

Dotdigital Terms and Conditions

These terms and conditions (“**Terms**”), the Additional Terms for Specific Services, the Data Processing Agreement, the Permission-based Marketing Policy, the Privacy Policy, and any Order Form collectively constitute a binding agreement (“**Agreement**”) between (1) the customer, whose details are set out on the Order Form (“**Customer**”, “**Client**”, or “**you**”) and (2) Dotdigital. The Agreement governs your use of the Dotdigital system and Services. By using our Site and Services, you confirm that you accept and agree to be bound by the Agreement. YOU MAY NOT USE THE SITE AND SERVICES UNLESS YOU AGREE TO BE BOUND BY THE AGREEMENT.

1. Interpretation

1.1 In these Terms the capitalised terms set out below shall have the following meanings:

“**Additional Terms for Specific Services**” means the terms and conditions applicable to certain Services available at <https://dotdigital.com/terms/specific-services/>;

“**Associated Company**” means a company belonging to the same group as either party;

“**Charges**” means Dotdigital’s charges for the Services as set out in the Order Form together with such other additional charges as may be agreed between the parties from time to time, including purchases made by the Customer through the Software;

“**Codes**” means all applicable legislation, regulations, directions, rules, codes of practice and guidelines applicable to Messages in the countries in which the Customer operates and/or in which recipients of Messages sent using the Services are located (including, without limitation, the Committee of Advertising Practice Code (CAP Code), Spamhaus best practice guides, DMA best practice guides, applicable guidelines published by the CTIA, the Mobile Marketing Association and also including, without limitation, any requirements or practices in relation to telemarketing such as a telephone preference service regime, ‘do not call’ regime) (as is relevant) as may be revised or adopted in relation to marketing best practice;

“**Customer Data**” means all information, data, and content that the Customer uploads, submits, or otherwise provides to Dotdigital in connection with the use of the Services. This includes, but is not limited to, Customer Marketing Material, personal data, contact information, Messages, and any other data generated or processed through the Services. Customer Data does not include aggregated or anonymised data that Dotdigital may derive from the use of the Services;

“**Customer Marketing Material**” means any marketing content or material uploaded, submitted, or otherwise provided to Dotdigital in connection with the use of the Services (including the content in Messages);

“Data Processing Agreement” means the data processing agreement available at <https://www.dotdigital.com/terms/data-processing-agreement/>;

“Data Protection Laws” means: (a) in relation to the Customer all data protection and/or privacy laws, principles and agreements and all electronic marketing laws, principles and agreements applicable to the country (and state where applicable) in which the Customer signing an Order Form is located and all countries (and states where applicable) in which recipients of Messages sent via the Services are located, including but not limited to the CAN-SPAM Act 2003 and Canada’s anti-spam legislation (CASL) and, in Singapore, the Spam Control Act (Cap. 311A) and the ‘Do Not Call’ regime established by the Personal Data Protection Act (No 12 of 2012); (b) in relation to Dotdigital all data protection and/or privacy laws, principles and agreements and all electronic marketing laws, principles and agreements applicable to the country (or state where applicable) in which the Dotdigital entity signing an Order Form is located;

“Dotdigital” means the Dotdigital entity specified on an Order Form whose details are outlined below:

(a) Dotdigital EMEA Limited, whose registered office is at No 1 London Bridge, London, SE1 9BG (registered in England and Wales under company number 03762341 and VAT number GB 945 651 305);

(b) Dotdigital, Inc., with its main office at 1261 Broadway, Suite 306, New York, 10001, USA (registered in Delaware under file number 5207163);

(c) Dotdigital APAC Pty Ltd, with its main office at 60/2 O’Connell Street PARRAMATTA NSW 2150, Australia (registered in New South Wales under ACN 606 847 330);

(d) Dotdigital B.V., whose registered office is at Mr. Treublaan 7, Amsterdam 1097 DP, Netherlands (registered in Amsterdam under company number 75737264);

(e) Dotdigital SG Pte. Ltd., with its registered office at 6001 Beach Road, #11-06 Golden Mile Tower, 199589, Singapore (Singapore company registration no. 201837123N); or

(f) Dotdigital Japan Limited, with its registered office at 3-1-6 Motoazabu Minato-Ku, Tokyo, Minato City, 106-0046, Japan (company registration no. 0104-03-034522).

