

## Service Terms and Conditions

These Terms and Conditions between Red Points Solutions, S.L., a Spanish corporation, with its principal address at Carrer de Berlín 38, 1<sup>a</sup>, 08029 Barcelona, Spain, and tax identification nº B-65649899 (“Red Points”) and the Client, are an integral part of the Master Services Agreement entered into on the Effective Date. Red Points and Client may be referred to individually as a “Party” or collectively as the “Parties”.

### 1. Provision of Services

**1.1 Scope of Services.** Red Points provides a proprietary software platform with tools for the detection, documentation and/or removal of online content that infringes Client’s rights, as well as related professional services (collectively, the “Services”). In addition to these Terms and Conditions, Client and Red Points will execute one or more Annexes to the Agreement specifying the Services Red Points will provide and the associated costs (the “Scope of Services”). Any such Scope of Services will hereby be incorporated into the Agreement upon execution by both Parties. Red Points will not be responsible for providing Services that are not described in a mutually executed Scope of Services. Once executed, a Scope of Services may only be changed by a written instrument executed by both Parties.

**1.2 Access to Software Platform.** Subject to the payment of all applicable Fees during the term of the Agreement, Red Points hereby grants to Client a worldwide, non-sublicensable, non-transferable (except as provided herein), non-exclusive right to access and use Red Points’ proprietary software platform located at [www.redpoints.com](http://www.redpoints.com) (the “Software Platform”) exclusively for the purposes described in the applicable Scope of Services, in accordance with these Terms and Conditions, including Clause 2 below.

**1.3 Personnel.** Red Points shall be responsible for staffing decisions with respect to employees or contractors utilized in the performance of any Services under the Agreement, and shall have the right at any time to delegate, subcontract, remove or replace any of its personnel or contractors assigned to perform Services under the Agreement, provided however, that Red Points will be responsible for the acts or omissions of its employee and contractor personnel and any delays caused by the reassignment or replacement thereof.

**1.4 Client Cooperation.** Client acknowledges that Red Points’ ability to deliver the Services is dependent upon Client’s ongoing cooperation and assistance. Client will provide Red Points, on a timely basis, with all information, material, and assistance reasonably necessary for Red Points to perform the Services, including, as applicable, information related to Client’s intellectual property rights and registrations, and any authorization forms required by Red Points. Red Points will not be responsible for delays resulting from Client’s failure to fully comply with the foregoing.

1.5 No Legal Representation Created. Intellectual Property is a complex area of law, which often requires guidance from an attorney. Client understands and acknowledges that Red Points is not a law firm, and that the employees of Red Points do not and cannot provide legal guidance. Red Points is not Client's attorney, nor are the Services a substitute for the advice of an attorney.

While Red Points provides tools and services which, in response to Client's input, verification, and direction, can greatly increase the operational efficiency of Client's efforts to detect, document, and remove online content that violates Client's rights, ultimately it is Client, not Red Points, who must make all decisions regarding Client's legal rights. Red Points does not make or provide independent legal guidance regarding Client's rights, and is prohibited from providing any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, or strategies. Any legal questions with respect to intellectual property law should be directed to Client's legal counsel.

The Services are not intended to (and do not) create an attorney-client relationship with Red Points. While communications between you and Red Points are protected by the Agreement and Red Points' Privacy Policy, they are not protected by the attorney-client privilege, work product doctrine, or other forms of legal privilege.

## 2. Software Platform Terms

2.1 User Accounts. Client will be given logon credentials for the number of users specified in writing by the Client, and Client may provide these credentials to its employees, contractors, representatives, and agents (each, an "Authorized User"). Client is legally responsible for all actions taken or authorized on the Software Platform under Client's passwords or accounts, including for compliance with all laws and regulations applicable to the use of the Software Platform.

