

# Reseller Main Services Agreement

This Reseller Main Services Agreement (the "Agreement" as defined below) is by and between Branch Metrics, Inc. ("Branch") and the Customer identified in the applicable Order Form referencing this Agreement ("Customer"). Branch and Customer, hereby agree to the following terms and conditions:

## 1. DEFINITIONS

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

**"Agreement"** means this Main Services Agreement together with any applicable Order Forms, and any exhibits, appendices, schedules, or attachments, and any amendments attached hereto or hereafter attached by mutual written agreement of the parties (all of which are incorporated herein by reference).

**"Confidential Information"** means non-public information disclosed under this Agreement or an Order Form designated as confidential in writing or information which ought to be in good faith considered confidential and proprietary by the disclosing party. Confidential Information of Branch includes but is not limited to the terms and conditions (but not the existence) of the Agreement, all trade secrets, software, source code, object code, specifications, documentation, business plans, Customer lists and other Customer-related information, financial information, audit reports of any nature, proposals, as well as results of testing and benchmarking of the Services, and product roadmaps. Information will not be considered Confidential Information to the extent that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was in the receiving party's possession before receipt from the disclosing party; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other.

**"Customer Data"** means electronic data, information, or content (including Personal Data as defined in the DPA) that is collected, processed, submitted and/or stored by Customer or its Authorized Users through its use of the SaaS Services but excludes Usage Data.

**"Customer's Digital Properties"** means Customer's mobile applications, websites, and program code created by or for Customer for use by Customer with the SaaS Services.

**"Documentation"** means the applicable SaaS Service documentation and usage guidelines at <https://help.branch.io/>, or its successor URL.

**“Data Processing Addendum” or “DPA”** means the data processing agreement posted at <https://legal.branch.io/#saas-dpa-pdf> as of the Effective Date.

**“Feedback”** means suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer relating to the Services. Feedback does not include any pre-existing intellectual property of the Customer.

**“Fees”** means any fees paid by Customer to Branch for the Services, as specified on an applicable Order Form.

**“Order Form”** means the document(s) or online order, regardless of actual name, executed by the parties which incorporates by reference the terms of this Agreement, and describes order-specific information, such as a description of Services ordered and fees.

**“Professional Services”** means the limited consulting, onboarding, or other professional services described in an Order Form.

**“SaaS Services”** means the software-as-a-service products, or components thereof, that are deployed and hosted by Branch in its cloud-based computing environment. SaaS Services exclude: (i) any web-based, mobile, or other software application functionality that interoperates with the SaaS Service that is not directly provided by Branch under this Agreement, and (ii) Third-Party Content defined below.

**“Services”** means the SaaS Services and Professional Services.

**“Subscription”** means a limited right to access and use a particular SaaS Service for the duration, and up to the use capacity purchased by Customer under an Order Form.

**“Third-Party Content”** means any opinions, advice, statements, services, offers, or other information that constitute part of the content expressed, authored, or made available by publicly available sources, other users or other third parties on the SaaS Services, or which is accessible through or may be located using the SaaS Services or pursuant to an Order Form, as more fully described in the Documentation.

**“Usage Data”** means data derived from operation of the Service, and may include Customer Data that has been aggregated or de-identified so that the data is not identified with Customer or its Authorized Users.

## **2. PURPOSE AND SCOPE**

**2.1 Purpose.** This Agreement establishes the general terms and conditions to which the parties have agreed with respect to the provision of Services by Branch to Customer. Additional terms applicable to specific Services are set forth in the Order Form.

**2.2 Incorporation of Order Form.** At any time after execution of an Order Form, Customer may purchase additional Services or otherwise expand the scope of Services granted under an Order Form, upon the mutual execution of a new or amended Order Form.

2.3 Order of Precedence. To the extent any terms and conditions of this Agreement conflict with the terms of an Order Form or any other document, the documents will control in the following order: (i) Order Forms with the latest date(s); (ii) this Agreement; and (iii) any other documents expressly incorporated herein by reference.

