

# Reseller Terms & Conditions

SERVICES AGREEMENT APPLICABLE TO  
CUSTOMERS OF BRANCH RESELLERS

## 1. Introduction

**1.1** You (“**Customer**” or “**you**” or “**your**” or related terms) are acquiring a subscription to the Services (as defined below) operated by Branch Metrics, Inc., a Delaware corporation d/b/a Branch, (“**Branch**,” “**Branch Metrics**,” “**we**,” or “**us**” or related terms) from an unrelated third party authorized to sell such services (“**Reseller**”) under a separate agreement with Branch (“**Reseller Agreement**”). In addition to any terms and conditions related to your use of the Services pursuant to any agreement by and between you and the Reseller, these Terms & Conditions (“**Terms**”) contain the terms and conditions that govern your access to and use of the Services. Branch is an express beneficiary of this Agreement (as defined below), and in acquiring a subscription to the Services, you expressly acknowledge and agree that Branch shall have the right to enforce this Agreement against you and that this Agreement constitutes the entire agreement and supersedes any and all prior agreements between you and Branch with regard to your subscription to the Services or your access to or use thereof under this Agreement and your agreement between you and the Reseller.

**1.2** By accepting this Agreement, either by accessing or using the Services, or authorizing or permitting any Agent or End User of your Digital Properties (as defined below) to access or use the Services, you agree to be legally bound by, and use Branch’s Services in compliance with, all terms, conditions, and notices in this Agreement as of the date of such access or use of the Services. If you are entering into this Agreement on behalf of a company, organization or another legal entity (an “**Entity**”), you are agreeing to this Agreement for that Entity and representing to Branch that you have the authority to bind such Entity and its Affiliates (as defined below) to this Agreement, in which case the terms “Customer,” “you,” or “your” herein refers to such Entity and its Affiliates. If you do not have such authority, or if you do not agree with this Agreement, you must not use or authorize any use of the Services. Customer and Branch shall each be referred to as a “**Party**” and collectively referred to as the “**Parties**” for purposes of this Agreement. IF YOU DO NOT AGREE TO THESE TERMS & CONDITIONS, DO NOT USE ANY SERVICES.

## 2. Definitions

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means these Terms together with any applicable Order Forms, and any exhibits, appendices, schedules, or attachments identified or referenced in these Terms, and any amendments mutually agreed to by the Parties (all of which are incorporated herein by

reference).

"**Beta Services**" means Branch's services or functionality that are not generally available to customers and that may be made available to you to try at your option which are designated as beta, pilot, limited release, developer preview, non-production, evaluation, or other services or functionality with a similar description.

"**Collection Technologies**" means any tags, SDKs, APIs, JavaScript, pixels, attribution or redirect links, cookies or other technology used or made available by Branch to Customer to support the provision of the Services by Branch, including any updates thereto.

"**Digital Properties**" means your mobile applications, websites and program code created by or for you that use the Services or for use by you with the Services.

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

"**Order Form**" means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer or its Affiliates and the Reseller managing Customer's subscription to the Services, including any addenda and supplements thereto. By entering into an Order Form with a Reseller, an Affiliate agrees to be bound by the terms of the Agreement as if it were an original party hereto.

"**Services**" means the products and services that are made available online by Branch under these Terms, the Beta Services, and other services or products that Branch may make available from time to time, including associated Branch offline or mobile components. Services exclude (i) Web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Customer or a third party, and (ii) Third-Party Content, as defined in these Terms.

### 3. SERVICE ACCESS AND AVAILABILITY

Branch will make the Services available to Customer solely for Customer's internal business needs pursuant to the terms of the Agreement and the applicable Documentation. Customer acknowledges and agrees that it is solely responsible for its integration and launch of the Services. Branch shall: (a) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned maintenance, (ii) emergency maintenance that is reasonably unforeseeable and necessary for purposes of maintaining the integrity or operation of the Services, and (iii) any unavailability caused by a Force Majeure Event, and (b) provide the Services in accordance with the laws and regulations applicable to Branch's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and subject to Customer's use of the Services in accordance with the Agreement and the Documentation. Your right to access and use the Services is limited by all the terms set forth in the Agreement. Branch reserves the right to monitor and periodically audit Customer's use of the Services to ensure that Customer's use complies with the Agreement and the limitations of Branch's Documentation. Should Branch discover that Customer's use of the Services violates the Agreement or the limitations of Branch's Documentation, Branch reserves the right to charge the Customer, and the Customer hereby agrees to pay, for such use, in addition to other remedies available to Branch.

