

## POLLEN TERMS AND CONDITIONS

These terms and conditions ("Agreement") forms a binding agreement between you individually or the business entity or public agency on whose behalf you are accepting this agreement ("Subscriber") and Pollen, LLC ("Licensor"). For purposes of this Agreement, Subscriber and Licensor each may be referred to individually as a "Party" and together as the "Parties."

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

### 1. **Definitions.** As used herein:

- (a) **"Authorized Payment Method"** means a current, valid, payment method accepted by us, as may be updated from time to time and which may include payment through your account with a third party.
- (b) **"Authorized Users"** shall mean Subscriber's employees and independent contractors working for Subscriber in the ordinary course of Subscriber's business who: (i) agree to be bound by the terms of this Agreement; and (ii) are specifically authorized by Subscriber to access the Service.
- (c) **"Display Devices"** shall mean the display device of an Authorized User used to access, display, and use the Service.
- (d) **"Service"** shall mean Licensor's web-based, application-based, email, and database services, including associated documentation made available to Subscriber in written form or online, subscribed to by Subscriber hereunder.
- (e) **"Service Start Date"** shall mean the date from which Subscriber first receives the applicable Service or as identified on an applicable Order Form, whichever is earlier.
- (f) **"Fees"** shall mean the fees payable pursuant to the 'Fees and Payment' Section below.
- (g) **"Order Form"** shall mean Pollen-approved form or online subscription process by which you agree to subscribe to the Service.
- (h) **"Subscriber Data"** means (i) any electronic data, customer data, information, or material that Subscriber provides, uploads, or submits to Licensor in connection with this Agreement, and (ii) any electronic data, customer data, information, or material generated from or in connection with Subscriber's use of the Service (including any Authorized User).
- (i) **"Subscriber Marks"** shall mean the trademarks, service marks, copyrights, intellectual property, symbols, logos, emblems, decals, designs, colors, likenesses, or other visual representations of Subscriber, as such trademarks and other marks may be modified by Subscriber from time to time.
- (j) **"Term"** shall mean the period beginning on the Service Start Date and ending on the last day within service period as specified in your Order Form ("Initial Term"); and each subsequent renewal period (if any) (each a "Renewal Term").

## 2. License to Receive the Service.

- (a) **Grant.** Licensor hereby grants the Subscriber identified on the Order Form a limited, non-exclusive and non-transferable license, without right of sublicense, during the Term to access, display, and use on Subscriber's Display Devices, the Service, and to permit Authorized Users to access and use the Service, subject to the terms and conditions of this Agreement. All rights in the Service not expressly granted hereunder are reserved to Licensor.
- (b) **Scope.** The license granted to Subscriber hereunder is solely for Subscriber's internal business purposes and is limited to the access, display, and use of the Service by only an Authorized User. Each Authorized User may access, display, and use the Service on only one Display Device at a time. Subscriber shall have no right pursuant to this Agreement to access, use, display, or distribute the Service, in whole or in part, beyond the Authorized Users. Subscriber is responsible for all activities that occur under Subscriber's and any Authorized User's accounts. Subscriber will: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all use of the Service by Subscriber and any Authorized User; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Licensor promptly after becoming aware of any such unauthorized access or use; and (c) comply with all applicable local, state, federal, and foreign laws in using the Service. Nothing in this Agreement shall obligate Licensor to continue providing access to any Service beyond the date when Licensor ceases providing such Service to subscribers generally.
- (c) **Restrictions on Use.** Subscriber shall not edit, alter, abridge, or otherwise change in any manner the content of the Service, including, without limitation, all copyright and proprietary rights notices. Subscriber may not, and may not permit others to (including any Authorized User):
  - (i) Reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Service;
  - (ii) Modify, translate, adapt, alter, or create derivative works from the Service;
  - (iii) Copy, distribute, publicly display, transmit, sell, rent, lease, or otherwise exploit the Service;
  - (iv) Copy, distribute, publicly display, transmit, sell, rent, lease, or otherwise exploit or infringe upon the intellectual property and/or proprietary material of another;
  - (v) Distribute, sublicense, rent, lease, loan or grant any third-party access to or use of the Service to any third party;
  - (vi) Distribute or display content that is threatening, abusive, harassing, stalking, obscene, indecent, vulgar, defamatory, deceptive, false, misleading or fraudulent;
  - (vii) Distribute or display content that is legally actionable between private parties;
  - (viii) Distribute or display content that encourages, promotes, facilitates or instructs others to engage in illegal activity;

