# Digimind Social Terms of Service for Hootsuite

**Reference: 1.2**

THIS DIGIMIND SOCIAL SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF OUR DIGIMIND SOCIAL.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR DIGIMIND SOCIAL, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE DIGIMIND SOCIAL.

You may not access the Digimind Social if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Digimind Social for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on May, 16th, 2018. It is effective between You and Us as of the date You accept this Agreement.

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# 1. DEFINITIONS

**"Affiliate"** means any entity which 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.

**"Country"** is the country name from where a mention has been published on the Internet.

**"Data Controller"** means a legal person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any Personal Data are, or are to be processed in the context of it activity and in compliance with it contractual obligation. You are identified hereby as the "Data Controller".

**"Data Processor"** means any legal person who processes Personal Data on behalf of the data controller in the context of it activity and in compliance with it contractual obligation. We are identified hereby as the "Data Processors".

**"Digimind Social"** means the products and services offered by Us under the name "Digimind Social," "Digimind", or successor branding, that You order under an Order Form and We make

available online via password-protected customer login, including associated offline components, as described in the User Documentation. "Digimind Social" exclude Third-Party Social Platforms, Indexed Content, and Non-Digimind Applications.

**"General Data Protection Regulation" or "GDPR"** refer to the REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC

**"Historic Mentions"** are all the webpages that meet the requirements set out in the Query and that Digimind Social finds from before the Query Start Date.

**"Indexed Content"** means information, including but not limited to links, posts, and excerpts, that has been made publicly available and obtained by Us or on Our behalf from the Internet, and data derived therefrom, including but not limited to reports, summaries, graphs and charts. An individual link, post or excerpt of Indexed Content may be referred to as a "Mention"

**"Language"** is the language selected for the collection of mentions. "All Languages" refers to a collection of mentions without filtering for a specific language.

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**"Mentions"** are all the webpages or sections of webpages that meet the requirements set out in the Query and that Digimind Social finds after the Query Start Date.

**"Non-Digimind Applications"** means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Digimind Social.

**"Order Form"** means the documents for placing orders for Digimind Social hereunder that are entered into between You and Us or any of Our Affiliates or Resellers from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

**"Personal Data"** means any information relating to an identified or identifiable natural person processed by the Data Controllers or Data Processor in the course of providing the services specified. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier.

**"Purchased Digimind Social"** means Digimind Social that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

**"Query"** is a search string that you, or an agent acting for you, use to define what words and

phrases must be present on a webpage for Digimind Social's technology to be able to include that webpage in the Digimind Social Application.

**"Query Start Date"** is the date and time when a Query was created in the Digimind Social Application.

**"Representative of the Data Processor"** means any person appointed by the Sub Contractor named Data Processor in order to coordinate the audits, if any, required by the Data Controller.

**"Reseller"** means **Hootsuite Media Inc.** or its Affiliates.

**"Retained Mentions"** are Mentions and Historic Mentions that Digimind Social make available to you in the Digimind Social Application.

**"Source"** refers to a specific source on the Internet. It is characterized by a specific URL. It can be either a global website domain or a specific page in a given domain.

**"Subcontractor of the Data Processor" or "Sub Contractor"** means the legal person who processes Personal Data on behalf of the Data Processor and according the guidelines given by the Data Controller in compliance with the contractual obligation between the Data Controller and the Data Processor.

**"Third-Party Social Platform"** means a third-party social-media website for which You use the Digimind Social or from which We receive Indexed Content for the Digimind Social, such as Facebook, Twitter, or YouTube.

A **"Topic"** gathers in one place Queries and associated Countries, Languages and Sources. The combination of these four elements is called a Topic.

**"User Documentation"** means Our training, help, how-to and explanatory materials that assist Users in using the Digimind Social, as such materials may be updated from time to time. You acknowledge that You have had the opportunity to review the User Documentation during the free trial described in Section 2 (Free Trial) below.

**"Users"** means individuals who are authorized by You to use the Digimind Social, for whom subscriptions to a Digimind Social Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

**"We," "Us"** or **"Our"** means the Digimind company described in Section 15 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**"You"** or **"Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. If You are an agency purchasing Digimind

Social on behalf of Your clients, the terms "You" or "Your" shall include such clients, provided that You shall be responsible for such clients' compliance with Your obligations under this Agreement, for any breach of those obligations by such clients, and for payment for Digimind Social Service purchases on behalf of such clients.