### 4. USE RESTRICTIONS; UPDATES & SUPPORT

**4.1 Use Restrictions.** You must comply with all applicable laws when implementing, configuring, and using the Services and, except as expressly permitted under these Terms, you will not directly or indirectly: (a) make the functionality of the Services available to any third party through any means, including, without limitation, any hosting, application services provider, service bureau, or other type of

service; (b) use any automated tool (e.g., robots, spiders) to access or use the Services; (c) extend, sell, distribute, rent, lease, sublicense, or otherwise provide access to the Services to another person; (d) circumvent or disable any digital rights management, usage rules, permissions, or other security features of the Services or attempt to gain unauthorized access to the Services or Branch's related systems or networks; (e) use the Services in a manner that overburdens, or that threatens the integrity, performance, or availability of, the Services; (f) frame or mirror any part of the Services, other than on Customer's own internal and non-public intranets for its own internal business purposes, unless otherwise permitted in the Documentation; (g) remove, alter, or obscure any proprietary notices (including copyright and trademark notices) on any portion of the Services; (h) send material containing software viruses, worms, trojan horses, or other harmful computer code, files, scripts, agents, or programs; (i) use Branch's Services in violation of Branch's Acceptable Use Policy available at <https://legal.branch.io/#branchio-aup>, or its successor URL; or (j) use the Services in connection with any Apps or websites that are directed to children under 13 (and in certain jurisdictions under the age of 16), without employing appropriate settings within the Collection Technologies to limit data collection from such children in accordance with applicable law. More information on these settings is available [here](#). If you have questions about how to use these settings or have any reason to believe that these resources may not address your particular use case, please reach out to the Branch Support team via the "Submit a Ticket" function at <http://help.branch.io/>, or its successor URL. Notwithstanding anything to the contrary in the Agreement, use of the Services in violation of the foregoing restrictions by Customer that, in Branch's judgment, threatens the integrity, performance, availability, or security of the Services may result in Branch's immediate suspension of, or limitation in Customer's access to, the Services.

**4.2 Updates and Support.** Branch will maintain, support, update, and provide error corrections for the Services to the same extent it does so for its customers generally. If Branch provides you with an update or maintenance release for the offline components of the Branch Services, unless you receive a separate license from Branch for that update or release that expressly supersedes these Terms, such update or release will be subject to these Terms. Branch shall have no liability for any damages that may result from Customer's failure to implement upgrades or updates to the Services provided that Customer is notified in writing by Branch of such upgrade or update. All support requests must be sent to the Branch Support team via the "Submit a Ticket" function at <http://help.branch.io/>, or its successor URL.

## 5. BETA SERVICES

From time to time, Branch may invite you to try Beta Services. You may accept or decline any such trial in your sole discretion. Beta Services are for evaluation purposes only and not for production use, are not subject to any service level agreements (SLAs) agreed to between you and Branch and may be subject to additional terms. Branch is under no obligation to maintain, support, update, or provide error corrections for the Beta Services. Branch may discontinue Beta Services at any time in Branch's sole discretion and reserves the right to never make them generally available. BRANCH WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF, OR IN CONNECTION WITH, CUSTOMER'S USE OF A BETA SERVICE. THE BETA SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE AND ARE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. WITHOUT LIMITING THE FOREGOING, WITH RESPECT TO THE BETA SERVICES, BRANCH EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. In the event of a conflict or inconsistency between this section and any other provision of the Agreement, the terms of this section "BETA SERVICES" shall control and prevail with respect to Beta Services.

## 6. CANCELLATION AND TERMINATION

**6.1 Cancellation & Termination Under Reseller Agreement.** Under the terms and conditions of Branch's Reseller Agreement with the Reseller, Branch is entitled to suspend or terminate your subscription to the Service, your rights to access and use the Services or your account, and remove and delete any your data if: (a) Branch is notified by Reseller of your failure to pay amounts due to Reseller with respect to your subscription to a Service; or (b) Reseller fails to pay any amounts due to Branch pursuant to the Reseller Agreement with respect to your subscription to a Service. You consent to these suspension and termination rights and acknowledge and agree that Branch shall have no liability to you of any kind with respect to any such suspension or termination. Your sole recourse with respect to any such suspension or termination shall be against Reseller. Following the termination or cancellation of your subscription

to the Services and/or account, Branch reserves the right to delete all data associated with your account in the normal course of operation consistent with Branch's standard data retention policies.

