

## **TERMS OF SERVICE US**

These Terms of Service together with a executed Statement of Work shall form the “**Agreement**” between Face US Inc t/a Pulsar, a New York corporation located at Second Home Hollywood, 1370 North Saint Andrews Place, Los Angeles, CA 90028 (“**Pulsar**”) and you the entity named as the customer in the Statement of Work to which these Terms of Service US apply (the “**Customer**”).

### **BACKGROUND**

- (A) Pulsar is engaged in delivering social media analytics, research and management software and consultancy.
- (B) The Customer wishes to acquire a licence to use the Software indicated in the Statement of Work and/or engage Pulsar for the purposes of Research pursuant to the terms of this Agreement (the “**Permitted Purpose**”).

### **OPERATIVE PART**

#### **1. Definitions and Interpretation**

- 1.1. In this Agreement, unless the context otherwise requires:

**Agreement** means these Terms of Service together with a Statement of Work.

**Applicable Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, the common law and the law of equity, any binding court order, judgement or decree, any applicable guidance, direction, policy, rule or order that is given by any regulatory body in any jurisdiction applicable to this Agreement each as in force or as may be amended from time to time.

**Data Protection Legislation** means any Applicable Law relating to the processing privacy and use of personal data, as applicable to the Supplier, the Customer and/or the Services, including:

- the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 (collectively, the “CCPA”);
- any other applicable state privacy laws in the United States, including but not limited to the Virginia Consumer Data Protection Act (VCDPA), the Colorado Privacy Act (CPA), and similar state privacy legislation;
- Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (the “EU GDPR”);
- the EU GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 and the UK Data Protection Act 2018 (collectively, the “UK GDPR” or “GDPR”);
- the EU e-Privacy Directive (Directive 2002/58/EC);
- any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority.

**AUP** means the Acceptable Use Policy set out at <https://www.pulsarplatform.com/acceptable-use-policy/> as may be updated from time to time.

**Business Day** means 9am until 5:30pm (ET or EDT) on a day (other than a Saturday, Sunday or a public holiday).

**Confidential Information** means any information relating to the business of the disclosing party which is not publicly available including, but not limited to, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing party.

**Control** has the meaning set out in sections 450, 451 and 1124 of the UK Corporation Tax Act 2010 and "Controlling" and "Controlled" shall be interpreted accordingly.

"**controller**", "**processor**", "**data subject**", "**personal data**", "**processing**" (and "**process**") and "**special categories of personal data**" shall have the meanings given in Applicable Data Protection Laws.

**CORE PROFILE** means a single social media account that is actively tracked by the Pulsar Core Software. The social media account may be from any one of the following platforms: Twitter, Facebook, Instagram, YouTube, LinkedIn or Google Analytics. Any additional platforms may be agreed in a Statement of Work, where available.

**Customer Content** means any data, video, graphics, information, statements or other material that is inputted by or on behalf of the Customer or a User during their use of the Services.

**Debrief** means the delivery and communication of any results and findings from the Research in writing or otherwise to the Customer on or before the Service End Date.

**DPA** means the document as found at <https://www.pulsargroup.com/data-processing-addendum>.

**Fees** means those fees payable by the Customer to Pulsar under this Agreement as set out in a Statement of Work.

**Frequency-Based Research** means Research services which are provided by Pulsar at regular intervals as set out in a Statement of Work.

**Initial Term** means the period commencing on the Service Start Date and continuing until the Service End Date.

**Intellectual Property Rights** means any and all patents, rights in inventions, rights in designs, trademarks, trade and business names and all associated goodwill, rights to sue for passing-off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term.

**Mention** means a single piece of content, which can be a post or an article that Pulsar collects into a Customer's Search using Pulsar TRAC Software. Such content can come from any of the various social media and online data sources covered by Pulsar.

A Mention, for example, can be a tweet, a retweet, a blog post, a comment on a blog post, a video post, a comment on a video post, a forum post, or a news article.

**Premium Source** means a source from which Mentions are generated and in respect of which an additional fee is payable in accordance with the Statement of Work.

**Privacy Policy** means the Pulsar Group Privacy Policy set out at <https://www.pulsargroup.com/privacy-policy/> as may be updated from time to time.

**Pulsar API Software** means the Pulsar Application Programming Interface developed and owned outright by Pulsar which allows customers to leverage data made available through the Pulsar TRAC Software for their own web applications.

**Pulsar CORE Software** means the channel analytics software system developed and owned outright by Pulsar.

**Pulsar TRAC Software** means the Pulsar TRAC proprietary software system developed and owned outright by Pulsar.

**Pulsar TRAC Software Daily Limit** means 15,000 Mentions per day.

**Pulsar TRAC Software Monthly Limit** means 500,000 Mentions per month per Search.

**Pulsar TRENDS Software** means the Pulsar TRENDS proprietary software system developed and owned outright by Pulsar.

**Register of Sub-Processors** means such register of Sub-Processors maintained and updated by the Pulsar from time to time and available at <https://www.pulsargroup.com/trustcentre/sub-processors/>.

**Rate Limits** means the number of API calls an app or User can make within a given time period. The current Pulsar API Software rate limit is 5 requests per second. Each request returns a maximum of 100 results per page. These limits may be updated by Pulsar from time to time.

**Renewal Period** means for the purposes of Software and any Frequency-Based Research Services, each successive period with a duration of either: (i) 12 months; or (ii) the equivalent of the Initial Term, whichever is greater, which commences on the expiry of the Initial Term or previous Renewal Period as applicable.

**Research** means services which involve engagement of Pulsar's professional services team for the purposes of producing reports which provide strategic insights into social media audience data as further detailed in a Statement of Work.