### **3. SaaS SERVICES**

3.1 SaaS Service Access. Subject to Customer's purchase of a Subscription under an Order Form and provision to Branch of all onboarding information and assistance as reasonably requested and required for Branch to activate and operate the SaaS Services, Branch will enable Customer to access and use the SaaS Services for the duration of the Subscription and in accordance with the terms of this Agreement. Customer is responsible for its own implementation of the SaaS Services within its Digital Properties (including the technical implementation of Branch's software-development-kit) and any engagements with third-party vendors or integration partners used by Customer in conjunction with the SaaS Services. Unless otherwise provided in an Order Form, if Customer deploys the SaaS Services in a country which requires data to be held in a locale other than the United States, Branch will not, in relation to such country or countries (i) be responsible for the configuration of the SaaS Services; (ii) provide any technical support for the SaaS Services; (iii) guarantee uptime or service levels for the SaaS Services; (iv) assume any liability for the SaaS Services. No SaaS Services may be deployed by Customer in countries or to entities and/or persons in violation of Section 12.8.

3.2 Security. Customer will not: (i) breach or attempt to breach the security of the SaaS Services or any network, servers, data, computers, or other hardware relating to, or used in connection with, the SaaS Services, or any third party that is hosting or interfacing with any part of the SaaS Services; or (ii) use or distribute through the SaaS Services any software, files, or other tools or devices designed to interfere with or compromise the privacy, security, or use of the SaaS Services, or the operations or assets of any other customer of Branch or any third party. Customer will comply with any user authentication requirements for use of the Services. Customer is solely responsible for monitoring its Affiliates, employees, vendors, partners, consultants, clients, external users, contractors, agents or other third parties ("**Authorized Users**") who it has authorized to have access to and use of the SaaS Services. Branch has no obligation to verify the identity of any person who gains access to the SaaS Services by means of an Authorized User's account. Any failure by any Authorized Users to comply with the Agreement will be deemed to be a breach by Customer, and Branch will not be liable for any damages incurred by Customer, or any third party, resulting from such breach. If there is any compromise in the security of an Authorized User's account, or if unauthorized use is suspected or has occurred, Customer must immediately take all necessary steps, including providing notice to Branch, to effectuate the suspension or termination of the affected account.

3.3 Use Restrictions. Customer agrees to use the SaaS Services exclusively for authorized purposes, consistent with all applicable laws and regulations, the Documentation, and applicable Branch policies, including the terms of the Branch Acceptable Use Policy, the latest version of which is available at <https://legal.branch.io/#branchio-aup>. Except as expressly permitted under this Agreement, Customer will not, and will not permit anyone else to: (a) make the functionality of the SaaS Services available to any third party through any means, including, without limitation, any hosting, application services provider, service bureau, or other type of service; (b) use any automated tool (e.g., robots, spiders) to access or use the SaaS Services; (c) rent, lease, or sublicense Customer's access to the SaaS Services to another person; (d) circumvent or disable any digital rights management, usage rules, or other security features of

the SaaS Services or attempt to gain unauthorized access to the SaaS Services or its related systems or networks; (e) use the SaaS Services in a manner that overburdens, or that threatens the integrity, performance, or availability of, the SaaS Services; (f) remove, alter, or obscure any proprietary notices (including copyright and trademark notices) on any portion of the SaaS Services; (g) send material containing software viruses, worms, trojan horses, or other harmful computer code, files, scripts, agents, or programs, (h) send or store in the SaaS Services any personal health data, credit card data, personal financial data or other such sensitive data as determined under applicable law, which may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach Bliley Act, or the Payment Card Industry Data Security Standards; (i) send, upload, transmit or store any infringing, fraudulent, threatening, libelous, defamatory, or otherwise unlawful or tortious material including material that violates third party rights or otherwise use the SaaS Services to link or redirect any such materials; or (j) use the SaaS Services in a manner which is reasonably likely to create a security or vulnerability concern for Branch. Notwithstanding anything to the contrary in the Agreement, use of the SaaS Services in violation of the foregoing restrictions by Customer that, in Branch's judgment, threatens the integrity, performance, availability, or security of the SaaS Services may result in Branch's immediate suspension of, or limitation in Customer's access to, the SaaS Services.

**3.4 Updates and Support.** Customer access is limited to the version of the SaaS Services in Branch's production environment. Branch regularly updates the SaaS Services and reserves the right to discontinue, add and/or substitute functionally equivalent features in the event of product unavailability, end-of-life, or changes to software requirements. Branch shall have no liability for any damages that may result from Customer's failure to implement upgrades or updates to the SaaS Services provided that Customer is notified in writing by Branch of an upgrade or update. Branch will notify Customer of any material change to or discontinuance of the SaaS Services. All support requests must be submitted to the Branch Support team via the "Submit a Ticket" function at <http://help.branch.io/>, or its successor URL.