2.2 Client Responsibilities. Client will take reasonable steps to prevent unauthorized access to the Software Platform and must (a) notify Red Points promptly upon becoming aware of any unauthorized use of any Client password or account (or any other breach of security of the Service), and (b) notify Red Points promptly upon becoming aware of, and make a reasonable effort to stop, any unauthorized copying of or access to the Software Platform.

2.3 Red Points Responsibilities. Red Points will use and apply information security techniques, measures, tools, and protection as is necessary and consistent with good industry standards in the hosting and provision of its Software Platform and the performance of the Services.

2.4 Use Restrictions. Client may not: (a) copy, rent, sublicense, or otherwise provide third parties with access to the Software Platform, (b) decompile, disassemble, reverse engineer, modify, create derivative works of the Software Platform or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services; (c) seek or gain unauthorized

access to the Software Platform; (d) interfere with or disrupt the integrity or performance of the Software Platform; (e) send, store or use on the Software Platform any infringing, obscene, threatening, libelous or otherwise unlawful material, or any material containing viruses, worms, Trojan horses or other malicious or harmful computer code.

2.5 No reliance. Red Points assumes no liability for the quality, accuracy, or validity of the data/information gathered in the Software Platform during the Services ("Software Platform Data") as said information is entered in the corresponding websites and/or marketplaces by third parties outside of Red Points' control. Red Points gathers Software Platform Data as is from websites and/or marketplaces in order to display it in our Software Platform. Use of Software Platform Data is at your risk. No oral or written information given by Red Points, its employees, agents, or third-party providers shall create a warranty; nor shall Client be entitled to rely on such information.

### 3. Fees and Payment Terms

3.1 Fees. Client will pay Red Points all Fees listed in an applicable Scope of Services, in the currency quoted therein. All Fees are due in advance and are based on the Services purchased and not actual usage. Unless specified in the applicable Scope of Services, payment obligations are non-cancelable, and Fees paid are non-refundable and not subject to set-off. The Client is responsible for providing complete and accurate billing and contact information to Red Points and updating Red Points of any changes.

3.2 Issuance of Invoice. Red Points issues its invoices on the first day of the month, in all those cases where the Client pays the Fees on a monthly basis. Unless otherwise set forth in the Scope of Services, all Fees will be invoiced in advance. If the Client has any issue regarding an invoice it must report the issue to Red Points in writing within seven (7) days of receipt of the corresponding invoice. Invoice disputes do not suspend the obligation to pay invoices.

3.3 Overdue Charges. Red Points reserves the right to apply late interest charges to overdue Fees at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Client will be responsible for all reasonable expenses (including attorneys' fees) incurred by Red Points in collecting past due amounts. Red Points may suspend or terminate the Services for material breach for Fees that are past due. In the event of any outstanding Fees due under the Agreement, and for which Red Points has requested the Client in writing to pay the amount due, Red Points reserves the right to, thirty (30) days after written request to the Client, suspend the Services and Client's access to the Software Platform until full payment has been received by Red Points. Regardless of Service suspension, Fees corresponding to the applicable Subscription Term will become due and payable.

3.4 Taxes. Client is solely responsible for the payment of all taxes, assessments, tariffs, duties, or other fees imposed, assessed, or collected by or under the authority of any governmental body

(collectively, "Taxes") arising from Red Points' provision of the Services hereunder, except any taxes assessed upon Red Points' net income or payroll. If Red Points is required to directly pay Taxes related to Client's use or receipt of any Services, Client agrees to promptly reimburse Red Points for any amounts paid by Red Points.

3.5 Renewal of Fees. The Fees established in the applicable Scope of Services Annex will be revised upon the renewal of every subsequent Subscription Term (as defined therein), so as to increase the Fees every renewal term thereafter in the amount specified in the Scope of Services. Such increase corresponds to continuous improvements and updates in our technology and Service. Red Points will notify the Client in writing before any change in Fees takes place.

