

Terms and Conditions

Welcome to Backlight! Backlight offers a range of cloud-based software platforms that enable companies to create, manage, distribute and monetize their content (collectively, the “**Platform Services**”). The following terms and conditions (collectively with any mutually agreed Addenda, this “**Agreement**”) apply to your use of the Platform Services. No other terms will apply unless expressly agreed in writing by the parties.

“**Backlight**” refers to the Backlight entity listed in the applicable service order or proposal (each, a “**Service Order**”). You are referred to below as the “**Customer**”. You and Backlight hereby agree as follows:

1. **Backlight Services.**

1.1 Provision of Services. Backlight will provide the Platform Services (including application programming interfaces, connectors and other technologies to enable Customer to access and implement the Platform Services) in accordance with the terms of this Agreement and the applicable service order or proposal (each, a “**Service Order**”). Backlight will provide service levels and support in connection with Customer’s use of the Platform Services pursuant to the Service Level Addendum and Support Terms located [here](#). Backlight will provide any mutually agreed professional services (“**Professional Services**”) in accordance

with the terms of this Agreement and the applicable Statement of Work or “**SOW**”. The Platform Services and Professional Services are referred to collectively below as the “**Backlight Services**.”

1.2 Customer Content. Backlight will maintain reasonable and appropriate administrative, technical, organizational and physical security measures to protect the content uploaded to the Platform Services by Customer (the “**Customer Content**”). As between the parties, Customer owns all right, title and interest in and to the Customer Content and Backlight will use and process the Customer Content solely for purpose of providing the Platform Services to Customer. Customer will ensure that Customer has all requisite rights needed to provide the Customer Content to Backlight and to distribute it using the Platform Services. Backlight may remove any Customer Content based on a credible third party demand, provided that Backlight provides prior notice to Customer and a reasonable opportunity for Customer to respond to the demand. Customer acknowledges that it is solely responsible for backing-up all Customer Content to Customer’s systems and that the Platform Services are not intended to be used for file back-up.

2. **Customer Commitments**

2.1 Use of the Service. Customer will perform any obligations or other commitments described in the applicable Service Order (for example, integration or marketing activities) or SOW, as applicable. Customer will use the Platform Services only in accordance with the terms of this Agreement and the documentation provided for the Platform Services (including all reasonable written instructions provided by Backlight, the “**Documentation**”).

2.2 Customer Account. Customer will ensure that Customer’s account information is accurate and complete and will be updated by Customer during the term of the Agreement as needed to maintain accuracy and completeness. Customer will give access to the Platform Services only to its employees, contractors and project participants for the purpose of working

on Customer's projects using the Platform Services ("**Authorized Users**"). Customer will be able to identify each Authorized User given access to the Platform Services and will provide such information to Backlight upon Backlight's reasonable request. Customer will ensure that Authorized Users do not share credentials and acknowledges that apparent sharing of credentials may result in individual accounts losing access to the applicable Platform Services. Customer will be solely responsible for all use of the Platform Services under its account, including the acts and omissions of any Authorized Users. Customer will protect its account against any unauthorized access and will notify Backlight immediately if Customer becomes aware of any unauthorized use, disclosure or other compromise of Customer's account.

2.3 Customer Conduct. Customer will not engage in any activity under this Agreement that: (a) violates any applicable laws, rules and regulations, including all laws pertaining to the export of technology (collectively, "**Applicable Laws**"); (b) violates any contractual or other rights of any third parties; (c) disrupts the Platform Services, including vulnerability testing, circumvention of any security measure, or access or use restrictions; or (d) violates the Acceptable Use Policy located [here](#). Specifically (and without limiting the foregoing covenants), Customer Content will not in any part violate any Applicable Laws or third party rights. In addition, Customer Content will not be in any part be pornographic, threatening, excessively violent or otherwise inappropriate as determined by Backlight in its reasonable discretion. Customer will not transfer, resell or license the Platform Services nor make the Platform Services available to third parties other than Authorized Users. Customer will not obscure, alter or remove any markings, logos or intellectual property notices or otherwise change the appearance of the Platform Services except as expressly enabled by the Platform Services.

3. **Payment.**

3.1 Fees and Payment Terms. Customer will pay the fees further described in the Service Order or SOW, as applicable (the “**Fees**”). Customer acknowledges that the Fees for Platform Services include a minimum financial commitment, as further described in the applicable Service Order. All Fees are non-refundable except as required by Applicable Law. Fees are payable net thirty days from the applicable invoice date. In the event any credits are issued to Customer by Backlight (for example, for Platform Services paid in advance), the credits will expire twelve-months after the issuance date.

