

# storm<sup>®</sup> Terms and Conditions

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## 1. Placing Orders

- 1.1 These terms and conditions apply to the supply of omni-channel Contact Centre as a Service (CCaaS) and customer experience (CX) services as detailed in any executed Order and/or Service Specification (the "Services"). All Orders placed with Content Guru ("CG") by you (the "Client"), together the "parties", shall constitute an offer to CG and no obligations shall come into being until any Order is accepted by CG in accordance with these terms and conditions.
- 1.2 To the extent any terms contained in (1) the Order, (2) the Service Specification, (3) the Service Level Agreement ("SLA"), (4) these terms and conditions, (5) the End-User License Agreement ("EULA") or (6) the Data Processing Agreement ("DPA"), together forming the "Agreement", are inconsistent, they shall prevail in that order.
- 1.3 The procedure for ordering, delivery and acceptance of Services shall be as follows unless agreed otherwise in writing between the parties:
- i. Upon CG's request, Client shall provide a Statement of Requirements (SOR) providing details of the Services it wishes to procure (CG to provide appropriate document for Client to complete, if required);
  - ii. CG shall provide a Price Quote (PQ) with a unique reference identifier for the Services, which shall be based on Client's SOR but may differ for commercial or technical reasons. Any documentation including but not limited to user manuals, bid information or supplementary documentation referenced in the PQ shall form part of the PQ. The PQ (or any Change Notice (CN) referencing a pre-existing PQ) shall form the basis for Client ordering the Services and not the SOR;
  - iii. Client will sign the PQ or CN and complete a Base Specification (template to be provided by CG) to place an Order, and this shall constitute a Purchase Order (PO);
  - iv. CG's Order Management department will issue an Order Acceptance via email to accept the PO. CG may accept or reject the PO in its sole discretion. If the PO is accepted, the Order shall come into effect and the Initial Term for the Services will begin;
  - v. CG will then use reasonable endeavors to provision the Services and make the licenses for access to and use of the Services available to Client within five (5) Working Days (meaning Monday to Friday between the hours of 08:00-18:00 excluding applicable local public holidays);
  - vi. CG (liaising with Client) shall produce a Service Specification(s), which shall contain the entirety of the Services to be delivered by CG (superseding the SOR, Base Specification and/or PO). The Service Specification(s) shall incorporate any applicable user guides, manuals and/or documentation for the relevant storm Services. No other documentation shall define the Services to be delivered;
  - vii. Client shall agree and sign the Service Specification(s) in the timeframe agreed within the Service Specification(s) or within ten (10) Working Days should a timeframe not be detailed in the Service Specification(s), following which Client will be deemed to have accepted the Service Specification(s);

- viii. CG shall deliver the Services in accordance with the Service Specification(s), such delivery not to be unreasonably withheld or delayed (but shall be excused for any delays which, in whole or part, are not caused by or attributable to CG);
- ix. Upon delivery of the Services, Client shall perform User Acceptance Testing (UAT) in accordance with the process and timeframe agreed in the Service Specification(s), or within ten (10) Working Days should a timeframe not be detailed in the Service Specification(s); and
- x. Client shall sign-off the UAT in the timeframe agreed within the Service Specification(s) or within ten (10) Working Days should a timeframe not be detailed in the Service Specification(s), following which, providing no material non-conformities with the Service Specification have been notified to CG during this period, Client shall be deemed to have fully accepted delivery of the Services and the Services shall be considered 'live' by CG ("Service Commencement Date"). Where any material non-conformities are notified to CG, CG will remedy the same within a reasonable period, following which Client shall re-perform UAT within a further period of ten (10) Working Days of notification that testing may be re-performed (and the terms of this clause shall apply to such further testing).