“Initial Term” means the fixed term, minimum term or initial term set out in the Order Form;

“Intellectual Property” means any and all patents, copyrights (including future copyrights), design rights, trade marks, Trade Mark, service marks, domain names, trade secrets, know-how, database rights, and all other intellectual property rights, whether registered or unregistered, and including applications for any of the foregoing and all rights of a similar nature which may exist anywhere in the world and provided by or owned by Dotdigital, or its Associated Companies;

“Material” means written documentation and content, verbal, electronic and other information, databases, computer software, Software, designs, drawings, pictures or other images (whether still or moving), the Site, sounds or any other record of any information in any form belonging to Dotdigital but for the avoidance of doubt does not include material belonging to the Customer;

“Messages” means communications and content sent using the Services by Customer to recipients, including, but not limited to, emails and SMS;

“Order Form” or **“Service Agreement”** means the order form or service agreement confirming the level of Services you are purchasing and incorporating these Terms;

“Permission-based Marketing Policy” means Dotdigital’s permission-based marketing policy, available at <https://dotdigital.com/terms/permission-based-marketing-policy/>;

“Privacy Policy” means Dotdigital’s privacy policy available at <https://www.dotdigital.com/terms/privacy-policy/>;

“Renewal Period” means twelve (12) months;

“Services” means the provision of the Dotdigital data processing services and Software for use by the Customer according to the Order Form whereby: (a) Dotdigital provides the Software to manipulate the personal data collected; (b) Dotdigital provides the facilities for the Customer to send Messages to data subjects who have expressly consented to the Customer sending them such Messages (except where otherwise agreed to by Dotdigital); and (c) Dotdigital provides facilities for the Customer to export personal data together with such other services agreed between Dotdigital and the Customer from time to time or ancillary to the Services;

“Site” means Dotdigital’s website at www.dotdigital.com;

“Software” means Dotdigital’s data management and manipulation software;

“Trade Mark” means the ‘Dotdigital’ trade mark and logo and any other mark or branding of Dotdigital or of any Associated Companies or third parties provided or used as a part of these Services or any application for registration anywhere in the world;

“Working Day” means Monday to Friday excluding statutory holidays in the country in which Dotdigital is located; and

“Working Hours” means 9.00 to 18.00 on a Working Day in the time zone in which Dotdigital is located.

1.2 Subject to clause 14, any reference in these Terms to ‘writing’ or related expressions includes but shall not be limited to a reference to email, communications via websites and comparable means of communication.

1.3 Except where the context requires otherwise: the singular includes the plural and vice versa; a reference to one gender includes all genders; and words denoting persons include firms and corporations and vice versa.

2. Supply of the Services

2.1 Dotdigital shall provide the Services to the Customer for the term set out in clause 10.1 in accordance with the terms and conditions of the Agreement.

2.2 Although Dotdigital does not warrant that the Services will be uninterrupted, error, bug or virus free or that the delivery of Messages will be without delay, Dotdigital will provide the Services and maintain security measures in accordance with industry best practice. The Services will be available with 99.5% uptime in any calendar month, excluding scheduled maintenance and emergency maintenance. The Customer's sole remedy for any failure by Dotdigital to meet the availability as stated herein shall be a service credit for the relevant calendar month calculated on the following basis:

Percentage Uptime	Percentage Credit
98% – 99.4%	2%
97% – 97.9%	5%
95% – 96.9%	10%
88% – 94.9%	20%
<88%	40%

Any service credits must be requested within 30 days from the end of the relevant calendar month in which the credit is being claimed.

2.3 It may be necessary for Dotdigital to temporarily suspend the Services in whole or in part from time to time to carry out maintenance of the Services. Dotdigital will use its reasonable endeavours to provide the Customer with at least 48 hours' notice of any temporary suspensions of the Services and to undertake any scheduled and planned maintenance or repair work outside of Working Hours in order to minimise disruption to the Services provided to the Customer. Such communications will be made via <https://dotdigitalstatus.com/> to which the Customer may subscribe to automated alerts. However, Dotdigital reserves the right to carry out urgent maintenance or repair work at any time where it would be unreasonable, in Dotdigital's opinion, to delay repairing the Services taking into account the interests of the Customer. Services may also be suspended in whole or in part where Dotdigital or any third-party host is obliged to comply with an order, instruction or request of government, a court or other competent administrative authority or an emergency service organisation. Except for the service credit procedure contained in clause 2.2, Dotdigital accepts no

responsibility or liability to the Customer for any direct or indirect loss or damage that may arise under this clause 2.3.

2.4 Dotdigital cannot guarantee the delivery of Messages to any recipient under the Services, as this is dependent upon accurate and up to date recipient contact information, suitable internet availability and connectivity, on various anti-spam and junk mail policies adopted by recipient service providers as well as restrictions regarding the content, wording and graphics of a Message. Dotdigital will use reasonable endeavours to assist the Customer with methods to maximise the delivery rate of Messages, however Dotdigital makes no representations or warranties whatsoever about the speed or number of Messages sent that will be received by recipients. Dotdigital accepts no responsibility or liability to the Customer for any direct or indirect loss or damage that may arise under this clause 2.4, except due to Dotdigital's error or omission causing any Messages not to be sent via the Services.