**Restricted Transfer** means (i) where the EU GDPR applies, a transfer of personal data from the EEA to a country outside of the EEA which is not subject to an adequacy determination by the European Commission; and (ii) where the UK GDPR applies, a transfer of personal data from the United Kingdom to any other country which is not subject based on adequacy regulations pursuant to Section 17A of the United Kingdom Data Protection Act 2018, in case whether such transfer is direct or via onward transfer.

**SCCs** means (i) where the EU GDPR applies, the contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to

Regulation (EU) 2016/679 of the European Parliament and of the Council ("EU SCCs") available here: [https://eur-lex.europa.eu/eli/dec\\_impl/2021/914/oj](https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj); and (ii) where the UK GDPR applies, standard data protection clauses for processors adopted pursuant to Article 46(2)(c) or (d) of the UK GDPR ("UK SCCs" / "UK Addendum") available here: <https://ico.org.uk/media/for-organisations/documents/4019539/international-data-transfer-addendum.pdf>

**Search** means a query which consists of filtering rules and other criteria that the Customer creates using the Pulsar TRAC Software. Each filtering rule contains specific clauses which can be a keyword, URL or panel of authors.

**Search Start Date** means, in relation to Pulsar TRAC Software, the date and time at which a Search begins collecting Mentions from any of the available Pulsar data sources.

**Service Manager** means the service managers appointed by the Customer and Pulsar as set out in a Statement of Work.

**Services** means the Software, Research or any other services outlined in a Statement of Work.

**Software** means the Pulsar CORE, Pulsar TRENDS, Pulsar API and Pulsar TRAC Software software-as-a-service ("**SaaS**") products offered by Pulsar that are ordered by the Customer using a Statement of Work.

**Statement of Work** means a statement of work and/or Pulsar licensing agreement which sets out the Services to be purchased and incorporates these Terms of Service.

**Service End Date** means the service end date set out in the Statement of Work.

**Service Start Date** means the service start date set out in the Statement of Work.

**Term** means the Initial Term and, where applicable, each Renewal Period.

**User** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

## 2. **Licensing and Intellectual Property Rights**

### 2.1. In consideration of payment by the Customer to Pulsar of the Fees:

- (i) Where the Customer has purchased access to any Software as part of the Services, Pulsar hereby grants to the Customer a personal, revocable, non-exclusive, non-transferable licence to use the Software for its lawful internal business purposes during the Term.
- (ii) Where the Customer has purchased Services related to Research, Pulsar hereby grants to the Customer a royalty free, perpetual and non-exclusive licence to use the Debrief or any other deliverable arising from the Services as required for the Customer's lawful internal business purposes.

### 2.2. The Customer shall not republish, make publicly available, sell, sub-license or share with any third parties:

- 2.2.1. the Software or Debrief; or

- 2.2.2. any comparison of data provided by one social media network against another social media network for the purposes of evaluating the technical competence or performance of such networks, creating a competing network, or profiling individuals by aggregating data from various networks pertaining to an individual in violation of applicable law.
- 2.3. Other than to the extent permitted by law or this Agreement, the Customer may not rent, sell, lease, sublicense, create derivative works of, print, copy, reproduce, distribute, modify or in any other manner duplicate the Software, in whole or in part, or interfere with, translate, reverse engineer, decompile or disassemble the Software or its features or functionality, or defeat, avoid, bypass, remove, deactivate or circumvent any software protection or monitoring mechanisms of the Software or otherwise use the Software in a manner that would constitute excessive or abusive usage or would disrupt or unreasonably interfere with the Software or the servers or networks that provide the Software or otherwise attempt to derive the source code of the Software.
- 2.4. All Intellectual Property Rights in the Services are owned by Pulsar or its licensors and shall remain vested in Pulsar or its licensors. Save where expressly provided in this Agreement, the Customer shall not acquire any proprietary right, title or interest in and to any Intellectual Property Rights in the Services.
- 2.5. Subject to clauses 2.6 and 2.7 below, Pulsar shall indemnify the Customer against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with a claim that the Customer's use of the Software infringes the Intellectual Property Rights of a third party (each a "**Claim**").
- 2.6. The Customer shall not have (without the consent of Pulsar) done, permitted or suffered to be done anything which may have been or become an infringement of any Intellectual Property Rights, including but not limited to: (i) engaging in unauthorised use or modification of the Services; (ii) Using the Services in combination with any products, technologies or data not supplied by Pulsar; (iii) any refusal to accept or use suitable modified or replacement services provided by Pulsar to avoid infringement; or (iv) any Service provided on the basis of the Customer's express specifications.
- 2.7. The Customer shall: (i) provide Pulsar with prompt written notice of a Claim; (ii) provide reasonable co-operation in the defence and settlement of the Claim at Pulsar's expense; and (iii) ensure that Pulsar is given sole authority to defend or settle the Claim.
- 2.8. If the Customer notifies Pulsar of a Claim, Pulsar may in its discretion:
  - 2.8.1. modify the Services, at no cost to the Customer, so that they no longer infringe or misappropriate any third-party Intellectual Property Rights;
  - 2.8.2. obtain a licence for the Customer's continued use of the Services, at no cost to the Customer, in accordance with this Agreement; or
  - 2.8.3. terminate this Agreement immediately on written notice and refund to the Customer any fees paid covering the period after the effective date of termination.
- 2.10 Nothing in this cause 2 shall: (i) create any liability or obligation on Pulsar in relation to any open source software or any third party data which is not within Pulsar's control; and (ii) restrict or limit the Customer's general obligation at law to mitigate a loss it may

suffer or incur as a result of an event that may give rise to a claim under the aforementioned indemnity.

- 2.11 The Customer grants Pulsar a worldwide, fully paid-up, sublicensable, non-exclusive, non-transferrable licence during the Term to use, copy, transmit, store, modify and back-up Customer Content for the sole purpose of providing the Customer with access to and use of the Services.

