

Effective: July 15, 2022

These terms last revised and are current as of the effective date set forth above. Zemanta reserves the right to change these terms from time to time.

## **Zemanta Platform Master Service Agreement**

This Zemanta Platform Master Service Agreement, including the Order Form and any terms set forth in a schedule or exhibit hereto (collectively, this "*Agreement*"), dated as of Effective Date on the Order Form entered into by Zemanta, Inc. ("*Zemanta*") and the customer whose details are set forth on the Order Form.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. Definitions**

"Advisory Services" means the support and assistance services that Zemanta provides to Customer in relation to with Customer's content advertising campaign set up and management, as well as proactive campaign monitoring. Customer will be solely responsible for managing any campaigns including making any changes (e.g., including, but not limited to bid prices, start and stop dates and times, and spend allocations).

"Agency" or "Managed Service Provider" means the advertising, media or creative agency or other professional services company that will provide services to a Client in order to conduct advertising campaigns on the client's behalf through the Zemanta Platform.

"Applicable Law" means a law, rule, regulation, declaration, decree, directive, statute, or other enactment, order, mandate or resolution issued or enacted by any government entity (including any domestic or foreign, supranational, national, state, county, municipal, local, territorial or other government), or applicable guidelines or principles issued by any governmental entity.

"Client" means Customer or an advertising client of Customer.

"Content" means text, images, documents, materials, photos, audio, video, and all other forms of data or communication.

"Customer" means the entity contracting with Zemanta in order to use the Zemanta Platform. If the Customer is an Agency, then Customer may be referred to as Customer or Agency.

"Customer Content" means all Content made available by Customer or its Users to Zemanta for use in connection with the Services or that is otherwise uploaded onto the Zemanta Platform by or on behalf of Customer or its Users.

"Data Protection Laws" means any applicable Data Protection Laws. It shall include (a) the Data Protection Directive 95/46/EC and ePrivacy Directive 2002/58/EC as implemented by countries within the EEA, (b) the General Data Protection Regulation (EU) 2016/679 ("GDPR") and/or (c) other Laws that implement the Laws

that are identified in (a) and (b) above. The terms "Personal Data", and "Processing" shall have the same meaning ascribed to them under the GDPR.

"Force Majeure" is defined as acts of God, terrorism, labor action, fire, flood, earthquake, governmental acts, order, or restriction, denial of service attacks and other malicious conduct, utility failures, or any other cause of Service unavailability that was beyond Zemanta's reasonable control.

"Media Spend" means the actual cost for impressions displayed within Zemanta's network of third-party partners. Media Spend may refer to Total Spend for the sake of calculating fees. Customers should refer to the Zemanta Platform dashboard for all applicable fees.

"Objectionable Content" means any viruses, malware or malicious code, as well as any Content or links to web sites that contain Content (or further links to content) which could be reasonably construed as illegal, unethical, defamatory, obscene, hateful, libelous, or that otherwise could be reasonably determined to reflect negatively, in a material way, upon Zemanta's reputation or that of Zemanta's customers, or that infringes upon the rights of any third party.

"Platform Credits" means the amount of credit that Zemanta will provide to the Customer through Customer's account on the Zemanta Platform. Platform Credits are used to fund campaign budgets created and managed by the Customer on the Zemanta Platform. Campaign budgets are used to buy media programmatically via the Zemanta Platform.

"Platform Services" means the hosted software-as-a-service offering made available by Zemanta to Customer via the Zemanta Platform, as more fully described in [Exhibit A](#).

"Professional Services" means the additional services (if any) that may be provided by Zemanta personnel on behalf of Customer pursuant to a separate Statement of Work ("SOW").

"Seat" means a written contractual relationship with a supplier (e.g., Outbrain, Appnexus, Google AdExchange, etc.) governing the terms of ad inventory supply and purchase from such supplier, including a direct billing relationship between the Seat holder and supplier.

"Services" means the Zemanta Platform services.

"Scheduled Maintenance" is defined as any maintenance performed during Zemanta's standard maintenance windows and any other maintenance of which Customer is given at least forty-eight (48) hours advance notice. Zemanta may perform maintenance on some or all of the Zemanta Platform in order to upgrade hardware or software that operate or supports the Zemanta Platform, implement security measure, or address any other issues it deems appropriate for the continued operation of the Zemanta Platform.

