

# Discovery Ads Terms

These Discovery Ads Terms and Conditions for Advertisers (“Agreement” or “Terms”) are a legal agreement between the entity executing this Agreement (“Advertiser,” “You” or “Your”) and Branch Metrics, Inc., with offices at 1975 W. El Camino Real, Suite 102, Mountain View, CA 94040 (“Branch”), and governs all purchases by Advertiser of ad inventory on Branch’s Discovery Ads service.

Your use of the Services requires the ability to enter into agreements and/or to make transactions electronically.

YOU HEREBY CERTIFY TO BRANCH THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY THIS AGREEMENT AND TO PAY FOR YOUR TRANSACTIONS WITH BRANCH INVOLVING THE DISCOVERY ADS SERVICE, AND THAT YOU HAVE THE RIGHT AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY, ORGANIZATION OR OTHER ENTITY, THAT YOU HAVE THE RIGHT AND AUTHORITY TO LEGALLY BIND SUCH ENTITY TO ALL THE TERMS AND OBLIGATIONS OF THIS AGREEMENT.

You agree to accept and abide by this Agreement as presented. Changes, additions, or deletions to this Agreement are not acceptable. Branch reserves the right to refuse access to the Services if You fail to comply with any part of this Agreement or for any other reason in Branch’s sole discretion.

In consideration of the foregoing and of the mutual promises and covenants set forth herein, You and Branch agree as follows:

1. **Access.** Access to the Services is available only to an Advertiser that is an existing customer of Branch’s deep-linking and attribution services, unless otherwise agreed by Branch.
2. **System Requirements.** Use of the Services requires compatible hardware, internet and/or mobile access, certain software, and may require obtaining updates or upgrades from time to

time. Because use of the Services involves hardware, software, and internet and/or mobile access, Your ability to use the Services may be affected by the performance of these factors. You acknowledge and agree that such system requirements, which may be changed from time to time, are Your responsibility.

3. **Other Agreements.** Any other agreements in effect between Branch and You (collectively, the "Other Agreements") are separate from these Terms. These Terms will in no event be deemed to be the terms of the Other Agreements and vice versa. No breach of these Terms will constitute a breach of the Other Agreements and vice versa.
4. **Your Information.** You agree to provide accurate, current and complete information required to register with the Services and at other points as may be required in the course of using the Services ("Advertiser Registration Information"), including, but not limited to, company name, physical address, corporate payment information, relevant tax information or other information as requested. You acknowledge and agree that Your use of the Services (as defined herein) will require Branch to send email communications to You at the email address that You provide upon registration. You agree that Branch may send to You communications, including but not limited to notifications and invoices (or other materials relating billing), in the English language, by email or postal mail. You hereby confirm Your ability to read and comprehend communications in the English language or Your practicable ability to have communications in the English language translated to a language of Your preference or as mandated by the jurisdiction(s) to which You are subject, at no cost to Branch. It is Your sole responsibility to ensure Advertiser Registration Information is up to date at all times.
5. **Access Credentials and Responsibility.** Certain parts of the Services, including account management features, may be password-restricted to registered users or other authorized persons ("Account"). Advertiser may select individuals (employees or independent contractors) to access and use such parts and Advertiser will obtain separate credentials, e.g., user IDs and passwords, from Branch for such individuals (each, an "Authorized User"). Advertiser is responsible for the confidentiality and security of each Authorized User's credentials and will take all necessary steps to protect each Authorized User's credentials from disclosure. Advertiser will not

share (and will instruct each Authorized User not to share) such Account credentials with any other person or entity or otherwise permit any other person or entity to access or use the Services. You agree to immediately notify Branch of any unauthorized use of Your Account or any other breach of security. You will at all times be responsible for all actions taken under an Account and all losses arising therefrom, whether or not such action was taken by an Authorized User or by another party, and whether or not such action was authorized by an Authorized User.