2.5 Dotdigital will ensure that Customers will have access to Dotdigital's support team, where support may be provided by either email or phone.

2.6 Additional Terms for Specific Services, which is hereby incorporated into this Agreement by reference, shall apply to certain Services the Customer purchases from Dotdigital as specified in the Additional Terms for Specific Services.

3. Charges, Invoicing and Payment

3.1 The Customer shall pay the Charges in accordance with these Terms, in the currency in which Charges are specified in the Order Form. Where Customer pays the Charges in an alternative currency to that specified, Customer shall also be responsible for the payment of currency conversion charges incurred by Dotdigital.

3.2 After expiry of the Initial Term, Dotdigital may alter the level of Charges or the payment terms by giving the Customer 30 (thirty) days' written notice. Within 30 (thirty) days of receiving such notice, the Customer must notify Dotdigital in writing if it does not accept the changes, otherwise the changes will be deemed accepted. If the Customer gives notice of any objection as aforementioned the parties shall attempt to mutually agree the changes to be made to the Terms and if the parties cannot agree within 30 (thirty) days of the notice of objection being served, either party may terminate the Agreement by giving the other 90 (ninety) days' notice in writing. Notwithstanding the above, unless agreed otherwise on an Order Form, changes relating to SMS charges may be amended on 14 (fourteen) days' written notice to the Customer, and in such cases, the Customer is not entitled to object to the changes made to the SMS charges.

3.3 All Charges quoted to the Customer for the provision of the Services are exclusive of any applicable tax, for which the Customer shall be additionally liable at the applicable rate from time to time. The Customer shall pay all Charges without withholding or

deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to Dotdigital such additional amount as will ensure that Dotdigital receives the same total amount that it would have received if no such withholding or deduction had been required.

3.4 Unless otherwise specified in the Order Form Dotdigital will invoice the Charges to the Customer in advance according to the invoicing frequency specified in the Order Form.

3.5 No payment shall be deemed paid until Dotdigital receives payment in cleared funds from the Customer.

3.6 If the Customer fails to pay Dotdigital any Charges due pursuant to these Terms, then Dotdigital shall be entitled to: (a) charge interest (both before and after any judgment) on the outstanding amount at the rate of 3% above the base rate of Barclays Bank plc from time to time, accruing on a daily basis and compounded quarterly, from the due date until the outstanding amount is paid in full; and (b) recover from the Customer any amount incurred by Dotdigital utilising any third party debt agency due to the Customer's failure to pay any Charges due.

3.7 If the Customer fails to pay any undisputed sums due to Dotdigital and if 5 (five) days after being sent a payment reminder notice by Dotdigital any sums remain unpaid, Dotdigital reserves the right to:

- (a) disable the account; and

- (b) temporarily suspend the provision of the Services to the Customer until such time as all outstanding undisputed amounts have been settled in full in cleared funds, whereupon the Services will be reinstated. Before reinstating the Services, dotdigital may require the Customer to pay a fee for reinstating the Services (as notified to the Customer by Dotdigital reasonably based on the hourly rate in the Dotdigital's rate card) and/or set up a direct debit mandate for payment of future Charges after prior notice and explicit consent from the Customer.

3.8 In the event of an invoice being disputed by the Customer for valid and reasonable grounds, Dotdigital agrees to continued provision of the Services whilst discussions take place to resolve the basis of the dispute in accordance with the provisions of clause 12, provided that the undisputed portion of any relevant invoice is paid. If the Customer disputes any portion of an invoice based upon usage of the Services, the Customer accepts that Dotdigital's records of such usage are correct unless proven otherwise by an independent expert.

4. Data and Data Protection

4.1 Each party undertakes to comply with its obligations under relevant applicable Data Protection Laws and the Data Processing Agreement. Dotdigital shall process the Client's Protected Data (as defined therein) in accordance with the Data Processing Agreement, which is hereby incorporated into this Agreement by reference. The use, processing, and storage of the Customer's account information (such as names and contact details of the Customer's users, billing information, login credentials, and technical information such as IP addresses, and user agent strings) shall be governed by the Privacy Policy.

4.2 Personal data is derived from data provided by the Customer and is not checked or monitored by Dotdigital. Dotdigital has no liability or responsibility whatsoever howsoever arising directly or indirectly to the Customer for the accuracy, content or use of such personal data under this clause 4.2, provided that such use is in accordance with the instructions of the Customer and Dotdigital's obligations set out in the Agreement.

4.3 Dotdigital has no responsibility or liability for the back-up of the data the Customer uploads to the Services. While Dotdigital performs regular back-ups of data for operational purposes, such back-ups are not intended for the restoration of the Customer's data on the Services in the event of accidental deletion or corruption caused by the Customer. The Customer is solely responsible for maintaining their own back-ups of any data stored on the Services.