### 3. **Services**

- 3.1. Pulsar shall perform the Services using reasonable endeavours and fulfil its obligations as set out in this Agreement for the benefit of the Customer.
- 3.2. There will be a minimum period of five (5) Business Days between the Service Start Date and Pulsar's provision of login details and training in connection with any Software.
- 3.3. Each party shall appoint a Service Manager prior to the commencement of the Services to represent and co-ordinate communications between the parties in all matters relating to the Agreement.
- 3.4. Pulsar may make any changes to the Services which: (i) are necessary to comply with any applicable law or safety requirements; or (ii) which do not materially affect the nature or quality of the Services.
- 3.5. The Customer acknowledges that the Services provided are subject to Pulsar receiving services and data supplied by third party data sources. The Customer acknowledges and agrees that: (i) the Customer shall and shall procure that all Users comply with the terms of service or policies of such third party data sources, as set out in the AUP; and (ii) Pulsar shall not be responsible for the accuracy of any analysis, report, document, visual representation or other information produced by the Services, whether digitally or manually, provided that such inaccuracies are due to third party data which is not in Pulsar's control.
- 3.6. The Customer agrees that Pulsar may include the Customer's name and/or logo on Pulsar's websites, including, but not limited to, [www.Pulsarplatform.com](http://www.Pulsarplatform.com), save always that the Customer may opt-out of such inclusion by sending a written request to Pulsar.
- 3.7. Where the Customer purchases Research Services from Pulsar, the Customer acknowledges and agrees that any Research credits which are provided in a Statement of Work shall be used within the Initial Term. For the avoidance of doubt, all Research credits shall expire at the end of the Initial Term and Pulsar shall not be liable for the Customer's failure to make use of Research credits.

### 4. **Customer Obligations**

- 4.1. The Customer shall not:
  - 4.1.1. exceed the number of Users for whom it has purchased access to the Services under a Statement of Work.
  - 4.1.2. access any part of the Services in order to build a product or service which competes with the Services or to copy any features, functions or graphics of the Services;

- 4.1.3. attempt to obtain, or assist third parties (other than Users) in obtaining, access to the Services; and
  - 4.1.4. exceed the limits on the number of Mentions or Searches per month.
- 4.2. Pulsar shall inform the Customer via email when it is approaching its limit on the number of Mentions or Searches per month (as applicable), provided that any failure to do so shall not be deemed a breach of the Agreement.
- 4.3. If the Customer exceeds its limit of the number of Mentions per month as set out in a Statement of Work, then Pulsar may charge the Customer for the excess number of Mentions at a rate of \$0.0075 per 1 Mention.
- 4.4. If the Customer exceeds its limit on the number of Searches per month as set out in a Statement of Work, then Pulsar may charge the Customer for the excess number of Searches at a rate of \$1,500 per additional Search. For the avoidance of doubt, each Search is limited to 200,000 Mentions per month which if exceeded by the Customer will allow Pulsar to charge the Customer at a rate of \$0.0075 per 1 Mention exceeded.
- 4.5. In relation to Pulsar CORE Software, the Customer agrees not to exceed 300 CORE Profiles at any time
- 4.6. The Customer shall:
  - 4.6.1. procure that each User shall keep his/her password for use of the Services secure and confidential;
  - 4.6.2. ensure that the Users use the Services in accordance with the terms of this Agreement and shall be responsible for any User's breach of this Agreement;
  - 4.6.3. be responsible for making all arrangements necessary for it to have access to the Services;
  - 4.6.4. co-operate with Pulsar in all matters relating to the Services;
  - 4.6.5. provide Pulsar with such information and materials as Pulsar may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
  - 4.6.6. to the extent that the Customer provides Pulsar with any materials or information, obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Service Start Date.
- 4.7. If Pulsar's performance of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (the "**Customer Default**"), then Pulsar shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Pulsar's performance of any of its obligations. The Customer shall reimburse Pulsar on written demand for any costs or losses sustained or incurred by Pulsar arising directly or indirectly from the Customer Default.

- 4.8. The Customer warrants, represents and undertakes that it shall not require Pulsar to deal with any pornographic, obscene, indecent or libellous material or material which infringes the rights of any third party or which would expose Pulsar to civil or criminal liability. The Customer shall indemnify Pulsar against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Pulsar in connection with: (i) the Customer's breach of the AUP; and/or (ii) any claim made against Pulsar for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Pulsar's use of any Customer Content during its provision of the Services.
- 4.9. . The Customer warrants and represents that when using the Pulsar TRAC Software (if purchased), it shall not upload any Customer Content: (i) that includes personal data without Pulsar's prior written approval; (ii) which it does not own unless the appropriate consents, authorisations or licences have been obtained; and (iii) which would (a) put the Customer's organisation or business into disrepute (b) reveal financial information of any kind (whether related to its employees, customers, business or otherwise); or (c) contain highly confidential or business critical information. Pulsar shall not be responsible for any data uploaded by the Customer in contravention of this clause 4.9.
- 4.10. The Customer will use industry standard security measures to prevent unauthorized access or use of any of the features and functionality of the Software, including access by viruses, worms, or any other harmful code or items of a destructive nature.
- 4.11. Where the Customer purchases access to the Pulsar API Software, the Customer shall:
- 4.11.1. not provide use of the Pulsar API Software on a service bureau, rental or managed services basis or permit other individuals or entities to create links to the Pulsar API Software or "frame" or "mirror" the Pulsar API Software on any other server, or wireless or Internet-based device, or otherwise make available to a third party, any token, key, password or other login credentials to the Pulsar API Software;
  - 4.11.2. not exceed the Rate Limits. If Customer exceeds or Pulsar reasonably believes that Customer has attempted to circumvent the Rate Limits, controls to limit use of the Pulsar API Software or the terms of this Agreement, then Customer's ability to use the Pulsar API may be suspended;
  - 4.11.3. only make use of the most updated version of the Pulsar API Software.
  - 4.11.4. not use the Pulsar API Software for the purposes of real-time data streaming into any web application;
  - 4.11.5. not display any data which is made available through the Pulsar API Software, in its raw format; and
  - 4.11.6. follow any guidance, instruction or advice communicated to the Customer regarding the Pulsar API Software from time to time.

