

# Hootsuite Enterprise Terms of Service

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***Last Modified:*** July 9, 2024

Please review these terms (the “**Agreement**”) carefully. Wherever used in this Agreement, “**you**”, “**your**”, “**Customer**”, and similar terms mean the person or legal entity accessing or using the Enterprise Services. For the avoidance of doubt, if you are accessing and using the Enterprise Services on behalf of a company

(such as your employer) or other legal entity, “**you**”, “**your**” or “**Customer**” means the company or other legal entity that you are using the Enterprise Services on behalf of.

By purchasing, accessing or using the Enterprise Services offered by Hootsuite Inc. (“**Hootsuite**”, “**we**”, “**us**”, or “**our**”), you are confirming that you have read, understand and accept this Agreement. This Agreement can be updated from time to time in accordance with Section 10.5 below. You are responsible for regularly reviewing the most current version of this Agreement, which is published at:

<https://www.hootsuite.com/legal/enterprise-terms>. When we change this Agreement, we will update the “Last Modified” date above.

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This Agreement applies only to the Enterprise Services, as further defined below. The terms that apply to the use of Hootsuite’s publicly available websites or use of other services (such as Hootsuite’s Free, Professional and Team plans) (the

**“Self-Serve Services”**) are available at [www.hootsuite.com/legal/terms](https://www.hootsuite.com/legal/terms).

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By purchasing, accessing or using the Enterprise Services, you confirm that:

**A.** You will only use the Enterprise Services for business and professional reasons (the Enterprise Services are not for use by consumers and may only be used for business and professional purposes);

**B.** You accept and will comply with this Agreement; and

**C.** You are responsible for anyone that uses the Enterprise Services through your account (**“Authorized Users”**), which may include your employees, consultants or contractors, or the employees, consultants or contractors of your Affiliates. If you are a marketing agency or similar organization and provide access to our Enterprise Services to any of your clients or their employees, they are also your Authorized Users.

## 1. Hootsuite Terminology.

**(a)** We use capitalization for terms that have a special meaning in this Agreement. While some terms are defined elsewhere, this section sets out the definitions of some key terms.

**“AI Powered Services”** are product features accessible in the Enterprise Services offering artificial intelligence capabilities as further described in the Hootsuite AI Terms (published at [www.hootsuite.com/legal/ai-terms](https://www.hootsuite.com/legal/ai-terms)).

**“Affiliates”** are companies or entities that either you or we own, that own either you or us, or that have the same owner or corporate parent as either you or us, as applicable.

An **“Authorization Form”** is a document that we issue and that is signed or otherwise agreed to by you, which describes the Enterprise Services and/or Partner Services you are

purchasing, including the fees, the quantities purchased, and any other details specifically related to those services.

**“Content”** is a generic term that means all information and data (such as text, images, photos, videos, audio and documents) in any format that is uploaded to, downloaded from or appears on the Enterprise Services.

**“Ads Content”** is Customer Content that you or your Authorized Users provide in connection with your creation, posting, or management of paid advertisements on Facebook, Instagram, X (formerly, Twitter) or any other applicable Social Network.

**“Customer Content”** is Content that you or your Authorized Users provide to us or upload to the Enterprise Services.

**“Mentions”** are the Content that a third party (in other words, someone other than you, an Authorized User or Hootsuite) creates and that we obtain on your behalf and at your instruction from Social Networks or other Third-Party Services that you connect to or are displayed on our Enterprise Services. For example, without limitation, Mentions includes (a) posts created by followers that appear on your Facebook page; and (b) Content originating from Third-Party Services as part of an analysis or query conducted by you via a social listening feature of the Enterprise Services.

**“Messaging Content”** is Submitted Content and Customer Content to the extent it is included only in private text messages (including sent through messaging services, such as WhatsApp and WeChat) and private direct messages sent through Social Networks, sent to and from Customer, including by Authorized Users.

**“Submitted Content”** is Content you ask people to submit through the Enterprise Services, such as in connection with contests or as Messaging Content.

**“Enterprise Services”** means services included in Hootsuite’s Enterprise or Business plans, any other Hootsuite products or services made available to you through an Authorization Form, and any Hootsuite Apps (as defined in the App Directory Terms) accessed through the Hootsuite App Directory, but **does not include:** (a) Hootsuite’s Self-Serve Services; or (b) any Third-Party Services (including, without limitation, Sparkcentral Services).

