

AHA! INSIGHTS TECHNOLOGY LLC TERMS AND CONDITIONS

1. **Applicability to Services Agreement.** These terms and conditions (“Terms and Conditions”) supplement and are a part of the terms set forth in the Services Agreement (“SA”) entered into between you (referred to herein as “Customer”) and AHA! Insights Technology LLC, a Delaware limited liability company with offices at 235 E. Main St. Suite 102A, Northville, Michigan 48167 (“AHA!”), as of the Effective Date identified in the SA. In the event of any conflict or inconsistency between the SA and these Terms and Conditions, these Terms and Conditions shall control. These Terms and Conditions and the SA shall be referred to collectively herein as the “Agreement.”
2. **Nature of Relationship.** AHA! operates a qualitative marketing research platform located at www.ahaconversations.com (the “Platform”) through an application service provider model, and AHA! agrees to provide certain services to Customer related to the implementation and administration of customer research studies as more fully described herein (“Services”). This Agreement sets forth the terms under which AHA! will assist Customer in the implementation and administration of certain customer market research studies (the “Studies”) using the Platform.
3. **Deliverables – In General.**
 - 3.1 For each Study, AHA! and Customer shall collaborate on a written Statement of Work (“SOW”) in substantially the form included with the SA setting forth the scope of Services for each Study. The deliverables for each Study implemented and administered by AHA! (“Deliverables”) shall be as defined in the applicable SOW.
 - 3.2 Each Deliverable provided to Customer shall be deemed accepted upon the first to occur of the following: (a) Customer notifies AHA! in writing that the Deliverable conforms with the descriptions for such Deliverable in the SOW; or (b) Customer has had possession of the Deliverable for ten (10) calendar days and has not notified AHA! in writing that the Deliverable is rejected.
 - 3.3 AHA! may use subcontractors to perform its obligations under this Agreement, provided that AHA! remains liable and responsible for each subcontractor’s compliance with and/or breach of this Agreement.
 - 3.4 Additional Studies, Services and Study support materials may only be added to this Agreement pursuant to a party’s request and the parties’ execution of a new SOW or amendment of an existing SOW.
4. **Access to the Platform.**
 - 4.1 Upon implementation of each Study, Customer will be given various credentials and points of access to the Platform. Customer is and will remain responsible for maintaining the confidentiality of these credential(s), and for all activities conducted on the Platform and

for the Services that make use of the credential(s), including any use that Customer may subsequently contend was not authorized by Customer.

- 4.2 Customer shall notify AHA! immediately of any unauthorized use of Customer's password(s) or any other breach of security that is known or suspected by Customer. AHA! shall not be responsible for any unauthorized access to, or alteration of, Customer's transmissions or data, or any material, information or data sent or received, regardless of whether the data is actually received by AHA!, unless such unauthorized access or alteration is the direct result of AHA!'s gross negligence or willful misconduct.
- 4.3 Customer acknowledges and agrees that AHA! has the right to use its servers on which the Platform, Study content and/or Study materials are kept for any applications as AHA!, in its sole discretion, may elect, including, without limitation, AHA!'s right to use the servers to provide concurrent Services to third parties for Studies which may conflict or compete with that of Customer's Studies.

5. Licenses.

- 5.1 AHA! grants to Customer a non-exclusive, non-transferable license to access and use the Platform and Study support materials solely for the purposes of conducting the Study and receiving the Services as described in the SOW. This includes the right for Customer to view, print, display, download, store, manipulate, analyze and reformat content contained in and/or generated by the Platform. All rights not expressly granted by AHA! to Customer and its end-users are retained by AHA!, and Customer may not access or use the Platform in any manner or for any purpose not expressly authorized by this Agreement.
- 5.2 Unauthorized use of the Platform, Services and/or Study support materials is expressly prohibited. Customer shall not copy, license, sell, transfer, make available, distribute, or assign this license, the Platform, Services or Study support materials to any third party. Customer also shall not reverse engineer any aspect of the Platform, create an Internet "link" to the Platform or "frame" or "mirror" the Platform on any other server or Internet-based device. Except as expressly provided in the SOW, the Platform and Study support materials may be used by Customer only, and may not be used by, or for the benefit of, any affiliate, subsidiary, parent company or any other third party, nor may the Platform or Study support materials be used to provide service bureau services.