**"Your Data"** means any electronic data, content or information that has not been made publicly available and is submitted by or on behalf of You to the Purchased Digimind Social, or is collected by You, or on Your behalf, through the Digimind Social.

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# 2. PURCHASED DIGIMIND SOCIAL

**3.1. Provision of Purchased Digimind Social.** We will make the Purchased Digimind Social available to You following this Agreement and the completion of the relevant Order Forms for a subscription term of a minimum period of 1 (One) Year, billed at the start of the Subscription period. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**3.2 Per-Topic subscriptions.** Subscriptions are calculated Per-Topic. A Topic gathers in one place Queries and associated Countries, Languages and Sources. The combination of these four elements is called a Topic. The minimum subscription fee refers to 1 (One) Topic.

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# 3. SERVICE

**3.1 Setup.** Subject to clause 4.4, the setup of Queries by Digimind is included in Your Subscription during the first 4 (Four) weeks of the Subscription period. Additional setup or fine-tuning of Queries after this period is an additional Service which requires a separate purchase order.

**3.2 Quantity of Queries.** Subject to clause 4.4 below, Digimind Social will provide Queries for You up to the limit of 5 (Five) Queries per Topic set out in the Order Form.

**3.3 Quantity of Mentions.** Subject to clause 4.4 below, Digimind Social will provide You with a maximum of 1,000,000 (one million) Retained Mentions per Topic and per month for Your Subscription, as stated in the applicable Order Form. Digimind Social is under no obligation to provide Mentions for Your Subscriptions above this fixed monthly limit.

**3.4 Exception for Retained Mentions.** Where a Query in Your subscription is deemed by Digimind Social to be attempting to track either all of or a significant part of all social medias, or

is being used to track multiple large brands, or is a Query that in any other way is so vast that it degrades the performance of the Service for You or for other customers of Digimind Social, then Digimind Social reserves the right to provide only a sample of Mentions for this Query. Examples of Queries for which Digimind Social may exercise this right include, but are not limited to, tracking all social media websites for common words like "the" or "yes" or trying to track all United States of America Banking companies in a single Query. Where Digimind Social has applied this Fair Usage Policy it will endeavour to contact You first to inform You and discuss ways in which Digimind Social can track all Mentions.

**3.5 Topic.** A Query is composed of keywords and boolean operators. Digimind Social will provide Queries for Query-based Subscriptions up to the limit of 17 (Seventeen) keywords for each Query. Keywords might contain words with different meanings, synonyms, and also words that are used to exclude non-relevant content. If You exceed this Fair Usage Policy Digimind will contact You first to inform You and discuss ways to rectify this.

**3.6. Keyword.** Keywords might be used for Queries, subject to clause 4.4 and also for classification purposes within Digimind Social. In that case, the keywords are not used to collect content on the web but instead serve to generate analysis and to tag mentions. Digimind Social provides You with a limited amount of 50 (Fifty) keywords per Query and a total of 200 (Two Hundred) keywords per Topic for classification purposes.

**3.7 Languages and Countries.** Queries might apply to specific Languages and Countries. The maximum amount of Languages per topic is 1 (One). 1 (One) Language might be either a specific Language (English or French or Russian) or "All Languages". The monitoring of 2 (Two) specific Languages (English and French), requires 2 (Two) Topics. The amount of Countries is unlimited.

**3.8 Sources.** Digimind Social retains Mentions from the Internet. Digimind Social also allows the specific integration and monitoring of already embedded Sources into a catalogue of web sources. Additionally, Digimind can integrate some other specific Sources that are not already embedded. This type of integration is subject to technical feasibility and at a specific cost which will be communicated to You by Your Digimind account manager. The total amount of customized sources monitored (already embedded or not) is limited to 1,000 (One Thousand) Sources per 1 (One) Topic.

# 4. USE OF DIGIMIND SOCIAL

**4.1. Our Responsibilities.** We shall: (i) provide Our basic support for the Purchased Digimind Social to You at no additional charge, and/or upgraded support if purchased separately; and (ii) make the Purchased Digimind Social available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice online or via email and which

We shall schedule to the extent practicable during the weekend hours from 10:00 p.m. Friday to 3:00 a.m. Monday Eastern Time), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), failures, downtime or delays by an Internet Service Provider or Third-party Social Platform, or denial of service attacks.