## 2. Charges and Payment

2.1 The Services will be invoiced as follows:

- i. Setup Charges - one-off (or phased one-off) charges relating to the implementation of the Services (including without limitation professional service charges and license activation fees) – upon Order Acceptance;
- ii. License Charges – recurring subscription charges to access the Services (including any service bundles and AI tokens) - annually in advance, from Order Acceptance (subject to any discount period as may be agreed in the Order);
- iii. Support Charges – recurring charges for service management and reporting - annually in advance, from Order Acceptance (subject to any discount period as may be agreed in the Order); and
- iv. Usage Charges – recurring charges for usage of the Services, including but not limited to overage charges (usage exceeding subscription), call minute volumes, message fees, data dips and data storage - monthly in arrears, as incurred.

Where any discount period applies to an Order, invoicing for monthly recurring charges under (ii)-(iv) above shall commence from the earlier of:

- a. Service Commencement Date;
- b. Client use of the Services in a live environment (excluding any trial usage or UAT which may take place in a production environment); or
- c. Expiry of the agreed discount period.

2.2 The price for the Services shall be (a) as specified in the Order, or where no price has been quoted, the undiscounted price for the relevant service(s) listed in CG's standard "Price List" (as amended from time to time, available on request) as at the date the Order is accepted by CG; (b) exclusive of value added or other sales taxes. Unless otherwise stated in the Order, the Charges do not include any direct or indirect local, state, federal, or foreign taxes, levies, fees, charges, duties, or similar governmental assessments of any nature, including, without limitation, sales, value-added, use and withholding taxes (collectively, "Taxes"). Client is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on CG's net income or property. If CG has the legal obligation to pay or collect Taxes for which Client is responsible under this section, the appropriate amount shall be

invoiced to and paid by Client, unless Client provides CG with a valid tax exemption certificate authorized by the appropriate taxing authority; and (c) payable in the stated currency, without deduction, withholding or set-off and in full and cleared funds within thirty (30) days of the date of the invoice ("Due Date"). Time shall be of the essence for the purposes of this clause.

- 2.3 CG reserves the right to apply maximum credit limits that CG will extend to Client's account ("Credit Limits") to the value of Services provided to Client. Any Credit Limits shall be communicated to Client following CG conducting a Dun & Bradstreet Credit Report ("D&B Report") which shall be used as the basis for determining any Credit Limits. Order acknowledgement and acceptance will only occur after receipt of the D&B Report. Should Client exceed any Credit Limits applied, CG reserves the right to suspend all Services until such time as payable amounts have been received, and the balance owing to CG no longer exceeds the Credit Limits. In addition, CG may, at its discretion, enforce transaction-based Credit Limits through the immediate suspension of further transaction services should the value of invoiced and un-invoiced Usage Charges exceed agreed Credit Limits.
- 2.4 If Client fails to make any payment when due then, in addition to all other remedies that may be available: (a) CG may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly, or the highest rate permitted under applicable law; and (b) Client shall reimburse CG for all costs incurred by CG in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.
- 2.5 If Client, acting in good faith, disputes all or any part of an invoice then it will notify CG in writing of that dispute within seven (7) days of the invoice date, specifying the disputed amount(s) and its reasons for disputing them. Any sums in the invoice that are not notified to CG in writing as being in dispute will be paid by Client in accordance with this Agreement. Client will co-operate with CG to resolve any dispute in a timely manner. If the parties agree that all or part of the disputed amount is properly due, Client will pay that amount in full within seven (7) calendar days of that agreement or the Due Date, whichever is the later.
- 2.6 Client will be required to make payment for all License Charges and Usage Charges by direct debit. Payment for License Charges and Usage Charges will be debited from Client's nominated bank account to reach CG's bank account on the last Working Day of the month the invoice is dated.
- 2.7 In the event that Client's use of the Service incurs Usage Charges for inbound or outbound calls, SMS, or other traffic for which rates have not been specifically agreed between the parties, then CG's standard Price List will apply to such transactions until rates have been agreed between CG and Client.
- 2.8 In setting up a Service for Client, CG will block outbound calls to premium rate or international destinations by default, unless specifically provided otherwise in the Service Specification agreed between the parties.
- 2.9 All transaction costs incurred by Client's use of the Services and charged to CG by a network operator, service provider or other third party shall be the responsibility of Client and payable by Client to CG, and shall be included in the Usage Charges, irrespective of whether the transaction costs are generated by Client or by any Client customer. This will include any transactions that arise from fraudulent use of Client's services. Client is solely responsible for adherence with e911 regulations, including location services. Should Client have incorrect location information setup on e911 services, Client will be liable for a cost of \$75.00 (or such sum as CG may incur, if higher) per call made.

