive may, from time to time, present anonymized aggregate data in sales and marketing materials, public presentations, and other promotional media. At no time will Brandlive associate such presentations with Client, or name Client as one of a number of named clients from whom data was gathered. No "case study" or other proof-of-concept report about Client's specific dataset will be made without Client's express prior written consent.
- 1.8. Participant Profiles.** Audience members for live events or other events run using the Services may include members of the public whom Client has invited to participate ("**Participants**"). Participants

are invited, but not required, to create profiles ("**Participant Profiles**") on Brandlive's website, for the purpose of gathering supplemental information about those Participants, and providing Participants with additional opportunities to interact with Client via the Services. Participants may also connect with other Participants on the Services, share content and archived recorded events with others via social media or other channels, and participate in community features such as messaging, Participant groups based on brand preference, location, or other commonalities, and otherwise interact with other Participants using the features provided in the Services. Client grants Brandlive a perpetual, non-exclusive, royalty-free license to Participant information, Participant Profiles, and content created by Participants within the Brandlive Services, for the purposes of: (i) providing the Services and integrating Participants into Client's brand channels; (ii) hosting and maintaining the Participant Profiles on Brandlive's servers; and (iii) providing technical support and service, answering questions from Participants regarding the Services, and otherwise communicating with Participants regarding their use of the Services, participation in events, and upcoming events and other opportunities to interact. Brandlive grants to Client a perpetual, non-exclusive, royalty free license to Participant information, including but not limited to information submitted to Participant Profiles, for Client's internal use, messaging outside of the Services, and any other marketing or business purpose.

- 1.9. **Client Account Creation.** In order to access and use the Services, a Client account ("**Account**") will be created with Brandlive. Client registration information must be accurate and complete at all times. Client's failure to maintain its registration information or notify a Brandlive account manager of a change in registration information constitutes a breach of these terms and may result in termination of the Account. The Client's Account creator (or the person who authorized the creation of the Account on behalf of Client) represents that he or she is capable and authorized to bind Client to this Agreement and any ancillary agreements between Brandlive and Client regarding Services contemplated by this Agreement.
 - 1.10. **User Accounts; Authorized Users.** When creating an Account, Client will be required to provide certain personal information for any member of Client's organization, as well as other agents and independent contractors, who will be authorized to access the Services ("**Authorized Users**"). Each Authorized User will be provided a unique login ID and password ("**Registration Information**"). Authorized Users are responsible for maintaining the confidentiality of Registration Information. Client understands and agrees that it is responsible for the activities or actions that occur under any account associated with Client's Authorized Users, whether or not Client authorized such activities or actions. Authorized Users are presumed to be accessing the Services on behalf of Client at all times. Registration Information is unique to each Authorized User and is not transferable to any other person or entity. Client represents and agrees that all Authorized Users will abide by all applicable laws and regulations and any other applicable terms and conditions in connection with the access and use of the Services. Only Authorized Users may appoint other Authorized Users, request or agree to changes to the Services, add or remove users, make billing inquiries, contact support, or take other, similar actions. A "**User**" is any individual who is granted login credentials to the Services. Users may not share account log in credentials.
 - 1.11. **Technical Specifications.** Client agrees to comply with the technical specifications provided by Brandlive in connection with the Services including without limitation by not modifying the JavaScript, HTML or other programming provided by Brandlive in any way.
2. **Trial Services.** If a trial period is indicated on an Order Form, Brandlive will provide Client with a temporary account to one or more Services ("**Trial Account**"). The Trial Account will be accessible beginning on the Activation Date (as defined in Section 6) and for the trial period set forth in the Order Form, or if no trial period is stated, the Trial Account period will be thirty (30) days from the Activation

Date. DURING THE TRIAL PERIOD, THE TRIAL ACCOUNT AND ASSOCIATED SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND.