- (ix) Harvest, collect, gather, or assemble information or data regarding other subscribers;
- (x) Transmit through or post on the Service unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors;
- (xi) Transmit material containing software viruses or other harmful or deleterious computer codes, files, scripts, agents, or programs;
- (xii) Interfere with or disrupt the integrity or performance of the Service or the data contained therein;
- (xiii) Attempt to gain unauthorized access to the Service, computer systems, or networks related to the Service;
- (xiv) Harass or interfere with another subscriber or end-user's use and enjoyment of the Service;
- (xv) Harass or interfere with the normal operation, privacy, integrity or security of another's property, including another's account(s), domain name(s), URL(s), website(s), network(s), system(s), facilities, equipment, data, other information, or business operations;
- (xvi) Gain unauthorized access to, use, monitor, make an unauthorized reference to, another's property, unless you have the appropriate express prior consent to do so;
- (xvii) Use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser (e.g., scraping or harvesting);
- (xviii) Access the Service using another's unique login credentials, including reusing or sharing unique login credentials among multiple users;
- (xix) Send any of the following types of emails:
  - (A) unsolicited bulk emails;
  - (B) emails that violate CAN-SPAM,
  - (C) emails directed to addresses obtained by internet harvesting methods or other surreptitious methods;
  - (D) emails directed to addresses that are incomplete, inaccurate or not updated for all applicable opt out notifications using best practices in the industry;
  - (E) emails that violate the General Data Protection Regulation or that involve data failing in the scope of the General Data Protection Regulation but fail to provide notice and establish a lawful basis for processing the data;
  - (F) emails that use names, addresses, email address or subject lines that are obscured, misleading or false;

- (G) emails that fail to provide a notice that the recipient may unsubscribe, opt-out or otherwise demand that use of its information for unsolicited, be stopped and instructions for submitting such a demand;
  - (H) emails directed to an email address for which an opt-out or unsubscribe request has been received.
  - (I) emails contained in an email address list that is not purchased from us and is likely to lead to an excessive number of unsubscribe requests or spam complaints, as determined by acceptable industry practices.
- (xx) Make or transmit text messages or other supported messaging that fail to comply with:
- (A) all applicable laws relating to telephone calling, texting, and any other message marketing, including applicable local, state, national or international laws (e.g., the CAN-SPAM Act, TRAI, TCPA or other similar laws and regulations applicable to you);
  - (B) all applicable laws related to the recording of phone calls;
  - (C) all policies and guidelines of third-party service providers, such as network operators and carriers; or
  - (D) industry standards, including those applicable guidelines published by the CTIA and the Mobile Marketing Association.
- (xxi) Remove any proprietary notice displayed on or in association with the Service.

### 3. Fees and Payment.

- (a) **Service Fees and Other Fees.** In exchange for the Services to be provided and the licenses granted under this Agreement, commencing on the Service Start Date, Subscriber shall pay Licensor the Fees identified in the applicable Order Form, plus any other applicable fees, costs, and expenses contained in the Order Form and/or this Agreement. All Fees are payable in advance, and are based on the Services identified in the Order Form.
- (b) **Fee Modification.** Modifications in any ongoing Fees in connection with the Service shall be communicated to Subscriber no later than thirty (30) days prior to their effective date, and such modified Fees shall be deemed to replace those previously stated in the Order Form and will be applied at the start of the next Renewal Term. If Subscriber does not agree to this increase, Subscriber can choose to terminate the Agreement at the end of the then current Term by giving the notice required in the 'Notice of Non-Renewal' section below.
- (c) **Payment of Fees.** If paying by credit card, Subscriber authorizes Licensor to charge your Authorized Payment Method for all Fees payable during the Term. Subscriber further authorizes Licensor to use a third party to process payments, and consent to the disclosure of Subscriber's payment information to such third party. Subscriber further authorizes Licensor to continue to charge your Authorized Payment Method for applicable Fees during the Term and until any and all outstanding Fees have been paid

in full. All payment obligations are non-cancellable, and all amounts paid are non-refundable, except as specifically provided for in this Agreement. All fees are due and payable in advance throughout the Subscription Term.