4.4 All Customer Data remains the exclusive property of the Customer. Dotdigital is authorized to use, process, store, and transmit Customer Data as necessary to provide the Services and as otherwise permitted under the Agreement. Dotdigital shall use any Customer Data or materials only for purposes:

- (a) set out in the Agreement; or
- (b) required by law, regulation or regulatory body or any court of competent jurisdiction.

4.5 Dotdigital may collect and derive from Customer Data aggregated or anonymised data that does not identify any specific individual or organisation and may use, disclose and otherwise process such data for Dotdigital's own legitimate business purposes, including but not limited to, the provision and enhancement of Services to the Customer and others, without restriction. Dotdigital may also gather and analyse Customer Marketing Material to enhance and improve the Services, as well as for Dotdigital's own legitimate business purposes without restriction.

4.6 The Customer has the option to integrate the Services with external products or services ("**External Services**") provided that the Customer adheres to the terms and

conditions set by the vendor of the external product or service (“**Vendor**”). Any transactions and data exchanges between Customers and Vendors are solely between these parties. Dotdigital is not accountable for any disclosure of, deletion of or changes to Customer Data caused by access from External Services or Vendors. By opting to integrate with External Services, the Customer consents to Dotdigital sharing Customer Data with the Vendors as requested by the External Services, unless the Customer requests to end the integration.

4.7 The Customer may utilise certain AI tools as part of the Services provided by Dotdigital. The Customer is responsible for ensuring that their use of AI complies with all applicable laws and regulations. Dotdigital does not guarantee the accuracy, reliability, or quality of outputs generated by these AI tools. The Customer shall not use AI in a manner that infringes on the rights of others or violates the Agreement. The Customer shall indemnify Dotdigital against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Dotdigital arising out of a breach of the obligations in this clause 4.7.

5.Customer’s Obligations

5.1 The Customer warrants that it shall not:

- (a) use the Services in breach of Dotdigital’s Permission Based Marketing Policy;
- (b) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content or materials transmitted through the Services;
- (c) use the Services in a manner which is unlawful, harmful, threatening, abusive, harassing, tortious, indecent, obscene, libelous, menacing or which infringes the Intellectual Property, proprietary or personal rights of any third party;
- (d) misuse or attack the Site of Services via a denial-of-service attack or by introducing viruses, trojans, worms, logic bombs or other material which is technologically harmful or;
- (e) attempt to gain unauthorised access to the Site or Services, the server on which the Site or Services are stored or any server, computer or database connected to the Site or Services.

5.2 The Customer warrants that it shall:

- (a) comply and ensure that its use of the Services complies with all Codes applicable to the country in which the Customer is registered and recipients of Messages reside;

- (b) provide all reasonable assistance required by Dotdigital to enable Dotdigital to comply with any requirements or conditions imposed by such Codes;
- (c) provide, Dotdigital, relevant authority, user group or regulator of the Codes with all information or material reasonably requested in order to carry out any investigation in connection with the Customer's use of the Services; and
- (d) not use the Services to upload or send to records purchased, rented or acquired from a third party in any way.

Dotdigital has no responsibility or liability whatsoever howsoever arising directly or indirectly to the Customer for the content of any Messages sent using the Services or Messages being sent to recipients in breach of the Customer of its obligations contained in this clause 5.2.

5.3 In relation to email Messages sent using the Services, Customer warrants that:

- (a) it will identify itself in every email according to applicable law, but at least with postal address, register number, phone number, email address data and tax registry, where applicable; and
- (b) it will not use the Service to send email communications advertising or promoting email lists or services supporting unsolicited bulk email. Any Customer who uses the Services to promote or advertise email lists or services supporting unsolicited bulk email will have their account disabled without notice and with immediate effect and no refund of Charges or other payments to Dotdigital will be made. Unsolicited bulk email support services may include but are not limited to: services providing service to spam operations known by Dotdigital, services providing 'bullet-proof hosting' for spam service purposes, services obfuscating or anonymising spam senders, services selling or providing hosting for the sales or distribution of spamware or address lists, and networks knowingly hosting spammers as either stated or de facto policy.

Dotdigital accepts no responsibility or liability to the Customer for any direct or indirect loss or damage that may arise under this clause 5.3.

5.4 In relation to SMS Messages sent using the Services, Customer warrants that

- (a) it will not attempt to use Services to access or allow access to emergency services or impersonate any other entity; and
- (b) if Customer has purchased a number, including but not limited to short code, 10DLC, and toll-free, then Customer will not change the use of that short code from the use stated in any documentation in relation to approval of the short code without first obtaining an amendment to any application for approval of the short code under the new use.