- 2.10 Notwithstanding anything to the contrary in this Agreement or any Order, CG may increase the Charges for the Services annually by five percent (5%) with effect from 01 January each year, except where a change in CG's direct utilities supply costs exceed five percent (5%) in which case CG may increase the Charges for the Services by such actual increased cost on a pass-through basis. Further, CG may adjust Usage Charges, tariffs for AI token consumption, or any License Charges with a third-party underlying cost to CG from time to time.
- 2.11 CG reserves the right to set-off, deduct or withhold any or all amounts due and receivable by it from amounts payable by CG to Client.

### 3. Client's Obligations

- 3.1 Client shall ensure that its use of the Services is at all times in accordance with these terms and conditions and the EULA, and is advertised, promoted, operated and presented in a manner so as not to bring or be likely to bring (based on CG's sole and reasonable opinion) the CG name, brand and Services into disrepute.
- 3.2 Client will cooperate with CG in all matters relating to the Services, and comply with CG's instructions. Client will (at no cost to CG) allow CG access to its premises (and use all reasonable efforts to procure access for CG to any third party's premises), systems, personnel and information as required to enable CG to perform its obligations under this Agreement.
- 3.3 Client represents and warrants that it can and shall at all times comply with obligations and regulations imposed by applicable law as they may affect the Services, including but not limited to the Telephone Consumer Protection Act (TCPA) and related regulations of the Federal Communications Commission (FCC), the Federal Trade Commission's Telemarketing Sales Rules, and applicable U.S. state laws. Further, upon the request of CG at any time, Client will provide such information and take such steps as may be necessary in order to enable CG to comply with all regulations, directions, conditions and obligations from time to time imposed on CG or otherwise by law in relation to the Services. CG shall have the right at any time to monitor the Services to ensure compliance with the provisions of this Agreement.
- 3.4 Client shall take such measures as are reasonably necessary to ensure access to the Services, in particular to ensure that local infrastructure (for example, adequate firewalls and connectivity) is in place to consume the Services and meet all reasonably expected demand.
- 3.5 To enable CG to manage platform capacity, Client will provide CG with a forecast of anticipated monthly inbound and outbound transaction volumes for the Services on a quarterly basis. CG, acting reasonably, reserves the right to take any necessary corrective actions in the event Client's Services experience unusual or unexpectedly high contact volumes (for example, a DDoS (distributed denial-of-service) attack on Client's Services) that may disrupt Client's Services or the services CG provides to other customers. CG will notify Client promptly and use reasonable endeavors to agree an action plan to manage and address the abnormal contact volumes. In the event the parties are unable to agree an action plan, CG (acting reasonably) reserves the right at its discretion to suspend, bar, restrict or terminate the affected Service(s).
- 3.6 Where Client is, at their request, allocated a special telephone number applicable to the Services, Client shall be responsible for all necessary investigations and inquiries as to the legitimacy of use of such number and CG shall have no liability whatsoever with respect to the number chosen and its use by Client.
- 3.7 The ability to make calls to the Emergency Services numbers 911 or 112 may be adversely affected in cases where Client uses CG Services to make outbound calls via degraded

connectivity. The Emergency Services may not receive accurate information on the location of the callers, or calls may fail due to power or connectivity failures. Subject to the SLA, CG cannot guarantee connectivity and therefore cannot accept any liability for the failure of such calls and Client should therefore ensure that all users are aware of these limitations and have alternative means of accessing these services. In circumstances where Client (or its end customer) routes calls to the Emergency Services via a network not provisioned or operated by CG, CG cannot accept any liability for the performance of such connectivity.