**“Third-Party Services”** are services that are not provided by Hootsuite that you may access or use in connection with the Enterprise Services. They include without limitation: **“Social Networks”**, which are the social networking sites and/or messaging platforms supported by the Enterprise Services (such as X (formerly, Twitter), Facebook, LinkedIn, Instagram, Pinterest, TikTok, YouTube, and WhatsApp); **“Partner Services”**, which are services offered by third-parties and resold by Hootsuite as an authorized reseller; **“Sparkcentral Services”**, which are Partner Services offered by our Affiliate, Sparkcentral Europe NV (**“Sparkcentral”**), that you may purchase through us as a reseller; services accessible through the extensions and applications available in the Hootsuite App Directory (<https://apps.hootsuite.com>); and services provided by any other third parties from which we obtain Mentions.

**(b)** Headings used in this Agreement are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

## **2. Hootsuite’s Responsibilities.**

**2.1 Enterprise Services.** During the Term, subject to the terms and conditions of this Agreement, we will make the Enterprise Services available to you in accordance with the applicable Authorization Form and the Service Level Agreement published at [www.hootsuite.com/legal/enterprise-service-level-agreement](http://www.hootsuite.com/legal/enterprise-service-level-agreement).

**2.2 Updates.** The Enterprise Services evolve constantly. So long as we do not breach the warranty set out in Section

9.2(a), we may change the Enterprise Services (such as by changing, adding or removing features) at any time, for any reason, and may or may not provide notice of those changes to you.

**2.3 Social Networks.** The Enterprise Services interact with Social Networks and depend on the availability of those Social Networks and the features and functionality they make available to us, which we do not control and may change without notice. If at any time a Social Network stops making some or all of its features or functionality available to us, or available to us on reasonable terms as determined at any time by Hootsuite in its sole discretion (each an “**API Change**”), we may at any time at our sole discretion stop providing access to those features or functionality and we will not be liable to you or any third party for any such change.

### **3. Content & Third-Party Services.**

**3.1 Third-Party Content.** We are not responsible for Content provided by others, including Mentions and Content from Third-Party Services (such as Content from Social Networks and apps from the App Directory). You and anyone else who accesses the Enterprise Services may access Content that might be unlawful, offensive, harmful, inaccurate or otherwise inappropriate. We will not be liable to you or any third party for Content provided by others.

**3.2 Third-Party Services.** If you access or purchase a Third-Party Service, you do so at your own risk. Your relationship with the Third-Party Service provider is an agreement between you and them. If you access or enable a Third-Party Service, you grant them permission to access or otherwise process your data as required for the operation of the Third-Party Services. We will not be liable for disclosure, use, changes to, or deletion of your data or for losses or damages you may suffer from access to your data by a Third-Party Service. WE MAKE NO REPRESENTATION AND WILL HAVE NO LIABILITY OR OBLIGATION WHATSOEVER IN RELATION TO

THE CONTENT OR USE OF, OR CORRESPONDENCE, AGREEMENTS OR TRANSACTIONS WITH, ANY THIRD-PARTY SERVICES. YOU MUST COMPLY WITH ALL AGREEMENTS AND OTHER LEGAL REQUIREMENTS THAT APPLY TO THIRD-PARTY SERVICES.

#### **4. Your Responsibilities.**

**4.1 Acceptable Use.** You and your Authorized Users must comply with the Acceptable Use Rules (published at [www.hootsuite.com/legal/acceptable-use](http://www.hootsuite.com/legal/acceptable-use)) and all applicable laws. If you or any of your Authorized Users do not comply with the Acceptable Use Rules or any applicable laws, we may remove any of your Content and temporarily suspend or restrict your access to the Enterprise Services without prior notice. In such case, we will then notify you and, where applicable, will work with you in good faith to resolve the issue.

**4.2 Hootsuite Professional Services.** If your Authorization Form includes professional services (such as account set-up, provisioning, or training) ("**Hootsuite Professional Services**"), the Hootsuite Professional Services Terms published at [www.hootsuite.com/legal/professional-services-terms](http://www.hootsuite.com/legal/professional-services-terms) also apply to and govern those Hootsuite Professional Services.

**4.3 Advertising Terms.** If you use the Enterprise Services to create and manage Ads Content on any Social Network, the Hootsuite Ads Terms published at [www.hootsuite.com/legal/ads-terms](http://www.hootsuite.com/legal/ads-terms) also apply to and govern that use.

**4.4 Beta Testing.** From time to time, we may offer you the opportunity to install, use and test certain Hootsuite services prior to their commercial release ("**Beta Services**"). Use of the Beta Services is optional. If you use any Beta Services, the Hootsuite Beta Terms published at [www.hootsuite.com/legal/beta-terms](http://www.hootsuite.com/legal/beta-terms) apply to and govern those Beta Services.