## 5. **Archiving & Deleting Searches**

- 5.1. If, following creation by the Customer of a Search, the Customer either:



- 5.1.1. pauses; and/or
- 5.1.2. stops; and/or
- 5.1.3. does not access,

the relevant Search, for a period of at least one (1) month after the Search Start Date, Pulsar may archive the relevant Search.

- 5.2. For the avoidance of doubt, the Customer may, upon written request to Pulsar, access a Search which has been archived pursuant to clause 5.1 above, provided that Pulsar shall only archive a Search for a reasonable period of time. Pulsar shall not be responsible for any loss or damage suffered by the Customer as a result of deleting an archived Search if it is not accessed by the Customer within a reasonable period of time of being archived.
- 5.3. For the purposes of clarity and unless otherwise agreed in a Statement of Work, Pulsar shall delete any Mentions or other data that is collected on behalf of the Customer through the Services after a period of 2 years from the date of initial collection.

## 6. **Fair Use**

6.1 In relation to Pulsar TRAC Software, if Pulsar considers:

- 6.1.1 A Search or Searches to track or attempt to track all, or a significant proportion of, social media websites generally;
- 6.1.2 A Search or Searches are being used by the Customer to track multiple large brands; or
- 6.1.3 A Search will result in the processing of an amount of data which will adversely affect Pulsar's performance of the Services and/or its services to any other customer

Pulsar will suspend data collection and notify the Customer of its breach of clause 6. The Customer will be required to promptly amend the Search to comply with clause 6.1 and re-initiate data collection. If the Customer fails to amend the Search within 14 Business Days from notification of the suspension, Pulsar may immediately terminate the Agreement.

- 6.2 Pulsar shall use its reasonable efforts to notify the Customer in advance of implementing the restriction detailed above.
- 6.3 In relation to Pulsar TRAC Software where the Customer has purchased unlimited Mentions per month:
  - 6.3.1 the Customer shall not create a Search or Searches that exceeds the Pulsar TRAC Software Daily Limit or the Pulsar TRAC Software Monthly Limit;
  - 6.3.2 if the Customer creates a Search or Searches that exceed the Pulsar TRAC Software Daily Limit or the Customer has used 80% of the Pulsar TRAC Software Monthly Limit, then Pulsar shall inform the Customer by email; and

- 6.3.3 if, after being informed in accordance with clause 6.3.2, the Customer creates a Search or Searches that exceed the Pulsar TRAC Software Daily or Monthly Limits, then, Pulsar may charge the Customer \$0.0075 for every 1 Mention in excess of the limits.

7. **Fees, Payment and other Financial Provisions**

- 7.1. The Customer shall pay to Pulsar the Fees set out in a Statement of Work and this Agreement in accordance with this clause 7.
- 7.2. On or before the Service Start Date and each Renewal Period (as applicable), Pulsar shall invoice and Customer shall pay to Pulsar 100% of the Fees.
- 7.3. All Fees shall be paid by the Customer to Pulsar by cheque or by electronic bank transfer by no later than thirty (30) days from the date of the relevant invoice ("**Due Date**"). For the avoidance of doubt, any bank charges incurred in payment of invoices must not be deducted from the amount in the invoice.
- 7.4. All amounts set out in this Agreement shall be exclusive of any applicable sales, excise and other value-added taxes, duties or levies of any kind whatsoever imposed by any authority, government agency or commission in connection with the Services as provided under this Agreement which shall be paid by Customer.
- 7.5. Pulsar's costs incurred in connection with the provision of the Services are calculated on the basis of the prevailing exchange rates for converting any currencies as applicable as set out in the currency exchange website [xe.com](http://xe.com) on the Service Start Date. Pulsar reserves the right to recover any additional costs incurred by it as a result of a change of more than 5% in the exchange rate used to calculate any foreign currency amounts between the Service Start and Service End dates.
- 7.6. For the purposes of Research related Services, the Customer should provide incidence rates during the proposal stage of the project. Should these details not be provided during the proposal stage by the Customer, Pulsar has the right to increase recruitment, incentive fees and extend timelines accordingly. All third-party costs should be reimbursed in full and an additional estimate shall be presented to the Customer to reflect the extra effort in delivering the project
- 7.7. Pulsar shall be entitled to charge the Customer for any expenses reasonably incurred by those persons whom Pulsar engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, provided that such expenses are mutually agreed in advance .
- 7.8. Without limiting any other right or remedy that Pulsar may have, if the Customer fails to make any payment due under this Agreement within fourteen (14) days of the Due Date, the Customer shall pay interest on the overdue amount at the rate of 4% per month of the overdue amount accruing on a daily basis from the Due Date until the date of actual payment by the Customer to Pulsar of the overdue amount, whether before or after judgment, and compounding quarterly.
- 7.9. The Customer shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and the Customer shall not assert any credit, set-off or counterclaim against Pulsar in order to justify withholding payment of any such amount in whole or in part. Pulsar may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Pulsar to the Customer.