- (d) **Payment Information.** Subscriber shall keep its business information, Authorized Payment Method and billing information up to date. Changes may be made on your Billing Page within your Service account.

#### 4. Customer Service.

- (a) **Email and In-App Support.** Requests for email support may be submitted to the following address: info@pollensocial.com. Email and in-app responses are provided between 9am and 5pm ET. While Licensor endeavors to respond within one business day or less, it does not promise or guarantee any specific response time. Licensor may limit or deny your access to support if determined, in Licensor's reasonable discretion, that Subscriber is acting, or has acted, in a way that results or has resulted in misuse of support or abuse of Licensor's representatives.

#### 5. Access.

- (a) **Service.** Subscriber shall acquire, install, operate, and maintain at Subscriber's expense all communications lines, equipment, software, services, and related technology necessary to receive, access, and use the Service. Except as expressly stated herein, Subscriber is prohibited from and will have no right to allow any third party (which may include agents, contractors, affiliates, or other third-party representatives acting on behalf of Company) to access and/or use the Service.
- (b) **Delivery and Acceptance.** During the Term, Licensor will make the Service available to Subscriber as indicated herein. The Service will be deemed accepted upon the Service Start Date. Any updates, bug fixes, or upgrades ("**Corrections**") to the Service will be deemed accepted by Subscriber on the day such Corrections are first made available to Subscriber or accessed by Subscriber, whichever is earlier.
- (c) **Free Trial.** If Subscriber registers for a free trial, Licensor will make the applicable Service available to Subscriber on a trial basis free of charge until the earlier of (a) the end of the free trial period (if not terminated earlier) or (b) the start date of Subscriber's paid subscription. Unless Subscriber purchases a subscription to the applicable Service before the end of the free trial, all of Subscriber's Data in the Service may be permanently deleted at the end of the trial, and Licensor shall have no obligation to retain or recover it. Any additional terms and conditions included on the trial registration web page shall also apply.

#### 6. Copyright Protection; Use Restrictions; Subscriber License Grant.

- (a) Subscriber agrees that the Service and all parts thereof, and its specifications, including without limitation the editorial coding and metadata contained therein, are the property of Licensor or Licensor's licensors. *The works and databases included in the content of the Service are protected by applicable copyright laws.* Other than as expressly set forth in this Agreement, no license or other rights in the pre-existing intellectual property

rights to the Service are granted to Subscriber, and all such rights are hereby expressly reserved.

- (b) Subscriber agrees that only Authorized Users shall be permitted access to the Service. Except as set forth herein, no clients or other persons or entities who are not legal employees of Subscriber or independent contractors consulting for Subscriber in the ordinary course of Subscriber's business may be Authorized Users.
- (c) Subscriber represents that with respect to any content that Subscriber reproduces, displays, distributes, performs or otherwise uses in association with the Service, Subscriber is either the owner of the copyrights for such content or has all necessary licenses to use the content in the manner in which the content is being used by Subscriber in association with the Service.

## **7. Subscriber Data.**

- (a) Subscriber owns and retains all rights to Subscriber Data. Subscriber hereby grants to Licensor a non-exclusive, royalty-free, and non-transferable license to use, copy, store, modify, and display the Subscriber Data as necessary to provide the Service in accordance with this Agreement. Subscriber Data submitted by Subscriber to the Service, whether posted by Subscriber or by an Authorized User, remains the sole property of Subscriber and Subscriber reserves all right, title, and interest in the Subscriber Data. Notwithstanding any other provision in this Agreement, Licensor may collect and provide certain Authorized User registration and statistical information, such as usage or Authorized User traffic patterns, in aggregate and anonymized form to third parties, provided that such information does not identify any Authorized User or Subscriber and contains no personally identifying information. Licensor may access Subscriber's and its Authorized User accounts, including, without limitation, Subscriber Data, to the extent necessary to respond to service or technical problems.
- (b) Subscriber provides Licensor with a license to use Subscriber Data for machine learning to support and develop features and functionality within the Service and similar products and services. You may opt out of having your Subscriber Data used for machine learning by contacting Licensor at [info@pollensocial.com](mailto:info@pollensocial.com).