**4.5 Partner Services.** Without limiting the generality of Section 3.2, if you purchase any Partner Services, you: (a) acknowledge and agree that we are acting solely as an authorized reseller for such Partner Services; and (b) expressly agree to be bound by the terms and conditions applicable to such services listed at [www.hootsuite.com/legal/third-party-terms](https://www.hootsuite.com/legal/third-party-terms) or as otherwise set out in the applicable Authorization Form.

**4.6 Sparkcentral Services.** Without limiting the generality of Section 3.2, if you purchase any Sparkcentral Services, you: (a) acknowledge and agree that we are acting solely as an authorized reseller for such Sparkcentral Services; and (b) expressly agree to the Sparkcentral Terms of Service published at <https://www.hootsuite.com/legal/sparkcentral-terms-of-service> which apply to and govern your use of the Sparkcentral Services.

**4.7 AI Powered Services.** If you use any AI Powered Services, the Hootsuite AI Terms published at [www.hootsuite.com/legal/ai-terms](https://www.hootsuite.com/legal/ai-terms) also apply to and govern that use.

**4.8 App Directory.** When you access the App Directory and install or use one or more apps available there, you also agree to the App Directory Terms (published at <https://hootsuite.com/legal/app-directory-tos>). The App Directory Terms apply to any app accessed through the App Directory, including Hootsuite Apps.

**4.9 Customer Content.** You are solely responsible for Customer Content. We have no obligation or responsibility to review, filter, block or remove Content, including Customer Content.

**4.10 Submitted Content.** You acknowledge and agree that:

(a) the Enterprise Services do not help you comply with any laws, rules, or regulations that may apply to your



collection or use of Submitted Content, which is solely your responsibility; and

(b) we will not be liable to you or any third party for the Submitted Content, and we make no warranty that any Submitted Content obtained or displayed through the Enterprise Services is accurate or complete.

**4.11 Account Information.** You are responsible for the completeness and accuracy of the account information you provide to us. You will promptly notify us upon becoming aware of any unauthorized access to or use of your login credentials or account.

**4.12 Affiliates.** Your Affiliates may use the Enterprise Services that you purchase, subject to the quantities or other usage limits set out in your Authorization Form. If an Affiliate wishes to have a separate account or wishes to be billed separately for its use of the Enterprise Services, that Affiliate will need to sign a separate Authorization Form, which will form a separate contract between Hootsuite and that Affiliate.

**4.13 Agency.** If you act as a legal agent purchasing the Enterprise Services on behalf of an end-user client (the “Principal”), then (a) that purchase must be made by signing an Authorization Form; (b) the Principal must be identified as the end user on the applicable Authorization Form; (c) you represent and warrant to us that you have obtained all necessary authorizations, consents, and licenses from the Principal to bind the Principal to this Agreement (including each applicable Authorization Form) and to act as the Principal’s agent, and all of your actions related to this Agreement are within the scope of your agency with the Principal; and (d) you will defend, indemnify, and hold harmless Hootsuite from all damages, liabilities, costs, and expenses (including reasonable legal fees) arising from any breach of the foregoing representation and warranty.

## **5. Intellectual Property.**



**5.1 Enterprise Services.** We keep all rights and interests in the Enterprise Services. The Enterprise Services contain Content owned or licensed by Hootsuite (“**Hootsuite Content**”). Hootsuite Content is protected by copyright, trademark, patent, trade secret and other laws, and, as between you and Hootsuite, we own and retain all rights in the Hootsuite Content.

**5.2 Feedback.** We welcome your suggestions, comments, bug reports, feature requests or other feedback (“**Feedback**”). We do not have to keep Feedback confidential, even if you tell us it is confidential, provided we do not disclose that you are the source of any Feedback. If you provide Feedback, you grant Hootsuite a non-exclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up license to use the Feedback for any purpose.

**5.3 Customer Content.** You retain your rights to any Customer Content you submit, post or display on or through the Enterprise Services. You grant us a non-exclusive, worldwide, sublicensable, royalty-free license to use, host, run, copy, reproduce, process, adapt, translate, publish, transmit, display and distribute your Customer Content solely for the purposes of providing, supporting and improving the Enterprise Services. We will not sell or rent any of your Customer Content.