**6.2. Termination for Material Breach.** Either Party may terminate this Agreement (including access to all Services that are in effect) in the event of a material breach of this Agreement and fails to remedy such breach within thirty (30) days of the date of written notice of such breach. For the avoidance of doubt, a breach of the [Branch Acceptable Use Policy](#) will be considered a material breach of this Agreement. Termination by either Party for material breach of these Terms will be effective as of the last day of the 30-day cure period provided herein or immediately to the extent such violation reasonably cannot be cured.

**6.3 Termination by Branch.** Branch reserves the right to suspend or discontinue, temporarily or permanently, all or any portion of the Services upon at least thirty (30) days' written notice (email sufficient), provided that Branch will promptly provide a pro-rated refund of all pre-paid and unearned amounts based on the period of suspension or the date of discontinuance, as applicable, and Branch will have no further obligations or liability to you or any third-party as a result of such suspension or discontinuance. Except where there are any Order Form(s) in effect, Branch may terminate your use of the Services without prior notice for any reason at any time by providing you with written notice. Additionally, Branch may immediately terminate this Agreement for cause without notice if provision of the Services violates applicable law, regulation or court order.

## 7. SURVIVAL

Upon termination of the Agreement, those sections of these Terms that by their nature would reasonably be expected to survive will survive termination or expiration of these Terms, including but not limited to the sections on Termination, Privacy Policy & Data Rights, Confidential Information, Proprietary Rights, Limitation of Liability, and Legal Notices.

## 8. PRIVACY POLICY & DATA RIGHTS

**8.1 Privacy Policy.** (a) You acknowledge and agree that you will provide a privacy policy to your end users, which shall be in compliance with applicable laws and regulations and shall include, at minimum, the following: (i) clear, meaningful, and conspicuous notice of your privacy practices consistent with applicable laws, (ii) disclosures regarding your use of cookies (including third-party cookies placed on your Digital Properties) and/or targeting and online behavioral advertising; (iii) your data collection, use and disclosure practices; and (iv) information regarding how end users may opt out from receiving targeted advertisements by visiting the NAI website opt-out page here: <http://www.networkadvertising.org/choices/>, the DAA opt-out page here: <http://www.aboutads.info/>, and/or the EDAA opt-out page here: <http://www.youronlinechoices.eu/>. Branch's Privacy Policy does not cover your Digital Properties, or the use of your Digital Properties, by your end users. It is your obligation to provide your own privacy policy to your end users. You acknowledge that Branch has no direct relationship or interface with your end users and that Branch's ability to comply with certain applicable data protection and privacy laws is dependent on your compliance with the terms of this section of the Terms. (b) If you use Branch's Engagement Builder feature, you agree to respect opt-out flags passed by Branch to you if you use Engagement Builder data for targeted advertisements. You acknowledge and agree that your use of the Services is subject to Branch's Privacy Policy, located at <https://legal.branch.io/#branchio-privacypolicy>, or its successor URL. (c) Where applicable in your use of the Services, you also agree to incorporate and adhere to the best practices and guidelines of the Self-Regulatory Principles of the Digital Advertising Alliance ("DAA") (<http://www.aboutads.info/principles>), and the Principles of the European Interactive Digital Alliance ("EDAA") (<http://www.edaa.eu/european-principles/>), as may be updated and amended from time to time.

**8.2 Data Analytics.** You acknowledge and agree that Branch may collect and process data from your Digital Properties as set forth in [Branch's Privacy Policy](#) with respect to your use of the Services. You grant to Branch a limited, non-exclusive, non-sublicensable, non-transferable license to use the data collected through the Services to provide, maintain, optimize and improve the Services.

**8.3 Data Security.** Branch will maintain appropriate technical, administrative, and physical safeguards designed to protect information on its servers, including customer data, against unauthorized access, alteration, disclosure, or destruction. However, you acknowledge and agree that no method of transmission over the Internet or method of electronic storage is completely secure, and that Branch cannot guarantee the absolute security of such information.