6. Customer Content and Marks.

- 6.1 Customer represents and warrants that all content and other materials it discloses or delivers to AHA! for use in connection with this Agreement are the property of Customer, or that Customer has the rights to disclose or deliver the content and other materials to AHA!, and that the content and other materials do not infringe any copyright, trademark, trade secret, patent or other right of any third party.
- 6.2 AHA! shall be entitled to rely on the accuracy, truthfulness, completeness and appropriateness of all content supplied by Customer. If Customer and/or its end-users submit content in deviation from the agreed upon specifications or format, or which

contains extraneous data, then AHA! may notify Customer of the deviation and Customer will either (a) remedy the deviation at its cost; or (b) direct AHA! to remedy the deviation, and Customer will pay to AHA! the hourly rate for “Defective Data Acceptance Services” set forth in the SOW.

- 6.3 AHA! shall have the right, but not obligation, to refuse to incorporate into the Platform or to remove from the Platform, at any time, without prior notice to Customer, any content that, in AHA!’s sole opinion, is defamatory, threatening, obscene, indecent, patently offensive, violative of the proprietary rights of a third party or otherwise tortuous or improper; provided, however, that such right will not relieve the Customer any of its indemnification obligations under this Agreement.
- 6.4 Customer hereby grants AHA! a non-exclusive, non-transferable license to reproduce its trademarks (“Marks”) in connection with the Platform and Studies. AHA! acknowledges and agrees that its reproduction and use of the Marks are under the sole control and supervision of Customer. AHA!’s reproduction and use of the Marks, and all goodwill established thereby and/or associated therewith, shall inure exclusively to the benefit of Customer, and AHA! acquires no goodwill or other legal rights or interests in the Marks other than the right to use the Marks in connection with its activities under this Agreement.
- 6.5 With the prior consent of Customer, AHA! may place the Customer’s Marks on the AHA! website. Further, with the prior written consent of Customer, for which an email will suffice, AHA! may list the Customer as a client of AHA! on the AHA! website.

7. Ownership.

- 7.1 Except for Customer Marks, the Study Copies (as hereinafter defined) and Customer provided content and materials, as specifically described in Section 7.2, AHA! owns and shall retain all rights, title and interests, including all intellectual property rights, in and to the Platform and all Deliverables, software, documents, and other materials created by AHA! in connection with, or pursuant to, this Agreement, including, without limitation, all copyrightable works of original authorship, ideas, inventions (whether patentable or not), know-how, processes, compilations of information and other intellectual property, including all modifications, adaptations and/or derivative works of all of the foregoing, whether made by AHA!, Customer and/or the parties jointly (“Proprietary Materials”). No Proprietary Materials created by AHA! in connection with, or pursuant to, this Agreement are “works made for hire” as that term is used in connection with the U.S. Copyright Act. To the extent that Customer owns any rights in such Proprietary Materials, Customer hereby irrevocably assigns to AHA! all rights, title and interest, including all intellectual property rights, in such Proprietary Materials. Customer agrees to provide reasonable assistance to AHA!, at no cost to AHA!, in connection with AHA!’s registration or recordation of its intellectual property rights in Proprietary Materials.
- 7.2 Customer owns and shall retain all rights, title and interests, including all intellectual property rights, in and to: (a) all Marks provided by Customer under this Agreement, (b) all content, discussion guides and Study-specific materials provided by Customer under

this Agreement, and (c) copies of all output, summaries, and reports generated by the Platform and Services (collectively, the “Study Copies”, exclusive of AHA!’s ownership rights in and to the manner in which the Platform and/or Study support materials: (i) receive, store, format, display and organize the content; and/or (ii) permit Customer or end users to view, print, display, download, manipulate, analyze and reformat the content.

8. Customer Responsibilities.

- 8.1 Customer shall bear all costs and expenses associated with Customer’s rights and obligations under this Agreement, including, but not limited to, all equipment, telephone lines, hardware, software, and other materials necessary for access to and use of the Platform and Services.
- 8.2 Customer, not AHA!, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all content that Customer provides to AHA! or that AHA! has access to, in relation to the Platform and/or Services. AHA! shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer content, or for any actions or omissions which AHA! takes in reliance upon Customer’s content.
- 8.3 Customer is solely responsible for the products and services it offers or provides to its customers. AHA! shall have no liability or responsibility in connection with Customer’s products and/or services.
- 8.4 Customer agrees that it shall be bound by this Agreement and that no other terms or conditions shall apply to Customer’s use of the Platform or receipt of Services. The terms of this Agreement shall prevail over all terms and conditions contained in any other oral or written communication, including, without limitation, any purchase order issued by Customer, which are different from or in addition to the terms of this Agreement, regardless of whether such other terms and conditions would materially alter the terms of this Agreement.

- 9. **AHA! Compensation.** AHA! shall invoice Customer on a monthly basis as fees for Services are incurred. Customer shall be responsible for paying all sales, use, excise and other taxes relating to its purchase and use of Services and Deliverables, except for those taxes based on AHA!’s income, or which are AHA!’s responsibility as an employer. All payment terms are Net 30 from date of invoice and past due amounts shall accrue interest at the lesser of 1% per month or the maximum rate permitted by law. Customer shall pay AHA!’s collection costs, including but not limited to attorneys’ fees, and all other expenses incurred by AHA! in connection with Customer’s non-payment of amounts due to AHA! under this Agreement.

10. Warranties and Disclaimer.

- 10.1 AHA! warrants that during the term of this Agreement, the Platform will operate in substantial conformance with the specifications in the SOW, and will be available to Customer and end users on a twenty four (24) hours per day, seven (7) days per week basis,

excluding scheduled maintain and downtime. If the Platform fails to meet this warranty, AHA! shall, at no additional charge to Customer, use commercially reasonable efforts to correct such failure within a reasonable time.

- 10.2 Customer acknowledges that the Platform may become inoperable for periods of time due to scheduled maintenance and due to causes beyond the reasonable control of AHA!, such as denial of service attacks, virus infestations, and power or communications outages. To the extent that the cause of inoperability is within the reasonable control of AHA!, the Platform will be restored promptly following the cessation of such cause(s).
- 10.3 The warranties and remedies described in this Section are the only warranties and remedies AHA! makes for Services and/or Deliverables provided under this Agreement and the SOW. AHA! DOES NOT WARRANT OR OTHERWISE GUARANTEE THAT ACCESS TO THE PLATFORM WILL BE UNINTERRUPTED, OR THAT THE OPERATION OF THE PLATFORM WILL BE FREE FROM ERROR. AHA! DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE DELIVERABLES, THE PLATFORM, THE SERVICES AND/OR THE RESULTS OBTAINED FROM THEIR USE BY CUSTOMER AND/OR ITS USERS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Confidentiality.

- 11.1 During the term of this Agreement, each party may have access to information that is considered confidential by the other. This information may include, but is not limited to, Proprietary Materials, technology, know-how, procedures, processes, protocols, specifications, strategic plans, designs, Platforms, software object code and source code, documentation, sales and marketing plans, results of testing, customer information, financial information, product information, proposed business arrangements, methods of operation and compilations of data (collectively “Confidential Information”). Confidential Information must be marked or identified as “confidential” by the disclosing party, unless the information should reasonably be understood by the receiving party to be confidential or proprietary under the circumstances.
- 11.2 Each party shall use the other’s Confidential Information only for the purposes of this Agreement and/or a SOW. Each party shall maintain the confidentiality of the other party’s Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the other party's Confidential Information.
- 11.3 Each party is permitted to disclose the other party’s Confidential Information to its employees, contractors and other third parties (collectively, “Recipients”) on a need to know basis only, provided that such Recipients have contractual or legal confidentiality obligations to that party no less stringent than those contained in this Agreement. Each

party shall be and remain fully liable and responsible for its Recipients' unauthorized disclosure or use of the other party's Confidential Information.

- 11.4 Each party is permitted to disclose the other party's Confidential Information as legally required in response to a court order, subpoena, administrative proceeding and/or similar legal process; provided that it gives the other party prompt notice of the request, and an opportunity to defend and/or attempt to limit or prevent the disclosure of its Confidential Information.
- 11.5 The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party's Confidential Information.
- 11.6 Upon termination of this Agreement, each party shall return the other party's Confidential Information and shall not use the other party's Confidential Information for its own, or any third party's, benefit. The provisions of this Section shall survive termination of this Agreement for so long as the Confidential Information remains confidential.
- 11.7 Each party acknowledges that any disclosure or misappropriation of Confidential Information in violation of this Agreement would cause irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Each party therefore agrees that the party disclosing Confidential Information will have the right to seek injunctive or other equitable relief for any breach or threatened breach of this provision by the party receiving Confidential Information. This right will be in addition to any other remedy available in law or equity.

12. Indemnification.

- 12.1 AHA! shall defend, at its sole expense, any third party claim, demand or suit against Customer alleging that Customer's authorized use of the Platform and/or any Deliverable infringes a third party's U.S. patent, copyright, trademark, trade secret or other intellectual property right (an "Infringement Claim"), and shall indemnify and hold Customer harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against Customer in connection with an Infringement Claim, or reached through a negotiated settlement of an Infringement Claim.
- 12.2 Except for Infringement Claims that are AHA!'s obligation under Section 12.1 above, Customer shall defend, at its sole expense, any third party claim, demand or suit ("Claim") against AHA!: (a) alleging that Customer's content or Marks infringes the intellectual property rights, contract rights or other rights of a third party; (b) that arises out of Customer's products and/or services, including, without limitation, the sale, lease, rental, transfer, license, distribution, marketing, advertising and/or promotion or provision of Customer's products or services; (c) arising from Customer's negligence, willful misconduct, or violation of applicable law; and/or (d) challenging the legality of any aspect

of Customer's Study; and shall indemnify and hold AHA! harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against AHA! in connection with the Claim, or reached through a negotiated settlement of the Claim.

- 12.3 In order to receive the indemnification in this Section, the party seeking the indemnification must promptly notify the other party of the assertion of the claim; allow the other party to retain sole and exclusive control over the defense and/or settlement of the claim; and cooperate with the other party, at the other party's expense, in the defense and/or settlement of the claim. This Section sets forth each party's sole indemnification obligations and remedies in connection with the claims described above.

13. Limitation of Liability.

- 13.1 It is understood and agreed by the parties that Customer is responsible for the business and legal justification of any Study it offers, and for the guidelines, rules or communications related to each such Study. Customer will determine the legality of all such Studies, in accordance with the laws of the United States and each state, and AHA! will implement such Studies pursuant to the terms of the SOW.

- 13.2 Except as expressly provided herein, in no event shall either party be liable to the other party in connection with this Agreement, the Platform and/or the Deliverables, regardless of the form of action or theory of recovery, for any: (a) indirect, special, exemplary, consequential, incidental or punitive damages, even if that party has been advised of the possibility of such damages; (b) lost profits, lost revenues, lost business expectancy, business interruption losses and/or benefit of the bargain damages; and/or (c) direct damages in an amount in excess of the amounts paid to AHA! under this Agreement during the six (6) month period immediately preceding the event giving rise to the claim. Notwithstanding the foregoing, the limitations set forth in this Section shall not apply to (i) a party's indemnification obligations under this Agreement; (ii) either party's breach of its confidentiality obligations under this Agreement; and/or (iii) either party's infringement, misappropriation or violation of the other party's intellectual property rights. Any claim by Customer arising out of this Agreement must be initiated within one (1) year of the date the Customer knew, or reasonably should have known, of the existence of such claim against AHA!.

14. Term and Termination.

- 14.1 This Agreement shall be effective on the Effective Date and continue for so long as there is an SOW in effect under this Agreement, unless this Agreement is terminated in accordance with the provisions of this Agreement.
- 14.2 This Agreement and/or any SOW may be terminated by either party for cause if the other party commits a material breach of this Agreement and/or the SOW and fails to cure such breach within thirty (30) days of its receipt of written notice of the breach from the non-breaching party.