- 7.10. Without prejudice to Pulsar's other rights or remedies, Pulsar may suspend the Services if at any time the Customer falls in arrears with the payment of any amount of Fees then due to Pulsar ("**Outstanding Fees**"), which period of suspension (the "**Suspension Period**") shall be effected by service of written notice to the Customer and shall continue until receipt by Pulsar of the full amount of Outstanding Fees, provided always that the Suspension Period shall not be added to and/or affect the duration of the Term.
- 7.11. The Customer shall be notified of any increase in Fees during the Term and any such increase shall:
- 7.11.1. be limited to 10% of the Fees currently payable by the Customer pursuant to this Agreement; and
- 7.11.2. take effect at the commencement of each Renewal Period.

## 8. **Audit**

- 8.1. Customer shall, for a period of one (1) year from creation, keep or cause to be kept full and accurate records pertaining to the delivery of the Services.
- 8.2. Customer grants to Pulsar the right to remotely audit its use of the Services. The exercise of the audit right shall be directed towards confirming that Customer's use of the Services is in accordance with the terms of this Agreement. Pulsar shall provide the Customer with reasonable notice of the audit which shall be conducted in such a way as to minimise any disruption to the Customer's ordinary course of business.
- 8.3. If any such audit result shows that a payment is owed to Pulsar, such payment shall be made by the Customer to Pulsar within thirty (30) days of the audit results being provided to the Customer.

## 9. **Warranties and Liabilities**

- 9.1. Pulsar does not warrant the accuracy, completeness, currency or reliability of any of the content or data derived from the Software or that the Software will be absolutely error free, virus free, uninterrupted or secure. With the exception of any warranties or representations expressly provided herein, the Software is provided "as is" and Pulsar expressly disclaims all warranties and conditions (to the extent permissible by law), including implied warranties and conditions or satisfactory quality fitness for a particular purpose, and those arising by statute or otherwise in law or from a course of dealing or usage of trade.
- 9.2. The Customer acknowledges and agrees that Pulsar shall not be in breach of any obligations under this Agreement where such obligations are impacted by: (a) any internet connection or software under the Customer's control; (b) any change to terms of use or access to third party data sources (including, without limitation, Twitter or Facebook rules); or (c) interruption to the Services as a result of any act or omission of a third party not within Pulsar's control.
- 9.3. Subject to clause 9.4 and to the maximum extent permitted by law, neither party, nor their respective employees, officers, directors, affiliates agents or suppliers, shall be liable for any:
- 9.3.1. Consequential losses or damages;

- 9.3.2. Special damage,
- 9.3.3. Incidental losses or damages,
- 9.3.4. Indirect damages,
- 9.3.5. Lost or imputed profits or royalties,
- 9.3.6. Lost data unless as a result of a breach of this Agreement;
- 9.3.7. Loss of goodwill; or
- 9.3.8. Cost of procurement of substitute goods or services arising from or related to this agreement,

whether for breach of warranty or any obligation arising therefrom or otherwise, however caused and on any theory of liability (including negligence or strict liability), and irrespective of whether the party has advised or been advised of the possibility of any such loss or damage.

- 9.4. Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation, or any matter which cannot be limited or excluded by law.
- 9.5. Subject to clauses 9.3 and 9.4, Pulsar's total liability to the Customer in respect of all losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total of twelve (12) months' Fees payable under the applicable Statement of Work.

## 10. **Term, Termination and Postponement**

- 10.1. The parties agree that the Term of this Agreement shall renew automatically for additional Renewal Periods unless the Customer provides Pulsar with written notice of its intention not to renew at least one (1) month prior to the expiration of the Term.
- 10.2. Without prejudice to any right or remedy either party may have against the other, either party may, by notice in writing to the other party, terminate all or any part of this Agreement immediately after the happening of any of the following events:
  - 10.2.1. if the other party commits a material breach of any of the terms of this Agreement provided that the other party has been notified in writing of the breach and has not cured it within thirty (30) days of receipt of such notice. For the avoidance of doubt, a failure to make timely payment by either party shall constitute a material breach of this Agreement;
  - 10.2.2. the passing by the other party of a resolution for its winding-up (except in connection with a bona fide business re-organisation) or the making by a court of competent jurisdiction of an order for the winding-up of the other party or the dissolution of the other party;
  - 10.2.3. the making of an administration order in relation to the other party or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrance of, any of the other party's assets;

- 10.2.4. the other party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; or
- 10.2.5. if the other party undergoes a change of Control where Control passes to a competitor of the terminating party, and such change of Control would (in the terminating party's reasonable opinion) have a material effect on the business of the terminating party.
- 10.3. Pulsar shall have the right to cease the provision of any Research Services, at any time, for any or no reason by providing the Customer with 30 Business Days prior written notice.
- 10.4. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.
- 10.5. Following termination of this Agreement for any reason, each party shall immediately on request deliver to the other party all materials and copies thereof (whether in hard or electronic format) relating to the Confidential Information together with a written confirmation from a senior authorised representative that it has complied with all of its obligations under this Agreement.
- 10.6. Following termination of this Agreement by Pulsar, the Customer shall promptly pay: (i) all unpaid invoices; (ii) the Fees for work carried out but for which an invoice has yet to be submitted; and (iii) with the exception of clause 10.3 to which this sub-section shall not apply, all annually recurring fees and costs for each year remaining in the Initial Term or Renewal Period (as applicable) and any other amounts the Customer owes to Pulsar under this Agreement.
- 10.7. Subject to Pulsar's obligations regarding Personal Data, if at the date of termination there are no other agreements for Services in force between the Customer and Pulsar, then Pulsar shall delete any Customer personal data that has been collected upon termination of this Agreement.
- 10.8. On termination or expiry of this Agreement the following clauses shall continue in force: clause 2 (Licensing and Intellectual Property Rights), clause 7 (Fees, Payment and other Financial Provisions), clause 9 (Warranties and Liabilities), clause 10 (Term and Termination), clause 11 (Confidentiality), clause 13 (Data Protection), clause 15.1 (Notices), and clause 15.16 (Governing law) along with any other clauses which expressly or by implication are intended to continue in force on or after termination.
- 10.9. If, at any time after the Service Start Date for a Research project, performance of the Agreement is postponed by the Customer:
  - 10.9.1. for a period of one month or more either: by notice in writing; or
  - 10.9.2. as a result of circumstances which are under the Customer's control (including, but not limited to, any failure by the Customer to sufficiently engage with Pulsar, where such failure to engage makes it difficult or impossible for Pulsar to perform or continue to perform its obligations under the Agreement) (each an "**Event of Postponement**"),