- 3.8 Client shall ensure that: all location information (including address information, Automatic Number Identification (ANI) and associated site address) is up-to-date and accurate in all respects, and that all necessary equipment is configured to present an ANI that correctly corresponds to the relevant site so that CG is able to provide accurate location information to the Emergency Services. Client shall promptly update CG in the event such location information changes. Client accepts full responsibility for failure to comply with its obligations under this clause and agrees to indemnify CG in full for, and save CG harmless from and against, all costs, expenses, damages, liabilities and losses (whether direct or indirect) of any kind, including (without limitation) any interest, fines, legal and other professional fees and expenses awarded against or incurred by CG as a result of or whatsoever related to the Emergency Services being dispatched to a location other than the location from which the call to 911 or 112 originated as a result of Client's failure to comply with its obligations under this clause.
- 3.9 Client acknowledges that it is responsible for the activities and communications of all employees, representatives or agents of Client who have access to and/or use of the storm platform ("Client personnel") in relation to the Services, including communications on the storm Platform, and the compliance by all Client Personnel with this Agreement and, in particular, the EULA.
- 3.10 Client shall not itself, or permit any third party to, export, re-export or release, directly or indirectly any Controlled Technology to any country, jurisdiction, person or entity to which the export, re-export or release of Controlled Technology (defined below) is prohibited by applicable law or without first completing all required undertakings (including obtaining any necessary export license or other governmental approval) and CG's approval in writing. The term "Controlled Technology" means any software, documentation, technology or technical data, or any products or services that include or use any of the foregoing, the export, re-export or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any applicable law, including, without limitation, the US Export Administration Act and its associated regulations.
- 3.11 Client shall indemnify, keep indemnified and hold CG harmless against all liability, costs, losses, damages, expenses, interest, penalties, legal costs and other professional costs and expenses arising out of any breach by or other act, omission or default of Client under or in relation to this Agreement. In order to fulfil the terms of the indemnities within this Agreement, Client shall effect and maintain legal liability insurance with a reputable insurer to the value of at least \$5,000,000.

#### **4. CG's Obligations**

- 4.1 CG will perform the Services using reasonable care, skill and diligence in accordance with best industry practice. CG will hold and maintain all necessary licenses and consents, and will comply with all relevant legislation in relation to the Services.
- 4.2 CG will deliver the Services as detailed in the Order and will ensure that, upon delivery, the Services conform in all material respects with the Service Specification. Any delivery dates stated in any Order are approximate only and Content Guru shall not be liable for any delay

in delivery of the Services. Following delivery of the Services, CG will maintain the Services in normal operating conditions in accordance with this Agreement and the SLA.

- 4.3 CG reserves the right to (a) charge prevailing daily or half-daily professional services charges if support is required outside the support times specified in the SLA and (b) charge an additional amount for support where the problem has arisen because Client has changed parameters and Services or software configurations without prior written notification to and the consent of CG.
- 4.4 Upon valid request for support from Client, CG, or its agent or subcontractor undertakes to use reasonable endeavors to resolve the support request. For the avoidance of doubt, no other support is provided for under this Agreement unless otherwise agreed in writing by the parties.
- 4.5 In the event that hardware is purchased by Client under any Order, Client will benefit from a 12-month warranty from date of despatch of the hardware to Client. Any subsequent hardware fault issues after expiry of the warranty period are the responsibility of Client.