Further, should Customer make use of a long telephone number(s), Dotdigital reserves the right to reclaim any phone number from Customer's account if, in Dotdigital's reasonable opinion, Customer does not send sufficient traffic over that phone number such that the phone number is underutilized. Dotdigital accepts no responsibility or liability to the Customer for any direct or indirect loss or damage that may arise under this clause 5.4.

5.5 The Customer shall indemnify Dotdigital against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Dotdigital arising out of a breach of the obligations in 5.1 to 5.4 above. This indemnity shall not cover Dotdigital to the extent that a claim under it results from Dotdigital's negligence or wilful misconduct.

5.6 Dotdigital may, but is not required to, monitor Messages created by the Customer and the use of the Services by the Customer. If Dotdigital considers in its reasonable opinion that the Customer is sending Messages in breach of clause 5.1 to 5.4 above, Dotdigital may at its absolute discretion (taking into account the Customer's track record of use of the Services):

- (a) suspend provision of Services;

- (b) block Customer's access to the Services for such time as in each case is reasonable; and

- (c) add any recipient contact details to its global suppression list ("**GSL**").

Dotdigital will usually provide the Customer with prior notice of any suspension, blocking or addition of an email to the GSL, unless immediate action is necessary in the circumstances.

Dotdigital accepts no responsibility or liability to the Customer for any direct or indirect loss or damage that may arise under this clause 5.6.

5.7 Where Dotdigital suspends or blocks access to the Services pursuant to clause 5.6 above, Dotdigital shall contact the Customer to:

- (a) inform the Customer of the action taken or proposed action (where applicable) giving rise to the suspension;

- (b) explain why the access to the Services is suspended or blocked;

- (c) to inform the Customer of the remedial actions that the Customer needs to take to rectify the issues with the Customer's use of the Services;

- (d) inform the Customer of any applicable de-listing fee payable to Dotdigital (if necessary and determined in Dotdigital's sole discretion); and

(e) to agree on the timescale for the Customer to take the necessary remedial actions.

Dotdigital shall only reactivate the Services once the Customer has taken the remedial actions. If the Customer fails to take the remedial actions within the timescale agreed, Dotdigital reserves the right to terminate the Agreement upon giving notice to the Customer and the Customer shall become immediately liable to pay all outstanding fees for remainder of the unexpired Term.

5.8 The Customer will keep its password and other access details for use with the Services confidential and restricted to those members of staff who need to know such details and shall ensure all such staff are aware of the confidential nature of such information and treat it accordingly. The Customer shall notify Dotdigital immediately if it believes that such information is no longer secret. The Customer is solely responsible for all activities resulting from use of the Customer's password or account. The Customer will not permit any person to access the Services for any unauthorised purpose that would constitute a breach of the Agreement.

5.9 Without prejudice to its other rights in these Terms Dotdigital reserves the right to prevent the sending of any Messages forming part of the Services or any other item or material made available via the Services by the Customer at any time and without notice, where the content is in Dotdigital's reasonable opinion a breach of the Agreement. Dotdigital accepts no responsibility or liability to the Customer for any direct or indirect loss or damage that may arise under this clause 5.9.

5.10 The Customer is not permitted to conduct vulnerability scanning, or any form penetration testing against the Dotdigital Services or application servers. Dotdigital shall provide Customer with the results of Dotdigital's own penetration tests upon written request.

6. Ownership and Use of the Intellectual Property Rights

6.1 Dotdigital warrants that to the best of its knowledge:

(a) Dotdigital is the proprietor of the Intellectual Property and Materials supplied during the course of providing the Services; and

(b) the Intellectual Property and Materials provided by Dotdigital do not infringe the intellectual property rights of any third-party.

6.2 Subject to the Customer's compliance with the rest of this Clause 6, Dotdigital shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising from a breach of

clause 6.1. This indemnity shall not cover the Customer to the extent that a claim under it results from use of Customer's intellectual property.

6.3 Dotdigital hereby grants to the Customer a personal, non-exclusive and non-transferable licence to use the Intellectual Property and/or Materials for the duration of the Agreement strictly in accordance with the Agreement only. The Customer shall not be entitled to use the Intellectual Property and/or Materials for any other purpose than the use of the Services, including, without limitation, that the Customer shall have no right to copy, translate, reproduce, adapt, reverse engineer, decompile, disassemble, create derivative works, modify, sell, rent, lease, transfer, assign, sub-licence, make any representations, warranties or guarantees with regard to the Intellectual Property and/or Materials in whole or part except as permitted by law.

6.4 The Customer shall only use the Intellectual Property and/or Materials or any Dotdigital branding in the form stipulated by Dotdigital from time to time and shall observe all directions given by Dotdigital as to colours and size and representations of the Trade Mark and branding and their manner and disposition on the Customer's products, packaging, labels, wrappers and any accompanying leaflets, brochures or other materials.

6.5 The Customer shall not use any mark or name confusingly similar to the Trade Mark in respect of any of its Services or use the Trade Mark as part of any corporate business or trading name or style. Dotdigital may use the Customer's trade marks for publicity purposes only in a form and manner approved by the Customer in writing in advance. Dotdigital may not refer to the Customer in Dotdigital's marketing and advertising communications, without first obtaining consent.

6.6 If the Customer becomes aware that any other person, firm or company alleges that the Intellectual Property and/or Materials is invalid or that use of the Intellectual Property and/or Materials infringes any rights of another party or that the Intellectual Property and/or Materials is otherwise attacked or attackable the Customer shall as soon as reasonably possible give Dotdigital full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.

6.7 Dotdigital shall have the conduct of all proceedings relating to the Intellectual Property and/or Materials and shall in its sole discretion decide what action if any to take in respect of any infringement or alleged infringement of the Intellectual Property or passing off or any other claim or counterclaim brought or threatened in respect of the use or registration of the Intellectual Property. The Customer shall not be entitled to bring any action relating to the Intellectual Property in its own name but shall reasonably assist Dotdigital upon Dotdigital's reasonable request. Dotdigital agrees to reimburse the Customer's reasonable expenses incurred in complying with clauses 6.6 and 6.7.

6.8 The Customer may provide feedback to Dotdigital regarding the Services. By providing such feedback, the Customer grants Dotdigital a perpetual, irrevocable, worldwide, royalty-free license to use, modify, and incorporate the feedback into its products and services without any obligation to compensate the Customer.

7. Confidentiality

7.1 Subject to clause 7.2, neither party shall disclose at any time during the Term or for a period of ten (10) years after termination, to any third party any information relating to the other party including information relating to:

(a) Intellectual Property, intellectual property, software, the Software, materials, Materials, products, systems, operations, processes, plans or intentions, product information, know-how and market opportunities; and

(b) business, identity and affairs and the business, identity and affairs of its directors, officers, employees, customers and potential customers or personal data relating to customers, suppliers, agents, or subcontractors and the like, which comes into the possession of the other party as a result of or in connection with the performance of the Agreement (collectively, “**Confidential Information**”).

7.2 The provisions of clause 7.1 shall not apply to any information which:

(a) is in or enters the public domain other than by a breach of clause 7.1; or

(b) is in the possession of the receiving party without restriction in relation to disclosure before the date of its receipt in connection with the Agreement; or

(c) is obtained from a third party who is lawfully authorised to disclose such information and is provided to the receiving party without any obligation of confidentiality;

(d) is authorised in advance for release by the disclosing party; or

(e) may be required to be disclosed under applicable legislation or the order of a Court or other competent authority.

7.3 The parties shall ensure that any Confidential Information which it receives from the other shall be held with the same degree of care as that party's own Confidential Information.

8. Limitation of Liability and Indemnity

8.1 This clause 8 sets out the entire financial liability of either party to the other (including any liability for the acts or omissions of a party's employees, agents, consultants, and subcontractors) in respect of:

- (a) any breach of the Agreement;
- (b) any use of the Services or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Terms.

8.2 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT, DOTDIGITAL SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ALL SERVICES, MATERIALS AND INTELLECTUAL PROPERTY ARE PROVIDED "AS IS". DOTDIGITAL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, DOTDIGITAL MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR MATERIALS OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

8.3 Nothing in the Agreement limits or excludes the liability of either party:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation;
- (c) for any indemnities provided under the Agreement; or
- (d) for any other liability which cannot be excluded by applicable law.

8.4 Subject to clauses 8.2, 8.3, and where expressly stated:

- (a) neither party shall be liable to the other under the Agreement for any loss of profits, loss of business; depletion of goodwill and/or similar losses; loss of goods; loss of contract; loss of use; loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) each party's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution arising in connection with the performance, or contemplated performance, of the Agreement shall be limited to the Charges paid or payable under the Initial Term or then-current Renewal Period, in total in respect of any single claim or series of connected claims brought by either party under the Agreement.

8.5 If any third party makes a claim, or notifies an intention to make a claim, against either party which may reasonably be considered likely to give rise to a liability under any indemnity provided under the Agreement (a “**Claim**”), the indemnifying party shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the indemnifying party, specifying the nature of the Claim in reasonable detail; and

(b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the indemnifying party (such consent not to be unreasonably withheld), provided that the indemnifying party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the claiming party.

8.6 Nothing in this clause shall restrict or limit either party’s general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 8.

9. Force Majeure

Neither party shall be responsible to the other in circumstances where some or all of the obligations (except for the obligation for the payment of Charges) under the Agreement cannot be performed due to circumstances outside the reasonable control of the defaulting party including, without limitation, an Act of God, change in legislation, fire, explosion, flood, accident, strike, lockout or other industrial dispute, war, terrorist act, riot, civil commotion, failure of public power supplies, third party hacking, viruses, trojans, worms, logic bombs or other material attacking the Site, a denial-of-service attack, a distributed or malicious denial-of service attack, failure of communication facilities, unavailability of the internet. However, if such circumstances persist for more than 14 (fourteen) days, the non-defaulting party may terminate the Agreement and all Charges due to Dotdigital up to the date of termination shall become immediately due and payable.

10. Term, Suspension and Termination

10.1 The Agreement commences on the date the Customer signs their first Order Form, and continue until all Order Forms have expired or have been terminated. Dotdigital shall provide the Services set out in the Order Form and (where applicable) as purchased by the Customer through the Software to the Customer for the Initial Term. For the avoidance of doubt, any purchases made through the Software shall run coterminous with those set out in an Order Form. Unless otherwise specified in the Order Form, the Order Form shall automatically renew for successive Renewal Periods unless either party gives the other party at least thirty (30) days written notice of its decision not to renew prior to expiry of the Initial Term or then-current Renewal Period. Such notification of non-renewal must be given to Dotdigital via the cancellation form

available at <https://dotdigital.com/cancel/>. The Initial Term and any subsequent Renewal Periods shall collectively constitute the “**Account Master Contract Term**” or “**Term**”.

10.2 Dotdigital may immediately and without notice suspend the provision of Services to the Customer if the Customer’s account remains inactive for a period of 13 months or more.

10.3 Either party may terminate the Agreement on giving written notice if:

(a) either party commits a material breach of the Agreement and (if capable of remedy) the breaching party fails to remedy the breach within 14 (fourteen) days after being required by written notice so to do; or

(b) either party becomes insolvent or bankrupt, enters into an arrangement with creditors, has a receiver or administrator appointed or its directors or shareholders pass a resolution to suspend trading, wind up or dissolve that party other than for the purposes of amalgamation or reconstruction or it ceases, or threatens to cease trading. For the avoidance of doubt, neither party may terminate an Order Form for convenience unless in accordance with 11.1 below.

10.4 The period during which Dotdigital may suspend the Services under the Agreement will continue until the circumstances giving rise to Dotdigital’s right to suspend the Services ceases to subsist or until the Agreement is terminated by either party. In the event that Dotdigital suspends the provision of Services to the Customer, the Customer will continue to be obliged to pay all Charges owing or due for the period when the Service is suspended.

10.5 Any termination of the Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to at law or under the Agreement and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination including but not limited to the warranties and indemnities contained in the Agreement.

11. Effects of termination

11.1 Where an Order Form is terminated by either party before the end of the Initial Term or then-current Renewal Period (except where terminated by the Customer due to a material breach of the Agreement by Dotdigital), all remaining Charges for the Initial Term or then-current Renewal Period (as applicable) shall be immediately payable.

11.2 Following termination: (a) unless required by the applicable law, Dotdigital shall have no obligation to retain any Customer Data. If the Customer wishes to export any data, it should do so prior to the effective date of termination. Where the Customer requires Dotdigital to export any data on its behalf a charge may be applied for this

additional service; (b) the Customer shall immediately cease using the Intellectual Property and the Materials; and (c) any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect.

12. Disputes

In the event of any dispute between the parties to the Agreement, the parties shall within 10 (ten) Working Days of a written request from a party to the other, meet in a good faith effort to resolve the dispute without recourse to proceedings. If the dispute is not resolved as a result of such meeting, any party may recourse to proceedings.

13. Assignment

Neither party shall assign the whole or any part of the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, however Dotdigital shall be entitled to assign the Agreement to any entity that purchases the shares or assets of that party as the result of a merger, takeover or similar event, unless such acquiring entity is a competitor of the non-assigning party.

14. Communication and Notices

Notices or proceedings relating to a dispute shall be given by post addressed to the other party at its address provided in the Order Form (or to such other address that may be notified to the party giving notice in writing). Other notices under this Agreement shall be given in writing by email. The Customer may give notice to Dotdigital at legal@dotdigital.com. Dotdigital may give notice to the Customer at the Customer's main/master account email address for the Dotdigital's platform. Sending the email containing the notice to the Customer's email address specified above shall constitute effective notice even if the Customer's email address is invalid or is not capable of receiving emails. Any notice under this clause shall be deemed to have been received at 5pm on that Working Day (or the following Working Day if not sent on a Working Day).

15. General

15.1 Except where otherwise expressly stated herein, the Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement and, supersedes any previous agreement or understanding whatsoever whether oral or written relating to the subject matter of the Agreement. In the event of any conflict, the following order of precedence shall be applicable: the Order Form, the Data Processing Agreement, the Permission-based Marketing Policy, the Additional Terms for Specific Services, and these Terms. Any terms and conditions included in any document provided by the Customer, including but not limited to any invoice, purchase order, or supplier form, are hereby declared invalid and unenforceable.