**3.5 Beta Services.** From time to time, Branch may offer Customer Beta Services. "**Beta Services**" means Branch's services or functionality that are not generally available to customers and which are designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description. Customer may accept or decline any such trial in Customer's sole discretion. Beta Services are for evaluation purposes only and not for production use, and are not subject to any service level agreements agreed to between Customer and Branch. Beta Services are not considered "Services" under the Agreement; however, all restrictions, reservations of rights and Customer's obligations concerning the Services shall apply equally to Customer's use of Beta Services. Branch may discontinue Beta Services at any time in Branch's sole discretion and reserves the right to never make them generally available. **BRANCH WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF, OR IN CONNECTION WITH, CUSTOMER'S USE OF A BETA SERVICE. THE BETA SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND ARE EXCLUSIVE OF ANY INDEMNITY OR WARRANTY WHATSOEVER EXPRESS OR IMPLIED.**

**3.6 Free Services.** Branch may make Free Services available to Customer and use of Free Services is subject to the terms and conditions of this Agreement. "**Free Services**" means Branch's SaaS Services or trial of Branch SaaS Services for which there are no Fees paid by Customer and up to certain limits described in the Documentation. If Customer registers on Branch's website for a trial of Free Services, Branch will make the Free Services available to Customer until the earlier of: (i) the end of the free trial period for which Customer registered to

use the Free Services or Customer's termination of such free trial period; (ii) the start date of any Subscriptions ordered by Customer for such SaaS Services; or (iii) termination by Branch in its sole discretion. Customer agrees that any termination of Customer's access to the Free Services may be without prior notice, and Customer agrees that Branch will not be liable to Customer or any third party for such termination. In the event of a conflict between this section and any other provision of this Agreement, this section shall control with respect to Free Services. **BRANCH WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF, OR IN CONNECTION WITH, CUSTOMER'S USE OF A FREE SERVICES. THE FREE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND ARE EXCLUSIVE OF ANY INDEMNITY OR WARRANTY WHATSOEVER EXPRESS OR IMPLIED.**

**3.7 Reseller Orders.** If Customer orders the Services from an authorized non-affiliated third-party reseller ("Reseller"), then this Section 3.7 (Reseller Orders) will apply and prevail over any conflicting terms in this Agreement.

(a) **Reseller Payments.** The fees for the Services will be set between Customer and Reseller. Customer will make payments of fees directly to Reseller under its agreement with Reseller ("Reseller Agreement").

(b) **Reseller Rights.** At Customer's discretion, Reseller may have access to Customer's account, Authorized Users, and Customer Data. As between Branch and Customer, Customer is solely responsible for: (a) any access by Reseller to Customer's account and Customer Data, (b) defining in the Reseller Agreement any rights or obligations as between Reseller and Customer with respect to the Services.

(c) **Reseller Technical Support.** Customer acknowledges and agrees that Reseller will be responsible for providing Initial Support (as defined below) for the Services. Reseller may disclose Customer Data and Customer Confidential Information to Branch as reasonably required in order for Reseller to handle any support issues that Customer escalates to or via Reseller. As used herein, the term "Initial Support" means the identification, diagnosis, and correction of user issues or problems with the Services by the provision of the following support services by help-desk technicians, prior to the elevation of such support to any Branch personnel: (a) telephone, email, and/or chat assistance; and (b) access to technical information on the Branch website for proper use of the Services.

(d) **Disclosure of Confidential Information to Reseller.** Branch may share Customer Confidential Information and Customer Data with Reseller as reasonably necessary to provide and support the Services. Customer hereby authorizes such sharing pursuant to Section 6.5.

#### **4. PROFESSIONAL SERVICES**

**4.1 Professional Services.** Professional Services shall be provided to Customer on a "Time and Materials" basis, if an estimated total fee amount is stated in the Order Form, that amount is solely a good-faith estimate for Customer's budgeting and Branch's resource scheduling purposes and not a guarantee nor a warranty that the work will be completed for that amount or within Customer's specified time frame. Any delays or lack of timely cooperation by Customer may result in additional fees. Professional Services purchased must be used within, and rates quoted are valid for, a period of one year following the effective date of the Order Form. Hours that are not used or have expired after the one-year period are non-refundable. Upon

preapproval by Customer and subject to Customer's policies, Branch's reasonable travel and lodging costs and expenses incurred by Branch in the performance of Professional Services on Customers site will be billed separately at actual cost.