## **6. Term and Termination.**

**6.1 Term of Agreement.** This Agreement will commence on the first day of the initial term set forth on your first Authorization Form and will continue in effect until the earlier of: (a) the expiration of all Authorization Forms applicable to you (including any renewal periods unless notice of non-renewal is provided as set out in Section 6.2); or (b) the termination of this Agreement in accordance with its terms (the “**Term**”).

**6.2 Term of Authorization Forms.** The term of each Authorization Form will start on the first day of the initial term

specified on the Authorization Form, and will continue for the specified term. Except as expressly stated otherwise in an Authorization Form, all Authorization Forms will automatically renew for subsequent one-year renewal periods unless a party gives the other party written notice of non-renewal (a “**Non-Renewal Notice**”) at least sixty (60) days prior to the end of the then-current term. Customer shall provide a Non-Renewal Notice to [cancellation@hootsuite.com](mailto:cancellation@hootsuite.com). Hootsuite shall provide notice pursuant to Section 10.7. Hootsuite reserves the right to increase the Fees for Enterprise Services and/or Partner Services on renewal by giving you written notice thereof (which notice may be given by email) provided that if Hootsuite gives you such notice less than ninety (90) days prior to the end of then-current Term, you will have thirty (30) days thereafter to give us a Non-Renewal Notice.

**6.3 Termination for Cause.** A party may terminate this Agreement for cause (a) immediately if the other party has failed to cure a material breach within thirty (30) days of receiving written notice of that material breach from the other party; or (b) immediately 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.

**6.4 Effects of Termination.** Upon termination of this Agreement for any reason: (a) all Authorization Forms will automatically terminate; (b) your access to Hootsuite accounts, Enterprise Services and Partner Services will be terminated and you will immediately cease all use thereof; and (c) you will pay all unpaid amounts you owe to Hootsuite. If you terminate this Agreement in accordance with Section 6.3, Hootsuite will refund any Fees you paid in advance for the Enterprise Services and Partner Services applicable to the period after termination. If Hootsuite terminates this Agreement in accordance with Section 6.3, then you will pay any unpaid Fees for the remainder of the term of each Authorization Form. In no event will termination of this Agreement relieve you of your obligation to pay any amounts

payable to Hootsuite for the period prior to the date of termination.

**6.5 Survival.** Any provision of this Agreement that, either by its terms or to give effect to its meaning, must survive and such other provisions that expressly or by their nature are intended to survive termination will survive the expiration or termination of this Agreement. Without limiting the foregoing, Sections 5, 8, and 9 will survive the expiration or termination of this Agreement.

## **7. Fees and Payment.**

**7.1 Fees.** You will pay all fees as and when described in the Authorization Form(s) (the “**Fees**”).

**7.2 Invoicing.** We will invoice you for the Fees in the currency set forth on the applicable Authorization Form. Unless otherwise stated on the Authorization Form, all undisputed invoices are payable within thirty (30) days of the invoice date. Any disputed amounts will not affect payment of non-disputed amounts. You will make payments to the entity and address set forth in the invoice.

**7.3 Late Payment.** If any undisputed amounts invoiced are not received by Hootsuite by the due date, then, at our discretion, such charges may accrue late interest at the lower of: (a) the rate of 12% per year; or (b) the maximum rate permitted by law from the date such payment was due until the date paid. In addition, upon thirty (30) days' written notice to you provided after the due date of any undisputed amount, we may suspend your access to the Enterprise Services if we have not received the amounts invoiced in full.

**7.4 Taxes.** You are responsible for paying all taxes, assessments, charges, fees, and levies that may be levied on or applicable to the sale or license of goods or services, as the case may be, including all sales, use, goods and services, value added, and excise taxes, customs duties, and assessments, together with any installments and any interest, fines, and

penalties with respect thereto, imposed by any governmental authority, including federal, state, provincial, municipal, and foreign governmental authorities (collectively, “**Taxes**”) associated with your subscription to the Enterprise Services, which for clarity does not include any taxes based on Hootsuite’s income. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section 7.4, the appropriate amount will be invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. Any and all payments by or on account of the compensation payable under this Agreement will be made free and clear of and without deduction or withholding for any Taxes. If you are required to deduct or withhold any Taxes from such payments, then the sum payable will be increased as necessary so that, after making all required deductions and withholdings, we receive an amount equal to the sum we would have received had no such deduction or withholding been made.