#### 4. Intellectual Property Rights

4.1 Red Points Property. As between Red Points and Client, Red Points owns and retains all right, title, and interest in and to the Software Platform and the Services, including any data related to the use, operation, or performance thereof, and any further development, upgrade or update thereof, as well as Red Points' name, logo, trade names and trademarks ("Red Points Property"), other than Client Property defined below. Except as expressly set out in these Terms and Conditions, no right, title, or license under any Red Points Property is granted to Client.

4.2 Client Property. As between Client and Red Points, Client owns and retains all right, title, and interest in and to any data, files, text, graphics, images, software, works of authorship of any kind, and information or other materials that Client transmits to Red Points for the provision of the Services ("Client Property"). Except as expressly set out in these Terms and Conditions, no right, title, or license under any Client Property is granted to Red Points.

4.3 License to Use Client Property. Client hereby grants Red Points a limited, non-exclusive, non-transferable (except in connection with the permitted assignment of the Agreement), and royalty-free license to access and use the Client Property during the term of the Agreement, solely as necessary for Red Points to provide the Services. Additionally, during the term of this Agreement, the Client grants Red Points a non-exclusive, non-transferable, revocable license to use Client's name and logo to identify Client as a subscriber of the Services.

#### 5. Confidentiality

5.1 Confidential Information. Each Party agrees to maintain the confidentiality of any proprietary information received from the other Party (non-public information disclosed or provided by one Party to the other as a consequence of the signature of the Agreement, whether in oral, written, graphic, electronic or any other form) during the term of the Agreement and for two (2) years after its termination, provided that such obligation regarding a Party's trade secrets will continue so long

as such information remains subject to trade secret protection pursuant to applicable law. Each Party agrees not to use, sell or distribute such confidential information to third parties except as necessary to fulfill its obligations under the Agreement and these Terms and Conditions. Accordingly, each Party undertakes to protect and keep the confidential information secret according to applicable professional standards, applying the same degree of care that it exercises for its own confidential information. Upon the termination of the Agreement, each Party must return or destroy the other Party's confidential information upon request.

5.2 Exceptions. Notwithstanding the foregoing, confidential information does not include information that: (i) is in the receiving Party's possession at the time of disclosure; (ii) is independently developed by the receiving Party without use of or reference to confidential information; (iii) becomes known publicly, before or after disclosure, other than as a result of receiving Party's improper action or inaction; or (iv) is approved for release in writing by the disclosing Party.

5.3 Misuse or Compelled Disclosure. Either Party shall promptly notify the other Party of any misuse or misappropriation of confidential information that comes to its attention. Notwithstanding the foregoing, a Party may disclose confidential information as required by applicable law or by proper legal or governmental authority, provided that it shall give the other Party prompt notice of any such legal or governmental demand and reasonably cooperate in any effort to seek a protective order or otherwise to contest such required disclosure. If the receiving Party discloses, uses (or threatens to disclose or use) any confidential information in breach of this Section, the disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts.

## 6. Data Protection

6.1 Data Protection under European Rules. For the execution and monitoring of the Agreement, it is necessary to process personal data of the signatories of the Agreement as well as those of the Client's contact person, employees and, where applicable, Client's Authorized Users and of potential infringers ("Personal Data"). Whenever Red Points processes your Data, the relevant Privacy Policy (<https://www.redpoints.com/data-protection-policy/>), Potential Infringers' Privacy Policy (<https://www.redpoints.com/reported-content/>), and/or Cookie Policy applies (<https://www.redpoints.com/cookies-policy/>).

6.2 Data Processing Agreement. Red Points agrees to observe the instructions given by the Client under the Data Processing Agreement available at <https://www.redpoints.com/data-processing-agreement-april-2022/>. The duration of the Data Processing Agreement shall be equal to the duration of the Agreement.