3.2 Interest and Collection. Backlight will notify Customer in the event Customer fails to pay any amount due in accordance with the terms of this Section 3. If any undisputed amount due to Backlight is not paid within fourteen days of such notice, then, until such amounts are paid in full, Backlight may charge interest on any unpaid amount due at the rate of one percent per month, or at the maximum rate permitted by Applicable Law, whichever is lower, from the date such payment was due until the date it is paid. In the event Backlight pursues collection of any overdue Fees payable hereunder, Customer will reimburse all reasonable third party costs and fees incurred by Backlight in connection with those collection activities.

3.3 Taxes. The Fees do not include any local, state, federal, VAT or other taxes, levies or duties of any nature. Customer is responsible for paying any such taxes, excluding taxes based on Backlight’s income payable by Backlight without regard to the transactions contemplated by this Agreement.

4. **Confidentiality**

4.1 Definitions. “**Confidential Information**” means information provided to the receiving party (“**Receiving Party**”) that is designated by the disclosing party (“**Disclosing Party**”) as “confidential” or “proprietary” or that a reasonable person would understand to be confidential given the nature of the information and the circumstances of the disclosure.

Customer's Confidential Information includes, without limitation, information concerning viewer engagement with Customer Content (e.g. specific content viewed, time of viewing, etc.). "Confidential Information" does not include information that: (a) is or becomes generally known to the public through no fault of the Receiving Party; (b) is in the Receiving Party's possession prior to receipt from the Disclosing Party; (c) is acquired by the Receiving Party from a third party without breach of a confidentiality obligation; or (d) is independently developed by Receiving Party without reference to the Disclosing Party's Confidential Information.

4.2 Confidentiality Obligations. Receiving Party will use and disclose Confidential Information solely as contemplated by this Agreement. Receiving Party will disclose Confidential Information only on a need-to-know basis and only to its employees, contractors or Authorized Users who are bound by obligations of confidentiality at least as strict as those contained in this Section. Receiving Party will use reasonable care to protect Disclosing Party's Confidential Information and to prevent unauthorized disclosure of Confidential Information. Confidential Information is and will remain the exclusive property of the Disclosing Party. Subject to the terms and conditions of this Agreement, Receiving Party will, upon written request, destroy all copies of the Disclosing Party's Confidential Information that are in its possession or control other than those copies maintained in system back-ups in the ordinary course of business.

4.3 Mandated Disclosures. In the event that Receiving Party is required by Applicable Law to make any disclosure of any of the Confidential Information of Disclosing Party, Receiving Party will first give written notice of such requirement to Disclosing Party to allow Disclosing Party a reasonable opportunity to protect its interests in the Confidential Information. In such cases, Receiving Party will provide full cooperation and assistance to Disclosing Party in seeking to obtain such protection, at Disclosing Party's expense.

4.4 Service Input. Notwithstanding any provision in this Agreement to the contrary, Backlight may use, develop and implement any suggestions or other input concerning the Platform Services provided by Customer or any of its users (collectively, “**Input**”) in connection with the development, operation, marketing and sale of the Platform Services, in its discretion and with no compensation to any person providing Input. Customer acknowledges and agrees that Backlight will own all improvements, modifications and other Platform Services developed by Backlight based on Input provided by Customer and its users.

4.5 Equitable Relief. Receiving Party acknowledges that a breach by it of any of the terms of this Section would cause irreparable harm to Disclosing Party for which Disclosing Party could not be adequately compensated by money damages. Accordingly, Receiving Party agrees that, in addition to all other remedies available to Disclosing Party in an action at law, in the event of any breach or threatened breach by Receiving Party of the terms of this Section, Disclosing Party will be entitled to temporary and permanent injunctive relief, including specific performance of the terms of this Agreement.

5. Indemnification

5.1 By Backlight.

(a) General. Backlight will defend, indemnify and hold Customer, its officers, directors and employees harmless against any third party claim, demand, suit, investigation or proceeding (each, a “**Claim**”) made or brought against such party relating to: (i) an allegation that the use of the Platform Services as permitted hereunder infringes or misappropriates a third party copyright, trade secret, trademark or patent; (ii) any violation by Backlight of Applicable Laws; or (iii) Backlight’s gross negligence or willful misconduct. Backlight will pay all costs, reasonable legal fees and any settlement amounts agreed to be paid by Backlight or damages awarded against Customer in connection with any such Claim.