## 5. PAYMENT TERMS

5.1 Fees. Customer shall pay to Branch all undisputed Fees specified in an Order Form. Unless otherwise specified in the Order Form, payment of invoiced Fees is due thirty (30) days after the invoice date. Interest accrues on past due balances at the lesser of 1.5% per month or the highest rate allowed by law. Except as otherwise specified in an Order Form, (i) Fees are based on Services and Subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and Fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription term. All Fees are exclusive of any applicable taxes. Except for income taxes levied on Branch's net income, Customer will pay, reimburse, or provide a valid exemption certificate to Branch for all taxes and assessments of any jurisdiction. Failure to make timely payments is a material breach of this Agreement, and Branch will be entitled to suspend any or all performance obligations hereunder in accordance with the provisions of Section 11.3 and/or to modify the payment terms, and to request full payment before any additional performance is rendered by Branch. Customer agrees to reimburse Branch for all expenses incurred, including interest and reasonable attorneys' fees, in collecting amounts due to Branch hereunder. Customer will notify Branch of any invoice dispute within thirty (30) days of the invoice date; at which time the parties will engage in good faith efforts to resolve the dispute. Branch may increase annually recurring Fees upon written notice seventy-five (75) days prior to the end of the current Subscription term.

## 6. DATA RIGHTS & USE

6.1 Proprietary Rights. Subject to the limited rights expressly granted hereunder, Branch, its Affiliates, and its licensors reserve all right, title and interest in and to the Services, including all related intellectual property rights including without limitation the Branch application programming interfaces and the Branch software development kits. No rights are granted to Customer hereunder other than as expressly set forth herein. Customer's right to use the Services is non-transferable, non-exclusive and limited to use for internal business purposes and only for the duration of the applicable Order Form. The rights granted herein extend to Permitted Users who have access to and use the Services on behalf of the Customer. The Customer will remain liable and responsible for all acts and omissions of Permitted Users and will procure that each Permitted User abides by the Agreement.

As between the Parties, Customer shall retain all right, title and interest in Customer's Digital Properties. If Customer chooses to use Customer's Digital Properties with a Service, Customer grants Branch permission to allow the Services to interoperate with Customer's Digital Properties as required to provide the Services under the permissions and settings chosen by Customer. Subject to the limited licenses granted herein, Branch acquires no other right, title or interest from Customer or its licensors under this Agreement in or to Customer's Digital Properties.

6.2. License. Customer acknowledges and agrees that in its provision of the SaaS Services Branch will collect and process data from your Digital Properties as set forth in Branch's Privacy Policy, the latest version of which is available at <https://legal.branch.io/#branchio-privacypolicy>, with respect to Customer's use of the SaaS Services. Customer grants to Branch a

limited, non-exclusive, non-sublicensable, non-transferable, worldwide, royalty-free license to use Customer Data collected through the SaaS Services to provide, maintain, optimize and improve the SaaS Services. Branch may collect and use Usage Data, during and after the Agreement, for its own business purposes, such as operating and improving the SaaS Services and developing for providing new services.

**6.3 Data Privacy and Security.** Without limiting Customer's obligations under Section 3.2, Branch will maintain reasonable and appropriate technical and organizational measures designed to secure Customer Data against accidental or unlawful loss, access or disclosure. The terms of the Data Processing Addendum are hereby incorporated by reference and shall apply to the processing of Personal Data.

**6.4 Feedback.** Customer agrees that Branch may, in its sole discretion, use the Feedback Customer provides to Branch in any way, including in future enhancements and modifications to the Services. Customer hereby grants to Branch and its assigns a perpetual, worldwide, fully transferable, sub-licensable, fully paid-up, irrevocable, royalty-free license to use, reproduce, modify, create derivative works from, distribute, publish and display the Feedback in any manner for any purpose, whether in any media, software, or technology of any kind now existing or developed in the future, without any obligation to provide attribution or compensation to Customer or any third party.