**4.2. Our Protection of Your Data.** We shall maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not: (a) modify Your Data; (b) disclose Your Data except as compelled by law in accordance with Section 9.3 (Compelled Disclosure) or as expressly permitted in writing by You; or (c) access Your Data except to provide the Digimind Social and prevent or address service or technical problems, or at Your request in connection with customer support matters.

**4.3. Your Responsibilities.** You shall: (i) be responsible for Users' compliance with this Agreement; (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Digimind Social, and notify Us promptly of any such unauthorized access or use; and (iv) use the Digimind Social only in accordance with the User Documentation and applicable laws and government regulations. You shall not: (a) make the Digimind Social available to anyone other than Users; (b) sell, resell, rent, or lease the Digimind Social; (c) use the Digimind Social to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Digimind Social to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the Digimind Social or third-party data contained therein; or (f) attempt to gain unauthorized access to the Digimind Social or their related systems or networks. Additionally, You shall not:(i) use the Digimind Social for the purpose of serving as a factor in establishing an individual's eligibility for credit, employment or insurance, or for any other consumer-initiated transaction; (ii) submit to the Digimind Social or use the Digimind Social to collect, store or process any of the following types of sensitive individually identifiable information, including, without limitation: (a) social security numbers, passport numbers, driver's license numbers, taxpayer numbers, or other government-issued identification numbers, (b) Protected Health Information (as defined in the U.S. Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended, "HIPAA", as defined in the French "loi Informatique et Liberté du 6 janvier 1978, modifiée le 6 aout 2004") or similar information under other comparable laws or regulations, or (c) financial account numbers (including without limitation credit or debit card numbers, or any related security codes or passwords, bank account information, or Non-Public Information (as defined in the Gramm-Leach-Bliley Act of 1999, as amended, "GLBA", as defined in the French "loi Informatique et Liberté du 6 janvier 1978, modifiée le 6 aout 2004" ) or similar information under other comparable laws or regulations. If the Digimind Social are configured by You or on Your behalf to use cookies and/or other tracking technologies for Your purposes, then You shall be solely responsible: (i) for assessing whether such technologies can be used in compliance with

applicable legal requirements, and (ii) for providing notice and or obtaining consent, as may be required by law, for such use of cookies and/or other tracking technologies.

**4.4. Usage Limitations.** Digimind Social may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against Our application programming interface, or other usage limits. Any such limitations are specified in the User Documentation or an Order Form. The Digimind Social may provide real-time information to enable You to monitor Your compliance with such limitations. If You purchase Digimind Social subject to usage limits and You routinely exceed those limits, We may work with You to seek to reduce Your usage so that it conforms with such limits. If You are unable or unwilling to abide by applicable usage limits, We may require You to execute an Order Form for additional Digimind Social and/or invoice You for Your excess usage, in which case You agree to execute such additional Order Forms and/or pay additional invoices, as applicable.

# 5. INDEXED CONTENT AND THIRD-PARTY SOCIAL PLATFORMS

**5.1. Indexed Content.** We do not own or control Indexed Content. Indexed Content shall not be considered Your Data or " Customer Data" under any circumstances, including pursuant to the terms of any other agreement we may enter into with You for non-Digimind Social. Indexed Content may be indecent, offensive, inaccurate, unlawful, or otherwise objectionable. We shall have no obligation to preview, verify, flag, modify, filter, or remove any Indexed Content, even if requested to do so, although We may do so in Our sole discretion. INDEXED CONTENT IS PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. Your use of Indexed Content is at Your sole risk, and We shall not be liable to You or any third party based on Indexed Content.