## 6. **Advertising Services.**

- a. **Overview.** Upon acceptance of this Agreement, You may bid on search ad inventory offered on Branch's Discovery Service, and run advertising campaigns ("Campaigns") on the search ad impressions that You purchase. If You purchase a search ad impression, Branch will deliver Your advertising content ("Ad Content"), which includes a deep link to Advertiser or third party mobile applications and/or the associated products and services, to a handheld device that supports the display of search results from Branch's Discovery Ads service (the supported devices, "Devices"; and advertising on Branch's Discovery Ads service, collectively, the "Services").
- b. **Limited License to Ad Content.** You hereby grant to Branch a non-exclusive, royalty-free, worldwide, fully paid-up license to store, use, reproduce and display the Ad Content (which is deemed to include all content, including text, audio, video, images, deliverables, digital files, web pages, trademarks, brand features or any other intellectual property contained therein or accessible therefrom) for purposes of delivering the Services and as otherwise expressly permitted hereunder.
- c. **Ad Parameters.** You understand and agree that if You are the winning bidder for an impression, Ad Content may be delivered to Devices authorized by Branch to display Ad Content, subject to Your specification of the following parameters: (i) the ad trafficking and/or targeting decisions (such as search query keywords), (ii) properties to which the Ad Content may direct viewers (such as deep linked mobile application content and app downloads), and (iii) the related URLs and redirects and the services and products advertised on such mobile applications, URLs and redirects ((i) to (iii), collectively, "Ad Parameters"). You authorize and

consent to the delivery of Ad Content to search impressions that satisfy the Ad Parameters. Branch may, but is not obligated to, make available to You suggestions relating to keywords or auction bids, intended to assist You with the selection and generation of Ad Parameters. You understand and agree that You are solely responsible for evaluating the appropriateness and permissibility of the Ad Parameters, and You are not required to implement or authorize the use of any of Branch's suggestions. You further understand and agree that if You decide to implement or authorize the use of any of Branch's suggestions, then You are solely responsible for the suggestions so implemented or used. Branch will not bear any responsibility or liability for Your Ad Parameters or Your decisions relating to Ad Parameters.

- d. **Advertiser Targeting Data.** Some features on the Services allow You to use information relating to Your customers, products, and services ("Advertiser Targeting Data") as Ad Parameters. As between You and Branch, You understand and agree that (i) You are solely responsible and liable for Your Advertiser Targeting Data; (ii) You undertake that You will only use the Advertiser Targeting Data as an Ad Parameter where you have lawful, permitted purposes; and (iii) You will remove (or request that Branch remove, if and where required) the Advertiser Targeting Data if You no longer intend to use such data in connection with the Services.
- e. **Compliance with Specifications, Content Guidelines and Policy Guidelines.** You agree to comply with the specifications provided by Branch to enable proper display of Ad Content in connection with the Services, including, without limitation, technical specifications and policy and content guidelines, which is accessible [here](#) (each as may be amended from time to time by Branch, the "AUP") and which You agree to visit and review regularly. You are solely responsible for the proper content, format, and keeping up-to-date Ad Content submitted by You or otherwise used in connection with the Services. You acknowledge that changes made to the configuration of re-direct deep link routing to the mobile application marketplace, and changes made to the display and description of Your mobile applications (e.g. app download price) in mobile application marketplaces such as the Apple App Store or the Google Play Store may impact Your Ad Content, and that such changes in the respective mobile

application marketplace may not be immediately reflected in the Services. You are responsible for all costs and expenses incurred in connection with development and certification of Your Ad Content. The data collected by Branch in connection with the Services is processed and used in accordance with Branch's publicly posted Privacy Policy, available at <https://legal.branch.io/discovery/discovery-privacy-policy/>.