## 5. Order Duration, Suspension & Termination

- 5.1 The “Initial Term” of any Order shall be as stated in the Order and shall commence from Order Acceptance. Unless agreed otherwise by the parties, any additional Services purchased under any Order by CN shall be coterminous with the Initial Term.
- 5.2 Following expiry of the Initial Term, Orders shall automatically renew for successive periods equal to the Initial Term (each a “Renewal Term”), unless either party provides a minimum of ninety (90) days’ written Notice prior to the expiry date of the Initial Term or Renewal Term of the Order. The Charges for the Renewal Term(s) of any Order shall be adjusted to the undiscounted price for the relevant Service(s) listed in CG’s then-current standard Price List.
- 5.3 Where Client wishes to cancel an Order before the Service Commencement Date, Client will give Notice in writing to CG and shall immediately be required to pay: (a) the Setup Charges in the Order; and (b) the License Charges for the first twelve (12) months of the Initial Term as stated in the Order (any applicable discount period having been rescinded).
- 5.4 In the event Client wishes to terminate an Order after the Service Commencement Date, Client will give Notice in writing to CG and shall immediately be required to pay: (a) the Setup Charges in the Order; (b) the License Charges and Support Charges for the remainder of the Initial Term or Renewal Term; and (c) Usage Charges up to and including the termination date of the Services.
- 5.5 CG may suspend the Services: (a) if Client fails to pay the Charges for the Services when due; (b) in order to comply with any law, regulation, request, order, direction, determination or consent of a court or other competent administrative or regulatory authority; (c) if CG has reason to suspect fraud or deception (including fraudulent generation of traffic from any source to any Services) has occurred or is likely to occur in connection with the Services; (d) in order to carry out any emergency maintenance or repair of the Services; (e) in order to carry out planned maintenance, repair, or improvement of the Services (in which circumstances CG will provide a minimum of five (5) Working Days prior notice of the suspension and, where practicable, will agree with Client when the Services will be suspended and for how long); or (f) if CG has reasonable grounds to believe that Client has breached or is likely to breach any of its obligations in relation to use of the Services hereunder.
- 5.6 Either party may terminate any Order and/or this Agreement forthwith on written Notice to the other party at any time if: (a) the other party commits any material breach of any term

of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within thirty (30) calendar days of receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or (b) the other party undergoes, or is the subject of the institution of, bankruptcy, receivership, insolvency, reorganization or other similar proceedings under any section or chapter of the United States Bankruptcy Code (as amended), or under any similar laws or statutes of the United States or any state thereof, or the other party makes any assignment for the benefit of its creditors.

- 5.7 Notwithstanding anything to the contrary express or implied elsewhere in the Agreement, CG (without prejudice to its other rights) may immediately terminate any Order and this Agreement or any of the Services provided hereunder upon written Notice in the event that: (a) Client ceases, or threatens to cease, to carry on business; (b) Client fails to pay any undisputed Charges within sixty (60) days of the invoice Due Date; or (c) CG is directed by Ofcom, the FCC or other competent authority (whether directly or indirectly) to cease to facilitate or allow the provision of the Services. Should CG terminate this Agreement for cause, termination charges under 5.4 shall become due and payable with immediate effect.
- 5.8 Upon termination of any Order and/or this Agreement, CG shall, if so requested by Client, provide all assistance reasonably required by Client to facilitate the smooth transition of the Services to Client or any replacement supplier appointed by it. The parties shall scope and agree any exit and transition services which shall be chargeable on a time and materials basis at CG's prevailing professional services rates.
- 5.9 No rights will accrue to Client in respect of porting of a number used in a service provided by CG unless Client has had continuous use of the number for the same service for a period of twelve (12) months. CG will be entitled to levy a charge for number porting in all cases. Client remains responsible for ensuring that number porting information is accurate, complete and provided in a timely manner. Any numbers ported, allocated and/or used under this Agreement will be governed by the rules and regulations of the applicable local regulator(s).

## 6. Confidentiality

Each party hereto undertakes to the other that it shall keep, and shall procure that its directors, employees and agents shall keep secret and confidential and shall not use or disclose to any other person any information or material of a technical or commercial nature relating in any manner to the business, products or services of the other party which they may receive or obtain in connection with or incidental to performance of this Agreement without the consent of the other party, provided that such obligation does not apply to confidential information which: (a) was already in the lawful possession of the receiving party and at its free disposal before the disclosure by the disclosing party to the receiving party; (b) is lawfully disclosed to the receiving party without any obligations of confidence by a third party; (c) is or becomes generally available to the public through no act or default on the part of the receiving party or its directors, employees or agents; (d) is independently developed without access, knowledge or reference to the confidential information; or (e) is required to be disclosed by a governmental or regulatory body or court of law with compellable and competent jurisdiction.