**6.5 Confidential Information.** All Confidential Information disclosed hereunder will remain the exclusive property of the disclosing party. The receiving party will not disclose (except as permitted herein) the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information, but in no case less than reasonable care. The receiving party will limit access to Confidential Information of the disclosing party to its Affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Branch may disclose Customer's Confidential Information on a need-to-know basis to its subcontractors who are providing all or part of the Services. Branch may use Customer's Confidential Information solely as provided for under this Agreement. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, and (ii) as required to respond to any summons or subpoena or in connection with any litigation, provided that the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, the receiving party may retain information for regulatory purposes or in back-up files, provided that the receiving party's confidentiality obligations hereunder will continue to apply so long as such information is so retained.

## **7. THIRD-PARTY CONTENT & INTEGRATIONS**

**7.1 Third-Party Content.** Customer may enable the SaaS Services to display, or contain links to, third-party products, services, and websites. Any Third-Party Content are those of the respective authors or producers and not of Branch or its Affiliates or their respective shareholders, directors, officers, employees, agents, or representatives. Branch does not control

Third-Party Content and does not guarantee the accuracy, integrity, or quality of such Third-Party Content. Branch is not responsible for the performance of, does not endorse, and is not responsible or liable for, any Third-Party Content or any information or materials advertised in any Third-Party Content. By using the SaaS Services, Customer and/or its end users may be exposed to content that is offensive, indecent, or objectionable. Branch is not responsible or liable, directly or indirectly, for any damage or loss caused to Customer by Customer's or a third party's use of or reliance on any goods, services, or information available on or through any third-party service or Third-Party Content. It is Customer's responsibility to evaluate the information, opinion, advice, or other content made available through the SaaS Services. Customer is solely responsible for any content and other material that Customer or its affiliates or authorized users submits, publishes, transmits, links, or displays on, through, or with the SaaS Services.

**7.2 Partners.** The SaaS Services enable Customer to measure and analyze its marketing campaigns with certain partners that Customer works with, such as advertising networks, publishers and analytics providers ("**Partners**"). For such purpose, Customer may, through its configuration of the SaaS Services ("**Partner Features**"), direct Branch to provide data to, and receive data from Partners relating to end users ("**Shared Data**"). Pursuant to the foregoing, insofar as Customer makes use of the Partner Features, Customer hereby grants Branch the right to provide Shared Data with Partners as to which Customer makes use of the Partner Features (the "**Permitted Partners**") and to obtain and process Shared Data from Permitted Partners. Customer acknowledges and agrees that: (i) the sharing of such Shared Data between Branch and Permitted Partners will be available only to the extent enabled by the Permitted Partner and Branch; (ii) any use of Shared Data by a Permitted Partner shall be subject to Customer's own agreements with Permitted Partner; (iii) Branch shall have no liability or responsibility in connection with any acts or omissions by Permitted Partners; (iv) any use or processing of Shared Data may be subject to certain limitations and restrictions imposed by Permitted Partners, and that Branch is not responsible for fulfilling such limitations and restrictions unless expressly agreed to in writing between Customer and Branch.

## 8. WARRANTIES

**8.1 Branch Warranties.** Branch represents and warrants that the SaaS Services, as updated by Branch, and used in accordance with the Documentation, will perform substantially in accordance with the Documentation under normal use and circumstances and that the Professional Services will be performed in a manner consistent with general industry standards. Branch is not responsible for any claimed breach of any warranty set forth in this Section caused by: (i) modifications made to the SaaS Services by anyone other than Branch; (ii) the combination, operation or use of the Services with any items not provided by Branch; (iii) Branch's adherence to Customer's specifications or instructions; or (iv) Customer deviating from the operating procedures described in the Documentation. For any breach of a warranty above, Customer's exclusive remedies are those described in Section 9.3.

**8.2 Customer Warranties.** The Customer represents and warrants that: (i) the Customer Digital Properties and Customer Materials do not infringe the intellectual property rights or privacy rights of any third party; (ii) it will obtain consent from its end users with regard to cookies and/or targeting and online behavioral advertising to the extent required by applicable law; and (iii) it has all permissions, authority, licenses, and consents required to enable the SaaS Services to collect, process, and store Customer Data for the purpose of providing the SaaS Services in accordance with the terms of this Agreement and as required by applicable law.