then the Customer shall, at Pulsar's request, pay to Pulsar (or, in the event that the Fee has already been paid by the Customer to Pulsar, Pulsar shall be entitled to retain) such percentage of the Fee as Pulsar deems sufficient to cover any work undertaken by Pulsar in connection with the Agreement up to and including the date on which Pulsar is notified of the postponement or becomes aware of the circumstances giving rise to the postponement (each a "**Postponement Date**").

10.10. In the event that Pulsar incurs any additional expenses as a result of an Event of Postponement, then the Customer shall, at Pulsar's request, reimburse Pulsar for such additional expenses.

10.11. In the event that:

10.11.1. the performance of the Agreement is postponed by an Event of Postponement for a period of more than one calendar month from the Postponement Date; and/or

10.11.2. on the occurrence of two or more Events of Postponement,

then Pulsar shall be entitled to terminate the Agreement immediately upon notice.

## 11. **Confidentiality**

11.1. Neither party shall use, copy, adapt, alter, disclose or part with possession of Confidential Information except solely as strictly necessary to perform its obligations or exercise its rights in this Agreement or with the written consent of the other party, except insofar as such Confidential Information:

11.1.1. is disclosed by Customer to any officers, employees, contractors or advisers of Customer ("**Customer Recipients**") to the extent that such disclosure is reasonably necessary for the purpose of carrying out its obligations under this Agreement, provided that Customer shall ensure that the Customer Recipient complies with Customer's obligations of confidentiality under this Agreement;

11.1.2. is disclosed by Pulsar to any Pulsar employees or other officers, employees, contractors or advisers of Pulsar or subcontractors ("**Pulsar Recipients**") to the extent that such disclosure is reasonably necessary for the purpose of carrying out its obligations under this Agreement, provided that Pulsar shall ensure that Pulsar Recipient complies with Pulsar's obligations of confidentiality under this Agreement;

11.1.3. can be proved by the receiving party to have been in the public domain at the date it was disclosed to a third party;

11.1.4. is lawfully or properly obtained by the receiving party from a person without obligation of confidentiality;

11.1.5. comes into the public domain otherwise than through the default or negligence of the receiving party;

11.1.6. was independently developed by the receiving party without reference to the Confidential Information of the other party;

- 11.1.7. is, with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) disclosed to obtain or maintain any listing on any recognised stock exchange; or
- 11.1.8. is requested to be disclosed by a court, regulator or a body having similar authority over the receiving party provided that to the extent permitted by law the other party is given prompt notice of such request.
- 11.2. The receiving party shall take no less than the same degree of care of securing Confidential Information as prescribed by the disclosing party, or if the disclosing party has not set a standard, as the receiving party would do with respect to its own confidential information. The receiving party shall be responsible for any improper use or any unauthorized disclosure of Confidential Information furnished to the receiving party including, but not limited to, by any Customer or Pulsar Recipients (as applicable).
- 11.3. Neither party makes any representation or warranty, express or implied, with respect to its Confidential Information. The disclosing party shall not be liable to the other party or another person in respect of the disclosing party's Confidential Information or its use.
- 11.4. Each party acknowledges that breach of clause 11 may cause irreparable injury to the other party, which injury will be inadequately compensable in damages. Accordingly, each party is entitled to the remedies of injunction, specific performance and other equitable relief in respect of any actual or threatened breach of the confidentiality obligations in this Agreement in addition to any other legal remedies which may be available.
12. **Audiense Licence**
- 12.1. The Customer may opt to purchase a licence of Audiense Insights and/or Audiense Connect (each a "**Audiense Service**") as part of a package with the purchase of the Software licence, and where it chooses to place an order for the Audiense Service, then this clause 12 shall apply in addition to the rest of the Agreement.
- 12.2. Where Customer places an order for the Audiense Service, the Customer acknowledges that Pulsar is acting as an authorised reseller of the Audiense Service on behalf of Audiense Limited.
- 12.3. Audiense Limited shall provide the Audiense Services to the Customer where the order for the product has been accepted by Pulsar, however Pulsar shall only be responsible for the onboarding of the Customer to the Audiense Service, account management and facilitating any renewal period relating to the Audiense Service. Pulsar does not give any warranty or representation in relation to the Audiense Service and excludes any liability arising from the Customer's use of the Audiense Service.
- 12.4. The Customer agrees that the supply of the Audiense Services shall be made to the Customer in accordance with the Audiense Terms of Use available at <https://audiense.com/terms-of-use/> and the Audiense Privacy Policy available at <https://legal.audiense.com/privacy-policy> or such other agreement as entered into between the Customer and Audiense Limited. By entering into this Agreement, the Customer agrees to be bound by the terms of such agreements and policies as between itself and Audiense Limited.