- f. **Reporting Metrics.** You acknowledge that reporting metrics provided by Branch (the "Reporting Metrics") are the definitive and binding measurements of Branch's performance on delivery of the Services, and that no other reporting metrics, third party or otherwise, are permitted in connection with the Services. The Reporting Metrics are in the standard format offered by the Services, and Branch makes no assurances that the Reporting Metrics will meet Your specific reporting or analytics needs.
- g. **Beta, Ad Experiments, Promotions.** You acknowledge that Branch or its affiliates may participate in "beta," "ad experiments" or promotion program features. You may not disclose any information regarding such program features or the terms or existence of any non-public feature.
- h. **Right to Reject Ad Content.** Branch reserves the right to reject or cancel any Ad Content, Campaigns or Ad Parameters requested by You at any time and on any grounds, including but not limited to reasonable belief by Branch that placement of Ad Content may subject Branch to criminal or civil liability, may contravene the Terms, may contravene Branch's policies, or may be adverse to Branch's business interests. You also understand and agree that certain Advertisers or materials owned by the Advertiser or advertiser products and/or services may not be eligible for promotion through a Campaign set up on the Services. The fact that Branch has not rejected any Ad Content does not in any way waive, reduce, limit or otherwise affect Your responsibilities and obligations under this Agreement.
- i. **Sub-contractors.** Branch reserves the right to engage sub-contractors to perform, under Branch's direction, the Services (or a portion thereof) where deemed necessary by Branch; provided that, Branch will remain liable to Advertiser with respect to the Services provided by

such sub-contractors subject to these Terms, and Branch's use of a sub-contractor shall not release Branch from any duty or liability to fulfill Branch's obligations under these Terms. Such sub-contractors will be informed about the confidential nature of the information and restrictions about the usage and disclosure of such confidential information and will be bound by Branch's obligations in clause 8 below. Upon reasonable request by Advertiser, Branch will provide Advertiser with a list of the sub-contractors that Branch is engaged with to perform the Services (or a portion thereof).

- j. **Marketing Permission.** You agree that Branch may send You marketing communications regarding the Services. Branch may request permission to use the Ad Content, including all trademarks and logos included in the Ad Content, for promotional purposes in Branch marketing materials. Branch must approve in writing any press release or announcement that refers or relates to this Agreement, the Ad Content or Your relationship with Branch.
- k. **Partners.** The Services enable You to measure and analyze Your Campaigns with certain third parties that You work with, such as analytics providers ("Partners"). You may, through Your configuration of the Services ("Partner Features"), direct Branch to provide data to, and receive data from Partners or from Branch's deep-linking and attribution services relating to end users that engage with Your Campaigns, including engagement data from Branch's Discovery Service and postback data from your applications and/or associated products and services ("Shared Data"). By using the Partner Features, You agree that Branch may make available Shared Data to Partners and may obtain and process Shared Data from Partners consistent with your use of the Partner Features. You acknowledge and agree that: (i) a Partner will only receive Shared Data to the extent enabled by the Partner and Branch; (ii) any use of Shared Data by a Partner shall be subject to Your own agreements with the applicable Partner; (iii) Branch shall have no liability or responsibility in connection with any acts or omissions by Partners; (iv) any use or processing of Shared Data may be subject to certain limitations and restrictions imposed by Partners, and that Branch is not responsible for fulfilling such limitations and restrictions unless expressly agreed to in a signed writing between You and Branch.