"Third Party Terms" means the terms and conditions for use of services from third parties made available to Customer through the Zemanta Platform, as described in [Exhibit B](#).

"Total Spend" means the sum of all spend recorded in the Zemanta Platform, inclusive of Media Spend, data costs (as applicable) and Platform Fees, based on Zemanta's reporting metrics.

"User" means an employee, agent or contractor of Customer or its Client who has been authorized by Customer to use the Services on behalf of Customer and its Clients.

"Zemanta Content" means all Content made available by Zemanta to Customer in connection with Customer's use of the Services or that is otherwise uploaded onto the Zemanta Platform by Zemanta on behalf of Customer or its Users.

"Zemanta Platform" means Zemanta's proprietary dashboard used to buy online media, flight and manage campaign(s), and drive traffic to various forms of native and content advertisements through real time and non-real time buys.

## 2. Services

(a) License. Subject to the terms and conditions of this Agreement (including the timely payment of all applicable fees), Zemanta hereby grants Customer and its Users a non-exclusive, non-transferable, right and limited license to access and use the Services during the term of this Agreement solely for use on behalf of Customer and its Clients. Customer will ensure that Customer and its Users comply with the terms and conditions of this Agreement, all Applicable Law and Data Protection Laws, and the Third-Party Terms set forth on [Exhibit B](#) hereto, as applicable. As between Customer and Zemanta, Customer shall be solely responsible for ensuring that its use of the Services complies with all self-regulatory best practice standards including, but not limited to the IAB Code of Conduct, Network Advertising Initiatives (NAI) Self-Regulatory Principles, the NAI Web Beacon Guidelines and the FTC Self-Regulatory Principles for Online Behavioral Advertising.

(b) Zemanta does not guarantee: (i) the placement, positioning or the timing of delivery of any Customer Content, (ii) clicks or impressions, or (iii) conversions. In no event shall Zemanta be liable for failure to deliver traffic to Customer Content. Once Platform Credits designated in an Order Form are used in total, Customer Content will no longer be distributed via the Zemanta Platform. However, an end-user may still click on Customer Content that was served prior to the budget being fulfilled. As a result, Customer may be charged up to twenty percent (20%) more than the pre-designated budget for clicks delivered during this time

(c) Equipment. Customer is responsible for procuring and maintaining the equipment and network connections necessary to remotely connect to the Services. Customer shall not attempt to access any other of Zemanta's systems, programs or data that are not made available for Customers use in connection with the Services.

(d) Customer Responsibility/Restrictions. Customer is solely responsible for (i) all activities conducted under its logins (including its Users' logins) within the Zemanta Platform and for its Users' compliance with this Agreement; (ii) protecting its login and password to the Zemanta Platform and (iii) and any requests or changes made by Customer (or its Users') within the Zemanta Platform. If Customer is utilizing Zemanta's automation feature within the Zemanta Platform, Customer grants Zemanta the right to set and modify Customer's bidding at Zemanta's discretion to aid in achieving Customer's goals for its campaign(s). If Customer requests Zemanta to make changes to its campaign(s) on Customer's behalf, all such requested changes must be conveyed previously in writing. Unauthorized use, resale or commercial exploitation of the Zemanta Platform in any way

is expressly prohibited. Customer represents and warrants (i) it will not upload to or otherwise authorize or permit any Objectionable Content to run through the Zemanta Platform and that any ads or data being authorized or permitted by Customer to run through the Zemanta Platform will be free of viruses and malicious code (ii) it is authorized to act on behalf of each of its Clients, will ensure that such Clients and all Users comply with the applicable terms and conditions of this Agreement and will be liable for the acts and omissions of such Clients and Users in connection with Zemanta Platform provided under this Agreement or for any breach of this Agreement by such Clients or Users; (iii) it will not attempt to interfere with or disrupt the integrity or performance of the Zemanta Platform or the data contained therein or attempt to gain unauthorized access to the Zemanta Platform or its related systems or networks, and (iv) it will not directly or indirectly reverse engineer, prepare derivative works of reverse compile or disassemble the Zemanta Platform or any portion thereof or permit any User or third party to do the same. Customer shall also be solely responsible for maintaining the security of any passwords and/or access codes assigned and shall immediately notify Zemanta if Customer becomes aware of any loss or theft or unauthorized use of any of Customers passwords or user accounts. Zemanta reserves the right, upon notice to Customer, to terminate any User's rights to access the Zemanta Platform if such User has violated any of the terms, conditions or restrictions contained in this Agreement.