## **8. Confidentiality, Security & Data Protection.**

**8.1 Confidential Information.** Hootsuite and you may exchange confidential information (“**Confidential Information**”) in the course of your negotiation and use of the Enterprise Services. Hootsuite’s Confidential Information may include, but is not limited to, non-public information about our pricing, personnel, or partnerships, our product roadmap, our security and data protection documentation, or other non-public information we identify as confidential. Your Confidential Information includes non-public information about your policies (such as your policies for internal review or approval of Customer Content), personnel (including names and email addresses of your Authorized Users), or plans or strategies (such as marketing plans or social strategies you share with Hootsuite in the course of our delivery of Hootsuite Professional Services), and includes your Messaging Content but does not include any other Content published, communicated, or transmitted to or through a Social Network

account. When either you or we (the “**recipient**”) receive Confidential Information from the other (the “**discloser**”), the recipient will 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) and will not disclose or use any Confidential Information of the discloser for any purpose outside of the scope of this Agreement. Information will not be considered Confidential Information if (a) it was lawfully in the recipient's possession before receiving it from the discloser; (b) it is provided in good faith to the recipient by a third party without breaching any rights of the discloser or any other party; (c) it is or becomes generally available to, or accessible by, the public through no fault of the recipient; or (d) it was or is independently developed by the recipient without reference to the discloser's Confidential Information. In the event that the recipient or any representative of the recipient becomes legally compelled (by law, rule, regulation, subpoena, or similar court process) to disclose any of the Confidential Information, the recipient will (if permitted to do so) provide the discloser with notice of such circumstances and will limit such disclosure to the required disclosure.

**8.2 Enterprise Security Standards.** During the Term, we will maintain the following “**Enterprise Security Standards**”:

**(a) Security Practices.** Hootsuite will implement and maintain security practices as described at <https://hootsuite.com/legal/security-practices>.

**(b) Reports.** You may obtain a copy of Hootsuite's most recent security audit report (which may include summaries of test results or equivalent measures taken to assess the effectiveness of its control environment) and a summary of Hootsuite's most recent penetration testing results through the Hootsuite Trust Center (<https://trustcenter.hootsuite.com/>).

**(c) Disaster Recovery and Business Continuity.** Hootsuite has and will maintain a disaster recovery and business continuity plan.

**(d) Breach Notification.** Hootsuite will notify you without undue delay (but in any event within 72 hours of becoming aware) of any unauthorized access to your Hootsuite account (a “**Breach**”), will promptly take all necessary steps to mitigate the Breach, and will provide you with reasonable cooperation in investigating the Breach (including, on request and to the extent reasonable, providing you with copies of relevant records, logs, or other materials).

**8.3 Privacy & Data Protection.** We may process certain information about you and individuals associated with you, such as your employees, in connection with your use of the Enterprise Services. This includes account information, usage data, and customer support questions as further described in our privacy policy ([www.hootsuite.com/legal/privacy](https://www.hootsuite.com/legal/privacy)). If your use of the Enterprise Services requires a Data Processing Addendum (“**DPA**”) with Hootsuite, you may enter into a DPA by visiting <https://www.hootsuite.com/legal/data-processing-addendum> to access a pre-signed DPA or by contacting your account manager. Once we receive your signed DPA, this becomes legally binding and forms a part of this Agreement.

## **9. Warranties, Indemnities & Limitations of Liability.**

### **WARRANTIES & DISCLAIMER**

**9.1 Mutual Warranties.** Each of Hootsuite and Customer represents and warrants that (a) it has the power and authority to enter into this Agreement and to perform its obligations and duties under this Agreement; and (b) it will perform its obligations and duties and exercise its rights under this Agreement in compliance with all laws applicable to it.

**9.2 Hootsuite Warranties.** Hootsuite warrants that: (a) subject to an API Change, the functionality of the Enterprise Services



will not be materially decreased during the term of the applicable Authorization Form; (b) to its knowledge, the Enterprise Services do not contain any malicious code or viruses; (c) Hootsuite has and will maintain and apply its own industry-standard company policies (including without limitation the policies made available at <https://www.hootsuite.com/legal/>); and (d) Hootsuite is an authorized reseller of any Third-Party Services sold to Customer by Hootsuite.

### **9.3 Disclaimer.**

**(a)** EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE OFFER THE ENTERPRISE SERVICES “AS IS” AND ARE NOT MAKING, AND TO THE GREATEST EXTENT PERMITTED BY LAW EXPRESSLY DISCLAIM, ANY WARRANTIES, CONDITIONS, REPRESENTATIONS OR GUARANTEES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ALL EXPRESS OR IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, SATISFACTORY QUALITY, AND/OR NON-INFRINGEMENT, THAT THE ENTERPRISE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE ENTERPRISE SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE OR ERROR-FREE. USE THE ENTERPRISE SERVICES AT YOUR OWN RISK.

**(b)** UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY THIRD-PARTY SERVICES, INCLUDING THE FAILURE OF ANY SUCH THIRD-PARTY SERVICES, OR ACTIVITIES OF THIRD PARTIES, OR ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET.

**(c)** WE ARE NOT RESPONSIBLE FOR AND WILL NOT BE LIABLE FOR THE CONTENT MADE AVAILABLE THROUGH THE ENTERPRISE SERVICES, INCLUDING CUSTOMER CONTENT, MENTIONS, AND ANY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. HOOTSUITE DOES NOT CONTROL OR VET CONTENT AND IS NOT RESPONSIBLE FOR ANYTHING



POSTED, TRANSMITTED, OR SHARED ON OR THROUGH THE ENTERPRISE SERVICES.

**(d)** NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

## INDEMNITIES

**9.4 Indemnification by Hootsuite.** Subject to Customer's compliance with Section 9.6, Hootsuite will defend, indemnify, and hold harmless Customer, its Affiliates, and its or their directors, officers, employees, agents, shareholders, successors and assigns from and against all claims, losses, damages, penalties, liability, and costs, including reasonable legal fees, of any kind or nature that are incurred in connection with or arising out of a third-party claim that the Customer's use of the Enterprise Services as permitted hereunder directly infringes the third-party's intellectual property rights (a "**Claim**").

Hootsuite will have no liability for any Claim to the extent it arises from:

- (i) a modification of the Enterprise Services by or at the direction of any person other than Hootsuite;
- (ii) use of the Enterprise Services in violation of this Agreement or applicable law;
- (iii) use of the Enterprise Services after Hootsuite notifies Customer to discontinue use because of an infringement or misappropriation claim; or
- (iv) the combination, operation, or use of the Enterprise Services with any other software, program, or device not provided or specified by Hootsuite to the extent such infringement would not have arisen but for such combination, operation, or use.

For the avoidance of doubt, Hootsuite's indemnification obligations in this Section 9.4 will not apply to third-party content, Social Networks, Partner Services or other Third-Party Services accessed through the Enterprise Services, or to Customer Content or Mentions.

If the Enterprise Services or any part thereof have become, or in Hootsuite's opinion are likely to become, the subject of any Claim, Hootsuite may at its option and expense:

- (1) procure for Customer the right to continue using the Enterprise Services as set forth hereunder;
- (2) replace or modify the Enterprise Services or applicable functionalities to make them non-infringing; or
- (3) if options (1) or (2) are not reasonably practicable, terminate either or both this Agreement or the Authorization Form for such Enterprise Services and refund to Customer any unearned Fees that Customer paid in advance for such Enterprise Services.

This Section 9.4 sets forth Hootsuite's sole liability (and Customer's sole remedy) regarding infringement or misappropriation of third-party intellectual property rights.

**9.5 Indemnification by Customer.** Subject to Hootsuite's compliance with Section 9.6, Customer will defend, indemnify, and hold harmless Hootsuite, its Affiliates, and its or their directors, officers, employees, agents, shareholders, successors and assigns from and against all claims, losses, damages, penalties, liability, and costs, including reasonable legal fees, of any kind or nature that are incurred in connection with or arising out of a third-party claim: (a) alleging that Customer Content, Ads Content, or Submitted Content infringes or violates the intellectual property rights, privacy rights, or any other rights of a third party or violates any applicable law; or (b) arising from Customer's breach of the Acceptable Use Rules, any terms or conditions applicable to Customer's use of any Third-Party Services, or any applicable law.

**9.6 Indemnification Procedure.** The indemnified party will: (a) give written notice of the claim to the indemnifying party promptly and in any event no later than ten (10) days after the indemnified party receives the claim; (b) give the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party may not enter into any settlement, compromise or consent to judgment with respect to any claim without the indemnified party's prior written consent unless such settlement, compromise or consent to judgment unconditionally releases the indemnified party of all liability); and (c) provide the indemnifying party with reasonable cooperation and assistance at the indemnifying party's expense.

## **LIMITATIONS OF LIABILITY**

**9.7 Maximum Liability.** EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 9.7 THROUGH 9.9, AND NOT INCLUDING CUSTOMER'S OBLIGATION TO PAY ALL FEES OWED TO HOOTSUITE HEREUNDER, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS OF ANY KIND, INCLUDING ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BY STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY OF LIABILITY, EXCEED THE FEES PAID BY CUSTOMER FOR THE ENTERPRISE SERVICES SUBJECT TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE. FOR CLARITY, THE CALCULATION OF EACH PARTY'S LIABILITY UNDER THIS SECTION 9.7 EXCLUDES ANY FEES PAID BY CUSTOMER TO A THIRD PARTY OR FOR ANY PARTNER SERVICES, EVEN WHERE HOOTSUITE'S ENTERPRISE SERVICES ARE BUNDLED WITH OR OTHERWISE PROVIDED IN CONJUNCTION WITH PARTNER SERVICES.