**5.2. Third-Party Social Platform Access and Interactions.** You shall enable the Digimind Social to access Your Third-Party Social Platform accounts and any websites operated by You or on Your behalf with respect to which You use the Digimind Social. Subject to the terms of this Agreement, You acknowledge and agree that We may access, collect, process, and/or store information or content, regardless of whether such content is Your Data or Indexed Content, from such Third-Party Social Platform accounts and/or websites in connection with providing the Digimind Social. Except for Our obligations with respect to Your Data, We shall not be responsible or liable for: (i) any content provided by You or Your Users to any Third Party Social Platform or other website, and any content accessed by You, Your Users or any third party from any Third-Party Social Media Platform or websites; (ii) any interactions or communications between You and/or Your Users and any third parties through any Third-Party Social Platform or websites; or (iii) any transactions relating to a separate agreement or arrangement between You or Your Users and any Third-Party Social Platform provider or websites.

# 6. NON-DIGIMIND PROVIDERS

**6.1. Acquisition of Non-Digimind Products and Services.** We or third parties may from time to time make available to You third-party products or services, including but not limited to Non-Digimind Applications and implementation, customization, and other consulting services. We do not warrant or support Non-Digimind products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form. Subject to Section 6.2 (Integration with Non-Digimind Applications), no purchase of Non-Digimind products or services is required to use the Digimind Social except a supported computing device, operating system, web browser, and Internet connection.

**6.2. Integration with Non-Digimind Applications.** The Digimind Social may contain features designed to interoperate with Non-Digimind Applications. To use such features, You may be required to obtain access to such Non-Digimind Applications from their providers. If the provider of any such Non-Digimind Application ceases to make the Non-Digimind Application available for interoperation with the corresponding Digimind Social Service features on reasonable terms, We may cease providing such Digimind Social Service features without entitling You to any refund, credit, or other compensation.

# 7. FEES AND PAYMENT FOR PURCHASED DIGIMIND SOCIAL

**7.1. Fees. You shall pay all fees specified in the Order Form.** Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term stated on the Order Form.

**7.2. Suspension of Digimind Social Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We or Our Reseller will give You at least 30 days' prior notice that Your account is overdue, in accordance with Section 15.2 (Manner of Giving Notice), before suspending services to You.

**7.3. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases

hereunder. If We or Our Reseller have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

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# 8. PROPRIETARY RIGHTS

**8.1. Reservation of Rights in the Digimind Social.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Digimind Social, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**8.2 Restrictions.** You shall not: (i) in the course of using the Digimind Social, access or use Third-Party Social Platforms, Your Data, or any Indexed Content in violation of applicable laws or applicable website terms of service, including the terms of service referenced at <u>Third Party</u> as applicable; (ii) display, distribute or make available the Indexed Content to any third party; provided such restriction does not apply to (a) aggregations of Indexed Content which do not reveal individual Mentions, or (b) content retrieved directly from the content provider's website rather than from the Digimind Social; (iii) permit any third party to access the Digimind Social except as permitted herein or in an Order Form; (iv) create derivative works based on the Digimind Social except as permitted herein; (v) copy, modify, or create derivative works based on Indexed Content except to create aggregations of Indexed Content which do not reveal individual Mentions; (vi) copy, frame, or mirror any part or content of the Digimind Social, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes; (vii) reverse engineer the Digimind Social; (viii) access the Digimind Social in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Digimind Social; (ix) use the Digimind Social to collect, store or process sensitive personal information, including (a) social security numbers, passport numbers, military numbers, voter numbers, driver's license numbers, taxpayer numbers, or other government identification numbers; (b) insurance policy or medical account identification numbers, (c) Protected Health Information (as defined in the U.S. Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as defined in the French "loi Informatique et Liberté du 6 janvier 1978, modifiée le 6 aout 2004") or similar information under other applicable laws or regulations, or (d) credit card numbers or bank account information or other information governed by the Gramm-Leach-Bliley Act of 1999, as amended, or other comparable law like the French "loi Informatique et Liberté du 6 janvier 1978, modifiée le 6 aout 2004" ; or (x) use the Digimind Social for a purpose related to establishing an individual's eligibility for credit, employment or insurance or for any consumer-initiated transaction as defined in the U.S. Fair Credit Reporting Act or any similar law.

**8.3. Your Data.** As between You and Us, You shall own all Your Data, including all reports, statistics, and other data to the extent generated from Your Data, and all intellectual property rights therein. During the term of this Agreement, You grant to Us the right to use Your Data to provide feedback to You concerning Your use of the Digimind Social Service.

**8.4. Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Digimind Social any suggestions, enhancement requests, recommendations, or other feedback provided by You, including Users, relating to the operation of the Digimind Social.