8.3 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THE SERVICES, AND THE DOCUMENTATION ARE PROVIDED "AS IS," WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, BRANCH EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. THE LIMITATIONS SET FORTH ABOVE APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 9. INDEMNITY

9.1 **Customer Indemnity.** Customer will defend Branch, its Affiliates and Resellers and their respective directors, officers, agents, employees, representatives, and assigns ("Branch Indemnified Parties") against any claim, demand, suit or action against Branch brought by a third party (a) arising from Customer's use of the Services in an unlawful manner or in violation of this Agreement, (b) alleging that any of Customer's Digital Properties developed or provided by Customer, or the combination of Customer's Digital Properties used with the Services, infringes, or misappropriates such third party's intellectual property rights or (c) Customer's instructions to share Shared Data with a Partner (each a "Claim Against Branch"). Customer will indemnify Branch Indemnified Parties from any costs, damages, and expenses finally awarded against Branch Indemnified Parties as a result of, or for any amounts paid by Branch Indemnified Parties under a settlement approved by Customer in writing of, a Claim Against Branch. The above defense and indemnification obligations do not apply if a Claim Against Branch arises from Branch's breach of this Agreement.

### 9.2 **Branch Indemnity.**

(a) Branch will defend Customer, its Affiliates, and their officers, agents, employees, representatives, and assigns ("Customer Indemnified Parties") against any claim, demand, suit or action against Customer brought by a third party alleging that any of the Services infringe any copyright rights or misappropriate the trade secret rights of any third party (a "Claim Against Customer"), and will indemnify Customer Indemnified Parties from any costs, damages, and expenses finally awarded against Customer Indemnified Parties as a result of, or for any amounts paid by Customer Indemnified Parties under a settlement approved by Branch in writing of, a Claim Against Customer.

(b) The defense and indemnification obligations in Section 9.2(a) do not apply to the extent a Claim Against Customer arises from Customer's breach of the Agreement, or usage of the Services in violation of the Documentation or in connection with any acts or omissions by Permitted Partners. Upon the occurrence of a claim, suit or action for which indemnity is or may be due pursuant to Section 9.2(a), or in the event that Branch believes that such a claim, suit or action is likely, Branch may, at its option provide one or more of the following remedies to Customer, which will be Customer's exclusive remedy for any related claims it may have against Branch, whether for breach of warranty, breach of contract or otherwise: (i) appropriately modify the Services so that they become non-infringing, or substitute functionally equivalent services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Customer. Customer agrees that Branch's performance of its obligations under this Section 9.2(b) constitute Customer's exclusive remedy, and Branch's sole obligation, with respect to a third-party infringement claim. Branch's obligations set forth within Section 9.2(a) do not apply to the extent: (A) a Claim Against Customer arises out of, and would

not have otherwise occurred absent of, Customer's Digital Properties or Customer's use of the Services in violation of this Agreement or the Documentation; (B) a Claim Against Customer arises from, and would not have otherwise occurred absent the, use or combination of the Services or any part thereof with hardware, software, data, information, design, specification, instruction, intellectual property, processes or other material not provided by Branch, or any material provided from a third party portal or other external source that is accessible to Customer within the Services ("External Outputs"), if the Services or use thereof would not infringe without such combination, (C) a Claim Against Customer arises under an Order Form for which there is no charge, (D) a Claim Against Customer is based on the combination of any External Outputs with any products or services not provided by Branch, or (E) a Claim Against Customer arises from the Third-Party Content.

9.3 Indemnification Procedure. The obligations of either Party to provide indemnification under this Agreement will be conditioned contingent upon (a) the indemnified party promptly giving the indemnifying party written notice of any claim for which indemnification is sought (provided that the indemnified party's failure to notify the indemnifying party will not diminish the indemnifying party's obligations under this Section, except to the extent that the indemnifying party is materially prejudiced as a result of such failure); (b) the indemnifying party having sole control of the defense and settlement of any and all claims for which indemnification is sought provided that no settlement may be entered into without the consent of the indemnified party if either such settlement would require any action on the part of the indemnified party, including payment of fees or admission of guilt, other than to cease using any allegedly infringing or illegal content or services; and (c) the indemnified party giving the indemnifying party all reasonably requested assistance at the indemnifying party's expense. Subject to the foregoing, an indemnified party will have the option to participate in any matter or litigation through counsel of its own selection solely at its own expense.