- 12.5. The Fees for the Audiense Service shall be as set out in the Statement of Work and shall be invoiced for as part of the Services which are subject to the agreed order for the Audiense Service.
- 12.6. In the event of any late payment by the Customer, Pulsar reserves the right to suspend and/or terminate that part of the Statement of Work which relates to the Customer's order for the Audiense Service.
- 12.7. The Customer acknowledges that Audiense Limited may terminate the Audiense Service as set out in the Audiense Terms of Use, and Pulsar shall have no liability to the Customer in respect of any termination by Audiense Limited.
- 12.8. Pulsar may, where it is required to do so to perform the contract between itself and Audiense Limited, provide the personal data of the Customer's representative who provided the order. The purpose of supplying the personal data (which will include the name, email and telephone number) of the representative is so that Audiense Limited can provide the Audiense Service to the Customer and/or enforce its own licence terms, privacy policy and fair usage policy against the Customer.

### 13. **Data Protection**

- 13.1. Customer (the controller) appoints Pulsar as a processor to process the personal data described in this Agreement ("**Customer Data**") for the Permitted Purpose (or as otherwise agreed in writing by the parties). Each party shall comply with the obligations that apply to it under Applicable Data Protection Law. If Pulsar becomes aware that processing for the Permitted Purpose infringes Applicable Data Protection Law, it shall promptly inform Customer.
- 13.2. Notwithstanding clause 13.1, Pulsar is an independent controller of any Customer personal data it processes about the Customer itself for Pulsar's own business purposes, including Customer personal data processed for direct marketing purposes and customer account management.
- 13.3. The Customer shall comply with its obligations as a controller and Pulsar will comply with its obligations as processor in connection with the performance of the Services under the Applicable Data Protection Laws.
- 13.4. Pulsar, as processor shall ensure that where the Services require the processing of Customer Data, the description of the Services in the Statement of Work shall include the subject matter and duration of the processing; the nature and purpose of the processing; a description of the type(s) of Customer Data processed; and a description of the categories of the data subjects comprised within the Customer Data referred to in this clause. The information referred to in this clause will be reviewed annually to ensure the information is up-to-date and relevant.
- 13.5. Where applicable, Pulsar shall not transfer the Customer Data outside of the European Economic Area ("**EEA**") unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Laws. Such measures may include (without limitation) transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorisation in accordance with Applicable Data Protection Laws, , or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission or other relevant supervisory body.



13.6. Pulsar shall:

- 13.6.1. only process Customer Data in accordance with the documented instructions of the Customer (including transfers of Customer Data outside the European Economic Area in accordance with clause 13.5), unless required to do so by Applicable Data Protection Laws to which Pulsar is subject, in which event Pulsar shall inform Customer of such legal requirement unless prohibited from doing so by Applicable Data Protection Laws on important grounds of public interest;
  - 13.6.2. ensure that any persons authorised by it to process the Customer Data (an **"Authorised Person"**) are subject to a contractual duty or statutory obligation of confidentiality;
  - 13.6.3. implement appropriate technical and organisational measures to protect the Customer Data from (i) accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Customer Data (a **"Security Incident"**) and shall ensure that the Customer Data is subject to a level of security appropriate to the risks arising from its processing by Pulsar or its sub-processors; and
  - 13.6.4. notify the Controller without undue delay and no later than 24 hours after becoming aware of a Security Incident.
- 13.7. Taking into account the nature of the processing, Pulsar shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising a data subject's rights under Applicable Data Protection Laws.
- 13.8. Taking into account the nature of the processing and the information available to Pulsar, Pulsar shall assist the Customer with regard to the Customer's compliance with its obligations set out in Articles 32 - 36 of the GDPR or equivalent under Applicable Data Protection Laws.
- 13.9. Upon termination of the Services that required the processing of Customer Data (in whole or in part) Pulsar shall, at the election of the Customer, deliver up or destroy such Customer Data which is in the possession of, or under the control of, Pulsar unless Applicable Data Protection Laws require Pulsar to store such Customer Data.
- 13.10. Pulsar shall, at the written request of the Customer, provide the Customer with all information necessary to demonstrate Pulsar's compliance with its obligations under this clause and shall allow for and contribute to audits and inspections conducted by or on behalf of the Customer.
- 13.11. Where required to do so by the Applicable Data Protection Laws, Pulsar shall maintain written records of its processing of the Customer Data in accordance with the requirements set out in Applicable Data Protection Laws and shall make such records available to a supervisory authority on request.
- 13.12. The Customer shall ensure that:
- 13.12.1. the supply to Pulsar of Customer Data by or on behalf of the Customer for the purposes of processing undertaken by Pulsar and its permitted sub-processors where such processing is authorised by the Customer shall comply with the Applicable Data Protection Laws; and

- 13.12.2. the instructions given by the Customer to Pulsar by operation of this clause 13.12 shall comply with Applicable Data Protection Laws.
- 13.13. Where Pulsar is obliged to provide assistance to the Customer, or to third parties at the request of the Customer (including submission to an audit or inspection and/or the provision of information and/or assisting with data protection impact assessments and/or prior consultations with Supervisory Authorities), such assistance shall be provided at the sole cost and expense of the Customer, save where such assistance directly arises from the Pulsar's breach of its obligations under this Agreement, in which event the costs of such assistance shall be borne by Pulsar.
- 13.14. Notwithstanding any other provision of this Agreement, the Customer agrees that Pulsar shall be entitled to engage sub-processors in performing the Services, provided that Pulsar shall notify the Customer in writing of its intention to change or engage new sub-processors. Such notice shall include details of the relevant sub-processor. The Customer shall be deemed to have approved the engagement or change of the sub-processor if it has not served a notice in writing on Pulsar objecting (acting reasonably and with supporting written information to justify the objection) to such appointment within 7 days of the date that the notice is deemed to be received by the Customer.
- 13.15. Pulsar shall ensure that any sub-processing arrangements entered into shall be on substantially the same terms to those set out in this Agreement and in particular, it shall ensure the sub-processor provides sufficient guarantees to implement appropriate technical and organisational measures in order that any processing of Customer Data is performed in accordance with Applicable Data Protection Laws. Pulsar will remain liable to the Customer where the sub-processor fails to fulfil its obligations under Applicable Data Protection Laws.