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# 9. CONFIDENTIALITY

**9.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Digimind Social; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.

**9.2. Protection of Confidential Information.** The Receiving Party shall (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

**9.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the

Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 10. WARRANTIES AND DISCLAIMERS

**10.1. Our Warranties.** We warrant that: (i) We have validly entered into this Agreement and have the legal power to do so; (ii) the Digimind Social shall perform materially in accordance with the User Documentation; (iii) subject to Section 6.2 (Integration with Non-Digimind Applications), the functionality of the Digimind Social will not be materially decreased during a subscription term; and (iv) We will not transmit Malicious Code to You, provided We are not in breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Digimind Social and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 14.3 (Termination for Cause) and Section 14.4 (Refund or Payment upon Termination) below.

**10.2. Your Warranties.** You warrant that You have validly entered into this Agreement and have the legal power to do so.

**10.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE INDEXED CONTENT IS PROVIDED "AS IS," "AS AVAILABLE," WITH NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. DIGIMIND SOCIAL PROVIDED UNDER A FREE TRIAL AT NO CHARGE ARE PROVIDED "AS IS", EXCLUSIVE OF ANY WARRANTY OR AVAILABILITY COMMITMENT WHATSOEVER.

## 11. PROCESSING OF PERSONAL DATA

**11.1 Nature, duration and purpose of treatment.** When a Personal Data processing operation is carried out by the Data Processor (Us) on behalf of the Data Controller (You), the latter explicitly and legitimately determines the nature, purpose and means of the data processing. The controller (You) also define the purpose and duration of the treatment. The duration of

treatment can not exceed the time necessary to achieve the specified objectives. This duration of the treatment corresponds to the duration of the data retention.

**11.2 Compliance of the Data Processor.** As part of the processing carried out by the Data Processor (Us) on behalf of the Data Controller (You), the Data Processor (Us) certifies, by contracting herein, that it is aware of the requirements of the General Regulation on the Protection of Personal Data (GDPR) and the obligations arising therefrom and its compliance with it.

In so doing, the Data Processor (We) vouches to the Data Controllers (You) of the reliability of its services with respect to the obligations of the GDPR. The Data Processor (Us) guarantee to have the necessary resources for the implementation of technical and organizational measures, in particular as regards the security of the processing in order to satisfy the requirements of the GDPR.

The Data Processor (Us) must be able to demonstrate at any time to the Data Controller (You) the respect of the obligations incumbent on him under the GDPR.
The Data Processor (Us) makes available to the Data Controller (You) all the informations necessary to demonstrate compliance with the obligations provided for in the present contract and in accordance with the GDPR and all the informations to allow the carrying out of audits, including inspections, by the Data Controller (You) or another auditor bound by a duty of confidentiality that have been mandated and contribute to these audits in accordance with Article 28 of the GDPR.

Such audits or inspections shall be performed during normal business hours and in a way that does not interfere with normal business activities of Data Processor (Us) and, where relevant, Subcontractor of the Data Processor.
These audits or inspections that Data Controller (You) can carry out are subject to payment of compensation, due to the Data Processor, corresponding to cost incurred by provision of human resources and equipment generating slowdown for activity or progress and completion of projects.

Compensation for human resources : twenty (20) Euros per hour and per person.
Compensation for material's means : full payment of transport costs for travel, if needed, of the Data Processor's Representative from the site where he is assigned to another.

**11.3. Subcontractor of the Data Processor**. Data Processor shall be allowed to outsource a Subcontractor for carrying out specific Personal Data processing activities, subject to herein and with authorization of the Data Controller by way of a written agreement. This written authorization is general or can be specific to each Subcontractor.

In the case of a general written authorization, the Data Processor shall inform the Data Controller of any planned changes regarding the addition or replacement of a Data Processor Subcontractor. The Data Controller may issue an objection and oppose these changes.

The Data Processor's Subcontractor is bound to the obligations of this contract on behalf of and according to the instructions of the Controller. Data Processor shall impose on its Subcontractor(s), by way of a written agreement, the same obligations as are imposed on provider under this Clause eleven (11) "Processing of Personal Data" for the implementation of appropriate technical and organizational measures provided for in the GDPR.
If the Data processor's Subcontractor does not fulfill its data protection obligations, the Data Processor can not be accountable for this non-performance to the Data Controller.