## **10. LIMITATION OF LIABILITY**

10.1 BRANCH AND ITS RESELLERS, SUPPLIERS AND LICENSORS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, GOODWILL, USE, LOSS OF DATA OR DATA THAT IS INCOMPLETE, MISSING, OR INCORRECT, OR OTHER INTANGIBLE LOSSES (EVEN IF BRANCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM THIS AGREEMENT.

10.2 Notwithstanding anything to the contrary contained in this Agreement, any Order Form, or any other agreement that incorporates this Agreement by reference, Branch's total liability to Customer and responsibility for any and all damages, claims, obligations, losses or expenses arising out of or in connection with this Agreement or the Services, including but not limited to, any amounts paid by Branch for the defense or settlement of any indemnified claims, will not exceed the Fees paid by Customer for the twelve (12) month period preceding the action or event giving rise to the Customer's claim. The limitations of liability set forth in this Section 10.2 will not apply to any amounts due to Branch by Customer for the Services, and will not limit or exclude the liability or remedy of either party to the extent prohibited by applicable law.

## **11. TERM AND TERMINATION**

**11.1 Term.** This Agreement commences on the effective date of the first Order Form and continues until such time that there is no active Order Form for sixty (60) days, unless terminated earlier as provided hereunder.

**11.2 Services Term.** The term of each Subscription shall be as specified in the applicable Order Form. Except as is otherwise specified in an Order Form, Subscriptions will automatically renew for additional one-year terms, unless either party gives the other written notice (if Customer provides notice to Branch, by emailing such notice to [billing@branch.io](mailto:billing@branch.io)) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of subscriptions will be at Branch's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has changed from the prior term may result in re-pricing at renewal without regard to the prior term's per-unit pricing.

**11.3 Suspension.** Branch will be entitled to suspend any or all Services upon ten (10) days written notice to Customer in the event Customer is in breach of this Agreement. However, Branch may suspend Customer's access and use of the Services immediately, with notice to Customer following promptly thereafter, if, and so long as, in Branch's sole judgment, there is a security or legal risk created by Customer that may interfere with the proper continued provision of the Services or the operation of Branch's network or systems.

**11.4 Termination.** A party may terminate this Agreement for cause (i) upon 5 days written notice to the other party of a material breach if such breach remains uncured within 30 days after written notice of such material breach to the non-breaching party, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Where a party has rights to terminate under this Section, that party may at its discretion either terminate the entire Agreement or the applicable Order Form. In such cases, Order Forms that are not terminated will continue in full force and effect under the terms of this Agreement. Where Customer has not agreed to be bound for a defined Term in any applicable Order Form, Customer may terminate the Services by providing written notice to Branch via the "Submit a Ticket" function at <http://help.branch.io/> or by electing to "Cancel my Subscription" in Customer's dashboard. Such termination will be effective and Customer's access to the Services will be removed as of the first day of the calendar month following the month when your termination notice is received by Branch.

**11.5 Effect of Termination.** Upon termination of this Agreement, any outstanding balance through the date of termination and other unpaid payment obligations will be immediately due and payable in full. All provisions that by their express terms or nature should survive or contemplates performance or observance subsequent to termination or expiration of this Agreement (including any Order Form) or are necessary for the interpretation of any of the foregoing, shall survive termination or expiration of this Agreement and continue in full force and effect, including 6.1 (Proprietary Rights), 6.2 (License), 6.5 (Confidential Information), 8 (Warranties), 10 (Limitation of Liability), Sections 11.5 (Effect of Termination), and 12 (Miscellaneous) will survive termination of this Agreement. Branch has no obligation to retain Customer Data beyond ninety (90) days after the expiration or termination of Services.

## **12. MISCELLANEOUS**

**12.1 Governing Law.** This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed under the laws of the State of Texas, without regard to its conflict of law provisions. The Parties expressly disclaim and exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. Client consents that any legal action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the state or federal courts located in Travis County, Texas.