3. Client Obligations.

- 3.1. As used in this Agreement, the term "**Client Data**" means the data that the Services capture or archive from Client's systems or from Client's Third Party Services (as defined in Section 4), or Client's historical data provided by or on behalf of Client for ingestion by the Services. Client hereby grants Brandlive a limited, royalty-free, non-exclusive license to access, copy, transmit, download, display, perform, and reproduce Client Data as necessary to provide, support, and improve the Services, as directed by Client, or as otherwise authorized hereunder. Client Data includes Client Content (defined below). Data generated by the Services regarding Client's use of the Services is usage data and is not and does not contain Client Data.
- 3.2. It is Client's sole responsibility to monitor the Services and Client's systems and Third Party Services to ensure that Client Data is being captured. Client will notify Brandlive of any delivery failures or outages of its systems that could affect the transmission of Client Data. It is Client's responsibility to encrypt (a) data sent to the Services from Client's systems and (b) historical data sent to Brandlive for ingestion. Brandlive will have no responsibility or liability for any data that Client transmits to Brandlive in an unencrypted format. Brandlive is not responsible or liable for any update, upgrade, patch, maintenance or other change to Client's systems or Third Party Services that affects the transmission of Client Data to the Service. It is Client's responsibility to ensure that the Services are configured to capture Client Data from all relevant end-user accounts or devices or web domains, as applicable.
- 3.3. Client is solely responsible for the content of Client Data. Client represents and warrants that (a) Client Data will not: (i) infringe any third party right, including third party rights in patent, trademark, copyright, or trade secret, or (ii) constitute a breach of any other right of a third party, including any right that may exist under contract or tort theories; (b) Client will comply with all applicable local, state, national, or foreign laws, rules, regulations, or treaties in connection with Client's use of the Services, including those related to data privacy, data protection, communications, SPAM, or the transmission, recording, or storage of technical data, personal data, or sensitive information; and (c) Client will comply with the Acceptable Use Policy available at www.brand.live/legal. Brandlive may update the Acceptable Use Policy from time to time.
- 3.4. Client is responsible for creating an account within the Services and ensuring that (a) Client's account registration information is complete and accurate; and (b) Client's account credentials are confidential. Client will notify Brandlive immediately of any unauthorized use of Client's account or account credentials, or any other known or suspected breach of the security of Client's account. Client is responsible for the activity that occurs within Client's account and for the actions or omissions of Client's employees, contractors or agents, whether such person is or was acting within the scope of their employment, engagement, or agency relationship. Client will not permit Brandlive competitors to access the Services.
- 3.5. Client is responsible for the accuracy, quality, and legality of Client's video assets, graphics, and any other collateral provided by Client in its use of the Services ("**Client Content**"), and for the means by which Client acquired any content posted to Brandlive servers. Client further warrants that Client Content does not and will not violate third-party rights of any kind, including without

limitation any intellectual property rights or rights of publicity and privacy. Client agrees to prohibit Authorized Users from uploading material to Brandlive servers in violation of the intellectual property rights of any party or entity, and shall maintain and enforce a policy that complies with the Digital Millennium Copyright Act (“**DMCA**”). Client agrees to act promptly to remove any infringing material from the Network if Client or Brandlive receive a notice qualifying under the DMCA (“**Take-Down Notice**”). In addition, Client agrees not to: (a) Use any robot, spider, scraper, or other similar automated data gathering or extraction tools, program, algorithm or methodology to search, access, acquire, copy or monitor any portion of the Service; (b) run mail list, Listserv, any form of auto-responder, or “spam” processes using Brandlive’s servers, or use any processes that run or are activated while an Authorized User is not logged in; (c) attempt to decipher, decompile, disassemble, or reverse-engineer or otherwise attempt to discover or determine the source code of any software or any proprietary algorithm used, comprising or in any way making up a part of the Service or our Site; (d) attempt to probe, scan or test the vulnerability of our Site, Services, system or network or breach or impair or circumvent any security or authentication measures protecting the Service; (e) frame or mirror the Service; (f) use any device, software, or routine that interferes with any application, function, or use of the Service, or is intended to damage, create undue load, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or communication; (g) resell, sublicense, timeshare, or otherwise share the Service, or data extracted from the Service; (h) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; and (i) resell the Service in any way that competes with Brandlive.