6.3 Potential Infringers' Personal Data under the Data Processing Agreement. In order to perform the Services, Controller may provide Processor with a list of qualified intangibles, potential infringers (the "Potential Infringers") via the Software Platform, where applicable, and this information is necessary for the correct provision of the Services. Processor will collect the Personal Data of the Potential Infringers found in the scanned websites via the bots as customized by the Client's Authorized Users under the Software Platform (i.e. name or nickname, e-mail address, phone); and, where applicable, the name, surname and e-mail address of the contact person from the Client's reseller or partner that must be provided by the Controller. In addition, the Processor may also have to search in other traditional sources to find eventual contact details of such Potential Infringers. While processing the Personal Data, Red Points will always act as Data Processor, acting in representation and on behalf of the Client (Data Controller) and under its instructions.

6.4 Data Subject's requests under the Data Processing Agreement. Notwithstanding the Processor's duty to assist the Controller, the Controller assumes the responsibility of addressing the corresponding requests of the Data Subjects who exercise their rights of access, rectification, erasure, objection, restriction of processing, portability, as well as not to be subject to automated decision-making, including profiling.

## 7. Term and Termination

7.1 Term of Agreement and Scope of Services Annexes. The Agreement will begin on the Effective Date and remain in effect until terminated in accordance with this Clause. Each Scope of Services Annex will specify a start date, term, termination and renewal details.

7.2 Termination. Either Party may terminate the Agreement and/or any Scope of Services Annex by providing written notice to the other Party in the event (i) the other Party materially breaches any of its duties, obligations or responsibilities under the Agreement or these Terms and Conditions and fails to cure such breach within thirty (30) days after receipt by the breaching Party of written notice specifying the breach, or provide the other Party with an acceptable plan for curing such breach within ten (10) days after receipt of such notice and thereafter curing such breach in accordance with such plan; (ii) a receiver, trustee, administrator, or administrative receiver is appointed for the other Party or its property; (iii) the other Party makes an assignment for the benefit of creditors; (iv) any proceedings are commenced against the other Party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; or (v) the other Party is liquidated or dissolved. In addition, a Party may terminate the Agreement by providing written notice to the other Party if there are no Scope of Services Annexes in effect for more than thirty (30) days, continuously.

7.3 Termination for Convenience. The Client will be entitled to terminate the Agreement for convenience upon thirty (30) calendar days' written notice, during the 30 days preceding the date of termination of the applicable Subscription Term.

7.4 Effects of termination. In those cases where Red Points carries out online enforcement on behalf of Client through a Letter of Authorization (“LoA”) signed by Client, the Client agrees and understands that any authority or representation capacity granted under such LoA will terminate upon termination of the Agreement or the applicable Scope of Services (“Termination Date”). Accordingly, Client undertakes to directly handle any further claims, reports, retractions or withdrawals before online marketplaces and platforms regarding their intellectual property rights as of the Termination Date, and acknowledges that Red Points will bear no responsibility in connection thereto as of the Termination Date.

7.5 Return of Software Platform Data. Upon request by Client made within 30 days after the Termination Date, Red Points will make available a link in order for Client to download a file containing Software Platform Data (excluding dashboards, reports, and stats) in comma separated value (.csv) format along with links to related content in their native or homogenized format, which can be downloaded as well. After such 30-day period, Red Points shall have no obligation to maintain or provide any Software Platform Data and shall thereafter, unless legally prohibited, delete all Software Platform Data in its systems or otherwise in its possession or under its control.

7.6 Survival Provisions. Sections 1.5, 2.3, 3, 4.1, 4.2, and 5-11 hereto shall survive any termination or expiration of the Agreement. Termination or expiration of the Agreement shall not affect any obligation accrued or arising prior to such termination or expiration.

## 8. Warranties; Disclaimers

8.1 Mutual Warranties. Each Party represents and warrants that it has the legal power and authority to enter into the Agreement and these Terms and Conditions.