Client acknowledges and agrees that the copying, disclosure, use or modification of the Services or CG's confidential information in any manner that is inconsistent with the terms of this Agreement shall cause irreparable injury to CG for which CG will not have an adequate remedy at law. Accordingly, CG shall be entitled to equitable relief in court, including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bond and without limiting CG's

other remedies available at law or otherwise. This clause shall survive termination of any Order or this Agreement.

## 7. Force Majeure

- 7.1 Except in relation to Client's payment obligations (including all undisputed amounts properly invoiced and any committed/recurring charges that continue to be incurred during any Force Majeure Event), neither party shall be held in breach of this Agreement nor liable to the other for any failure or delay in performing its obligations to the extent such failure or delay is caused by any cause, event(s) or circumstances beyond its reasonable control (a "Force Majeure Event").
- 7.2 A Force Majeure Event includes, without limitation: act of God; flood, drought, lightning or fire; epidemic or pandemic; strike, lock-out, trade dispute or labor disturbance (excluding strikes/lockouts impacting the affected party's own workforce only); act or omission of Government or other competent authority (including change in law, regulatory restriction, export controls, sanctions or embargo); war, terrorist attack, military operations or riot; failure or interruption of the public internet, telecommunications networks, hosting, cloud or data-centre providers, or other third-party infrastructure not under the affected party's direct control; failure, interruption or shortage of power, utilities or cooling; and malicious cyber events, including distributed denial-of-service (DDoS) attacks, ransomware, malware outbreaks, hacking or other cyber attacks, provided that the affected party is not entitled to rely on this clause to the extent the Force Majeure Event was caused by (or materially contributed to by) that party's wilful misconduct, gross negligence, or material breach of its security obligations expressly set out in this Agreement.
- 7.3 For clarity, Force Majeure Events include cyber attacks and DDoS events that are targeted at (i) the affected party or its subcontractors/suppliers, or (ii) the Client or a third party but materially impact the Services, even where the affected party implements protective measures (including traffic filtering, rate limiting, blocking, segmentation, suspension of non-essential features, or emergency changes) to protect the Services, other customers, shared infrastructure, or the security of systems and data.
- 7.4 Any party affected by a Force Majeure Event shall as soon as reasonably practicable give the other party written notice of its nature and extent and the affected party shall use commercially reasonable endeavours to mitigate its effects and resume performance, including implementing reasonable workarounds and disaster recovery or business continuity measures to the extent applicable and reasonable in the circumstances. The parties shall cooperate in good faith to mitigate the effects of the Force Majeure Event and agree any reasonable alternative arrangements. Each party shall bear its own costs of mitigation unless otherwise agreed in writing.
- 7.5 During a Force Majeure Event:
- i. the affected party's performance obligations shall be suspended (and time for performance extended) only to the extent impacted by the Force Majeure Event;
  - ii. the affected party shall continue to perform any obligations not affected by the Force Majeure Event to the extent reasonably practicable; and
  - iii. any service levels, service credits, remedies or termination rights that would otherwise arise solely as a result of the affected party's failure to meet such obligations during the Force Majeure Event shall be suspended to the same extent, provided the affected party complies with the notice and mitigation requirements above.
- 7.6 Where a Force Majeure Event continues for a period exceeding ninety (90) days, either party may terminate any affected Order or this Agreement immediately on written Notice

to the other party in respect of the affected Services only without liability to the other party, and without prejudice to any rights or obligations which have accrued prior to termination. Termination shall not affect Client's obligation to pay for (i) Services provided up to the termination date, and (ii) any charges expressly stated in the relevant Order to be non-cancellable or committed for the applicable term.

## 8. Intellectual Property

- 8.1 Client agrees that CG retains all right, title, and interest (including all trademarks, service marks, patents, copyrights, trade secrets and other proprietary and intellectual property rights) in and to the Services and any and all related and underlying technology and documentation, derivative works, modifications, or improvements of any of the foregoing (the "CG Technology"). CG grants to Client a fully paid-up, royalty free, non-exclusive, non-transferable license to use any CG Technology for the duration of any Order and in accordance with and subject to the restrictions stated in this Agreement.
- 8.2 CG shall indemnify Client against any claim that the normal use of the Services is a direct infringement of the intellectual property rights of any third party provided that Client: (a) provides prompt notice of the claim to CG; (b) does not prejudice CG's defense of such claim; and (c) gives CG all reasonable assistance and grants CG sole authority to control the defense and any related settlement of any such claim. CG shall have no obligations under this section or any other liability for any claim of infringement or misappropriation resulting or alleged to result from: (a) any modification, alteration or enhancement to the applicable CG Technology by any person or entity other than CG; (b) any use of the applicable CG Technology by Client in any manner for which the Services were not designed or otherwise in a manner inconsistent with the service documentation; (c) the combination, operation or use of the applicable CG Technology or any part thereof in combination with any equipment, software, data, service, or documentation not approved by CG; (d) materials, items, resources, or services provided or performed by Client or any third-party service provider (whether or not used in connection with or incorporated into the Services); or (e) Client's continuing the allegedly infringing activity after being notified thereof or after being informed of and provided with modifications that would have avoided the alleged infringement.
- 8.3 In the event an infringement or misappropriation claim arises, or if CG reasonably believes that a claim is likely to be made, CG shall have the right to: (a) modify the applicable portion of the CG Technology to become non-infringing but functionally equivalent; or (b) replace the applicable portion of the CG Technology with material that is non-infringing but functionally equivalent; or (c) obtain for Client the right to use the applicable portion of the CG Technology upon commercially reasonable terms; or (d) remove the infringing aspect of the CG Technology if it can be removed without material degradation of the applicable CG Technology.
- 8.4 The foregoing states the Client's sole and exclusive remedy and CG's entire liability in relation to any intellectual property or misappropriation claims.
- 8.5 Client hereby grants and assigns CG and its corporate group a non-exclusive, non-transferable license to use the name (or any abbreviation thereof), trademarks or any logo (or adaptation thereof) of Client in any advertising or promotional materials, including CG's websites, or for any other commercial purposes related to the promotion of CG's products and services. Following signature of this Agreement, Client agrees to cooperate in the creation and distribution of a joint press release with CG. During the term of this Agreement, Client further agrees to participate as a reference customer by sharing Client's evaluation of CG's Services with other potential customers or partners of CG, as and when requested by CG.

## 9. Limitation of Liability

- 9.1 The express terms set out in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 9.2 Save as provided by clause 9.3 below: (a) CG's total aggregate liability in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed the annual License Charges payable by Client to CG for the Services; and (b) CG shall not be liable for any claim arising out of or in connection with this Agreement to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, loss of data, injury to reputation, wasted management time or indirect, consequential or special loss or damage regardless of the form of action (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) and regardless of whether that party knew or had reason to know of the possibility of the loss or damage in question.
- 9.3 Nothing in this Agreement shall limit or exclude either party's liability for; (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any other loss or damage the exclusion or limitation of which is prohibited by law.
- 9.4 CG shall not be liable for any delay or failure in the delivery or performance of the Services which is not caused by or attributable to CG. Where any part of the Services is obtained by Client from a third-party service provider, CG assumes no liability in relation to the provision of those services.

## 10. Dispute Resolution

If a dispute arises out of or in connection with this Agreement (Dispute), then the parties shall adhere to the following procedure:

- iv. either party shall give to the other written Notice of the Dispute, setting out its nature and full particulars (Dispute Notice);
- v. on service of the Dispute Notice, representatives of the parties shall attempt in good faith to resolve the Dispute;
- vi. if the representatives of the parties are for any reason unable to resolve the Dispute within fifteen (15) days of service of the Dispute Notice, the Dispute shall be referred to senior representatives of the parties who shall attempt in good faith to resolve it;
- vii. if the senior representatives of the parties are for any reason unable to resolve the Dispute within fifteen (15) days of it being referred to them, the parties will attempt to settle the Dispute by mediation. Any mediation shall be conducted in accordance with The Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure; and
- viii. if the Dispute is not resolved within thirty (30) days of being referred for mediation, either party may commence proceedings for the Dispute to be resolved by the Courts. The prevailing party shall be entitled to reimbursement of all of its costs and reasonable attorneys' fees incurred in connection with such Dispute.

## 11. Anti-Bribery Compliance

- 11.1 Each party shall:

- i. comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption;
- ii. have in place and maintain throughout the term of this Agreement policies and procedures to ensure compliance with these requirements, and enforce them where appropriate; and
- iii. promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

11.2 Each party shall ensure that any person associated with it who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes terms equivalent to those imposed on the parties in this clause. Each party is responsible for the observance and performance of their representatives, and shall be directly liable to the other party for any breach of the requirements.

11.3 Breach of this clause shall be deemed a material breach of the Agreement.

## 12. General

12.1 This Agreement contains the entire agreement between the parties in respect of the subject matter and supersedes, replaces and invalidates any prior written or oral agreements, representations or understandings between them relating to such subject matter. Each party acknowledges and accepts that, in entering into this Agreement, it has not relied upon any representation, undertaking or promise except as set out in this Agreement. Nothing in this Agreement shall attempt to exclude representations made fraudulently which either party can be shown to have relied upon.

12.2 No variation of any Order or this Agreement shall be effective unless it is in writing and signed by authorized representatives of the parties. CNs will be scoped and agreed by the parties, including updates to the Services, Charges and delivery timetable. Notwithstanding the foregoing, CG shall have the right by written notice to Client to modify this Agreement at any time so as to comply with any regulations, determinations or other requirements applicable to or imposed upon CG by any competent authority.

12.3 Any "Notices" under this Agreement must be issued in writing. Any such Notice may be delivered personally, by first class prepaid post letter (to the address of the recipient set out in the Order, or such other address as the recipient may designate by written notice) or by email (to legal@contentguru.com where CG is the recipient). Notices will be deemed to have been issued: if by hand, when delivered; if by first-class post, forty-eight (48) hours after posting; or if by email, at the time of transmission (if this falls outside any Working Day in the place of receipt, on the next Working Day).

12.4 This Agreement shall be binding on and endure for the benefit of the successors in title of the parties, and shall not be assigned or sub-contracted by any party without the prior written consent of the other. Notwithstanding the foregoing, CG may assign the benefit or sub-contract its obligations under this Agreement to any company within its corporate group.

12.5 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

12.6 If any provision of this Agreement is held by any competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions of this Agreement and the remainder of the affected provision.

- 12.7 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 12.8 The parties acknowledge and agree that this Agreement is entered into by and between, and for the sole benefit of, CG and Client, and that there are no third-party beneficiaries of this Agreement. A person who is not a party to this Agreement shall have no rights under or in connection with it.
- 12.9 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of California, without reference to the principles of conflicts of law that would apply to the substantive laws of any other jurisdiction. Each party hereby submits to the exclusive jurisdiction of the state and federal courts located in San Francisco, California, over any dispute arising out of or relating to this Agreement and waives the right to object to such venue or make a claim of forum non conveniens. Notwithstanding the foregoing, nothing herein shall prevent either party from commencing legal proceedings for the purpose of seeking immediate injunctive relief in the appropriate jurisdiction.
- 12.10 The parties' duly authorized representatives may sign any Order by using electronic signature. The parties agree that the electronic signatures express the consent for this Agreement to be legally binding and to serve as evidence on the same account as a hand-signed paper document.