**11.4 Data Processor Support to Data Controller**. Data Processor shall assist Data Controller, through appropriate technical and organizational measures, to respond insofar as this is possible to comply with its obligations under applicable data protection laws such as any disclosure request or request for information or for the exercise of data subjects' data protection rights (right of access to its data, right to object, right to erasure, right to rectification) that have been made to Data Controller directly or to Data Processor.

Data Processor shall help the Data Controller to guarantee security throughout the processing. At this end, the Data Processor commit to establish, in the context of processing Personal Data carried out by the Data Controller, all the technical and organisational measures suitable to provide a level of security appropriate to each nature of processing and to the informations to which the Data Processor can have access.

**11.5 Processing of data**. The Data Processor shall only process Personal Data on behalf of Data Controller, in compliance with its instructions and for the sole aim which is the subject of subcontracting.
This defined data are processed only under written instruction which shall notably be
deemed to include an instruction to use the Personal Data as necessary for Provider to perform its obligations under the Agreement, unless such instruction is amended in writing by the Customer)
This defined data are only processed under written instruction which shall notably be deemed to include an instruction concerning Personal Data transfers to a third country (outside of E.U.) if needed for Data Processor to perform its obligations, unless it is required to do so under the law of the European Union or the law of the member State to which the Data Processor is subject;.

In this event, the Data Processor will notify this obligation to the Data Controller as soon as it becomes aware of it and before any processing unless the relevant right prohibits such information for important reasons of public interest.
If the Data Processor considers that an instruction constitute a violation of the European Data Protection Regulation or any other provision of Union law or of the data protection law of the member states, he shall immediately inform the Data Controller.

**11.6 Privacy by Design**. The Data Processor undertakes to take into account, with regard to its tools, products, applications or services, the principles of data protection from the outset and the principles of data protection by default.

**11.7 Persons allowed to process Personal Data.** The Data Processor ensures that persons authorized to process Personal Data undertake to respect confidentiality.

In order to fulfill this obligation, the Data Processor has to maintain a document, signed by all persons authorized to process the Personal Data. This document invites the individuals to respect the utmost confidentiality with regard to the information they may know about the processing of Personal Data entrusted by the Controller. This document is at the disposal of the Data Controller , This act certifies the respect of confidentiality by the persons authorized to process the Personal Data on behalf of the Data Controller.

**11.8 Notification of data breaches.** Data Processor shall notify Data Controller by email of any Personal Data breach in a timely manner after becoming aware of it.

Data Processor shall timely provide to Data Controller all data and details relating to such breach and provide any necessary assistance to enable Data Controller to remedy any such breach.

Data Processor provides also all information enabling Data Controller to notify the responsible control authority if needed.

The notification shall at least (i) describe the nature of the Personal Data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned; (ii) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained; (iii) describe the likely consequences of the Personal Data breach; (iv) describe the measures taken or proposed to be taken by the controller to address the Personal Data breach, including, where appropriate, measures to mitigate its possible adverse effects.

In the event where it is not possible to provide all the informations at the same time, the information may be provided in phases without undue further delay. The Data Controller shall document any Personal Data breaches, comprising the facts relating to the Personal Data breach, its effects and the remedial action taken.

**11.9 Termination of the process**. After the completion of the processing on behalf of the Data Controller or at the end of the contract between the Data Processor and the Data Controller, the Data Processor undertakes, according to the choice of the Data Controller, for each type of Personal Data to return or delete thereof, and to destroy all the existing copies unless european regulation or the law of a Member State to which the Data Processor is subject requires the retention of such copies.

**11.10 Allocation of responsibilities.** When the Data Processor has notified the Data Controller that the instruction given in the context of the data processing is contrary to the legislation and in the event that, the Data Controller confirm this instruction. The Data Processor is exempted of any liability for this processing. He may also refuse to carry out this instruction by justifying the refusal by the existence of a contrary regulation or law.

The Data Processor can not be accountable for failure to comply with its obligation to assist the Data Controller in order to respond to the requests of the persons concerned by the processing of their Personal Data in order to exercise their rights, if he has not been informed of this request expressly by the Data Controller.