**8.4 Compliance with Applicable Law.** You will comply with all laws, rules, and regulations applicable to your business and operations and to your use of the Services, including those governing the privacy, security and trans-border transfers of personal data (such as, but not limited to, compliance with the General Data Protection Regulation (EU 2016/679) ("**GDPR**") and the California Consumer Privacy Act ("**CCPA**"). Where required, you shall be responsible for (a) obtaining consent from end users of your Digital Properties to (i) to place Collection Technologies (including by Branch) on the browsers or devices of end users of your Digital Properties, and (ii) collect and use the data you provide to Branch through the Services and the data that you enable Branch to collect from end users of your Digital Properties and process on your behalf, and (iii) to direct Branch to share data it processes on your behalf with any third party; (b) ensuring that you otherwise have any and all rights required in order to provide such data to Branch or to direct Branch to share it with any third party; (c) obtaining data properly and in accordance with applicable law, including, without limitation, the U.S. Children's Online Privacy Protection Act ("**COPPA**"), and the Video Privacy Protection Act (18 U.S.C. § 2710) ("**VPPA**"); and (d) ensuring you do not provide Branch with any sensitive information or personally identifiable information through the Services that is afforded legal protection under applicable regulation or laws ("**PII**"). To the extent that any of your users request that you not share their data with Branch, or to the extent that you believe that any data you may have provided to Branch was inappropriately obtained, you shall inform Branch immediately. Branch shall have no responsibility or liability to the extent resulting from or arising out of your use of the Services not in compliance with the Agreement, the Documentation or applicable law.

**8.5 CCPA.** If any data collected through your use of the Services is deemed personal information subject to the CCPA, then the terms set forth in the Branch California Privacy Addendum ("**California Privacy Addendum**") available at <https://legal.branch.io/#branchio-ca-privacy-addendum>, or its successor URL, shall apply to the use and processing of such personal information and the Parties agree to incorporate such California Privacy Addendum by reference into the Agreement as an integral part thereof.

## 9. RESTRICTED AREAS OF THE SERVICES

**9.1 Registration Information.** In order to access and use the Services, you must register an account. Any information provided during your registration must be current, complete, and accurate ("**Registration Information**"). It is your sole responsibility to ensure Registration Information is current, complete, and accurate at all times.

**9.2 Access Credentials.** The Services, including account management features, may be password-restricted to registered users or other authorized persons. You may select individuals (your employees, Affiliates, or your independent contractors) to access and use the Services in furtherance of your internal business purposes as expressly permitted by this Agreement, unless otherwise expressly agreed to in writing by Branch. You will obtain separate credentials, e.g., user IDs and passwords, from Branch for such individuals (each, an "**Authorized User**").

**9.3 Responsibility.** You are responsible for all actions taken under an Authorized User's account, regardless of whether such action was taken by an Authorized User or by another party, and regardless of whether such Authorized User authorized or had knowledge of such action. You are responsible for the security of each Authorized User's credentials and shall take all necessary steps to protect each Authorized User's credentials from disclosure. You will not share (and will instruct each Authorized User not to share) such credentials with any other person or entity and will notify Branch promptly of unauthorized access or use of the Services.

## 10. LINKS AND THIRD-PARTY CONTENT

You may enable the Services to display, or contain links to, third party products, services, and websites. You acknowledge that it is your responsibility to evaluate the information, opinion, advice, or other content linked to or made available through Branch's Services. Any opinions, advice, statements, services, offers, or other information that constitute part of the content expressed, authored, or made available by other users or other third parties on the Services, or which is accessible through or may be located using the Services (collectively, "**Third-Party Content**") are those of the respective authors or producers and not of Branch or its shareholders, directors, officers, employees, agents, or representatives. Branch does not control Third-Party Content and makes no representations, warranties, endorsements, or guarantees regarding the accuracy, integrity or quality of such Third-Party Content. Branch expressly disclaims all responsibility and liability for any Third-Party Content, including but not limited to, any information or materials advertised in any Third-Party Content. Branch is not responsible or liable, directly or indirectly, for any damage or loss caused to you by your or a third party's use of or reliance on any goods, services, or information available on or through any third-party service or Third-Party Content.

## 11. TRADEMARKS

"Branch Metrics", the Branch Metrics logo, and any other trademarks or service marks used by Branch or slogan displayed on the Services ("Branch Marks") are trademarks of Branch and its suppliers or licensors, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Branch or the applicable trademark holder. You may not use any metatags or any other "hidden text" utilizing "Branch Metrics" or any other Branch Marks without Branch's prior written permission. In addition, the look and feel of the Services, including all page headers, custom graphics, button icons and scripts, is the trade dress of Branch and may not be copied, imitated or used, in whole or in part, without Branch's prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Services are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation thereof by Branch.