8.2 Anti-Money Laundering. The Parties represent, warrant and undertake to each other on a continuous basis that they shall comply with all applicable anti-money laundering laws, rules, and regulations, and, to the best of their knowledge, no such action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator is pending. In addition, the Parties represent, warrant and undertake to each other on a continuous basis that they shall each respectively take no action which would subject the other to fines or penalties under such laws, regulations, rules or requirements.

8.3 Anti-Corruption. Client acknowledges it has not received or been offered any illegal or otherwise improper bribe, kickback, payment, gift or other thing of value by any Red Points employee, representative or agent in connection with the Agreement, and shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption (as such statutory provisions are amended from time to time). Client will promptly notify Red Points’ Legal Department at (legal-department@redpoints.com) if Client becomes aware of any circumstances that are contrary to this acknowledgment.

8.4 Export Compliance. The Services may be subject to export laws and regulations of the European Union and other jurisdictions. Each Party represents that it is not named on any government denied-party list. Client shall not access the Software Platform or use Services in an embargoed country (which at the Effective Date of the Agreement includes Cuba, Iran, North Korea, Sudan or Syria) or in breach of any E.U. export law or regulation.

8.5 Red Points Warranties. Red Points warrants that the Services will perform substantially in conformity with applicable specifications. This warranty shall not apply to non-conformities, errors, or problems caused by acts within Client's control or arising from Client's negligence or improper use of the Services and/or the Software Platform, from unauthorized modifications made to the Services, from use of the Services in an unsupported operating environment or manner, or from interoperability issues arising from devices or equipment or browsers used by Client to access the Software Platform, or that arises from Client's or any third party's software or systems. Professional Services, if any, performed by Red Points under the Agreement will be performed in a professional and workmanlike manner.

8.6 Client Warranties. Client warrants it will have qualified representatives using due care to review, validate, and verify for accuracy all information transmitted to Red Points for the purpose of providing the Services. Client undertakes to use the Services and Software Platform in accordance with these Terms and Conditions and in compliance with all applicable laws and regulations. If applicable, Client warrants that it will use the Services to report claims of intellectual property infringement against third parties only when Client has a good faith belief in the veracity of such claims, and not for the purposes of harassment, unfair competition, overreach, or other unlawful purposes. Accordingly, the Client warrants that it is the rightful owner or licensee of all intellectual property rights included in the Scope of Services, and holds Red Points harmless for any third party claim that may arise as a consequence of any enforcement actions carried out by Red Points on behalf of Client. Additionally, Client represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under the Agreement and these Terms and Conditions and that no pending or threatened claim or litigation known to it would have a material adverse impact on the Parties' ability to perform as required by the Agreement and these Terms and Conditions. Client agrees that it has not relied on the availability of any future functionality of the Services and the Software Platform or any other future product or service in executing the Agreement or any Scope of Services. Client acknowledges that information provided by Red Points regarding future functionality should not be relied upon to make a purchase decision.

8.7 Client Warranties Specific to Enforcement. In those cases where Red Points carries out online enforcement on behalf of Client, Client acknowledges and agrees that although Red Points will send the corresponding takedown requests and make commercially reasonable efforts to achieve removal in all cases, Red Points may not be able to take down all reported content due to (i) the marketplaces' or websites' own takedown policies, or (ii) insufficient intellectual property rights and/or registrations of Client. Accordingly, Client understands and agrees that the foregoing cannot be attributed to Red Points and that the Client's obligation to pay the Fees is not contingent on such removal. Client further acknowledges and agrees that if Red Points were to withdraw a takedown



request as instructed by Client, Red Points cannot guarantee that the content will be restored within a specific time frame, or restored at all, as the restoring of such content depends solely on the corresponding platform or marketplace, in accordance with their own internal policies and terms of use. Additionally, in the event that Red Points is required to execute an agreement with a website or hosting provider in order to be able to report online infringements therein, the Client agrees to subrogate in Red Points' position towards those websites or hosting providers, and warrants to assume any liability towards such websites or hosting providers that may arise as a consequence of Red Points' enforcement activity therein at the request of Client and on behalf of Client.