15.2 Dotdigital may at its reasonable discretion, change or modify the Terms or Services to comply with a change in any applicable law upon giving the Customer 30 (thirty) days' notice of the same either by email or notification on the website. Within a further 14 (fourteen) days from the expiry of such 30 (thirty) days' notice, the Customer may notify Dotdigital in writing that it wishes to terminate the Agreement with effect from the date of any proposed change to the Terms or Services. Dotdigital may then choose to either accept the notice of termination from the Customer, alter the Terms or Service or withdraw its notice to the Customer. If no such notice is received from the Customer, the Customer shall be deemed to have accepted the changes made by Dotdigital.

15.3 Each party warrants to the other that it has the power and authority:

- (a) to enter into the Agreement; and
- (b) to perform its obligations under the Agreement.

15.4 the Agreement shall not be deemed to create any partnership or employment relationship between the parties.

15.5 Nothing contained in the Agreement is intended to be enforceable by any third party pursuant to any rights that such third party may have under applicable law or otherwise.

15.6 No act, failure or delay to act, or acquiescence by Dotdigital or the Customer in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right or in any way prejudice any right of Dotdigital or the Customer under the Agreement, and no waiver by Dotdigital of any breach of the Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver or relaxation whether partly or wholly of any of the terms or conditions of the Agreement shall be valid only if in writing and signed by or on behalf of Dotdigital and shall apply only to a particular occasion and shall not be continuing and further shall not constitute a waiver or relaxation of any other terms or conditions of the Agreement.

15.7 If any provision of the Agreement is held by any court or other competent authority to be unlawful, invalid or unenforceable in whole or in part, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

16. Jurisdiction and Applicable Law

16.1 Each party agrees that the Agreement shall be governed by the applicable law of the country or state as specified below, without regard to choice of law or conflict of law

rules, and the courts specified below shall have exclusive jurisdiction to determine any disputes arising under the Agreement:

(a) for Customers signing an Order Form with Dotdigital EMEA Limited – the laws of England and Wales shall govern the Agreement and the courts of England and Wales shall have exclusive jurisdiction; or

(b) for Customers signing an Order Form with Dotdigital B.V. – the laws of the Netherlands shall govern the Agreement and the courts of Amsterdam shall have exclusive jurisdiction; or

(c) for Customers signing an Order Form with Dotdigital, Inc.– the laws of the state of New York shall govern the Agreement and the courts of New York shall have exclusive jurisdiction; or

(d) for Customers signing an Order Form with Dotdigital APAC Pty Ltd – the laws of New South Wales, Australia shall govern the Agreement and the courts of New South Wales, Australia shall have exclusive jurisdiction;

(e) for Customers signing an Order Form with Dotdigital SG Pte. Ltd. – the laws of Singapore shall govern the Agreement and the courts of Singapore shall have exclusive jurisdiction; or

(f) for Customers signing an Order Form with Dotdigital Japan Limited – the laws of Japan shall govern the Agreement and the courts of Tokyo shall have exclusive jurisdiction.

17. Compliance and Export Restrictions

17.1 Modern Slavery. Dotdigital undertakes and represents that:

(a) neither Dotdigital nor any of its officers, employees, agents or subcontractors has:

(i) committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”); or

(ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(b) it shall comply with the Modern Slavery Act 2015 and Dotdigital’s Modern Slavery Policy (as applicable);

(c) it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Dotdigital's obligations under clause 17.1(b). Any such notice shall set out full details of the circumstances concerning the breach or potential breach of Dotdigital's obligations.

17.2 Bribery. For the purposes of this clauses, means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010. Dotdigital shall ensure that it and each person referred to in (a) to (c) below (inclusive) does not, by any act or omission, place Customer in breach of any Bribery Laws. Dotdigital shall comply with all applicable Bribery Laws in connection with the performance of the Services, ensure that it has in place adequate procedures to prevent any breach of this clause 17.2 and ensure that:

- (a) all of Dotdigital's personnel and all direct and indirect subcontractors of Dotdigital;
- (b) all others associated with Dotdigital; and
- (c) each person employed by or acting for or on behalf of any of those persons referred to in (a) and (b) above), involved in performing the Services or with the Agreement so comply.

Without limitation to the above, Dotdigital shall not in connection with the performance of the Services and/or the Agreement make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

Dotdigital shall immediately notify the Customer as soon as it becomes aware of a breach of any of the requirements in this clause 17.2.

17.3 Export Restrictions. The Services, content, and other technology that Dotdigital makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied party list. The Customer shall not permit users to access or use any Service or content in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.