#### 14. **Variation**

Pulsar reserves the right to vary the terms of this Agreement at any time during the Term on one (1) month's prior notice to the Customer. Notice shall be provided either: (i) by way of publishing an update on Pulsar's website ([www.Pulsarplatform.com](http://www.Pulsarplatform.com) or such other URL as updated from time to time); (ii) by email; or (iii) such other means as reasonably determined by Pulsar. Pulsar shall exercise the right set out in this clause 14 acting reasonably and in good faith.

#### 15. **General**

- 15.1. Notices: Unless stated otherwise in this Agreement, all notices and communications must be in writing and should be either sent by email, delivered by hand, sent by pre-paid courier or registered post addressed to the other party at the address set out in the Statement of Work. Unless there is evidence that it was received earlier, such notice or document shall be deemed to have been served:
- 15.1.1. if delivered by courier, when left at the address referred to above; or
- 15.1.2. if sent by post to an address within the country of postage, 2 Business Days after posting it; or
- 15.1.3. if sent by post to an address outside the country of postage, 5 Business Days after posting it; or
- 15.1.4. by email to Pulsar at [account.team@Pulsarplatform.com](mailto:account.team@Pulsarplatform.com), 1 Business Day after receipt by Pulsar.

- 15.2. Sub-contractors: Pulsar may subcontract any of its obligations under this Agreement, provided that it shall be solely responsible for the acts and/or omissions of its sub-contractors as if they were its own.
- 15.3. Entire Agreement: This Agreement constitutes the entire agreement and understanding between the parties relating to the transactions contemplated by or in connection with this Agreement and the other matters referred to in this Agreement and supersedes any other agreement or understanding (written or oral) between the parties or any of them relating to the same. For the avoidance of doubt, additional terms and conditions contained in any purchase order, email, proposal or other documentation or communication of any kind shall not apply. If any term in the Terms of Service US conflicts with a term in the Statement of Work, then the terms in the Statement of Work shall prevail.
- 15.4. Each party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any promise, assurance, statement, warranty, undertaking or representation made (whether innocently or negligently) by any other party or any other person except as expressly set out in this Agreement in respect of which its sole remedy shall be for breach of contract. Nothing in this clause 15.4, however, shall operate or be construed to exclude or limit any liability of any person for fraud, including fraudulent misrepresentation.
- 15.5. Waiver: No waiver of any provision of this Agreement or any rights or obligations of either party will be effective unless in writing and signed by both parties or their duly authorised representatives. Any such waiver will be effective only in the specific instance and for the specific purpose specified in writing.
- 15.6. Unless otherwise stated in this Agreement, each right or remedy of a party under this Agreement is without prejudice to any other right or remedy of that party under this Agreement or at law.
- 15.7. Force Majeure: Pulsar shall not be liable under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business as a result of an event which is beyond Pulsar's reasonable control, including, without limitation, an act of God, fire, flood, storm, earthquake, strike, civil commotion, act of government, failure of a utility service or telecommunications network, accident, breakdown of plant or machinery (each a **"Force Majeure Event"**), provided that Pulsar notifies the Customer as soon as reasonable practicable after such an event has occurred.
- 15.8. Assignment: Neither party shall assign this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. Any attempted assignment in contravention of this clause shall be null and void. Notwithstanding the preceding sentence, nothing in this Agreement shall prevent or restrict Pulsar from assigning, sub-licensing, transferring or otherwise disposing of all or any of its rights or obligations under this Agreement to any legal entity which succeeds to all or part of the business or assets.
- 15.9. Severance: To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, and such finding shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

- 15.10. No partnership: Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.11. Non-solicitation: During the period in which Pulsar is providing the Services to the Customer and for a period of twelve months thereafter, the Customer shall not (whether personally or by its agent and whether for itself or on behalf of any other person, firm or company) induce or seek to induce any employee of Pulsar to leave Pulsar's employment. If the Customer commits any breach of this clause, the Customer shall on demand pay to Pulsar a sum equal to one year's basic salary or the annual fee that was payable by Pulsar to that employee plus the recruitment costs incurred by Pulsar in replacing such person. The Customer shall not be in breach of this clause as a result of running a national advertising campaign open to all applicants and not specifically targeted at any of Pulsar's staff.
- 15.12. Third parties: A person who is not a party to this Agreement shall not have any rights under or to enjoy the benefit of any term of this Agreement.
- 15.13. Compliance: The parties shall: (i) comply with all applicable laws, rules, statutes and regulations relating to anti-bribery and anti-corruption including, but not limited to, the UK Bribery Act 2010 (Relevant Requirements); (ii) not undertake nor cause nor permit to be undertaken any activity which either: (a) is illegal under any applicable laws, decrees, promulgations, rules or regulations in effect in any country; or (b) would have the effect of causing the other party to be in violation of any applicable laws, decrees, promulgations, rules or regulations in effect, including but not limited to the United States and any other country where the Services would be provided; (iii) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.
- 15.14. Dispute resolution: The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the parties, who have authority to settle the same. Should the negotiations fail, in whole or in part, to resolve the dispute within thirty (30) Business Days, either party shall be entitled to seek resolution of the dispute pursuant to clauses 15.16 and 15.17.
- 15.15. Both parties warrant that: (i) they shall comply with all applicable laws; (ii) they have full capacity and authority to enter into and perform this Agreement; and (iii) this Agreement is executed by an authorised representative of each party.
- 15.16. Governing law: This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, New York law.
- 15.17. Jurisdiction: Each party irrevocably agrees that the courts of New York state shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.