8.8 Counter-notifications. In those cases where Red Points carries out online enforcement on behalf of Client, (i) Red Points reserves the right to withdraw a take-down request filed through its Software Platform in the event that Red Points receives a counter-notification from the reported infringer or their legal representation and such counter-notification is notified to Client in writing and Red Points does not receive any instructions from Client within two (2) business days as of said notice; and (ii) as of the Termination Date, the Client agrees and understands that the Client will be the only responsible for handling any counter-notifications from infringers, as well as retractions or withdrawals before online marketplaces and platforms.

8.9 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES OR ANY OUTPUT FROM THE SERVICES ARE PROVIDED "AS-IS," AND RED POINTS DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ANY OUTPUT FROM THE SERVICES IS ACCURATE OR RELIABLE, WILL MEET CLIENT'S BUSINESS REQUIREMENTS, WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL DEFICIENCIES IN THE SERVICES CAN BE FOUND OR CORRECTED. RED POINTS SHALL NOT BE LIABLE FOR ANY COST OR DAMAGE ARISING, EITHER DIRECTLY OR INDIRECTLY, FROM CLIENT'S RELIANCE OR USE OF THE SERVICES. CLIENT IS ENTIRELY RESPONSIBLE FOR ALL CONTENT THAT IT UPLOADS, E-MAILS OR OTHERWISE TRANSMITS VIA THE SERVICES AND/OR THE SOFTWARE PLATFORM.

## 9. Indemnification

9.1 Indemnification by Red Points. Red Points will defend and indemnify Client, its employees, directors and officers (the "Client Indemnified Parties") from and against any and all costs, damages and expenses, including reasonable attorneys' fees (collectively, "Losses"), suffered or incurred by any of the Client Indemnified Parties, as a result of any claim brought by a third party against Client Indemnified Parties alleging that the use of the Services in accordance with these Terms and Conditions infringes any patent, copyright, trademark or trade secret right of such third party (an "Infringement Claim"). Without limiting the foregoing, in the event that the Services or any part thereof is likely to, in Red Points' sole opinion, or do become the subject of an Infringement Claim, Red Points may, at its option and expense: (i) procure for Client the right to continue using the allegedly infringing item, (ii) substitute a functionally equivalent non-infringing replacement for such item, or (iii) modify such item to make it non-infringing and functionally equivalent, or (iv) terminate

the Agreement and any outstanding Scope of Services and refund to Client Fees paid by Client to Red Points for the infringing items in an amount prorated to reflect the period of time between the date Client was unable to use the Services due to such Infringement Claim and the remaining days in the current Scope of Services Annex. Notwithstanding the foregoing, Red Points shall have no liability for any Infringement Claim arising from (1) Client's use or supply to Red Points of any Client Property; (2) use of the Services in combination with any software, hardware, network or system not supplied by Red Points if the alleged infringement relates to such combination; (3) any modification or alteration of the Services (other than by Red Points), if the alleged infringement arises in connection with such modification or alteration; or (4) Client's violation of applicable law or third party rights. The foregoing indemnity will be The Client Indemnified Parties' sole and exclusive remedy, and Red Points' sole and exclusive obligation regarding an Infringement Claim.

9.2 Indemnification by Client. Client will defend and indemnify Red Points, its employees, directors and officers (the "Red Points Indemnified Parties") from and against any and all Losses, suffered or incurred by any of the Red Points Indemnified Parties, arising from (i) any breach of the Agreement by Client; (ii) any third party claim against any Red Points Indemnified Parties resulting from Red Points' reporting or taking actions instructed by the Client and/or under its authorization; (iii) any third party claim against any Red Points Indemnified Parties resulting from Client taking independent action as a result of its use of, or reliance on, the Software Platform; (iv) any third party claim against any Red Points Indemnified Parties based on the use of the Services by Client, other than those claims for which Red Points expressly provides an indemnity in Section 9.1. For clarity, Red Points will not be liable in any manner (except for Red Points' gross negligence) for the shutdown of fraudulent or infringing websites, as instructed by Client.