**12.2 Marketing Support.** Customer agrees to comply with reasonable requests of Branch to support public relations efforts pertaining to the Services, which efforts may include: (a) a press release highlighting Customer's use of the Services; (b) participation in targeted press and analyst interviews highlighting benefits of implementing the Services; and (c) participation in customer case studies developed by Branch and used on Branch's website(s) and other collateral. Customer grants to Branch a non-exclusive, non-transferable, limited non-sublicensable, worldwide, royalty-free right to use Customer's name, trademarks, service marks and logos (collectively, the "**Customer Marks**") (i) for the purpose of referencing Customer as a customer of Branch on the Branch website(s) and (ii) in the production of marketing materials, provided that such use is in accordance with any of Customer's trademark and logo use guidelines that Customer provides to Branch. All goodwill developed from such use shall be solely for Customer's benefit.

**12.3 No Waiver; Severability.** Branch's failure to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by Branch in writing. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**12.4 Assignment.** Except as expressly stated in this Section, neither party may assign its rights or obligations under this Agreement without obtaining the other party's prior written consent, provided however that either party may assign, transfer or novate its rights and obligations to an Affiliate or a successor in connection with a merger, acquisition or consolidation or to the purchaser in connection with the sale of all or substantially all of its assets. Any assignment in contravention of this Section is void. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**12.5 Counterparts; Electronic Signatures.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. 'This Agreement may be electronically signed, and any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**12.6 Entire Agreement.** The Agreement, together with any exhibits or attachments and any active Order Forms, contains the entire agreement of the parties with respect to its subject matter and supersedes and overrides all prior agreements on the same subject matter and will govern all disclosures and exchanges of Confidential Information made by the parties previously hereto. This Agreement may not be modified except by a writing signed by a duly authorized representative of both parties. Branch acceptance of a Customer purchase order or other ordering document is for convenience only, and any additional or different terms in any purchase order or other response by Customer are deemed objected to by Branch without need

of further notice of objection and will be of no effect or in any way binding upon Branch.

**12.7 Relationship between the Parties.** The Parties are independent contractors. No agency, partnership, joint venture, fiduciary, or employment relationship is created as a result of this Agreement.

**12.8 Export/Trade Compliance.** The Services and any derivatives thereof, may be subject to export control and economic sanctions laws and regulations of the United States and other jurisdictions. Both Customer and Branch each represent respectively that it is not named on any U.S. Government Consolidated Screening denied-party list which may be searched at: <https://www.export.gov/article?id=Consolidated-Screening-List>. Customer shall not permit any entity or individual to access or use any of the Services who is listed on the Consolidated Screening List or located in a U.S. government-embargoed country (currently Cuba, Iran, North Korea, Syria and Crimea), or known to be engaged in proliferation of nuclear, chemical or biological weapons or missiles, or otherwise in violation of any U.S. export law or regulation.

**12.9 Third Party Beneficiary.** This Agreement is not intended to and will not be construed to give any third party any interest or rights with respect to any agreement or provision contained herein, even if the third party is indirectly benefited by this Agreement. Unless otherwise agreed in writing by the parties, Customer will be responsible for its Affiliates' performance and compliance with the terms of this Agreement. If a claim for breach of this Agreement is brought against Branch based on the use of the Services by Customer's Affiliates, such claim will be brought solely by Customer. An Affiliate shall have the right to order Services under the Agreement by execution of a separate Order Form. If an Affiliate of Customer executes an Order Form referencing this Agreement, the Affiliate shall be considered the Customer for purposes of such Order Form and its Services.

**12.10 Force Majeure.** Branch will not be responsible for any delay or failure in performance of any part of this Agreement to the extent that the delay or failure of performance (1) is caused by an event or circumstance beyond its reasonable control and (2) could not have been avoided or corrected through the exercise of reasonable diligence (a "Force Majeure Event"). Branch will promptly notify Customer in writing where a Force Majeure Event occurs, giving details of the Force Majeure Event, its anticipated effect on Branch's performance, and the steps that Branch is taking to remedy the delay or failure. If Branch's performance is delayed or otherwise affected by any Force Majeure Event for more than thirty (30) days, then Customer may terminate the affected Order Form or Services upon written notice to Branch and receive a pro-rated refund, as Customer's sole and exclusive remedy, of any prepaid and unearned fees measured from the date Branch notified Customer of the Force Majeure Event.

**12.11 Notices.** Except as otherwise specified in this Agreement, all notices to Branch will be provided via email to [legal@branch.io](mailto:legal@branch.io). Billing-related notices to Customer will be provided via email and addressed to the relevant billing contact designated by Customer on the applicable Order Form. All other notices to Customer will be provided via email and addressed to the relevant Services account administrator designated by Customer.