## 12. AGENCIES & PARTNERS

**12.1 Agency Client.** If you are an agency or a party representing, or providing services for the benefit of, a third party ("**Agency Client**"), you represent and warrant that you are authorized to act on behalf of, and bind to the Agreement, that Agency Client (and upon Branch's request shall provide evidence thereof). You further represent and warrant that, to the extent that you are accessing the Services on the Agency Client's behalf, such Agency Client has provided you with explicit permission to collect on its behalf and view Agency Client's data and that you shall use such data strictly in accordance with the permissions provided to you by such Agency Client and the terms of the Agreement. You shall ensure that each Agency Client agrees to the terms of the Agreement and any applicable Order Form(s) and agrees to abide by its terms, including without limitation, Section 8 (Privacy Policy & Data Rights) of these Terms. You acknowledge and agree that: (i) Branch makes no representations or warranties for the direct or indirect benefit of any Agency Client; and (ii) you shall not make any representations or warranties to such Agency Client on behalf of Branch.

**12.2 Partners.** The Services enable you to integrate, measure, and analyze your Branch account (including data contained therein) with certain partners that you work with, such as advertising networks, publishers and analytics providers ("**Partners**"). For such purpose, you may, through your configuration of the Services ("**Partner Features**"), direct Branch to provide data to, and receive data from Partners relating to end users ("**Shared Data**"). To the extent that you use the Partner Features for Partners you select ("**Permitted Partners**"), then you hereby grant Branch the right to provide Shared Data with Partners pursuant to your configuration of the Services and to obtain and process Shared Data from Permitted Partners pursuant to your configuration of the Services. You acknowledge and agree that: (i) the sharing of such Shared Data between Branch and Permitted Partners will be available only to the extent enabled by the Permitted Partner and Branch; (ii) any use of Shared Data by a Permitted Partner shall be subject to your own agreements with such Permitted Partner; (iii) Branch shall have no liability or responsibility in connection with any acts or omissions by Permitted Partners; and (iv) any use or processing of Shared Data may be subject to certain limitations and restrictions imposed by Permitted Partners and Branch is not responsible for fulfilling any such limitations and restrictions unless expressly agreed to in writing between you and Branch.

## 13. CONFIDENTIAL INFORMATION

**13.1 Definition.** Each Party to these Terms (a **"Receiving Party"**) may have access to, or become acquainted with, certain non-public confidential information of the other Party (a **"Disclosing Party"**) including without limitation all information clearly identified as confidential at the time of disclosure (**"Confidential Information"**). You and Branch further agree that, subject to the rights and licenses granted herein, each Party's Confidential Information shall include all non-public information regarding the Disclosing Party, including without limitation any customer, customer prospect, the terms, conditions and pricing set forth in the Agreement and its Order Form(s), marketing, technical, business and/or strategic plans or information provided by the Disclosing Party to the Receiving Party in the performance of the Services under the Agreement.

**13.2 Use and Disclosure.** Each Party agrees as follows: (a) to use the Confidential Information of the Disclosing Party only for the purposes permitted by the Agreement, or as otherwise permitted by the Agreement (the **"Purpose"**); (b) to take all reasonable steps to ensure that the Disclosing Party's Confidential Information is not disclosed or distributed by the Receiving Party's employees or agents to another party in violation of the Agreement, but in no event will the Receiving party use less effort to protect the Confidential Information of the Disclosing Party than it uses to protect its own Confidential Information of like importance; (c) to restrict access to the Confidential Information disclosed by the Disclosing Party to such of the Receiving Party's employees, agents and third parties, if any, who have a legitimate need to have access for the Purpose and who have agreed in writing or are otherwise bound to treat such information in accordance with the Agreement; and (d) to return or destroy all Confidential Information of the Disclosing Party's written request, after termination of the Agreement. The Receiving Party will not be obligated under this confidentiality section with respect to information that: (1) is or has become readily publicly available through no act or omission of the Receiving Party or its employees or agents; (2) is received from a third party lawfully in possession of such information and the Receiving Party has no knowledge of any disclosure restrictions on such third party to disclose such information; (3) is disclosed to a third party by the Disclosing Party without restriction on disclosure; (4) was rightfully in the possession of the Receiving Party without restriction prior to its disclosure by the Disclosing Party; or (5) was independently developed by employees or consultants of the Receiving Party without reliance on, or reference to, such Confidential Information.

**13.3 Permitted Disclosures.** Notwithstanding the foregoing, Confidential Information may be disclosed as required by any court order or governmental agency, provided that before disclosing such Confidential Information the Receiving Party must provide the Disclosing Party with sufficient advance notice of the court or agency's request for the information to enable the Receiving Party to exercise any rights it may have to challenge or limit the court or agency's authority to receive such Confidential Information, to the extent permitted by applicable law.