## 7. Payment for Services.

a. **Fees.** As consideration for the Services, You agree to pay Branch, and agree that Branch may charge Your payment method, for the full amount of the fees for any Campaign that You purchase in the Services (including any taxes, administrative fees, and late fees, as applicable) that may be accrued by or in connection with the Services or Your Account. You agree that any discounts to Your invoice must be mutually agreed upon by the Parties in writing (email suffice). You acknowledge and agree that fees are based solely on the Reporting Metrics (as defined herein). You are responsible for the timely payment of all fees and for providing Branch with current, complete and accurate billing information to process Your payment for all fees. You are responsible for the payment of any fees associated with an electronic funds transfer (i.e., ACH, wire transfer) when issuing payment to Branch, which includes fees from Your financial institution and intermediary banks. For the use of credit card to process Your payment, You agree that Branch may automatically charge the credit card nominated by You at any time after any portion of the Services are delivered. Furthermore, You authorize Branch (or its billing agent) to charge the credit card account until You or Branch cancels or terminates the Services as set forth herein; provided that if payment is not received from the credit card issuer, the transaction is returned after the payment has been settled, otherwise known as chargeback, or if there are insufficient funds in the case of check or debit card payments, You agree to pay all amounts plus any applicable transaction fees (e.g., NSF fees, chargeback fees) due upon demand. Branch will invoice You in arrears on a monthly basis during the applicable invoice period, with payment due net 30 days from the invoice date. You agree to pay Branch a monthly administrative fee up to six percent (6%) of the value of the applicable monthly invoice. Late payments bear interest at the rate of one-and-a-half-percent (1.5%) per month of the outstanding balance or the highest rate permitted by law, whichever is less. Timely payments do not bear interest.

b. **Taxes.** Branch may invoice You for any applicable taxes, levies, duties, costs, charges, deductions or any charges of equivalent effect, as imposed by any tax authority on or in respect of the Services provided by Branch to You under this Agreement, including, without limitation, sales tax, use tax, value added tax ("VAT"), goods and services tax ("GST"), and

consumption tax. Branch will determine, collect and remit such applicable taxes to the competent tax authorities, and You agree to pay such taxes as invoiced by Branch. In the event that any tax authority imposes any tax compliance responsibility on You including, without limitation, reverse charge accounting, self-accounting and reporting, You will take full responsibility for such compliance obligations.

## 8. Confidentiality.

- a. **Definitions.** During the term of this Agreement, each Party (a "Recipient") may have access to, or become acquainted with, certain non-public confidential information of the other Party (a "Discloser") including without limitation all information clearly identified as confidential at the time of disclosure ("Confidential Information"). Advertiser and Branch further agree that, subject to the rights and licenses granted herein, each Party's Confidential Information includes all non-public information regarding the Discloser, including without limitation any customer, customer prospect, the terms, conditions and pricing set forth in this Agreement, orders for Services, marketing, technical, business and/or strategic plans or information provided by such Party to the other Party in the performance of the Services under this Agreement. Confidential Information further includes the proprietary information and technology used by Branch to perform the Services, the Branch Data, and all intellectual property and related rights associated therewith (collectively, the "Branch IP"), Reporting Metrics, nonpublic product plans, marketing plans, whether such information is clearly designated as "Confidential" in writing, or at the time of disclosure, if disclosed orally or visually, a reasonable person would understand the information to be confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is now or subsequently becomes generally available to the public through no act or omission of the Discloser or its employees or agents; (ii) was rightfully in the possession of the Recipient without restriction prior to its disclosure by the Discloser; (iii) is disclosed to a third party by the Discloser without restriction on disclosure; (iv) was rightfully in the possession of the Recipient without restriction prior to its disclosure by the Discloser; (v) is independently developed by Recipient without reliance on, or reference to such Confidential Information; and (iv) is

received from a third party lawfully in possession of such information and the Recipient has no knowledge of any disclosure restrictions on such third party to disclose such information.

Confidential Information excludes any open source software ("OSS") included in the Services and accompanied by licensing terms that do not impose confidentiality obligations on the use or disclosure of such OSS.

- b. **Obligations Regarding Confidential Information.** Each Party agrees as follows: (a) to use the Confidential Information of the Discloser only for the purposes of performance of its obligations under this Agreement, or as otherwise permitted by this Agreement; (b) to take all reasonable steps to ensure that the Discloser's Confidential Information is not disclosed or distributed by the Recipient's employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the Discloser than it uses to protect its own Confidential Information of like importance; (c) to restrict access to the Confidential Information disclosed by the Discloser to such of the Recipient's employees, agents and third parties, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with this Agreement; and (d) to return or destroy all Confidential Information of the Discloser in its possession upon the Discloser's written request, after termination of this Agreement. Recipient will be responsible for any violation of the terms of this section by its employees or consultants.
- c. **Permitted Disclosures of Confidential Information.** Notwithstanding the foregoing, Confidential Information may be disclosed as required by applicable law or any governmental agency, provided that before disclosing such information the Discloser must provide the Recipient with sufficient advance notice of such request for the information to enable the Recipient to exercise any rights it may have to challenge or limit the agency's authority to receive such Confidential Information, to the extent permitted by applicable law.

## 9. Ownership



- a. **Advertiser.** As between Advertiser and Branch, Advertiser retains ownership of the Ad Content, and Advertiser Data, in each case, subject to Branch's usage rights under this Agreement. "Advertiser Data" means (i) the Advertiser Targeting Data; and (ii) the data that specifically identifies Advertiser that is generated by or from Advertiser's use of Services. Branch may use and disclose the Advertiser Data: (1) to perform Advertiser's obligations under this Agreement; (2) to operate, support, maintain and enhance the Services; (3) to disclose aggregate statistics about Branch's Discovery Ads service in a manner that prevents individual identification of Advertiser; (4) in accordance with a judicial or other governmental order or as may be required by law, in accordance with Section 8; and/or (5) as otherwise expressly authorized by Advertiser.
- b. **Branch.** As between Advertiser and Branch, Branch retains ownership of the Discovery Ads service (which includes the Services), the proprietary information and technology used by Branch to perform the Services, the Branch Data, and all intellectual property and related rights associated therewith. "Branch Data" means (i) the data derived from or generated by Advertiser's use of the Services (which include its end users' interactions with the Ad Content) that do not specifically identify Advertiser; (ii) the data relating to any error, issue or enhancement to the operation or use of the Services; and (iii) the data that Branch would have regardless of Advertiser's use of the Services. For the avoidance of doubt, Advertiser Data may include information that is similar or identical to the information included in the Branch Data; provided, however, that such similarities will not adversely affect each party's ownership of its data. For the avoidance of doubt, "Branch," "Branch Metrics," the Branch Metrics word and design logo, the Branch Metrics badge logo, "Branch Discovery," and any other product or service name, slogan, design, graphic, or logo used in connection with the Services are trademarks and service marks of Branch Metrics, Inc. and its suppliers or licensors, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Branch or the applicable trademark holder.

## 10. Representations and Warranties

- a. **Advertiser Warranty.** You represent and warrant that: (i) You are duly organized under applicable law and have sufficient authority to enter into and carry out Your obligations under this Agreement, and upon Branch's request, You will demonstrate such authority to Branch's satisfaction, and understand and acknowledge that Your failure to do so will be deemed a material breach of this Agreement; (ii) the person entering into this Agreement is authorized to execute this Agreement on behalf of Advertiser; (iii) Your Ad Content and Your selection of Ad Parameters comply fully with the Services' posted policies and procedures, including the AUP, and all applicable legal and regulatory requirements of each jurisdiction, including with the requirements of any applicable self-regulatory codes, whether or not You are a member of such codes, in which it is displayed through Your use of the Services; and (iv) none of the Ad Content (1) infringes on any third party's copyright, patent, trademark, trade secret or any other intellectual property or proprietary rights; (2) is defamatory or trade libelous; (3) is pornographic or obscene; or (4) contains malware, spyware, viruses, Trojan horses, worms, time bombs, ransomware or other similar harmful or deleterious programming routines.
- b. **Branch Warranty.** Branch represents and warrants that: (i) it is duly organized under applicable law and has sufficient authority to enter into and carry out its obligations under this Agreement; and (ii) the Services will be performed in a workmanlike and professional manner. Unless otherwise stated, Your sole remedy and Branch's sole obligation for any breach of the foregoing warranties is set forth in Section 12.c. of this Agreement.

## 11. **Disclaimer of Warranties.**

- a. THE PRODUCTS AND SERVICES DELIVERED TO YOU THROUGH THE SERVICES are provided "AS IS" AND "AS AVAILABLE" without warranty of any kind, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, BRANCH EXPLICITLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY REPRESENTATIONS OR WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. Branch does not guarantee, represent, or warrant the accuracy, completeness, or usefulness of the Services, or that Your use of the Services will be uninterrupted or free from

errors, network failures, loss, corruption, attack, viruses, interference, hacking, or other security intrusion and Branch disclaims any liability relating thereto. Advertiser relies on the Services at Advertiser's own risk.

- b. BRANCH MAKES NO ASSURANCE THAT THE SERVICES WILL HAVE AVAILABLE ANY VOLUME OR A SUFFICIENT VOLUME OF AD IMPRESSIONS THAT SATISFY YOUR AD PARAMETERS (INCLUDING YOUR DESIRED TERRITORY AND DESIRED LANGUAGE); OR THAT YOU WILL BE SUCCESSFUL IN THE AUCTION FOR THE AD IMPRESSIONS ON WHICH YOU BID; OR THAT YOUR AD CONTENT WILL BE SUITABLE OR PERMISSIBLE IN THE DISCOVERY AD SERVICES MARKET OR TERRITORY IN WHICH YOU SEEK TO ADVERTISE.
- c. YOU AGREE THAT FROM TIME TO TIME BRANCH MAY REMOVE THE SERVICES (OR PARTICULAR PRODUCTS OR SERVICES THEREIN) FOR INDEFINITE PERIODS OF TIME, OR CEASE TO OFFER THE SERVICES IN THEIR ENTIRETY, AT ANY TIME, WHERE NECESSARY TO PROTECT BRANCH'S INTERESTS.
- d. YOU UNDERSTAND AND AGREE THAT PRICING FOR THE SERVICES IS BASED ON AN AUCTION MODEL, WHICH MAY VARY BASED ON NUMEROUS FACTORS, INCLUDING, WITHOUT LIMITATION, PROPRIETARY ALGORITHMS USED BY BRANCH.
- e. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, RIGHTS, AND REMEDIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

## 12. **LIMITATION OF LIABILITY.**

- a. BRANCH WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF BRANCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM CUSTOMER'S USE OF THE SERVICES.

- b. UNDER NO CIRCUMSTANCES WILL BRANCH'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO ADVERTISER'S USE OF THE SERVICES (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNTS, IF ANY, PAID AND PAYABLE TO BRANCH FOR USE OF THE SERVICES FOR THE SIX (6) MONTH PERIOD PRIOR TO THE CLAIM.
- c. IN THE EVENT BRANCH FAILS TO DELIVER YOUR CAMPAIGN IN ANY RESPECT, THE SOLE LIABILITY OF BRANCH TO YOU AND YOUR SOLE REMEDY IS LIMITED TO EXTENSION OF THE CAMPAIGN UNTIL THE CONTRACTED METRICS ARE DELIVERED OR COMPENSATION UP TO A MAXIMUM OF 100% OF THE FEES ACTUALLY PAID OR PAYABLE TO BRANCH UNDER THIS AGREEMENT. NOTWITHSTANDING THE ABOVE, BRANCH CANNOT ASSURE THAT ANY AUCTION-BASED ADS WILL BE DELIVERED.
- d. SOME OF THE LIMITATIONS PROVIDED HEREIN MAY NOT BE ALLOWED UNDER THE LAWS OF CERTAIN JURISDICTIONS. IF ANY SUCH LAW IS DEEMED TO APPLY TO THE AGREEMENT THEN THE LIMITATIONS SET FORTH HEREIN APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER SUCH LAWS.
13. **Indemnity.** By using the Services and/or the Services, You agree, to the maximum extent permitted by law, to indemnify and hold Branch, Branch's directors, officers, employees, affiliates, agents, contractors, and licensors harmless with respect to any claims arising out of Your breach of this Agreement, any representations or warranties made by You herein, your instructions to share Shared Data with a Partner, or Your other improper, unauthorized or unlawful use of the Services, including, without limitation, any allegation that the Ad Content or the content to which it links, the Ad Parameters You select, or the Discovery Data you provide to Branch (i) misappropriated, violated or infringed any third party's patent, copyright, trademark, trade secret, mask work or any other intellectual property or proprietary right; (ii) defamed, or breached the confidentiality or violated the privacy of another under any applicable law or regulation relating to privacy or data protection, including but not limited to the Regulation EU 2016/679 (GDPR), the California Consumer Privacy Act of 2018 (CCPA), and any other U.S. state or federal law governing

personal information or personal data (collectively, "Applicable Privacy Law"); (iii) constituted false, deceptive, unfair, abusive acts or practices, including relating to advertising or sales; or (iv) failed to comply with any applicable law or regulation.

14. **Data Privacy Terms.** In relation to the provision and processing of any personal data or personal information as defined under Applicable Privacy Law (including Advertiser Targeting Data, Ad Parameters, or Shared Data) that Advertiser provides to Branch for use in connection with the Services ("Discovery Data"), each Party shall act as an independent controller or business, and not as a joint controller or joint business with the other Party. Each Party shall decide how to manage the processing of Discovery Data, including which data to collect, how to collect it, how long to store it, and which security measures to apply to it.

a. **Purposes of Use.** Branch may collect, retain, use, disclose, and/or otherwise process Discovery Data (i) to perform the Branch Services under the Agreement, (ii) to deliver Reporting Metrics for your Campaigns; (iii) to fulfill Branch's obligations in this Section 14, (iv) to optimize targeting of advertising to end users of the Branch Discovery Service and to otherwise improve the Services, (v) for use as permitted by the CCPA, and (vi) as otherwise agreed by the Parties in writing. In addition to these purposes, Branch may collect, retain, use, disclose, and otherwise process Discovery Data as follows: (vii) to collect, use, retain, share, or disclose Discovery Data that has been (A) aggregated or (B) de-identified in accordance with the CCPA, (viii) to comply with applicable laws, (ix) to comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities, (x) to cooperate with law enforcement agencies concerning conduct or activity that Advertiser, Branch, or a third party reasonably and in good faith believes may violate federal, state, or local law, (xi) to exercise or defend legal claims.

b. **Use Limitations.** Advertiser discloses Discovery Data to Branch, and Branch may retain, use, and disclose such Discovery Data, solely for the legitimate business purposes set forth in this Section 14 and for purposes permitted by Applicable Privacy Law.

c. **Obligations of Branch as Data Controller.** Branch will comply with requirements applicable to controllers or third parties under Applicable Privacy Law when processing Discovery Data,

including but not limited to by: (i) providing the same level of privacy protection to Discovery Data as is required under Applicable Privacy Law, (ii) providing applicable rights to individuals, and (iii) implementing technical and organizational security measures appropriate to the level of risk for the Discovery Data. If either Party receives any request or claim related to Discovery Data processed pursuant to this Agreement, such Party shall inform the other Party without undue delay and provide all reasonable assistance to answer such request or claim. Branch shall have no obligation to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information as defined under Applicable Privacy Law. Advertiser understands and agrees that it is solely responsible for responding to requests to exercise individual rights that it receives and that Branch shall have no responsibility to respond directly to an individual on the Advertiser's behalf.

d. **Cooperation by Branch.** Advertiser has the right to take reasonable and appropriate steps to ensure that Branch uses Discovery Data provided by Advertiser consistent with this Agreement and Applicable Privacy Law, and, upon reasonable advance written notice, to take reasonable steps to stop and remediate use of Discovery Data by Branch that is inconsistent with this Agreement or Applicable Privacy Law. Such steps include requesting that Branch provide Advertiser with: (i) information reasonably necessary for Advertiser to comply with Applicable Privacy Law related to the processing of Discovery Data, including to complete any necessary data protection assessment, and (ii) in case of control or investigation by a data protection authority, relevant information related to the Discovery Data processed pursuant to this Agreement to allow Advertiser to cooperate with the data protection authority. Branch will notify Advertiser if it determines that it can no longer meet its obligations under Applicable Privacy Law.

e. **Advertiser's Compliance with Applicable Law.** Advertiser shall comply with applicable laws, including without limitation, and to the extent required: (i) providing notice; (ii) obtaining consent; (iii) honoring access, deletion, opt-out, and opt-in rights and requests; and (iv) otherwise ensuring that it and Branch have any and all rights required in order for Branch to collect, retain, use, disclose, and otherwise process Discovery Data under the Agreement.

15. **Termination.** If You fail to comply with any material provision of this Agreement, Branch, upon notice to You may: (i) terminate this Agreement and/or Your Account, and You remain liable for all amounts due under Your Account up to and including the date of termination; (ii) terminate the license to the software; and/or (iii) preclude access to the Services (or any part thereof). Branch reserves the right to modify, suspend, or discontinue the Services (or any part or feature thereof) at any time, with or without advance notice to You, and Branch is not liable to You or to any third party should it exercise such rights, subject to Section 12.c.
16. **Notices.** Except as otherwise specified in this Agreement, all notices of termination or an indemnifiable claim related to this Agreement will be in writing and will be effective (i) upon receipt if personally delivered to one of the addresses listed below, (ii) upon receipt if sent by certified or registered mail (return receipt requested), postage prepaid, to one of the addresses listed below, or (iii) upon receipt if transmitted by e-mail to one of the email addresses listed below. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer on the applicable Order Form. All other notices to Customer will be addressed to the relevant Services account administrator designated by Customer. Branch's address for the giving of notice under this Agreement is: Branch Metrics, Inc., 195 Page Mill Rd, Suite 101, Palo Alto, CA 94306, Attention: Legal Department. A party may change its email or mailing address by giving the other party written notice as described above.
17. **Entire Agreement.** This Agreement, including all Attachments thereto, constitute the entire agreement between You and Branch and govern Your use of the Services, superseding all prior agreements between You and Branch. You may not assign this Agreement, including, without limitation, by operation of law or merger, without Branch's prior written approval, and any attempt to assign this Agreement without such prior written approval is void. If any part of this Agreement is held invalid or unenforceable, that portion will be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions will remain in full force and effect. Branch's failure to enforce any right or provisions in this Agreement will not constitute a waiver of such provision, or any other provision of this Agreement. Branch will not be responsible for failures to fulfill any obligations due to causes beyond its control.

18. **Modification or Amendment of Terms.** Branch reserves the right, at its discretion, to modify or amend this Agreement at any time. Upon such modification, the modified Terms will be available [here](#) (or its successor URL). You agree to regularly visit our [Terms](#) and to review the Terms, including for any modifications, which may be indicated by updates to the Effective Date stated at the top of the Terms. You acknowledge and agree that regularly reviewing this Agreement for modifications is Your responsibility. If You do not agree to any modification to the Terms, You must immediately cease all access to and use of the Services. Your continued use of the Services after any modification to the Terms will be deemed to be Your acceptance of the Terms as modified.
19. **Relationship of the Parties.** The Parties are independent contractors under this Agreement. No employment relationship, agency relationship, fiduciary relationship, partnership or joint venture is created by this Agreement, and neither Branch nor You will hold itself out as the agent of the other, except as set forth in this Agreement.
20. **Governing Law.** You expressly agree that the laws of the State of California, excluding its conflicts of law rules, govern this Agreement and Your use of the Services, and that the exclusive jurisdiction for any proceeding arising out of or relating in any way to Your use of the Services will be the Northern District of California. You hereby waive the right to object to the foregoing choice of law, personal jurisdiction or venue.