(b) Infringement Options. If the use of the Platform Services by Customer has become, or in Backlight's opinion is likely to become, the subject of any Claim, Backlight may at its option and expense: (i) procure for Customer the right to continue using the Platform Services as set forth herein; (ii) modify the Platform Services to make it non-infringing; or (iii) if the foregoing options are not reasonably practicable, terminate this Agreement and refund Customer any unused pre-paid Fees.

(c) Limitations. Backlight will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by: (i) use of the Platform Services by Customer that is not in accordance with the terms of this Agreement; or (ii) the combination, operation or use of the Platform Services with other applications, products or services where the allegedly infringing aspect of the Platform Services would not by itself be infringing.

5.2 By Customer. Customer will defend, indemnify and hold harmless Backlight, its officers, directors and employees against any Claim relating to: (a) any violation or alleged violation by Customer of Section 2.3 (Customer Conduct); (b) taxes payable by Customer pursuant to Section 3.3 (Taxes); or (c) Customer's gross negligence or willful misconduct. Customer will pay all costs, reasonable legal fees and any settlement amounts agreed to be paid by Customer or damages awarded against Backlight in connection with any such Claim.

5.3 Obligations. A party entitled to indemnification under this Agreement (the "**Indemnified Party**") will: (a) provide prompt written notice of the applicable Claim to the other party (the "**Indemnifying Party**"); (b) provide the Indemnifying Party with sole control of the applicable defense and settlement; and (c) cooperate as requested by the Indemnifying Party, at the Indemnifying Party's expense. The Indemnifying Party will not agree to any settlement unless such settlement includes a full release of the applicable Claim against the Indemnified Party.

6. Disclaimer

Except as expressly provided in this Agreement, the Backlight Services and all related products and activities are provided “AS IS,” “AS AVAILABLE” and “WITH ALL FAULTS”. Any promises contained in this Agreement are in lieu of all other warranties, representations or conditions, whether express or implied, including implied warranties of merchantability, fitness for a particular purpose and non-infringement, all of which are expressly disclaimed. Backlight does not represent that the Platform Services will uninterrupted or error free or that the Backlight Services will meet Customer’s requirements. Customer is solely responsible for backing-up all Customer Content and agrees that Backlight will not be liable in any way for any loss of Customer Content. Additionally, Customer acknowledges and agrees that, as a SaaS-based service, the features, functions and interfaces of the Platform Services may change over time.

7. Limitation of Liability

Except as described in this paragraph, under no circumstances and under no legal theory, whether in tort, contract, or otherwise, will either party be liable to the other party for any indirect, special, incidental, consequential or punitive damages or any character, including damages for loss of goodwill, lost profits, lost sales or business, computer failure or malfunction, lost data or any and all other similar damages or losses, even if such party knew or should have known of the possibility of such damages. The foregoing exclusions will not apply to any breach of Section 2.3 (Customer Conduct), Section 4 (Confidentiality) or any amounts payable to a third party under Section 5 (Indemnification).

Excluding each party’s indemnification obligations and Customer’s payment obligations hereunder, under no circumstances and under no legal theory, whether in tort, contract or otherwise, will either party’s liability under this Agreement exceed the amounts paid by Customer in the twelve month period prior to the initial liability claim.

The provisions of this Section allocate the risks under this Agreement between the parties, and the parties have relied on the limitations set forth in this Section in determining whether to enter into this Agreement.

8. Term and Termination

8.1 Term. The term of this Agreement will commence on the Effective Date and will continue as long as a Service Order or SOW is in progress. The term of each Service Order will renew automatically for the same duration as the initial term, unless either party gives the other party written notice of its intent not to renew the Service Order at least sixty days prior to the end of the then-current term. Backlight will give Customer at least sixty days prior notice of any planned price increases and any such increases will not take effect until the commencement of the following renewal term.

8.2 Termination. Either party may terminate this Agreement immediately on giving notice in writing to the other party if the other party commits any material breach of any term of this Agreement and has not cured such breach within thirty days of its receipt of written notice of the breach. In addition, either party may terminate this Agreement immediately on giving notice in writing to the other party if the other party files for bankruptcy; becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; makes an assignment for the benefit of all or substantially all of its creditors; or enters into an agreement for the cancellation, extension, or readjustment of substantially all of its obligations.