- 14.3 To the extent permitted by applicable laws, and upon prior written notice, either party may terminate this Agreement upon the insolvency of the other party. The "insolvency" of a party shall mean the filing of a petition commencing a voluntary case against such party under the United States Bankruptcy Code; a general assignment by such party for the benefit of creditors; the inability of such party to pay its debts as they become due; such party's seeking or consenting to, or acquiescence in, the appointment of any trustee, receiver or liquidation of it, or any material party of its property; or the commencement against such party of an involuntary case under the United States Bankruptcy code; or proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute, which case or proceeding is not dismissed or vacated within sixty (60) days.
- 14.4 In the event of termination of this Agreement: (a) all SOWs shall terminate as of the same date; (b) AHA! shall, at its then-current hourly rates, purge all Customer content from the Platform and provide Customer with an electronic copy of all of Customer content residing on the Platform, in a format agreed to by the parties; (c) each party shall return the other party's Confidential Information and other materials; and (d) Customer shall pay AHA! all amounts owed under this Agreement within thirty (30) days of the effective date of such termination.
- 14.5 Subject to the terms of this Agreement, all provisions of this Agreement relating to payment, non-solicitation, ownership, limitations of liability, confidentiality and indemnification shall survive termination of this Agreement.
15. **No Employee Solicitation.** During the term of this Agreement and for a period of one (1) year after its termination, Customer agrees not to hire, solicit for hire, use, and/or contract with any individuals who were or are AHA! employees or contractors during the term of this Agreement or for one (1) year thereafter. Customer stipulates to the reasonableness of this provision to protect the legitimate interests of AHA! in its workforce.
16. **Independent Contractor Relationship.** The relationship between AHA! and Customer is that of independent contractor. Nothing in this Agreement shall be construed as creating a relationship between AHA! and Customer of joint venturers, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any statement, representation or document.
17. **Compliance With Law.** Each party shall comply with all United States federal, state and local laws, regulations, orders, or rules applicable to its performance under this Agreement.
18. **Insurance.** AHA! shall throughout the term maintain insurance of the following kinds and amounts:
- 18.1 Workers' compensation insurance as required by applicable local law;
- 18.2 Comprehensive general liability insurance supplemented by umbrella coverage, with limits of \$1,000,000 for each occurrence of property damage and \$2,000,000 in aggregate, supplemented by a \$3,000,000 umbrella policy;

18.3 Cyber liability coverage with limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

19. General.

19.1 This Agreement, all SOWs, and any addenda thereto, contain the entire understanding of the parties with respect to the subject matter addressed herein and supersede, replace and merge all prior understandings, promises, representations and agreements, whether written or oral, relating thereto. This Agreement may not be modified except by a writing signed by both parties. Except as expressly provided herein, the remedies accorded the parties under this Agreement are cumulative and in addition to those provided by law, in equity or elsewhere in this Agreement.

19.2 Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will effect the other provisions of this Agreement.

19.3 Neither party shall be responsible or liable for any delay or failure in performing its obligations under this Agreement if such delay or failure is the direct result of causes outside of that party's reasonable control, including, without limitation, power outages, accidents, strikes, fires, war or acts of God; provided that such party uses best efforts to resume performance of its obligations as soon as practically possible.

19.4 This Agreement shall be governed by the laws of the State of Michigan (exclusive of its choice of law rules), and the federal laws of the U.S. The parties agree that any litigation arising between the parties in relation to this Agreement shall be initiated and maintained in the state courts of appropriate subject matter jurisdiction sitting in Detroit, Michigan, or the U.S. District Court for the Eastern District of Michigan, Southern Division, and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts.

19.5 If any provision of this Agreement and/or a SOW is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is valid and enforceable under applicable law. All other provisions of this Agreement shall remain in full force and effect.

19.6 All notices must be in writing and transmitted by hand delivery; messenger; certified mail, return receipt requested; overnight courier; or by facsimile or by e-mail (with a confirming copy by regular mail) and shall be effective when received by such party at the address listed herein or other address provided in writing.

19.7 Neither party may assign this Agreement or any SOW, in whole or in part, without the other party's prior express written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment without such consent shall be void. Notwithstanding the foregoing, AHA! may assign this Agreement, in whole but not in part, without Customer's consent, as reasonably necessary in connection with a merger, acquisition or

sale of assets. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

- 19.8 In the event of any conflict between the terms of this Agreement and the terms of any SOW, the terms of this Agreement shall control.