## **9.8 Excluded Damages.**

**(a)** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY, ITS DIRECTORS, EMPLOYEES, AGENTS, OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR FOR LOSS OF PROFITS, GOODWILL OR DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE ENTERPRISE SERVICES OR ANY OTHER ASPECT OF THIS AGREEMENT.

**(b)** The Enterprise Services support multi-factor authentication, and the Acceptable Use Rules require you to maintain the confidentiality of your passwords or other login credentials for the Enterprise Services. ACCORDINGLY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL HOOTSUITE BE LIABLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM UNAUTHORIZED ACCESS TO OR USE OF THE ENTERPRISE SERVICES OR YOUR ACCOUNT OR THE CONTENT OR INFORMATION CONTAINED THEREIN IF: (A) THE UNAUTHORIZED ACCESS OR USE COULD HAVE BEEN PREVENTED THROUGH YOUR USE OF MULTI-FACTOR AUTHENTICATION; OR (B) YOU OR ANY OF YOUR AUTHORIZED USERS FAIL TO MAINTAIN THE CONFIDENTIALITY OF ANY PASSWORD OR OTHER LOGIN CREDENTIALS.

**(c)** WITHOUT LIMITING SECTION 9.8(b), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL HOOTSUITE BE LIABLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM UNAUTHORIZED ACCESS TO OR USE OF THE ENTERPRISE SERVICES OR YOUR ACCOUNT OR THE CONTENT OR INFORMATION CONTAINED THEREIN, EXCEPT TO THE EXTENT HOOTSUITE'S BREACH OF THE ENTERPRISE SECURITY STANDARDS RESULTS IN THE UNAUTHORIZED DISCLOSURE OF YOUR CONFIDENTIAL INFORMATION.

**(d)** YOUR EXCLUSIVE REMEDIES FOR ANY INTERRUPTION OR CESSATION OF ACCESS OR TRANSMISSION TO OR FROM

THE ENTERPRISE SERVICES ARE SET FORTH IN THE ENTERPRISE SERVICE LEVEL AGREEMENT.

**9.9 Exclusions.** NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR RESTRICT OR WILL BE CONSTRUED AS EXCLUDING OR RESTRICTING THE LIABILITY OF EITHER PARTY FOR (I) INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; (II) DEATH OR BODILY INJURY CAUSED BY THE NEGLIGENCE OF THAT PARTY, ITS EMPLOYEES, OR ITS AGENTS; (III) FRAUDULENT MISREPRESENTATION OR WILLFUL MISCONDUCT OF THAT PARTY OR ITS EMPLOYEES; OR (IV) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

**9.10 Basis of Bargain.** THE ESSENTIAL PURPOSE OF SECTIONS 9.7 THROUGH 9.9 IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES AND LIMIT THEIR POTENTIAL LIABILITY GIVEN THE FEES CHARGED UNDER THIS AGREEMENT, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF HOOTSUITE WERE TO ASSUME ANY FURTHER LIABILITY. THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THESE TERMS.

## **10. General.**

**10.1 Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other party (not to be unreasonably withheld), and any attempted assignment without such consent will be void. Notwithstanding the foregoing, we may assign this Agreement in its entirety (including all Authorization Forms), without your consent, to any of our Affiliates, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our shares or assets.

**10.2 Relationship of the Parties.** No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.

**10.3 Publicity.** Unless you provide us with written notice to the contrary or of any reasonable restrictions or requirements, you agree that we may disclose that you are a customer of the Enterprise Services and may use your name(s) and logo(s) in: (a) Hootsuite's digital, online, and printed marketing materials (including on our websites); and (b) external-facing presentations, including to individual clients and prospects and at trade shows, conferences, and similar events.

**10.4 Force Majeure.** Neither party will be liable for any failure to perform its obligations under this Agreement if that failure results from any cause beyond such party's reasonable control, including: the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes, lockouts or labor disruptions; and any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts.