### **3. Service Level Objective**

(a) Service Level. Zemanta's service level objective is to make commercially reasonable efforts to provide Service Availability of 99% as measured on a monthly basis ("Service Availability Objective"). "Service Availability" is defined as the time that the Service is capable of receiving, processing, and responding to requests, excluding Scheduled Maintenance and Force Majeure. Service Availability is calculated as a percentage by dividing the number of minutes the Service is available during the applicable month by the number of total minutes in the applicable month, excluding in all cases Scheduled Maintenance and Force Majeure. Zemanta will provide notice of downtime on <https://one.zemanta.com> and through registered user accounts.

(b) Remedy for Failure to Achieve Service Zemanta's Service Level Objective. If either (i) Zemanta fails to achieve the System Availability Objective set forth above for thirty (30) consecutive days in a row or sixty (60) days in any twelve (12) month period or (ii) Zemanta's Service Availability is less than 50% for ten (10) consecutive days, Customer shall be entitled, as its sole remedy, to terminate this Agreement for convenience upon written notice to Zemanta in which case Customer shall receive a refund of any prepaid, unused fees paid hereunder to Zemanta.

### **4. Payment**

(a) Payment. Customer will pay its Total Spend and all applicable fees (as set forth on the Order Form) and media costs associated with any Third-Party Terms, and any applicable taxes, thirty (30) days from receipt of Zemanta's invoice. This includes any and all fees incurred by Customer, Customer's Clients, or Customer's Users related to the use of the Zemanta Platform. Payments may be made by ACH, check, wire transfer or other means expressly agreed to in writing by Zemanta. All payments will be made in US Dollars, unless

otherwise agreed on an Order Form. For the avoidance of doubt, Customer shall be billed for Total Spend regardless of any cost-per-click denoted by Customer in the Zemanta Platform. Further, if Customer is utilizing Zemanta's automatic bidding feature, Customer grants Zemanta the right to set and modify Customer's cost-per-click at Zemanta's discretion to aid in achieving Customer's targets for its campaign; provided however, for clarity Customer will only be charged on a cost per impression basis. For the avoidance of doubt and notwithstanding anything to the contrary contained herein or any Order Form, Customer shall be charged all fees and costs specified in the Zemanta Platform. To the extent of any conflict between this Agreement and the Zemanta Platform, the Zemanta Platform shall control.

(b) Late Payment. Customer agrees to pay a late charge of two percent (2%) per month (or part of a month, or the maximum lawful rate permitted by Applicable Law, whichever is less), for all amounts, not subject to a good faith dispute, and not paid within sixty (60) days of being due. Customer shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the Services rendered hereunder, except for taxes related to the net income of Zemanta and any taxes or obligations imposed upon Zemanta under federal, state and local wage laws. Customer will also reimburse Zemanta for all costs and expenses Zemanta incurs in collecting or seeking to collect any late payments that are not disputed in good faith (including court costs and reasonable attorneys' fees). Zemanta also reserves the right to suspend or terminate Customer's use of the Service until Customer has paid all amounts due and to charge Customer for all costs of collection, including collection agency and reasonable legal fees and court costs. Customer authorizes Zemanta to investigate Customer's credit record. If applicable, Customer agrees to provide such further financial information and documentation as may be required from time to time by Zemanta as a condition for the continued extension of credit. Customer acknowledges and agrees that any account, credit card and related billing and payment information which Customer provides to Zemanta may be shared by Zemanta with companies who work on Zemanta's behalf solely for the purpose of performing credit checks, effecting payment to Zemanta, collecting debts owed to Zemanta and/or servicing Customer's account. Zemanta may, in its sole discretion, extend, revise or revoke credit at any time.