8.3 Suspension of Platform Services. Backlight may suspend the Platform Services in the event of any non-payment of Fees or other breach of this Agreement that is not cured within thirty days of delivery of notice of the applicable breach to Customer. Additionally, notwithstanding any provision herein to the contrary, in the event of any activity by Customer or any of its users that has (or in Backlight's

reasonable assessment is likely to have) an adverse effect on the operation of the Platform Services, Backlight may temporarily suspend the Platform Services. In such event, Backlight will notify Customer as soon as possible and will work with Customer in good faith to remedy the cause of the adverse effect.

8.4 Effect of Termination.

(a) Customer Content. Backlight will delete Customer Content within a reasonable period after termination of this Agreement.

(b) Survival. The provisions of this Section 8.4 and the following Sections will survive any termination of this Agreement: Section 2 (Customer Commitments), Section 3 (Payment), Section 4 (Confidentiality), Section 5 (Indemnification), Section 6 (Disclaimer), Section 7 (Limitation of Liability) and Section 9 (General).

9. General

9.1 Ownership. Backlight and its third party licensors will retain all ownership interest in and to the Platform Services and its underlying systems. Customer's rights under this Agreement are limited to those expressly stated in herein and no license to any intellectual property of Backlight is granted except as specifically needed to access and use the Platform Services. Nothing in this Agreement is intended to limit either party's liability in the event of any misappropriation or infringement of the other party's intellectual property rights.

9.2 Marketing. Subject to any trademark usage guidelines provided by Customer, Backlight may use Customer's name and logo in any Customer list promoting the Platform Services.

9.3 Notices. Marketing and business-related notices between the parties may be delivered by email. All legal notices relating to this Agreement must be in writing and sent

to each party its then-current primary place of business or such other address provided by the recipient. Each legal notice provided under this Agreement must be sent using a major overnight delivery service or mailed in a manner that requires signature by the recipient.

9.4 Governing Law.

(a) For Customers located in North America:

This Agreement is governed by the laws of the State of Delaware, United States, without regard to its conflict of law principles. Any dispute arising out of or relating to this Agreement will be submitted to and resolved by a court of competent jurisdiction in Wilmington, Delaware.

(b) For Customers located outside of North

America: This Agreement is governed by the laws of England and Wales, without regard conflict of laws principles. Any dispute arising out of relating to this Agreement will be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this Section. The arbitration will be conducted in London, England by a single arbitrator with reasonable experience arbitrating disputes concerning SaaS-based service offerings.

(c) Attorneys' Fees. The prevailing party in

any dispute under this Agreement will be entitled to recover all reasonable attorneys' fees and costs.

9.5 Force Majeure. Neither party will be liable under this Agreement for non-performance caused by events or conditions beyond that party's control if the party makes reasonable efforts to perform.

9.6 No Assignment. Neither party may assign this Agreement in whole or in part except, upon written notice to the other party, to (a) an Affiliate or (b) a successor in interest in the event of a sale or merger of such party. Any assignment in violation of this subsection will be deemed null and void.

“**Affiliate**” means an entity that controls, is controlled by or under common control with a party to this Agreement.

9.7 Entire Agreement. This Agreement together with any mutually agreed Addenda constitute the entire agreement between the parties concerning the subject matter herein and supersede any and all prior communications and agreements whether written or oral concerning the subject matter hereof. Each party hereby acknowledges that no reliance is placed on any representation made but not referenced in this Agreement. No purchase order or other text that purports to modify or supplement the printed text of this Agreement will add to or vary the terms of this Agreement.

9.8 Interpretation. This Agreement has been negotiated by the parties, each of which is represented by legal counsel, and will not be construed in favor of the original non-drafting party. The term “including” as used through this Agreement is intended to mean “including without limitation” in each instance.

9.9 Modifications; Severability. Except as expressly provided herein, any modification to this Agreement must be made in writing and signed by an authorized representative of each party. If any provision of this Agreement is held to be unenforceable, then such provision will be reformed to the extent necessary to make it enforceable, and such holding will not impair the enforceability of the remaining provisions.

9.10 Waiver. The failure by a party to exercise any right hereunder or to enforce strict performance of any provision of this Agreement will not waive such party's right to exercise that or any other right in the future.

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