- 3.6. Client will report any suspected misuse, appropriation or transfer of Registration Information, or other behavior by an Authorized User that is in violation of this Agreement, the Brandlive Terms of Use, or the Brandlive Privacy Policy. To report suspected misuse of the Service or a breach, Client will send written notice to Brandlive via the info@brand.live email address, with a CC (carbon copy) to the Brandlive account representative who is Client’s primary point of contact for support and service. Failure to timely report such misuse will be grounds for termination of Client’s Account and all associated Authorized Users.
 - 3.7. Client warrants that its use of the Services is compliant with applicable laws, regulations, and directives, and that it shall be solely responsible for any fines, fees, or obligations incurred by the actions of its Authorized Users.
4. **Third Party Providers.** The Services receive Client Data from third party sources and are dependent on the third party’s services, software, applications, platforms (such as third party social media, business networking platforms systems, telecommunications carriers, or other messaging or communication services or APIs) (“**Third Party Services**”). Third Party Services are not offered, controlled or provided by Brandlive. A Third-Party Service may make changes to its service, or components thereof, or suspend or discontinue a service without notice to Brandlive. In addition, the availability of the Third-Party Service may depend on Client’s compliance with the Third-Party Service terms. The Third-Party Service will have access to Client’s data and will provide Client Data to Brandlive. Brandlive does not control and is not responsible or liable for how the Third-Party Service transmits, accesses, processes, stores, uses, or provides data to Brandlive. Brandlive expressly disclaims all liability related to or arising from any Third-Party Service, including Client’s use thereof, or liability related to or arising from any updates, modifications, outages, delivery failures, corruption of data, loss of data, discontinuance of services, or termination of Client’s account by the Third-Party Service. Client is solely responsible for ensuring Client complies with all Third-Party Service terms and conditions. Client acknowledges that certain Third-

Party Services do not represent that they are suitable for sensitive communications and do not encrypt messages sent over such Third-Party Services networks, including social media providers, telecommunication carriers and certain messaging platforms. Client agrees that if Client transmits sensitive health or financial information via these unsecure Third Party Services networks, Client assumes all risk associated with such transmission and is responsible for any damages or losses incurred with respect to transmitting such sensitive data over such networks and to Brandlive. Such transmission may also be a breach of the AUP.

5. Term & Termination.

- 5.1. **Term.** The Agreement will begin on the Effective Date and will remain in effect for the term specified in the Order Form or, if no term is specified, 12 months (“**Initial Term**”). The Initial Term will renew automatically for additional, successive 12-month terms (each a “**Renewal Term**”), unless Brandlive or Client provides the other party with written notice of non-renewal at least 60 days prior to the end of the Initial Term or the applicable Renewal Term, or either party terminates in accordance with section 5.2 or 5.3 below. The Initial Term plus any Renewal Term are, collectively, the “**Term.**” Any Order Form executed after the Effective Date will co-terminate with Client’s then-current Term.
- 5.2. **Termination for Breach.** Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and such breach remains uncured for a period of 30 days following the non-breaching party’s written notice thereof. Brandlive may suspend Client’s access to the Services in the event of a breach of this Agreement and will not be liable for any damages resulting from such suspension.
- 5.3. **Termination for Bankruptcy.** This Agreement will terminate immediately, upon written notice, where (a) either party is declared insolvent or adjudged bankrupt by a court of competent jurisdiction; or (b) a petition for bankruptcy or reorganization or an arrangement with creditors is filed by or against that party and is not dismissed within 60 days.
- 5.4. **Effect of Termination.** Upon any termination or expiration of the Agreement: (a) all rights and licenses to the Services granted to Client by Brandlive will immediately terminate; (b) Client will pay any Fees due and payable up to the date of termination, except in the case of Brandlive’s termination for Client’s breach, and in such case, Client will pay the Fees owing for the remainder of the then-current Term; and (c) upon request, each party will return to the other or delete the Confidential Information of the other party.
- 5.5. **No Refunds; Payment Upon Termination.** Unless otherwise agreed by the Parties, no refunds of prepaid fees shall be made to Client in connection with any termination or expiration of this Agreement. In no event will termination relieve Client of Client’s obligation to pay any fees owed to Brandlive for the period prior to the effective date of termination. Client may continue to use the Services until the end of the relevant term.
- 5.6. **Survival.** Any suspension or termination will not affect either party’s obligations to the other under this Agreement (including, without limitation, ownership, confidentiality, indemnification and limitation of liability), that by their sense and context are intended to survive such suspension or termination.