## 14. PROPRIETARY RIGHTS

**14.1 Proprietary Rights.** As between you and Branch, you shall retain all right, title and interest in your Digital Properties. If you choose to use your Digital Properties with a Service, you grant Branch permission to allow the Services to interoperate with your Digital Properties as required for the interoperation of your Digital Properties with the Service. Subject to the limited licenses granted herein, Branch acquires no right, title or interest from you or your licensors under the Agreement in or to your Digital Properties. Subject to the limited rights expressly granted hereunder, Branch, its Affiliates, and its licensors reserve all of their right, title and interest in and to the Services (including the Branch application programming interfaces and the Branch software development kits), the Documentation, all technology utilized by Branch to provide the Services, and all of their related intellectual property rights related to, embodied by, or incorporated in any of the foregoing and including any updates, upgrades, enhancements, modifications and improvements made to, or derivatives of, the foregoing. No copyright is granted by Branch to Customer hereunder. No rights are granted to Customer hereunder other than as expressly set forth herein.

**14.2 Feedback.** Branch may provide you with a mechanism to provide feedback, suggestions, and ideas, if you choose, about the Services (**"Feedback"**). You agree that Branch may, in its sole discretion, use the Feedback you provide to Branch in any way, including in future enhancements and modifications to the Services. You hereby grant to Branch and its assigns a perpetual, worldwide, fully transferable, sub-licensable, fully paid-up, irrevocable, royalty-free license to use, reproduce, modify, create derivative works from,

distribute, and display the Feedback in any manner for any purpose, in any media, software, or technology of any kind now existing or developed in the future, without any obligation to provide attribution or compensation to you or any third party.

## 15. WARRANTY & DISCLAIMER OF WARRANTIES

**15.1 Warranty.** You represent and warrant to Branch that (a) you have validly entered into this Agreement and has the legal power and authority to do so and (b) c) the execution, delivery and performance of the Agreement does not and will not violate the terms or conditions of any other agreement to which you are a party or by which you are otherwise bound.

**15.2 DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THE SERVICES, AND THE DOCUMENTATION ARE PROVIDED "AS IS," WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, BRANCH EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. BRANCH DOES NOT WARRANT THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SERVICES, AND THE DOCUMENTATION, NOR DOES BRANCH WARRANT THAT THE SERVICES WILL BE FREE FROM ERRORS, OR THAT THE OPERATIONS OF THE SERVICES WILL BE UNINTERRUPTED. YOU RELY ON THE SERVICES AND THE DOCUMENTATION AT YOUR OWN RISK. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, THE LIMITATIONS SET FORTH ABOVE APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 16. LIMITATION OF LIABILITY

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

**16.2** UNDER NO CIRCUMSTANCES WILL THE TOTAL AGGREGATE LIABILITY OF BRANCH AND ITS SUPPLIERS AND LICENSORS RESULTING FROM THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED IN CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EXCEED THE AMOUNTS, IF ANY, THAT THE RESELLER HAS PAID, OR HAS AGREED TO PAY, TO BRANCH WITH RESPECT TO YOUR SUBSCRIPTION TO THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. SOME OF THE LIMITATIONS PROVIDED HEREIN MAY NOT BE ALLOWED UNDER THE LAWS OF CERTAIN JURISDICTIONS. IF ANY SUCH LAW IS DEEMED TO APPLY TO THE AGREEMENT, THEN THE LIMITATIONS SET FORTH HEREIN SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER SUCH LAWS.

## 17. INDEMNITY

**17.1 Indemnity.** You will defend Branch, its Affiliates and their officers, agents, employees, representatives, and assigns ("**Branch Indemnified Parties**") against any claim, demand suit or action against Branch brought by a third party to the extent arising out of or relating to: (a) Third Party Content or your use of the Services in violation of the Agreement, the Documentation or applicable law, (b) allegations that your Digital Properties, or the combination of your Digital Properties with the Services, infringes or misappropriates a third party's intellectual property rights, (c) your instructions to share Shared Data with a Partner, or (d) a regulatory investigation (each a "**Claim Against Branch**"). You will indemnify Branch Indemnified Parties from any costs, damages, and expenses finally awarded against Branch Indemnified Parties as a result of, or for any amounts paid by Branch Indemnified Parties under a settlement approved by you in writing of, a Claim Against Branch. The above defense and indemnification obligations will be limited to the extent a Claim Against Branch arises from Branch's fraud, or reckless or willful misconduct.