He can not also be accountable for the failure of the Data Controller in its obligations relating to the transparency of information and communication and to the procedures for the exercise of the data subjects' rights once he has transmitted to the Data Controller all the information requested in the exercise of the rights of the data subject.

Liability of each party can be considered only in view of the status of each party. This contract can never be seen as a partnership establishing a co-liability of the parties.

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# 12. MUTUAL INDEMNIFICATION

**12.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party (i) alleging that the use of the Digimind Social as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against You"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You; and (c) provide to Us all reasonable assistance, at Our expense. In the event We receive information regarding a Claim Against You, or if We reasonably believe the Digimind Social may infringe or misappropriate or violate any applicable laws, We may in Our discretion (i) modify the Digimind Social so that they no longer infringe or misappropriate third party rights or fail to comply with any applicable law, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Digimind Social, at no cost to You, in accordance with this Agreement, (iii) terminate Your User subscriptions for such Digimind Social upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination, or (iv) require that You immediately, upon receipt of notice from Us, discontinue all use of any Indexed Content or Your Data that may be related to an actual or potential Claim Against You or violation of law, to the extent not prohibited by law, delete from Your systems any such Indexed Content or delete or permit Us to delete from the Digimind Social, any of Your Data, in each case within five days of receipt of notice from Us. You shall, if so requested by Us, certify such

deletion and discontinuance of use in writing. We shall be authorized to provide a copy of such certification to the third party claimant. We shall have no obligation to indemnify You to the extent any Claim Against You arises from Indexed Content, a Third Party Social Platform, or Your breach of the terms of this Agreement.

**12.2. Indemnification by You.** You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Digimind Social, a Third-Party Social Platform, or Indexed Content in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Us"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense. In the event We receive information regarding an actual or potential Claim Against Us, We may, in Our discretion, require You to immediately, upon receipt of notice from Us, discontinue all use of any Indexed Content or Your Data that may be related to an actual or potential Claim Against Us and, to the extent not prohibited by law, delete from Your systems any such Indexed Content or delete or permit Us to delete from the Digimind Social, any of Your Data, in each case within five days of receipt of notice from Us. You shall, if so requested by Us, certify such deletion and discontinuance of use in writing. We shall be authorized to provide a copy of such certification to the third party claimant.

**12.3. Exclusive Remedy.** This Section 12 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

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# 13. LIMITATION OF LIABILITY

**13.1. Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF $500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 8 (FEES AND PAYMENT FOR PURCHASED DIGIMIND SOCIAL).

**13.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

# 14. TERM AND TERMINATION

**14.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Digimind Social for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

**14.2. Term of Purchased Subscriptions.** Subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Order Form, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term. The per-topic pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Digimind Social in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.**

**14.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**14.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees

payable to Us for the period prior to the effective date of termination.

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# 15. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

**15.1. General.** Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where You are domiciled.

| If You are domiciled in: | You are contracting with: | Notices should be addressed to: | The governing law is: | The courts having exclusive jurisdiction are: |
|---|---|---|---|---|
| The United States of America, Canada, Mexico, or a Country in Central or South America or the Caribbean. | Digimind Inc. | DIGIMIND Inc. 10 Fawcett Street Cambridge, MA 02138 - USA Tel : + 1 800-510-3790 Contact : contact-us@digimind.com | Massachusets and controlling United States federal law | Boston, Massachusets, U.S.A. |
| United Kingdom | Digimind Ltd. | 1650 Arlington Business Park, Theale, Reading, RG7 4SA, UK Tel: +44 1189 298 134 contact@digimind.com | United Kingdom | United Kingdom |
| All other countries in Europe, the Middle East or Africa | Digimind S.A. | DIGIMIND S.A 90 avenue Leon Blum 38100 Grenoble - France Tél. +33 (0)4 76 70 13 78 Contact: contact@digimind.com | France | France |
| A Country in Asia or the Pacific region | Digimind Singapore Ltd | DIGIMIND Asia 5, Pine Grove, #08-04 Astor Green SINGAPORE 597591 Tél. (+65) 9789-7100 Contact: apac@digimind.com | Singapore | Singapore |

**15.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the fifth business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Digimind Social system administrator designated by You.

**15.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**15.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.