(c) Payment Dispute. If Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the parties, Customer shall pay the amounts due under this Agreement less the disputed amount, and the parties shall diligently proceed to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Customer delivers a written statement to Zemanta on or before seven (7) days after invoice has been issued, describing in detail the basis of the dispute and the amount being withheld by Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Customer that are not in dispute have been paid as and when required under this Agreement.

## 5. Ownership

(a) Customer Ownership. Customer retains ownership of all right, title and interest in and to all Customer Content.

During the Term of this Agreement, Customer hereby grants to Zemanta a limited, worldwide, non-exclusive, royalty free right to use, display, transmit, and distribute the Customer Content solely as necessary to provide the Services to Customer. Except as provided in this Agreement, Customer shall be solely responsible for providing, updating, uploading and maintaining all Customer Content. The accuracy of Customer Content shall be Customer's sole responsibility. Customer has the right and authorizes Zemanta to place the Customer Content within the Service, and is solely responsible for determining the propriety and legality of the Customer Content. In addition, Customer Content must comply with [Zemanta's Advertising Guidelines](#), as may be updated from time to time by Zemanta.

(b) Zemanta Ownership. Customer acknowledges and agrees that (i) as between Zemanta and Customer, all right, title and interest in and to the Zemanta Platform, the Services and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain with Zemanta or its licensors, and Zemanta in no way conveys any right or interest in the Zemanta Platform or the Services other than a limited license to use them in accordance with the terms of this Agreement, and (ii) the Zemanta Platform and the Services are works protected by copyright, trade secret, and other proprietary rights and laws. As between Customer and Zemanta, Zemanta will also own all data derived from use of the Zemanta Platform and may use and disclose such data (i) to provide the Services and for internal media planning purposes, (ii) as aggregate Services statistics, which will not include personally identifiable information or identify Customer or its Clients, and (iii) if required by court order, law or governmental or regulatory agency (after giving reasonable notice to Customer, if permitted). Notwithstanding the foregoing, nothing herein shall prohibit Zemanta from using anonymous aggregated data for purposes of system performance and tuning. The Zemanta name, the Zemanta logo, and the product names associated with the Services are trademarks of Zemanta or third parties, and no right or license is granted to use them. Customer shall not remove any Zemanta trademark or logo from the Services. Zemanta retains ownership of all right, title and interest in and to all Zemanta Content. During the term of this Agreement, Zemanta grants to Customer a limited, worldwide, non-exclusive, royalty free right to use, display, transmit, and distribute the Zemanta Content solely in connection with Customer's permitted use of the Services. No press releases or general public announcements shall be made without the mutual consent of Customer and Zemanta. Zemanta shall have the right to include Customer's name on Zemanta's client list and in other marketing materials. Customer shall not use Zemanta's name, logo or trademark without Zemanta's prior written consent.

## 6. Confidentiality

(a) During the Term of this Agreement, each party will regard any information provided to it by the other party to be confidential ("*Confidential Information*"). Confidential Information shall also include information, which to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director,

officer, employee, Client, outside consultant, or advisor (collectively “*Representatives*”) who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party’s Confidential Information than this Agreement. The receiving party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing party. Each party accepts responsibility for the actions of its Representatives and shall protect the other party’s Confidential Information in the same manner as it protects its own valuable confidential information, but in no event less than reasonable care be used. The parties expressly agree that the terms and pricing of this Agreement are the Confidential Information of Zemanta. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

(b) Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement, or (iv) is independently developed by the receiving party without use of the disclosing party’s Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of Applicable Law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

Notwithstanding any other provision of this Agreement, both parties acknowledge that any use of the disclosing party’s Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under Applicable Law.