6. Fees & Payment.

- 6.1. Client will pay the fees for the Services as set forth in the Order Form ("**Fees**"). Following execution of the Order Form, Brandlive will activate or otherwise make available the Services listed in the Order Form by providing Client with login credentials to an account within the applicable Service ("**Activation Date**"). Client agrees to provide Brandlive with valid and updated credit card or ACH information or alternative document reasonably acceptable to Brandlive. If Client provides credit card or ACH information to Brandlive, Client authorizes Brandlive to charge such credit card or ACH payments for all Services listed in an Order Form for the duration of this Agreement.
- 6.2. If an Order Form specifies that payment will be by a method other than a credit card or ACH, Brandlive will invoice Client in advance, in accordance with the billing frequency stated on the applicable Order Form, and unless otherwise stated on the Order Form, Client shall pay all amounts invoiced within thirty (30) days of the date of invoice. Additionally, Client will provide complete and accurate billing and contact information to Brandlive and notify Brandlive of any changes to such information.
- 6.3. If Client disputes any Fees, Client must notify Brandlive within 120 days of the date of invoice. Invoices not disputed within 120 days from the date of invoice will be deemed accepted by Client. Brandlive may charge a late fee of 1.5% per month on any Fees not paid when due. Brandlive may suspend Client's access to the Services in the event Client fails to pay the Fees when due. Brandlive may increase Fees upon each Renewal Term, provided Brandlive will provide sixty (60) days' prior written notice of any such increase in Fees.
- 6.4. Suspension of Services and Acceleration. If any amount due by Client under this or any other agreement for Brandlive's Services is thirty (30) or more days overdue (or 10 or more days overdue in the case of amounts Client has authorized Brandlive to charge to Client's credit card or request ACH payment), Brandlive may, without limiting any other rights and remedies, accelerate Client's fee obligations so that all such amounts become immediately due and payable, and suspend Brandlive's Services to Client until such amounts are paid in full.
- 6.5. Event Cancellation. If Client cancels its event after Brandlive has made any applicable travel arrangements, Brandlive will charge all travel costs associated with Client's event to Client in addition to any other fees it may be owed under this Agreement or any applicable Purchase Order, including changes and amendments thereto. In addition to the foregoing, if Client's event is cancelled within two calendar weeks of the event date, Client shall pay 100% of all fees and charges due under this Agreement, including any purchase orders or changes or amendments thereto.

7. **Minimum Commitment & Invoice of Overages.** Client agrees that the recurring Fees are Client's minimum purchase commitment during the Initial Term and, upon renewal, each Renewal Term. The minimum commitment is the total sum of the recurring Fees set forth in the applicable Order Form. For Fees invoiced based on usage, (a) if Client's usage exceeds the minimum commitment specified in the Order Form, Brandlive will invoice, and Client will pay the additional Fees due for such usage at the rate specified in the Order Form; and (b) if Client's usage during a month is less than Client's minimum purchase commitment, Brandlive will invoice Client for the minimum purchase commitment. Client understands that even if Client terminates prior to the end of the Term or any Renewal Term, such minimum commitment shall be due to Brandlive.

8. **Taxes.** All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. Client is responsible for all sales, service, use and excise taxes, utility user's fees, VAT, 911 taxes, or universal service fund fees or taxes, taxes assessed on the use of software or any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable hereunder, other than any taxes imposed on Brandlive's income.
9. **Confidentiality.**
- 9.1. **"Confidential Information"** means (a) the non-public information of either party, including but not limited to information relating to either party's product plans, present or future developments, customers, designs, costs, prices, finances, marketing plans, business opportunities, software, software manuals, personnel, research, development or know-how; (b) any information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; (c) the terms of this Agreement; and (d) Client Data. "Confidential Information" does not include information that: (i) is in, or enters, the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving party knew prior to receiving such information from the disclosing party, as evidenced the receiving party's records; or (iv) the receiving party develops independently without reference to the Confidential Information.
- 9.2. **Obligations with Respect to Confidential Information.** Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement; and (b) that it will use at least reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control but no less than the measures it uses to protect its own Confidential Information. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and/or legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement; or (ii) to the parties' agents, representatives, subcontractors or service providers who have a need to know such information provided that such party shall be under obligations of confidentiality at least as restrictive as those contained in this Agreement. Each party will promptly notify the other party in writing upon becoming aware of any unauthorized use or disclosure of the other party's Confidential Information.
- 9.3. **Remedies.** Each party acknowledges and agrees that a breach of the obligations of this Section 9 by the other party may result in irreparable injury to the disclosing party for which there may be no adequate remedy at law, and the disclosing party will be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by the recipient of Confidential Information.
10. **Intellectual Property.** As between Brandlive and Client, Client acknowledges that all right, title and interest in and to the Services, the information technology infrastructure including the software, hardware, databases, electronic systems, networks, and all applications, APIs or client-side software required to deliver the Services, or made available or accessible to Client by Brandlive, including all documentation regarding the use or operation of the Services (collectively "**Intellectual Property**") are

the sole and exclusive property of Brandlive. Except for the limited licenses herein, nothing in this Agreement will serve to transfer to Client any right in or to the Intellectual Property. Brandlive retains all right, title and interest in and to Intellectual Property. As between Brandlive and Client, Client Data is the sole and exclusive property of Client and other than the limited license to Client Data granted hereunder, nothing in this Agreement will serve to transfer to Brandlive any intellectual property rights in Client Data.

11. Brandlive Representations and Warranties; Warranty Disclaimer.

- 11.1. **Performance Warranty.** Brandlive represents and warrants that it will provide the Services in accordance with generally accepted industry standards.
- 11.2. **Authority.** Brandlive represents and warrants that it has the right and authority to enter into this Agreement and that the performance of its obligations under this Agreement will not breach, or conflict with, any other agreement to which Brandlive is a party.
- 11.3. **Compliance with Laws.** Brandlive represents and warrants that it will comply with the laws and regulations applicable to Brandlive in its performance of the Services.
- 11.4. **Warranty Disclaimer; No Guarantee.** EXCEPT AS SET FORTH ABOVE, BRANDLIVE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES, PROFESSIONAL SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION OR MATERIALS PROVIDED OR MADE AVAILABLE BY BRANDLIVE. BRANDLIVE HEREBY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BRANDLIVE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SOFTWARE WILL BE AVAILABLE OR ERROR-FREE. BRANDLIVE WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BRANDLIVE. BRANDLIVE DOES NOT GUARANTEE THAT USE OF THE SERVICES BY CLIENT OR THE ADVICE, CONSULTING OR PROFESSIONAL SERVICES PROVIDED TO CLIENT WILL ENSURE CLIENT'S LEGAL COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO ANY APPLICATION IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE.

12. Indemnification.

- 12.1. **Client Indemnification.** Client will defend, indemnify and hold harmless Brandlive, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to the content of Client Data or Client's breach of the Service Specific Terms or Sections 3.2 - 3.7, 9.2 or 14.1 of this Agreement. Brandlive will (a) provide Client with prompt written notice upon becoming aware of any such claim; except that Client will not be relieved of its obligation for indemnification if Brandlive fails to provide such notice unless Client is actually prejudiced in

defending a claim due to Brandlive's failure to provide notice in accordance with this Section 12.1(a); (b) allow Client sole and exclusive control over the defense and settlement of any such claim; and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim.

12.2. Brandlive Indemnification. Brandlive will defend, indemnify and hold Client harmless from third party claims arising from a claim that the Services infringe any United States patent, trademark or copyright; provided that, Client shall (a) provide Brandlive with prompt written notice upon becoming aware of any such claim; (b) allow Brandlive sole and exclusive control over the defense and settlement of any such claim; and (c) reasonably cooperate with Brandlive in the defense of such claim. Notwithstanding the foregoing, Brandlive will not be liable for any claim that relates to or arises from: (i) custom functionality provided to Client based on Client's specific requirements; (ii) any modification of the Services by Client or any third party; (iii) the combination of the Services with any technology or other services, software, or technology not provided by Brandlive; or (iv) Client's failure to use updated or modified versions of the Services made available by Brandlive. Except as expressly provided in Section 13.1.3, the indemnification obligation contained in this Section 12.2 is Client's sole remedy, and Brandlive's sole obligation, with respect to claims of infringement.

13. Remedies and Limitation of Liability.

13.1. Remedies.

13.1.1. In the event of a breach of any warranty under Section 11 Brandlive will use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity. The foregoing remedy is Client's sole and exclusive remedy for a breach of Section 11.

13.1.2. In the event of a breach of the applicable Service Level Agreement, Brandlive will provide Client with the credit stated in the Service Level Agreement. The foregoing remedy is Client's sole and exclusive remedy for a breach of the applicable Service Level Agreement.

13.1.3. If the Services are subject to a claim of infringement under Section 12.2, Brandlive may, in its sole discretion, either (a) procure for Client the right to continue to use the Services; (b) modify the Services such that they are non-infringing; or (c) if in the reasonable opinion of Brandlive, neither (a) nor (b) is commercially feasible, then Brandlive may, upon thirty (30) days' prior written notice to Client, terminate the applicable Service.

13.2. Limitation of Liability.

13.2.1. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF: USE, DATA, BUSINESS, OR PROFITS), ARISING FROM OR IN CONNECTION WITH THE SERVICES OR SOFTWARE (AS DEFINED IN THE SERVICE SPECIFIC TERMS), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BRANDLIVE WILL NOT BE LIABLE FOR ANY DAMAGES, WHETHER CONSEQUENTIAL OR OTHERWISE,

ARISING FROM OR RELATED TO CLIENT'S NON-COMPLIANCE WITH ANY FEDERAL, STATE, OR INTERNATIONAL STATUTE, LAW, RULE, REGULATION, OR DIRECTIVE.

13.2.2. EXCEPT WITH RESPECT TO SECTION 12.1 (CLIENT INDEMNIFICATION), EACH PARTY'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT (E.G., CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THE TOTAL FEES ACTUALLY RECEIVED BY BRANDLIVE FROM CLIENT FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE INCIDENT FROM WHICH THE DAMAGES AROSE.

13.2.3. THE LIMITATION OF LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES WILL BE AGGREGATED TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

14. General Terms.

14.1. Export Restrictions. The Services and Software (as defined in the Service Specific Terms), including any software, documentation and any related technical data included with, or contained in, the Services of Software, may be subject to United States export control laws and regulations. Brandlive Public IM policy manager is classified under Export Control Classification Number (ECCN) 5D002.c.1 and has been qualified for export under authority of license exception ENC, in accordance with sections 740.17(d) and 740.17(b)(3) of the U.S. Export Administration Regulations, 15 C.F.R. Part 730 et seq. (the "EAR"). It may not be downloaded or otherwise exported or re-exported into (or to a national or resident of) Crimea- Region of Ukraine, Cuba, Iran, North Korea, Sudan, Syria or any other country to which the United States has embargoed goods; or any organization or company on the United States Commerce Department's "Denied Parties List." Client will comply with the export laws and regulations of the United States and other applicable jurisdictions when using the Services. Client will not transfer the Software, or any other software or documentation provided by Brandlive (i) to any person on a government promulgated export restriction list; or (ii) to any U.S.-embargoed countries. Without limiting the foregoing: (a) Client represents that it and its Authorized Users and any other users of the Services are not named on any United States government list of persons or entities prohibited from receiving exports; (b) Client represents that Client will not use the Software or Services in a manner which is prohibited under United States Government export regulations; (c) Client will comply with all United States anti-boycott laws and regulations; (d) Client will not provide the Software or Service to any third party, or permit any user to access or use the Software or Service, in violation of any United States export embargo, prohibition or restriction; and (e) Client will not, and will not permit any user or third party to, directly or indirectly, export, re-export or release the Software or Services to any jurisdiction or country to which, or any party to whom, the export, re-export or release is prohibited by applicable law, regulation or rule.

14.2. Assignment. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in the case of a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. This Agreement will inure to the benefit of, and bind, the parties' respective successors and permitted assigns.

- 14.3. Force Majeure.** A failure of party to perform, or an omission by a party in its performance of, any obligation of this Agreement will not be a breach of this Agreement, nor will it create any liability, if such failure or omission arises from any cause or causes beyond the reasonable control of the parties, including, but not limited to the following (each a “**Force Majeure Event**”): (a) acts of God; (b) acts or omissions of any governmental entity; (c) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof; (d) fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts; or (e) utility or telecommunication failures; so long as such party uses reasonable efforts to resume performance after any such Force Majeure Event.
- 14.4. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict/choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Multnomah County, in the State of Oregon, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.
- 14.5. Relationship of the Parties.** The parties are independent contractors as to each other, and neither party will have power or authority to assume or create any obligation or responsibility on behalf of the other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.
- 14.6. Notices.** Any legal notice under this Agreement will be in writing and delivered by personal delivery, express courier, certified or registered mail, postage prepaid and return receipt requested, or by email. Notices will be deemed to be effective upon personal delivery, one (1) day after deposit with express courier, five (5) business days after deposit in the mail, or when receipt is acknowledged in the case of email to Brandlive. Notices will be sent to Client at the address set forth on the Order Form or such other address as Client may specify. Notices will be sent to Brandlive at the following address: Brandlive Inc., Attention: Legal, 3303 N Mississippi Ave #200, Portland, OR 97227, or in the case of email, to legal@yourbrandlive.com.
- 14.7. Publicity.** The parties may use the other party’s name or trademark(s) in advertising, written sales promotion, press release(s) and/or other publicity matters, in a truthful and non-derogatory manner, unless a party specifies in writing that it does not consent to such use. Brandlive may disclose that Client is a customer of Brandlive.
- 14.8. Severability; Waiver.** If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure of either party to insist on strict performance of any provision herein will not be deemed a waiver of any rights or remedies that either party will have and will not be deemed a waiver of any subsequent default of the terms and conditions thereof.
- 14.9. Entire Agreement; Electronic Signatures.** This Agreement and all agreements and orders referenced herein or posted at www.brand.live/legal, including without limitation the Order Form, Service Specific Terms, Service Descriptions, AUP, Privacy Policy, and Terms of Use, and any amendments to such agreements and terms is the entire agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous agreements, negotiations, and communications, whether written or oral, regarding such subject matter. Brandlive expressly rejects all terms contained in Client’s purchase order documents, or in

electronic communications between the parties, and such terms form no part of this Agreement. The parties agree that electronic signatures, whether digital or encrypted, or Client's click-through acceptance of this Agreement, give rise to a valid and enforceable agreement.

14.10. Amendments. Brandlive may amend this Agreement by posting a revised version to www.brand.live/legal or at the Services log-in prompt. Client accepts the revised version of this Agreement by either (a) click-through acceptance at the Services log-in prompt; (b) execution of an Order Form incorporating the revised version; or (c) continued use of the Services for 30 days following the earliest notice of such revised version provided to an Authorized User at the Services log-in prompt.

15. IF CLIENT IS LOCATED IN EUROPE, THE FOLLOWING MODIFICATIONS TO THE ABOVE TERMS APPLY:

15.1. Sections 13.2.1 – 13.2.3 are replaced with the following Sections 13.2.1 – 13.2.3:

13.2.1 Limitation of Consequential Damages. Subject to 13.2.3, in no event shall either party be liable under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any: (a) loss of profits; (b) loss of sales; (c) loss of turnover; (d) loss of, or loss of use of, any (i) software or (ii) data; (e) loss of use of any computer or other equipment or plant; (f) wasted management or other staff time; (g) losses or liabilities under or in relation to any other contract; or (h) indirect, special or consequential loss or damage.

13.2.2 Limitation on Direct Damages. Subject to Sections 13.2.1 and 13.2.3, Brandlive's aggregate liability arising from or in connection with this Agreement (and whether the liability arises because of breach of contract, negligence, misrepresentation or for any other reason) shall not exceed 1.25 times the amounts paid or payable (having been invoiced but not yet paid) by Client for the license to use the Service.

13.2.3 Notwithstanding anything to the contrary in this Agreement, neither party excludes or limits its liability in respect of death or personal injury caused by the negligence of that party, its servants or agents, breach of any condition as to title or quiet enjoyment implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982, or liability for fraudulent misrepresentation or such other liability which cannot under applicable law be excluded or limited by Agreement.

15.2. Section 14.4 is replaced with the following:

14.4 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of England and Wales and the parties agree to submit to the jurisdiction of the English courts, which venue shall be exclusive except for claims arising under or related to section 12 (indemnity), section 14.1 (export controls), or a claim that a party infringed the intellectual property rights of the other party. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement prevents either party from seeking injunctive relief in the appropriate or applicable forum.