**10.5 Amendment.** We may change any part of this Agreement (including any terms or documents incorporated by reference in this Agreement) at any time by posting the revised terms on the Hootsuite website. It is important for you to review this Agreement before using the Enterprise Services and from time to time, though we will notify you of any changes that, in our sole discretion, materially impact this Agreement. The updated Agreement will be effective as of the time of posting, or on such later date as may be specified in the updated Agreement, and your continued use of the Enterprise Services after any such changes are effective will constitute your consent to such changes. Except for changes made by us as described here, no other amendment or modification of this Agreement will be effective unless set forth: (a) in an Authorization Form issued by Hootsuite and signed by you; or (b) in an agreement signed or otherwise agreed in writing by both you and Hootsuite.

**10.6 Severability.** If a court finds part of this Agreement to be invalid, the rest of the Agreement will continue to apply with the minimum changes required to remove the invalid part.

**10.7 Notices to You.** Hootsuite may give notice to you by placing a banner notice on the Hootsuite platform or Hootsuite's website. We may also contact you or your Authorized Users through your Hootsuite account or contact information you provide, such as email or telephone. If you fail to maintain accurate account information, such as contact information, you may not receive critical information about our Enterprise Services or this Agreement.

**10.8 Notices to Hootsuite.** For any Non-Renewal Notice to Hootsuite, you must notify Hootsuite by email to [cancellation@hootsuite.com](mailto:cancellation@hootsuite.com). For all other notices to Hootsuite that you give under or regarding this Agreement, you must notify Hootsuite by email to [legal@hootsuite.com](mailto:legal@hootsuite.com) with a duplicate copy sent via registered mail to the following address: Hootsuite Inc., 111 East 5th Avenue, 3rd Floor, Vancouver, British Columbia, V5T 4L1; Attention: Legal Department.

**10.9 Waivers.** The rights of each Party may be waived only in writing. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

**10.10 Remedies.** Unless otherwise stated, each party's remedies under this Agreement are not exclusive of any other remedies under this Agreement, at law or otherwise.

**10.11 Insurance.** Hootsuite has and will maintain industry-standard insurance policies. You can obtain a copy of our current insurance certificate showing coverage for comprehensive general liability and professional liability (including coverage for errors & omissions and network &



information security liability) through the Hootsuite Trust Center (<https://trustcenter.hootsuite.com>).

## 10.12 Governing Law and Dispute Resolution.

**(a)** The laws of the Province of British Columbia and Canadian law applicable in British Columbia will govern any dispute, cause of action or claim arising out of this Agreement or your use of the Enterprise Services ("**Dispute**"), without giving effect to conflict-of-law principles.

**(b)** If either of us breach this Agreement or violate the other's rights or another person's rights, in addition to any other remedy, you or we may ask a court for an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions of this Agreement and seek reimbursement of reasonable legal fees associated therewith.

**(c)** If you have any kind of Dispute with us, the exclusive means of resolving it will be by confidential, binding arbitration before a single arbitrator chosen by you and Hootsuite. You will give notice of your Dispute to us in writing. If we do not decide together on an arbitrator within fifteen (15) days after we receive that notice, we both agree to ask the British Columbia International Commercial Arbitration Centre (BCICAC) to appoint one for us. The arbitration will take place in Vancouver, British Columbia, under the Arbitration Act (British Columbia), and will follow the Domestic Commercial Arbitration Rules of the BCICAC. The arbitrator will have the right to decide how the costs should be divided between us. The arbitrator will have the right to accept whatever kind of evidence they think is appropriate and will have the right to make whatever award they consider fair and equitable, based on legal and equitable principles, including giving an order such as an injunction (to stop one of us from doing something) or an order that you or we pay damages to the other. The arbitrator's award can be entered into the registry of the British Columbia Supreme Court in Vancouver, British

Columbia, and enforced in the same way as a court order if the court in the enforcing jurisdiction allows.

**(d)** Any Dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. Hootsuite and you each waive any right to a trial by jury.

**10.13 Export Compliance.** You will not use or access the Enterprise Services if you are located in any jurisdiction in which the provision of the Enterprise Services is prohibited under Canadian, U.S. or other applicable laws (a “**Prohibited Jurisdiction**”) and you will not provide access to the Enterprise Services to any government, entity or individual located in any Prohibited Jurisdiction. You confirm that (a) you are not named on any Canadian or U.S. government list of persons or entities prohibited from transaction with any Canadian or U.S. person; (b) you are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) you will not allow Authorized Users to access or use the Enterprise Services in violation of any Canadian, U.S. or other export embargoes, prohibitions or restrictions; and (d) you will comply with all applicable laws regarding the transmission of data exported from the country in which you (or your Authorized Users) are located to Canada and the United States.



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