## **7. Data Protection/Privacy**

7.1 The parties acknowledge that some or all of data used or collected through the Service may qualify as, or include, personal data. Each party warrants and represents to (i) comply with all Data Protection Laws; and (ii) maintaining and displaying on their respective websites an easily accessible and discoverable privacy policy that complies with the applicable data protection laws. Customer acknowledges and agrees that it is Customer’s responsibility to ensure that its use of the Services complies with all Data Protection Laws, including that Customer’s use of any third party cookies, pixels and/or impression trackers in its campaign(s), and the capturing of any consent to such, is in accordance with Data Protection Laws



7.2 The provisions of the [Data Sharing Agreement](#) shall be incorporated into, and form part of, this Agreement.

## 8. Indemnification

(a) Zemanta Indemnification. Subject to subsection (c) below, Zemanta will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorney's fees) (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party against Customer (i) alleging that the use of the Services as permitted hereunder infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party, (ii) arising out of Zemanta's breach of any of its representations, warranties or covenants made in this Agreement or (iii) that is attributable to or otherwise alleges any violation of any Applicable Law by Zemanta, including without limitation, compliance with data privacy and data protection laws. The foregoing obligations will not apply to the extent the claim arises as a result of (a) any use of the Services in a manner other than as specified in this Agreement, (b) any use of the Services in combination with other products, equipment, devices, software, systems or data not supplied by Zemanta to the extent such claim is caused by such combination; (c) any alteration, modification or customization of the Services made by any party other than Zemanta or Zemanta's authorized representatives if such infringement would not have occurred without such alteration, modification or customization or (d) any services of third parties made available to Customer through its use of the Services. If Customer's use of the Services is, or in Zemanta's opinion is likely to be, enjoined as an infringement or misappropriation of any third-party intellectual property right, Zemanta shall at its discretion and expense: (i) procure for Customer the right to continue to use the Services under the terms of this Agreement; (ii) replace or modify the Services or portions thereof so that it is non-infringing and substantially equivalent in function to the Services as enjoined; or (iii) terminate this Agreement in whole or in part and refund to Customer any prepaid, unused fees paid hereunder for the infringing Services.

(b) Customer Indemnification. Subject to subsection (c) below, Customer will indemnify, defend, and hold Zemanta harmless from and against any and all Losses resulting from any claim, suit, action, or proceeding brought by any third party against Zemanta (i) alleging that any content or materials supplied by Customer or its Clients or any use thereof, infringes the intellectual property rights, proprietary or privacy rights of others, or has caused harm to a third party, (ii) arising out of Customer's breach any of its representations, warranties or covenants made in this Agreement or (iii) that is attributable to or otherwise alleges any violation of any Applicable Law by Customer, including without limitation, compliance with Data Protection Laws. Customer also agrees to indemnify, defend, and hold Zemanta harmless from and against any and all Losses resulting from any Objectionable Content used or transmitted by Customer or any of its Users in violation of this Agreement.

(c) Indemnification Procedure. With respect to any third party claims or proceedings, the indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement provided that the indemnifying party will not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or



delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

#### 9. Representations and Warranties

(a) Zemanta's Representation and Warranties. Zemanta represents and warrants that the Services will comply in all material respects with the description of the Services found in this Agreement, or Order Form, as the case may be. The foregoing shall not be construed as a warranty that the Services will function without error or interruption. For any breach of the warranty set forth above, both parties' sole and exclusive remedy, except for termination of this Agreement as described in Section 12, and Zemanta's entire liability shall be, for Zemanta to use commercially reasonable efforts to correct the defect or error that caused the breach of warranty.

(b) Customer's Representation and Warranties. Customer represents and warrants to Zemanta that: (i) Customer is a duly organized under the laws of the state in which it is domiciled and Customer has all right and authority to enter into this Agreement; (ii) Customer has all necessary rights, licenses and permission for Customer Content and the Customer Content will not violate any intellectual property right, proprietary rights or rights of privacy of any third party and the Customer Content will not be objectionable as defined in section 2(c) above; (iii) Customer is authorized to take all actions under the terms of this Agreement on behalf of Customer's Clients; and (iv) Customer will comply with all Data Protection Laws (including complying with all laws related to data collection) and Customer has a privacy policy on its website.

#### 10. ZEMANTA'S DISCLAIMERS.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, THE ZEMANTA PLATFORM AND ANY SERVICES PROVIDED BY ZEMANTA IN CONNECTION WITH THIS AGREEMENT, ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ZEMANTA EXPRESSLY DISCLAIMS, ON ITS BEHALF AND ON ITS SUPPLIERS BEHALVES, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. CUSTOMER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF ZEMANTA OR ITS SUPPLIERS.