**17.2 Agency Indemnity.** If you are an agency or a party representing, or providing services for the benefit of an Agency Client, in addition to the obligations set forth in the section "Agencies & Partners" of these Terms, you further agree to indemnify, hold harmless and defend Branch Indemnified Parties from and against any claim, demand, suit, or action and any related liability against a Branch Indemnified Party brought by a third party, arising out of or relating to: (a) any representations and warranties made by you concerning any aspect of the Services to an Agency Client; (b) any claims made by or on behalf of any Agency Client arising out of or relating to your use of the Services; and (c) any claims arising out of or relating to acts or omissions of an Agency Client in connection with the Services.

**17.3 Indemnification Procedure.** Your indemnification obligations under this Agreement will be contingent upon: (a) Branch promptly giving you written notice of any claim for which indemnification is sought (provided that the Branch's failure to notify you will not diminish your obligations under this section, except to the extent that you are materially prejudiced as a result of such failure), (b) you having sole control of the defense and settlement of any and all claims for which indemnification is sought (provided that no settlement may be entered into without either (i) Branch's consent where a settlement requires any action on the part of Branch or (ii) the securing of an unconditional release of Branch for all liability), and (c) Branch giving you reasonably requested assistance at your expense. Branch may, at its own expense, and without limiting the obligations of the indemnifying party, maintain its own counsel and participate in the defense with counsel of its own choosing at any time.

## 18. MISCELLANEOUS

**18.1 Governing Law.** The Agreement and all matters arising out of or relating to the Agreement shall be governed by and construed under the laws of the State of California, without regard to its conflict of law provisions. The parties expressly disclaim and exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

**18.2 Dispute Resolution.** In the event of any dispute, claim, or controversy in connection with this Agreement (other than for disputes, claims, or controversies related to the intellectual property of a party) (collectively, "**Disputes**"), each Party's senior representatives will, in good faith, attempt to resolve a Dispute. If the Parties are unable to resolve a Dispute within thirty (30) days or within such other time period as the Parties may agree in writing, then the Parties may commence binding arbitration under JAMS' Comprehensive Arbitration Rules and Procedures. The Parties will share equally the fees and expenses of the JAMS arbitrator. The arbitration will be conducted by a sole arbitrator mutually agreed to between the Parties or, failing that, by JAMS under its then prevailing rules. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator will have the authority to grant specific performance or any other equitable or legal remedy, including provisional remedies. Each Party will be responsible for its own incurred expenses arising out of any dispute resolution procedure. Any arbitration proceedings will take place in the English language in (a) San Francisco, California, if you are domiciled in any country outside of the (i) European Economic Area or its regions or territories, the United Kingdom, Switzerland, Andorra, Vatican City, and Monaco and (ii) Asia-Pacific region; (b) London, England, if you are domiciled in any country within the European Economic Area or its regions or territories, the United Kingdom, Switzerland, Andorra, Vatican City, or Monaco; or (c) Singapore, if you are domiciled in any country within the Asia-Pacific region.

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

**18.4 Assignment.** Under the terms of the Reseller Agreement, your agreement with the Reseller with respect to your subscription to the Services may be assigned to Branch. you agree that if your agreement with Reseller is assigned to Branch, your continued rights to access and use the Services shall be subject to Branch then standard Terms & Conditions governing the Services available at <https://legal.branch.io/#branchio-ts-cs> (or its successor URL) and you consent to the application of such terms and conditions,

including without limitation, the billing and payment provisions contained therein. You agree that following any such assignment, you shall, upon request by Branch, provide such information as is required to secure payment for any subscription term commencing after such assignment. You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or your rights under this Agreement or delegate performance of your duties under this Agreement without Branch prior written consent, which consent will not be unreasonably withheld. Branch may transfer and assign any of its rights and obligations under the Agreement freely and without consent. If requested by Branch, You must execute a document to give effect to Branch's assignment. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**18.5 Entire Agreement.** Both you and Branch agree that the Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes all previous written and oral agreements, communications and other understandings relating to your use of the Services, and that all waivers and modifications must be in a signed writing by both Parties, except as otherwise provided herein. Preprinted terms in your purchase orders or other customer-generated ordering documents, or terms referenced or linked within them, will have no effect on the Agreement and are hereby rejected, regardless of whether they are signed, clicked through, or otherwise agreed to by Branch and/or purport to take precedence over the Agreement. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) any applicable Order Form(s) incorporating these Terms; (2) any exhibit, schedule or addendum expressly incorporated into to these Terms, (2) the body of these Terms, and (3) the Documentation.

**18.6 Relationship between the Parties.** The Parties are independent contractors. No agency, partnership, joint venture, fiduciary or employment relationship is created as a result of the Agreement, and you do not have any authority of any kind to bind Branch in any respect whatsoever.

**18.7 International Trade and Anti-Corruption and Laws.** Each party (a) warrants that it will comply with all applicable anti-corruption, anti-money laundering, economic and trade sanctions, export controls, and other international trade laws, regulations, and governmental orders (collectively, "**Anti-Corruption and Trade Laws**") in the jurisdictions that apply directly or indirectly to the Services, including, without limitation, the United States, and (b) represents that it has not made, offered, promised to make, or authorized any payment or anything of value in violation of Anti-Corruption and Trade Laws. You will promptly notify Branch in writing of any actual or potential violation of Anti-Corruption and Trade Laws in connection with the use of the Services and take all appropriate steps to remedy or resolve such violations, including any steps requested by Branch. If applicable, you represent that you have obtained, and warrant that you will continue to obtain, all licenses or other authorizations required to export, re-export, or transfer the Services.

**18.8 Sanctions Lists.** The Services and any derivatives thereof, may be subject to export control and economic sanctions laws and regulations of the United States and other jurisdictions. Both you and Branch each represent that (and in your case, also your end users of your Digital Properties) it is not named on any government prohibited, denied, or unverified-party, sanctions, debarment, or exclusion list or export-controlled related restricted party list (collectively, "**Sanctions Lists**"). Customer shall not permit any entity or individual to access or use any of the Services who is listed on the Consolidated Screening List or located in a U.S. government-embargoed country (currently Cuba, Iran, North Korea, Syria and Crimea), or known to be engaged in proliferation of nuclear, chemical or biological weapons or missiles, or otherwise in violation of any U.S. export law or regulation. You will immediately (i) discontinue your use of the Services if you become placed on any Sanctions List and (ii) remove your End Users' access to the Services if your end users become placed on any Sanctions List. You represent that you have not, and warrant that you will not, export, re-export, or transfer the Services to an entity on any Sanctions List without prior authorization from the applicable governmental authority. Notwithstanding anything to the contrary in this Agreement, either Party may terminate this Agreement immediately upon written notice to the other party if the other party is in breach of its obligations hereunder with respect to Anti-Corruption and Trade Laws or Sanction Lists. If your account is blocked because it is operating in a country or region prohibited by Anti-Corruption and Trade Laws, you will receive notice of your

account being inoperable when you attempt to log into your account in such prohibited country or region.

**18.9 Third Party Beneficiary.** Except where expressly provided herein, no provision of the Agreement is intended, nor shall it be interpreted, to provide or create any third-party beneficiary rights or any other rights of any kind in any customer, affiliate, stockholder, partner, member, director, officer, or employee of any Party hereto or any other person or entity.

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

**18.11 Force Majeure.** Neither Party will be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by an event or circumstance beyond the reasonable control of the Party whose performance is affected and could not have been prevented or corrected through the exercise of reasonable diligence, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Branch employees), Internet service provider failure or delay, integrated third party applications, or denial of service attack (each such event, a "**Force Majeure Event**"). The Party alleging a Force Majeure Event (the "**Affected Party**") will promptly notify the other Party in writing of the Force Majeure Event, providing reasonable detail of the circumstances giving rise to the Force Majeure Event, and the steps it is taking to remedy the delay or failure. Notwithstanding the foregoing, financial incapability will not be considered as a Force Majeure Event.

**18.12 Notices.** Except as otherwise specified in the Agreement, all notices of termination or an indemnifiable claim related to the Agreement ("**Legal Notices**") will be provided via email and will be effective upon receipt by e-mail as set forth below. If to Branch, all notices shall be provided to [legal@branch.io](mailto:legal@branch.io) ("**Branch Notices**"). Billing-related notices to Customer will be provided via email and addressed to the relevant billing contact designated by Customer on the applicable Order Form or the relevant Services account administrator designated by Customer. All Legal Notices and other notices to Customer will be provided via email and addressed to the relevant Services account administrator designated by Customer.

**18.13 Modifications.** We may make changes to these Terms from time to time. When we do, we will revise the "Last updated" date given above. It is your responsibility to review these Terms frequently and to remain informed of any changes to them. The then-current version of these Terms will supersede all earlier versions. You agree that your continued use of Branch's Services after such changes have been published to Branch's Services will constitute your acceptance of such revised Terms.

## 19. CONTACTING US

If you have any questions or concerns about Branch's Services or these Terms, you may contact us by email at [info@branch.io](mailto:info@branch.io).