## **8. Subscriber Licenses and Feedback.**

- (a) Subscriber hereby grants Licensor a non-exclusive, non-transferable, and royalty-free license to use Subscriber Marks for the limited purposes set forth in this Agreement, including as necessary for Licensor's performance under this Agreement, to deliver the Service in accordance with this Agreement, and in marketing materials related to the Service.
- (b) Licensor will have the right to use, act upon, and freely exploit any suggestion, idea, enhancement request, feedback, recommendation, or other information provided by Subscriber, an Authorized User, or any other third party acting on Subscriber's behalf, without any remuneration, fee, royalty, or expense of any kind, and Licensor will hereby own all rights, title, and interest in any such suggestion, idea, enhancement request,

feedback, recommendation, or other information provided by Subscriber, an Authorized User, or any other third party acting on Subscriber's behalf.

## **9. Warranties; Disclaimer.**

- (a) Each Party warrants and represents that it has the authority to execute, deliver, and perform its obligations under this Agreement, having obtained all required Board of Directors' or other consents, and is duly organized or formed, and validly existing and in good standing under the laws of the state of its incorporation or formation.
- (b) Licensor warrants that: (i) the Service and Professional Services will be provided in a manner consistent with generally accepted industry standards, and (ii) Licensor will not knowingly introduce any viruses or other forms of malicious code into the Service; provided however, this warranty will not apply to you if you only use the Free Services. In the event of non-conformance with this warranty, we will use commercially reasonable efforts to correct such non-conformance. If we cannot correct such non-conformance within thirty (30) days from the date when you notified us of the non-conformity (the "Remedy Period"), then either party may terminate this Agreement by providing the other party written notice within thirty (30) days after the end of the Remedy Period. If you terminate the Agreement for this reason, we will provide, within a commercially reasonable period after termination, a pro-rata refund to Subscriber for all fees prepaid for the Service and not yet earned by Licensor. We will not have any obligation or liability under this section if the non-conformance is caused by or based on: (i) any combination of the Service with any hardware, software, equipment, or data not provided by Licensor, (ii) modification of the Service by anyone other than Licensor, or modification of the Service by Licensor in accordance with specifications or instructions provided by Subscriber, or (iii) use of the Service in violation of or outside the scope of this Agreement.
- (c) EXCEPT AS SPECIFICALLY PROVIDED HEREIN, SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICE(S), THE CONTENTS THEREIN, AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS, AND LICENSOR DOES NOT MAKE ANY AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.
- (d) THIS SECTION STATES LICENSOR'S ENTIRE LIABILITY AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM PROVIDED FOR UNDER THIS SECTION. YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS SECTION, LICENSOR WOULD NOT PROVIDE THE SERVICE TO SUBSCRIBER.

## **10. Indemnification.**

- (a) **Subscriber Infringement Indemnity.** Subscriber, at its expense, will defend, indemnify, and hold Licensor harmless from and against any and all third-party claims

for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Licensor which relate to a claim, action, lawsuit, or proceeding made or brought against Licensor by a third party alleging the infringement or violation of such third party's registered patent, trade secret, copyright, or trademark (each a "Licensor Claim") by way of Licensor's use of any Subscriber Data, Subscriber Marks, or other information or materials provided by Subscriber in connection with this Agreement.

- (b) **Licensor Infringement Indemnity.** Licensor, at its expense, will defend, indemnify, and hold Subscriber harmless from and against any and all third-party claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Subscriber to the extent such directly relates to a claim, action, lawsuit, or proceeding made or brought against Subscriber by a third party alleging the infringement or violation of such third party's registered patent, trade secret, copyright, or trademark (each a "Subscriber Claim") by way of Subscriber's use of the Service that Licensor provides to Subscriber under this Agreement.
- (c) For purposes herein, each Party, when providing indemnification, will be termed an "Indemnifying Party" and each Party, when receiving the benefits of indemnification, shall be termed an "Indemnified Party." The term "Indemnified Party" will include the other Party's respective shareholders, officers, directors, administrators, managers, employees, servants and agents, and successors and assigns. The Indemnifying Party's obligations under this Section will be subject to the Indemnified Party providing the Indemnifying Party prompt notice of the event giving rise to an indemnity obligation, providing reasonable cooperation and assistance in the defense or settlement of any claim (at the Indemnifying Party's sole cost and expense), and granting the Indemnifying Party control over the defense and settlement of the same. The Indemnifying Party will have the right to consent to any settlement or judgment that is binding upon the Indemnifying Party.
- (d) In the event a court of competent jurisdiction makes a determination that the Service infringes on or otherwise violates any third-party registered patent, trade secret, copyright, or trademark, or if Licensor determines that the Service likely infringes or otherwise violates such third party's foregoing intellectual property rights, Licensor, at its sole option and expense, will: (a) modify the allegedly infringing or violating portion of the Service so as to make it non-infringing and non-violating; (b) replace the allegedly infringing or violating Service, or any portion thereof, with a non-infringing and/or non-violating product having reasonably equivalent functionality; (c) obtain the right for Subscriber to continue using the allegedly infringing or violating portion of the Service; or (d) revoke the license to the allegedly infringing or violating Service and provide a pro-rata refund to Subscriber for all fees prepaid for the Service and not yet earned by Licensor.



- (e) Licensor will have no obligation under this Agreement relating to any indemnification if a Subscriber Claim results from, relates to or arises out of any of the following: (i) Subscriber's continued use of the infringing or violating Service after Licensor first makes an applicable Correction available to Subscriber; (ii) Subscriber's modification of the Service (including a third party acting on its behalf); or (iii) Subscriber's use of the Service in any manner other than as permitted under this Agreement.

**11. Limitation of Liability.** LICENSOR AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AND LICENSORS ("LICENSOR PARTIES") WILL NOT BE LIABLE (JOINTLY OR SEVERALLY) TO SUBSCRIBER, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS, AND LOST REVENUES (COLLECTIVELY, THE "EXCLUDED DAMAGES"), WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF ANY OF LICENSOR PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY OF THE EXCLUDED DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF AN ESSENTIAL PURPOSE OF A LIMITED REMEDY. IN NO EVENT WILL THE LIABILITY OF LICENSOR PARTIES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT, EXCEPT FOR LICENSOR'S INDEMNIFICATION FOR INTELLECTUAL PROPERTY INFRINGEMENT PURSUANT TO THE 'INDEMNIFICATION' SECTION ABOVE, EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. FOR ANY LICENSOR INDEMNIFICATION FOR INTELLECTUAL PROPERTY INFRINGEMENT PURSUANT TO THE 'INDEMNIFICATION' SECTION ABOVE, IN NO EVENT WILL THE LIABILITY OF LICENSOR PARTIES ARISING OUT OF ANY SUCH CLAIM EXCEED THREE TIMES THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN LICENSOR PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW.

YOU UNDERSTAND AND AGREE THAT ABSENT SUBSCRIBER'S AGREEMENT TO THIS LIMITATION OF LIABILITY, LICENSOR WOULD NOT PROVIDE THE SERVICE TO YOU.

**12. Term; Termination.**

- (a) **Term and Renewal.** This Agreement shall be effective for the Term, unless terminated earlier in accordance herewith. Unless a notice of non-renewal is timely submitted, the Service shall automatically renew for a Renewal Term, the duration of which shall be equal to the duration of the Initial Term or one year, whichever is shorter.

- (b) **Notice of Non-Renewal.** To prevent renewal of the subscription for a Renewal Term, Subscriber must submit a notice of non-renewal through the website and/or application through which the Service is provided. To be effective, the notice of non-renewal must be submitted at least 1 days prior to the expiration of the Initial Term identified in the Order Form.
- (c) **Termination for Cause.** This Agreement may be terminated as follows: (a) if either Party commits a material breach of this Agreement and fails to remedy such breach within thirty (30) days of receiving written notice thereof by the non-breaching Party ("Notice of Breach"), the Party giving such notice may then deliver a second written notice to the breaching Party terminating this Agreement, in which event this Agreement, and the licenses granted hereunder, will terminate on the date specified in such second notice; or (b) if a receiver is appointed over any assets of either Party or if either Party makes any arrangement with its creditors or becomes subject to an administration order or goes into liquidation or anything equivalent to the foregoing under any jurisdiction or ceases to carry on business, the other may terminate by giving written notice with immediate effect.
- (d) **Termination for Convenience.** If this Agreement is terminated before the end of its then-current term for any reason other than by Subscriber under the foregoing clauses (a) or (b) in this Section, then Subscriber will pay to Licensor as liquidated damages, the amount due by Subscriber for the previous calendar month times the number of months remaining in such Term ("Liquidated Damages") within 30 days after such termination. The parties agree that the Liquidated Damages under this clause are not intended to be and will not be punitive in effect and that the Liquidated Damages are a genuine pre-estimate of loss (which may be difficult to ascertain) resulting from early termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if Subscriber receives any notice of late payment under this Agreement in any form, written or electronic, from Licensor including any business division (e.g., Licensor's Credit Department), such notice will be deemed to be a Notice of Breach.
- (e) **Suspension for Prohibited Acts.** Licensor may suspend access to any or all Services by Subscriber and its Authorized Users, without notice, for: (i) use of the Service in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement, (ii) use of the Service that results in excessive bounces, SPAM complaints via feedback loops, direct spam complaints (to our abuse desk), or requests for removal from a mailing list by recipients, or (iii) repeated instances of posting or uploading material that infringes or is alleged to infringe on the copyright or trademark rights of any person or entity. We may, without notice, review and delete any Subscriber Data or other Subscriber materials that we determine in good faith violate these terms.
- (f) **Suspension for Non-Payment.** Unless the full amount of Fees has been timely paid, Licensor may suspend Subscriber's access to any or all of the Services. If a Service is suspended for non-payment, Licensor may charge a re-activation fee to reinstate the Service.
- (g) **Suspension for Present Harm.** If Subscriber's website, or use of, the Service: (i) is being subjected to denial of service attacks or other disruptive activity, (ii) is being used to engage in denial of service attacks or other disruptive activity, (iii) is creating a

security vulnerability for the Service or others, (iv) is consuming excessive bandwidth or storage, or (v) is causing harm to Licensor or others, then Licensor may, with electronic or telephonic notice to you, suspend all or any access to the Service. Licensor shall make commercially reasonable efforts to limit the suspension to the affected portion of the Service, and each party will make reasonable efforts to promptly resolve the issues causing the suspension of the Service. Nothing in this clause limits Licensor's right to terminate for cause as outlined above, if Subscriber is acting, or has acted, in a way that has or may negatively reflect on or affect Licensor, or its prospects, or customers.

- (h) **Suspension for Unauthorized Access or Use.** If Licensor has a reasonable belief that Subscriber or any Authorized User is engaged in or facilitated any unauthorized access or use of the Service in violation of this Agreement, Licensor, in its sole discretion, may immediately suspend Subscriber's access to the Service until such violation is resolved to Licensor's reasonable satisfaction. Licensor will have no liability to Subscriber for such period of suspension and a suspension shall have no effect on the Term of this Agreement nor on Subscriber's obligation to pay the Fees.

### 13. Confidentiality.

- (a) Subscriber and Licensor understand and agree that in the performance of this Agreement each Party may have access to private or Confidential Information of the other Party, which either is marked as "confidential" or the receiving party should reasonably know under the circumstances that such information is confidential and/or proprietary information of the other Party. Each Party shall hold such Confidential Information in confidence and not, without the consent of the other, disclose it to a third party or use it for any purpose other than in performance of this Agreement. The disclosure of the Confidential Information to the receiving Party does not confer upon the receiving Party any license, interest, or right of any kind in or to the Confidential Information, except as provided under this Agreement. At all times and notwithstanding any termination or expiration of this Agreement, the receiving Party agrees that it will hold in strict confidence and not disclose to any third party the Confidential Information of the disclosing Party, except as approved in writing by the disclosing Party. The receiving Party will only permit access to the Confidential Information of the disclosing Party to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations substantially similar to those contained in this Agreement. The receiving Party will be responsible to the disclosing Party for any third party's use and disclosure of the Confidential Information that the receiving Party provides to such third party in accordance with this Agreement. The receiving Party will use at least the same degree of care it would use to protect its own Confidential Information of like importance, but in any case with no less than a reasonable degree of care, including maintaining information security standards for such Confidential Information as are commercially reasonable and customary for the type of Confidential Information.
- (b) This obligation of confidentiality shall not apply to information that is: (i) generally available to the public through no act or omission of the receiving Party, (ii) becomes known to the receiving Party through a third party with no obligation of confidentiality,

- (iii) was in the receiving Party's possession before receipt from the disclosing Party, or  
(iv) is independently developed by the receiving Party,
- (c) If any Confidential Information is required to be disclosed by statute, rule, regulation, or order of any court of competent jurisdiction, before any such disclosure the receiving Party will provide notice to the disclosing Party reasonably sufficient to allow the disclosing Party the opportunity to apply for a protective order or other restriction regarding such disclosure. If either Party elects to file this Agreement with the U.S. Securities and Exchange Commission or any other securities exchange or market, regulatory authority or other body, the filing Party will provide the non-filing Party with no less than five (5) business days' notice before the expected date of the filing (the "Filing Date"), and a copy of the Agreement marked to show the sections for which the filing Party plans to seek confidential treatment. The filing Party agrees to expand its confidential treatment request to include those provisions of this Agreement reasonably indicated by the non-filing Party before the Filing Date as provisions for which the non-filing Party requests confidential treatment.
- (d) All Confidential Information will remain the exclusive property of the disclosing Party. Each Party to this Agreement will immediately notify the other Party in writing upon discovery of any unauthorized loss, access, or disclosure of the Confidential Information of the other Party. Upon termination or expiration of this Agreement, upon written request of the other Party, or when no longer needed by either Party for fulfillment of its obligations under this Agreement, each Party will either: (a) promptly return to the other Party all documents and other tangible materials representing the other Party's Confidential Information, and all copies thereof in its possession or control; or (b) destroy all tangible copies of the other Party's Confidential Information in its possession or control by the following methods. Notwithstanding the foregoing, each Party's legal counsel may retain one copy of the disclosing Party's Confidential Information for its files solely to provide a record of such Confidential Information for archival purposes.
- (e) If either Party should breach or threaten to breach any provision of this Section of the Agreement, the non-breaching Party, in addition to any other remedy it may have at law or in equity, will be entitled to seek a restraining order, injunction, or other similar remedy in order to specifically enforce the provisions of this Agreement. Each Party specifically acknowledges that money damages alone would be an inadequate remedy for the injuries and damages that would be suffered and incurred by the non-breaching Party as a result of a breach of any provision of this Section. In the event that either Party should seek an injunction hereunder, the other Party hereby waives any requirement for the submission of proof of the economic value of any Confidential Information or the posting of a bond or any other security.

#### **14. Miscellaneous.**

**(a) Notices.**

- (i) All notices to Licensor shall be made in writing and delivered by first class mail, postage prepaid to the following address: Pollen, 1801 Reynolds Ave., Unit D-1, North Charleston, SC 29405, with a copy emailed to the following email address: [info@pollensocial.com](mailto:info@pollensocial.com)

- (ii) All notices to Subscriber may be made (1) in writing to the then-current address associated with Subscriber's account; and/or (2) by email to the then-current email address associated with Subscriber's account.
- (b) **Amendment.** This Agreement may not be amended except in a writing executed by authorized representatives of Subscriber and Licensor.
- (c) **Assignment.** This Agreement is not transferable, assignable, delegable, or sublicenseable by Subscriber in whole or in part, without the prior written permission of Licensor. This Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors, trustees, administrators, and assigns.
- (d) **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or will confer upon any third-party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (e) **Survival.** Any and all provisions, promises, and warranties contained herein, which by their nature or effect are required or intended to be observed, kept, or performed after termination or expiration of this Agreement, will survive the termination or expiration of this Agreement and remain binding upon and for the benefit of the Parties hereto.
- (f) **Independent Contractor.** Licensor is acting in performance of this Agreement as an independent contractor.
- (g) **Binding Effect and Third-Party Beneficiary.** Except if specifically stated in this Agreement, neither Party, nor any of their respective employees or agents, will have the power or authority to bind or obligate the other Party. No third party is a beneficiary of this Agreement.
- (h) **Waiver of Rights.** Except where specifically stated to the contrary, all remedies available to either Party for breach of this Agreement under this Agreement, at law, or in equity, are cumulative and non-exclusive. A waiver or failure of either Party at any time to require performance by the other Party of any provision hereof will not affect the full right to require such performance at any time thereafter.
- (i) **Injunctive Relief.** If Subscriber breaches Sections 2, 7 and/or 14 of this Agreement, Licensor will be entitled, in addition to any other rights available under this Agreement, or at law or in equity, to apply for immediate injunctive relief without any requirement to post a bond or other security and Subscriber acknowledges and agrees to not contest such application.
- (j) **Severability.** If any provision or portion thereof of this Agreement or its application in a particular circumstance is held to be invalid or unenforceable to any extent in any jurisdiction, such provision or portion thereof will, as to such jurisdiction only, be ineffective to the extent of such unenforceability, all other provisions and portions thereof of this Agreement will not be affected thereby and will be valid and enforced to the fullest extent permitted by law.
- (k) **Choice of Law and Venue.** This Agreement, as well as any and all tort claims arising from this Agreement or arising from any of the proposals, negotiations, communications, or understandings regarding this Agreement, will be governed by and construed in accordance with the laws of the State of South Carolina, United States of America

without regard to any conflict or choice of law principles. The sole jurisdiction and venue for any litigation arising out of this Agreement will be an appropriate federal or state court located in South Carolina. Further, neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement.

- (l) **Attorney Fees.** In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to recover its reasonable costs and expenses actually incurred in endeavoring to enforce the terms of this Agreement, including reasonable attorney fees.
- (m) **Contract for Services.** This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, will not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement or the rights and obligations of the parties under this Agreement.
- (n) **Force Majeure.** Any failure or delay by Licensor in the performance of its obligations pursuant to this Agreement will not be deemed a default or breach of the Agreement or a ground for termination to the extent such failure or delay is due to computer or Internet or telecommunications breakdowns, denial of service attacks, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil unrest, rebellions or revolutions in the United States, or any nation where the obligations under this Agreement are to be executed, strikes, supplier and third-party failure, lockouts, labor difficulties, quarantines, health related orders, or other similar actions taken by governmental authorities, or any similar cause beyond the reasonable control of Licensor.
- (o) **Entire Agreement.** This Agreement contains the final and entire agreement of the parties and supersedes all previous and contemporaneous verbal or written negotiations, understandings, or agreements regarding the Agreement's subject matter.
- (p) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed an original and all of which will constitute the same instrument.
- (q) **Non-Solicitation.** Each Party agrees that, during the term of this Agreement and for twelve (12) months thereafter ("Restricted Period"), it will not, directly or indirectly, solicit or induce any employee of the other Party to consider or accept employment with the first Party. Neither Party is prohibited from responding to or hiring employees of the other Party who inquire about employment with the first Party on their own accord or in response to a public advertisement or employment solicitation in general.
- (r) **Headings.** Headings of particular sections are inserted only for convenience and are not to be considered a part of this Agreement or be used to define, limit, or construe the scope of any term or provision of this Agreement. Should any provision of this Agreement require judicial interpretation, the Parties agree that the court interpreting or construing the same will not apply a presumption that the terms of this Agreement will be more strictly construed against one Party than against the other.

- (s) **Export Laws Compliance.** Neither Party will export, directly or indirectly, any technical data acquired from the other Party pursuant to this Agreement (or any product utilizing such data) to any country for which the United States Government, any agency thereof, or any applicable foreign governmental body at the time of export requires an export license or other governmental approval without first obtaining such license or approval. Each Party will comply with all applicable export and import laws and regulations.
- (t) **Legal Counsel.** Each Party acknowledges that it has had the right to seek independent legal counsel with respect to this Agreement, and that each Party has substantially participated in the drafting and negotiation of this Agreement. No provision hereof will be construed against one Party by virtue of the fact that such provision was drafted by such Party. Subscriber agrees that it is not relying on any promise or representation that does not appear in this Agreement as an inducement to enter into this Agreement.
- (u) **Licensor's Remedies not Exclusive.** No remedy that is available to Licensor under this Agreement shall be deemed exclusive of any other remedy Licensor may have at law or in equity unless it is expressly stated herein that such remedy is exclusive.
- (v) **Authority.** Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.