9.3 Indemnification Conditions. The Parties' obligations under this Clause 9 are contingent upon the indemnified Party giving prompt written notice to the indemnifying Party of any claim subject to indemnification and giving the indemnifying Party sole control of the defense or settlement of the claim. The indemnifying Party shall not settle or consent to an adverse judgment in any such claim that adversely affects the rights or interests of the indemnified Party or imposes additional obligations on the indemnified Party, without the prior express written consent of the indemnified Party.

## 10. Limitation of Liability

10.1 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL RED POINTS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY CLIENT HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION APPLIES EVEN IF A PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

10.2 Exclusion of Consequential and Related Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF USE OR DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE FOR ANY LOSS, DAMAGE OR INCONVENIENCE SUFFERED BY THE OTHER PARTY OR BY ANY THIRD PERSON, TO THE EXTENT THAT SUCH LOSS, DAMAGE OR INCONVENIENCE IS CAUSED BY THE FAILURE OF THE OTHER PARTY TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

## 11. General

11.1 Relationship. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties and Red Points will be considered an independent contractor when performing any Services hereunder.

11.2 Conflicts. Red Points reserves the right to refuse to report or enforce online listings on behalf of Client against current or past clients of Red Points in the event there is any conflict between their registered intellectual property rights.

11.3 Severability. If any provision of the Agreement or these Terms and Conditions is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

11.4 Entire Understanding. The Agreement (including these Terms and Conditions and all Scope of Services, and any other Annexes, which are incorporated by reference) constitutes the entire agreement between the Parties as to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of the Agreement.

11.5 Modification; Waiver and Cumulative Remedies. Except for Red Points' modification or update of the Services, or any policies as necessary to comply with applicable law, rules, regulations, no modification of the Agreement, and no waiver of any breach of the Agreement or right under the Agreement, is legally binding against the other Party unless in writing and signed or electronically accepted by both Parties. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

11.6 Governing Law, Venue and Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of Spain. The Parties expressly agree that any conflict or dispute arising under or related to the Agreement will be submitted exclusively to the ordinary courts of Barcelona, Spain, regardless of any other jurisdiction or court to which the Parties may be entitled to submit such conflict.

11.7 Publicity. Any press release developed by a Party regarding the Agreement shall be subject to the prior written consent of the other Party, which shall not be unreasonably withheld.

11.8 Assignment. Neither Party may assign any of its rights or obligations under the Agreement, whether by operation of law or otherwise, without the other Party's prior written consent, not to be unreasonably withheld; except, however, either Party may assign the Agreement in its entirety, without the other Party's consent, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any other attempt to transfer or assign is void. If a Party is acquired, sells substantially all of its assets, or undergoes a change of control, then the other Party may terminate the Agreement upon written notice. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

11.9 Notices. All notices under the Agreement shall be in writing and shall be delivered to the addresses first set forth by each Party. Either Party may change its address for notice by giving written notice of such address change in the manner provided herein.

11.10 Language. The Agreement has been drafted in the English language. Any interpretation of the Agreement, or communications and notices to be made or given pursuant to the Agreement, shall be in the English language.

11.11 Force Majeure. Except for performance of a payment obligation, neither Party shall be liable under the Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. In the event any of the foregoing events results in Red Points not being able to provide the Services for a period of more than thirty (30) days, then either Party may terminate the Agreement upon written notice to the other Party.

11.12 Definitions. All expressions and terms defined or used in the Agreement shall have the same meaning in all of its Annexes, unless the context clearly requires otherwise.

11.13 Execution. The Agreement may be signed electronically and in counterparts, in which case each signed copy will be deemed an original as though both signatures appeared on the same document.