#### 11. LIMITATIONS OF LIABILITY

NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ZEMANTA TO CUSTOMER'S CLIENTS OR USERS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF SUCH PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF SECTION 5 (OWNERSHIP), A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 OR A PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 8, UNDER NO

CIRCUMSTANCES WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER FOR ANY AND ALL DAMAGES AND CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR OWED BY CUSTOMER TO ZEMANTA UNDER THIS AGREEMENT DURING THE SIX MONTH PERIOD THE DATE OF THE ACTION OR CLAIM FOR THE SERVICES.

## 12. Term and Termination

(a) Term. Subject to earlier termination as described herein, the term of this Agreement shall commence on the Effective Date as defined on the Order Form and shall continue in effect for an initial term as defined on the Order Form (the "*Initial Term*"). Thereafter, this Agreement shall automatically renew for successive one-year periods each (each, a "*Renewal Term*") unless either party elects not to renew the Agreement by providing written notice to the other party no fewer than 60 days prior to the expiration of the then current term.

(b) Termination. Notwithstanding the foregoing, either party may terminate this Agreement (i) immediately in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days of written notice thereof from the other party, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Z In the event that Customer violates Applicable Law in connection with its use of the Services or otherwise uses or transmits any Objectionable Content in violation of this Agreement Zemanta may suspend Customer's access to the Services until such time as Customer is no longer in violation of Applicable Law and/or has removed Objectionable Content. Termination of this Agreement pursuant to this Section (b) shall be in addition to any other rights or remedies available to the terminating party at law and in equity. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement (including, without limitation, Sections 6, 7, 8, 11 and 12, and all payment obligations relating to the period prior to termination.

(c) Suspension. Zemanta also reserves the right in good faith and reasonable discretion, to suspend or otherwise pause any advertising campaign being run through the Services for material non-compliance or in the event that Customer materially breaches any of the terms and conditions of this Agreement or any Third Party Terms, including, without limitation, any failure by customer to make payments in a timely fashion in accordance with Section 4. If an advertising campaign is paused, Zemanta will promptly notify the Customer.

## 13. General

This Agreement will not be interpreted or construed as creating or evidencing any association, joint venture, partnership, or franchise between the parties. Except as expressly stated herein, the provisions of this Agreement are for the benefit of the parties to this Agreement and not for any other person or entity. Customer

may not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Zemanta (such consent not to be unreasonably withheld or delayed). Any such assignment without prior written consent by Zemanta will be void and of no force or effect. Zemanta may assign this Agreement without restriction to a purchaser of all or substantially all of Zemanta's assets, a successor in interest of Zemanta or as part of a corporate reorganization, consolidation or merger. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Any notice under this Agreement will be effective if in writing and sent by email, certified or registered mail, or insured courier, return receipt requested, to a party at its address or email address given below. Each party may update its address or email by notice to the other party in accordance with this Section. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of New York, USA, without reference to its choice of law rules and not including the provisions of the 1980 US Convention on Contracts for the International Sale of Goods. Each party hereby consents irrevocably to the exclusive jurisdiction and venue of the federal, state, and local courts in New York, New York, in connection with any action arising out of or in connection with this Agreement. Either party's waiver of any breach of any provision of this Agreement does not waive any other breach. Either party's failure to insist on strict performance of any covenant or obligation in this Agreement will not be a waiver of such party's right to demand strict performance in the future. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. This Agreement may be executed in multiple counterparts with the same effect as if the parties had signed one document. All counterparts will be construed as and constitute the same agreement. This Agreement may also be executed and delivered by facsimile and such execution and delivery will have the same force and effect of an original document with original signatures. This Agreement, including the Order Form, and [Exhibits](#) hereto and terms and policies referenced in this Agreement constitute the whole and complete expression of the agreement between Customer and Zemanta regarding their subject matter. This Agreement supersedes, and its terms govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the order is accepted by Zemanta. No employee, agent, or other representative of Zemanta has any authority to bind Zemanta with respect to any representation, warranty, or other expression unless it is specifically set forth in this Agreement. No employee, agent or other representative of Customer has any authority to bind Customer with respect to any representation, warranty or other expression unless it is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the provisions of this Agreement. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement shall be construed and interpreted fairly, in

accordance with the plain meaning of its terms, and there shall be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof.