

dbt cloud Terms of Use

Last updated: 1/15/2019

You (“Subscriber” or “you”) and Fishtown Analytics Inc. (“Fishtown Analytics” or “we”) are bound by these Master Terms and Conditions. The definitions for some of the defined terms used in these Master Terms and Conditions are set forth in Section 2. The definitions for other defined terms are set forth elsewhere in these Master Terms and Conditions.

1. NATURE OF AGREEMENT.

1.1 Structure of Agreement. The Parties may enter into Orders, which are governed by these Master Terms and Conditions. Each Order, together with these Master Terms and Conditions, collectively comprise a single agreement between the Parties (each, an “Agreement”). Accordingly, one or more separate Agreements may be created, each governed by these same Master Terms and Conditions. Each Agreement specifies the terms under which Subscriber may access and use the Platform.

1.2 Binding Nature. Please read each Agreement carefully before accessing or using the Platform, because by doing any of the foregoing, clicking “I Agree,” executing an Order, or otherwise manifesting assent to an Agreement, Subscriber agrees to be bound by the terms of the Agreement. If Subscriber does not agree to (or cannot comply with) all of the terms of an Agreement, do not access or use the Platform. The individual agreeing to each Agreement represents that he or she is an authorized representative of Subscriber and capable of binding Subscriber the Agreement.

1.3 Order of Precedence. To the extent of any conflict or inconsistency between these Master Terms and Conditions and any term contained in an Order, the terms of the Order shall govern. No term included in any confirmation, acceptance, purchase order, or any other similar document from you in connection with an Agreement will apply to the Agreement or have any force or effect.

2. DEFINITIONS.

2.1 “Account Parameters” means the parameters within which you and your Authorized Users may access and use the Platform, as set forth in the applicable Order.

2.2 “Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

2.3 “Authorized User” means any of your current employees, consultants, or agents whom you authorize to access and use the Platform pursuant to the terms and conditions of the Agreement; provided, however, that any consultants’ or agents’ access and use of the Platform shall be limited to their provision of services to you. You are responsible for the acts and omissions of your Authorized Users and any other person who accesses and uses the Platform using any of your or your Authorized Users’ access credentials.

2.4 “Beta Features” means pre-release features, functionalities, or modules of the Platform that are made available to you to use and evaluate.

2.5 “Billing Information” means any of your or your customers’ billing information, including, without limitation, bank account numbers, credit card or debit card numbers, account details, ACH information, and similar data.

2.6 “Confidential Information” means: (i) with respect to Fishtown Analytics, the Platform, the Website, and any and all source code relating thereto and any other non-public information or material regarding our legal or business affairs, financing, customers, properties, pricing, or data; (ii) with respect to you, your Data and any other non-public information or material regarding your legal or business affairs, financing, customers, properties, or data; and (iii) with respect to each Party, the terms and conditions of each Agreement. Notwithstanding any of the foregoing, Confidential Information does not include information which: (a) is or becomes public knowledge without any action by, or involvement of, the Party to which the Confidential Information is disclosed (the “Receiving Party”); (b) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the “Disclosing Party”); (c) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (d) is obtained by the Receiving Party without restrictions on use or disclosure from a third party.

2.7 “Data” means: (i) any data that you or your Authorized Users submit to the Platform; and (ii) any data that you or your Authorized Users extract, transfer, and load onto the Servers via the Platform.

2.8 “Deliverables” means any deliverables that we are to develop in the performance of our Professional Services.

2.9 “Destructive Elements” means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Platform or any other associated software, firmware, hardware, computer system, or network (including, without limitation, “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,”

“devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices) or any other harmful, malicious, or hidden procedures, routines or mechanisms that would cause the Platform to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications, or otherwise interfere with operations.

2.10 “Fees” means the Subscription Fees, any Professional Services Fees, and any other fees we charge for our products, services, or data, as set forth in the applicable Order.

2.11 “Free Products” means tools, features, functionalities, or modules of the Platform that are made available to you to use at no charge.

2.12 “Initial Subscription Term” means the initial period when we will provide you the Service, as set forth in the applicable Order.

2.13 “Order” means: (i) a transaction you electronically process via the Platform and/or the Website either during the subscription enrollment process or after enrollment when you wish to upgrade your Account Parameters, subscribe to additional features, or order any Professional Services; or (ii) an order form for the Service and/or any Professional Services mutually executed by the Parties that sets forth, among other things, the Account Parameters and the attendant Subscription Fees when you are ordering the Service and a description of the Professional Services to be performed, including any applicable specifications, service levels, milestones, and Deliverables and the Professional Services Fees when you are ordering Professional Services.

2.14 “Overage” means any use of the Platform in excess of the Account Parameters.

2.15 “Party” means you or us, as applicable, and “Parties” means you and us collectively.

2.16 “Platform” means our proprietary, cloud-based platform, as set forth in the applicable Order.

2.17 “Professional Services” means any professional services that we provide to you pursuant to an Order, such as training, installation, integration, or consulting services.

2.18 “Professional Services Fees” means the fees we charge for the Professional Services, as set forth in the applicable Order.

2.19 “Prohibited Content” means content that: (i) is illegal under applicable law; (ii) contains Sensitive Personal Information; (iii) violates any third party’s intellectual property rights, including, without limitation, copyrights, trademarks, patents, and trade secrets; (iv) contains indecent or obscene material; (v) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; (vi) promotes unlawful or illegal goods, services, or activities; (vii) contains false, misleading, or deceptive statements, depictions, or sales practices; (viii) contains Destructive Elements; or (ix) is otherwise objectionable to us in our sole, but reasonable, discretion.

2.20 “Renewal Subscription Terms” means any renewal periods after the Initial Subscription Term during which we will provide you the Service, as forth in the applicable Order.

2.21 “Sensitive Personal Information” means personal data, the loss of which would trigger a data breach notification requirement, and includes, but is not limited to, Billing Information, financial information, health information, or country identification number (e.g. Social Insurance Number, Social Security Number, or other governmentally-issued identification number such as driver’s license or passport number).

2.22 “Servers” means the servers owned or controlled by you or your third-party hosting providers, which shall host the Data before and after it is transformed via the Platform.

2.23 “Service” means our provision to you of access to and usage of the Platform through the Website as set forth in the applicable Agreement.

2.24 “Subscription Fees” means the fees for the Service set forth in the applicable Order.

2.25 “Subscription Term” means the Trial Period, if any, the Initial Subscription Term, and any Renewal Subscription Terms, collectively.

2.26 “Trial Period” means any period during which we provide you the Service on a trial basis, as set forth in the applicable Order.

2.27 “Website” means any website through which we provide access to the Platform.

2.28 “Work Product” means all works of authorship (whether or not fixed in a tangible medium of expression); any invention (whether or not patentable) and all related know-how, designs, mask works, formulae, processes, manufacturing techniques, trade secrets, and ideas; trademarks, service marks, and logos; software; and all other copyrightable or patentable works conceived, developed, reduced to practice, made, or created (or caused to be conceived, developed,

reduced to practice, made, or created) by Fishtown Analytics (solely or jointly with others) as part of or in connection with the providing of the Professional Services, including all Deliverables.

3. TRIAL PERIOD AND SUBSCRIPTION SERVICE.

3.1 Trial Period. * If you register for a trial, we will provide the Service to you free of charge during the Trial Period.

* Following the Trial Period, if you have not selected a paid subscription, your access to the Platform will be limited to Free Products, and we will automatically set capacity limitations

* During the Trial Period, our representations and warranties set forth in Section 11.1 and Section 11.2 shall not apply, and we will not be liable to you for damages of any kind related to the Agreement, including, without limitation, your use of the Platform or Website.

3.2 Subscription Service. During the Subscription Term, we will provide you the Service subject to the terms and conditions of the Agreement, including, without limitation, the Account Parameters set forth in the Order. In connection with any subscription: (i) you are solely responsible for securing sufficient capacity on the Servers for the Data and for hosting and maintaining the Servers; and (ii) you shall provide us all information (such as access credentials and Server information) necessary process the Data on the Servers. For security reasons, you should provide the information required under subsection (ii) only through the Platform and not through e-mail, our Help Desk, or any other channel.

3.3 Changes to Service. At any time, you may subscribe to additional features of the Service and/or upgrade the Account Parameters by agreeing to a new Order.

3.4 Modifications. We may modify the Platform and our Website from time to time by adding or deleting features to improve the user experience.

3.5 Customer Support. We will provide customer support as described on the Website or Platform. Primary technical information is provided through documentation available on the Platform.

3.6 Beta Features. From time to time, we may invite you to try Beta Features. You may accept or decline any such trial at your sole discretion. An important part of this beta process is getting real-world testing of the Beta Features before a general release. If you agree to participate in a beta trial, the following additional terms and conditions will apply:

- You agree to use and test the Beta Features and to provide timely feedback, comments, and suggestions (“Feedback”) to our team.
- You agree that we shall be free to use, reproduce, disclose, and otherwise exploit any and all such Feedback without compensation or attribution to you.
- You acknowledge that Beta Features are for evaluation purposes only and not for production use, are not considered part of the Service under the Agreement, are not supported, are provided “AS IS” with no warranties of any kind, and may be subject to additional terms.
- Unless otherwise stated, any Beta Feature trial period will expire upon the date that a version of the Beta Feature becomes generally available or we elect to discontinue such Beta Feature.
- We may discontinue Beta Features at any time in our sole discretion and may never make them generally available.
- WE WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A BETA FEATURE, AND YOU USE ANY BETA FEATURE AT YOUR OWN RISK.

3.7 Free Products. We may, in our sole discretion, provide Free Products. You may use such products with or without our paid products at your sole discretion. If you use any or all of our Free Products, the following additional terms and conditions will apply:

- You acknowledge that Free Products are not considered part of the Service under the Agreement, are not supported, are provided “AS IS” with no warranties of any kind, and may be subject to additional terms.
- We may discontinue Free Products (or your access to any Free Products) at any time in our sole discretion
- WE WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A FREE PRODUCT, AND YOU USE ANY FREE PRODUCT AT YOUR OWN RISK.

4. FEES AND PAYMENT.

4.1 Fees. The Fees and any applicable Taxes (as defined below) are due and payable as set forth below and in the applicable Order. Unless otherwise set forth in the applicable Order, we may increase the Fees on a prospective basis by providing you written notice of such increase at least forty-five (45) days in advance. Payments that are past due shall accrue interest at the lesser of one and one half percent (1.5%) per month, or the maximum rate permitted by law. We shall be entitled to recover all reasonable costs of collection (including reasonable attorneys’ fees, expenses, and costs) incurred in attempting to collect undisputed payments from you that are more than thirty (30) days delinquent.

4.2 Taxes. The Fees do not include federal, provincial, or local sales, PST, GST, HST, VAT, foreign withholding, use, property, excise, service, or similar transaction taxes (“Taxes”) now or hereafter levied, all of which shall be for your account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to us prior to the execution of the Agreement. If we are required to pay Taxes on your behalf, we shall invoice you for such Taxes, and you shall reimburse us for such amounts in accordance with this Section 4. You hereby agree to defend, indemnify, and hold harmless us and our officers, directors, managers, employees, and agents from any and all liabilities, costs, and expenses (including reasonable attorneys’ fees) in connection with any Taxes and related costs, interest, and penalties paid or

payable by us on your behalf. For the avoidance of doubt, we shall be responsible for any taxes related to our income, property, franchise, or employees.

4.3 Payment by Credit Card and ACH Transactions. You hereby authorize us, as applicable, to charge your credit card or other payment instrument or issue an ACH transaction, as follows: (i) for Subscription Fees, we may, as applicable, automatically charge (or issue an ACH transaction for) them and any applicable Taxes in advance on the periodic basis (i.e., monthly or annual) set forth in the applicable Order; (ii) for Overages and/or any upgrades to the Service that you order pursuant to Section 3.3, we may, as applicable, automatically charge (or issue an ACH transaction for) the associated Overages and/or Subscription Fees and any applicable Taxes in arrears or at the time of the order, respectively. You further authorize us to use a third party to process payments and hereby consent to the disclosure of your Billing Information to such third party. You may receive a receipt upon our receipt of payment or you may obtain a receipt from the Platform to track your subscription status.

4.4 Payment Against Invoice. If you are paying any Fees and Taxes by invoice, we will invoice you as follows: (i) for Subscription Fees, we will invoice you in advance on the periodic basis (i.e., monthly or annual) set forth in the applicable Order; (ii) for any upgrades to the Service that you order pursuant to Section 3.3, we will invoice you at the time of the order; (iii) for any Overages, we will invoice you in arrears on a monthly basis; (iv) for any Professional Services for a set number of hours, we will invoice you the associated Professional Services Fees and any applicable Taxes in advance in full; and (v) for any Professional Services of a recurring nature, we will invoice you the associated Professional Services Fees and any applicable Taxes in advance on the same periodic basis that we invoice you the Subscription Fees for the Service to which the Professional Services relate. All amounts invoiced are due and payable upon your receipt of the invoice, unless otherwise specified in the Order.

4.5 Payment Information. You will keep your contact information, Billing Information, and credit card information (where applicable) up to date. Changes may be made on your billing page on the Website.

4.6 Non-Cancelable and Non-Refundable. Except as expressly stated in Section 6.4 and Section 13.3, all Fees and Taxes payable under any Agreement, including all Order Forms, are non-cancelable, and all payments made are non-refundable.

5. TERM, TERMINATION, AND SUSPENSION.

5.1 Term. These Master Terms and Conditions commence on the date you first accept them and continue until terminated pursuant to Section 5.2 (the "Term"). The Subscription Term shall be set forth in the applicable Order.

5.2 Termination. Each Party can terminate these Master Terms and Conditions at any time on written notice to the other Party provided there are no active Orders then in effect. Either Party may terminate an Agreement: (i) during the Trial Period, if any, in which case the termination shall take immediate effect; (ii) for month-to-month subscriptions, at any time outside the Trial Period, in which case the termination shall take effect on the next monthly anniversary date; (iii) for subscriptions that are not month-to-month, on written notice to the other Party if such other Party has breached the Agreement and failed to cure such breach within thirty (30) days of receiving written notice thereof; or (iv) at any time if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors, in which case the termination shall take immediate effect. We may terminate an Agreement upon written notice to you under the limited circumstances set forth in Section 12.3 below.

5.3 Suspension for Non-Payment. We may suspend the Service and/or the Professional Services immediately if any undisputed payment due to us is over thirty (30) days past due, and such failure to pay will be considered a material breach of the Agreement. We will not suspend the Service or the Professional Services while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If the Service or the Professional Services are suspended for non-payment, we may charge a re-activation fee to reinstate them. You will promptly reimburse us for any reasonable expenses of collection, including costs, disbursements, and reasonable outside legal fees we incur, to the extent necessitated by your refusal to pay amounts that you are not disputing in good faith.

5.4 Effect of Expiration or Termination. Upon termination or expiration of an Agreement, we will stop providing the Service and the Professional Services, and you will stop all access to and use of the Website and Platform. If you terminate an Agreement pursuant to Section 6.2(iii) or Section 6.2(iv), we will promptly refund any prepaid but unused Subscription Fees. If we terminate an Agreement pursuant to Section 6.2, you will promptly pay, or we may automatically charge your credit card or other payment instrument, all unpaid Fees and Taxes through the end of the Term. Upon written request and subject to Section 7.4, each Party shall either return to the other Party (or, at such other Party's instruction, destroy and provide such other Party with written certification of the destruction of) all documents, computer files, and other materials containing any of such other Party's Confidential Information that are in its possession or control.

5.5 Survival. The following provisions will survive expiration or termination of the applicable Agreement: Section 1 ("Nature of the Agreement"); Section 2 ("Definitions"); Sections 3.6(b), 3.6(c), and 3.6(f) ("Beta Features"); Section 3.7 ("Free Products"); Section 4.2 ("Ownership of Work Product and Use of Deliverables"); Section 5 ("Fees and Payment") until you have paid all Fees and applicable Taxes; Section 6.4 ("Effect of Expiration or Termination"); Section 7 ("Confidentiality"); Section 8.4 ("Aggregated Data"); Section 9 ("Intellectual Property"); Section 11.4 ("Disclaimer"); Section 12 ("Limitation of Liability"); Section 13 ("Indemnification"); Section 14 ("General Provisions"), and this Section 6.5 ("Survival").

6. CONFIDENTIALITY.

The Receiving Party will: (i) protect the confidentiality of the Disclosing Party's Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care; (ii) not use any of the Disclosing Party's Confidential Information for any purpose outside the scope of the Agreement; and (iii) not disclose the Disclosing Party's Confidential Information to any party other than its employees, contractors, advisors, and agents, who are bound by obligations of confidentiality as restrictive as those set forth in the Agreement. If the Receiving Party is legally compelled to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will provide the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section. If such protective order or other remedy is not obtained or the Disclosing Party waives compliance with the provisions of this Section, the Receiving Party may furnish only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed, and will use its best efforts to insure that confidential treatment shall be afforded such disclosed portion of the Confidential Information.

7. YOUR DATA.

7.1 Your Data. We will use your Data only to provide the Service and the Professional Services and only as permitted by the Agreement and our privacy policy, located at www.getdbt.com/cloud/privacy-policy. You acknowledge and agree that in order to provide the Service and/or the Professional Services, we may: (i) copy your Data that you store on our servers or on a third-party service to which you facilitate our access via an application programming interface ("API") or other means; (ii) modify and transfer this Data back to such third party, all subject to such third party's terms of service governing this Data; and (iii) analyze the Data to determine which other products and services may be relevant to you. We may also retain a copy of your Data for a reasonable period of time in order to provide the Service and/or the Professional Services or as otherwise required by applicable law. We may retain an archival copy of your Data, unless you provide us written notice to delete your Data. You shall have sole responsibility for the accuracy, quality, and legality of your Data. Unless we are managing an instance with our third-party hosting provider on your behalf, we will store your Data only as long as needed to provide the Service.

7.2 Sensitive Personal Information. You agree to remove or anonymize all Sensitive Personal Information before transferring your Data to us. We will not have any liability that may result from your disclosure of such information to us.

7.3 Data Security. We shall employ commercially reasonable physical, administrative, and technical safeguards to secure your Data on the Platform from unauthorized use or disclosure. Some of the Data may be subject to governmental regulation or otherwise may require security measures beyond those set forth herein. Unless we have first agreed in writing to provide such additional required security measures, we shall have no obligation to do so or any liability in connection therewith.

7.4 Aggregated Data. We may monitor the performance and use of the Website and the Platform by all of our customers, combine this data (the "Usage Data") with other data (including your Data), and use such combined data in an aggregate and anonymous manner. You hereby agree that we may collect, use, and publish such aggregate data for the purpose of creating aggregated and anonymized statistics regarding our customer base. Examples of our use of such aggregate data include, but are not limited to, statistics aggregated across all of our clients on metrics such as size of data sets, the number of users of the Website and Platform, revenue, number of transactions, and growth rates.

7.5 European Economic Area. If you are established in, or any of your Data contains the personal data of individuals in, the European Economic Area, we will process any personal data you submit to us when you use the Service in accordance with the [dbt Cloud Data Protection Addendum](#), which will be supplemental to the Agreement. To submit a signed Data Protection Addendum to Fishtown, please use the [DPA Submission Form](#).

8. INTELLECTUAL PROPERTY.

All right, title, and interest in and to the Platform, the Website, the Usage Data, and the Work Product, including all modifications, improvements, adaptations, enhancements, or translations made thereto, and all proprietary rights therein, shall be and remain our sole and exclusive property. Subject to Section 7.1 and Section 7.4, all right, title, and interest in and to your Data, including all modifications, improvements, adaptations, enhancements, or translations made thereto, and all proprietary rights therein, shall be and remain your sole and exclusive property.

9. USE AND LIMITATIONS OF USE; COOPERATION

9.1 Restrictions on Use. You will not (and will not authorize, permit, or encourage any third party to): (i) allow anyone other than Authorized Users to access and use the Platform or the Website; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Platform or the Website; (iii) modify, adapt, or translate the Platform or the Website; (iv) make any copies of the Platform or the Website; (v) resell, distribute, or sublicense the Platform or the Website without our prior written permission in each instance, which we may withhold in our sole and absolute discretion; (vi) remove or modify any proprietary marking or restrictive legends placed on the Platform or the Website; (vii) use the Platform or Website in violation of any applicable law or regulation, in order to build a competitive product or service, or for any purpose not specifically permitted in the Agreement; or (viii) introduce, post, upload, transmit, or otherwise make available to or from the Platform or the Website any Prohibited Content.

9.2 Compliance. We have the right to monitor your compliance with the applicable Account Parameters and the other provisions of the Agreement. If any such monitoring reveals that you have exceeded any Account Parameters or other usage limitations or otherwise are not using the Website or the Platform in compliance with the Agreement, then you will

remedy any such non-compliance within five (5) business days of receiving notice from us, including, if applicable, through the payment of additional Subscription Fees, which we may automatically charge and process in accordance with Section 5.

9.3 Onboarding of Authorized Users. Authorized Users must log into the Website. During the initial registration, Authorized User will be prompted to create an account, which includes a sign-in name ("Sign-In Name"), a password ("Password"), and perhaps certain additional information that will assist in authenticating the Authorized User's identity when he or she logs-in in the future ("Unique Identifiers"). When creating the account, Authorized Users must provide true, accurate, current, and complete information. You are solely responsible for the confidentiality and use of Authorized Users' Sign-In Names, Passwords, and Unique Identifiers, as well as for any use, misuse, or communications entered through the Website or the Platform. You will promptly inform us of any need to deactivate a Password or Sign-In Name or change any Unique Identifier. We reserve the right to delete or change Authorized Users' Passwords, Sign-In Names, or Unique Identifiers at any time and for any reason. We will not be liable for any loss or damage caused by any unauthorized use of an Authorized User's account.

9.4 Cooperation. You acknowledge that our ability to implement and provide the Service and the Professional Services is dependent on your providing us complete, accurate, up-to-date, and timely Data, information, and other materials. You agree to reasonably cooperate with us; to provide such data, information, and other materials to us; and to cause your personnel and third-party service providers to do the same.

10. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

10.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into the Agreement; (ii) the execution, delivery, and performance of the Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party; and (iii) it has the full power, authority, and right to perform its obligations and grant the rights it grants hereunder.

10.2 Additional Representations and Warranties of Fishtown Analytics. In addition to the representations and warranties set forth in Section 10.1, we represent and warrant to you that the support services and any Professional Services shall be performed in a professional and workmanlike manner.

10.3 Your Additional Representations and Warranties. In addition to the representations and warranties set forth in Section 10.1, you represent and warrant to us that your Data contains no Prohibited Content and that you have the right to provide us the Data in accordance with the Agreement.

10.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1, SECTION 10.2, AND SECTION 10.3, THE SERVICE, THE PLATFORM, THE WEBSITE, ANY BETA FEATURES, ANY FREE PRODUCTS, THEIR COMPONENTS, THE DOCUMENTATION, THE SUPPORT SERVICES, THE PROFESSIONAL SERVICES, THE DELIVERABLES, AND ANY OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND NEITHER PARTY MAKES ANY WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THE AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT EITHER PARTY MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

11. LIMITATION OF LIABILITY.

EXCEPT IN CONNECTION WITH YOUR BREACH OF SECTION 9.1, YOUR FAILURE TO PAY ANY AMOUNTS DUE AND OWING, AND A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER: (I) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THE AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF; AND (II) EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER AN AGREEMENT WILL NOT EXCEED THE FEES PAID BY YOU UNDER SUCH AGREEMENT DURING THE PERIOD SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

12. INDEMNIFICATION.

12.1 Indemnification by Fishtown Analytics. Subject to Section 12.2, we will defend, indemnify, and hold harmless you and your officers, directors, managers, and employees from any and all liabilities, costs, and expenses (including reasonable attorneys' fees) in connection with any third-party action, claim, or proceeding that the use of the Platform and/or the Website in accordance with the Agreement infringes or misappropriates any third-party copyrights or trade secrets; provided, however, that the foregoing obligations shall be subject to your: (i) promptly notifying us of the claim; (ii) providing us, at our expense, with reasonable cooperation in the defense of the claim; and (iii) providing us with sole control over the defense and negotiations for a settlement or compromise.

12.2 Exceptions to Our Indemnification Obligations. We are not obligated to indemnify, defend, or hold you or any third party harmless hereunder to the extent: (i) the claim arises from or is based upon your or your Authorized Users' use of: (a) the Beta Features and/or the Free Products; (b) the Platform and/or the Website not in accordance with the documentation or the Agreement; or (c) any unauthorized modifications, alterations, or implementations of the Platform and/or the Website made by you or at your request (other than by us); (ii) the claim arises from use of the Platform and/or the Website in combination with unauthorized modules, apparatus, hardware, software, or services not supplied or specified in writing by us; or (iii) the claim arises from any use of the Platform and/or the Website for which they were not designed.

12.3 Infringement Claims. In the event that we reasonably determine that the Platform and/or the Website is likely to be the subject of a claim of infringement or misappropriation of third-party rights, we shall have the right (but not the obligation), at our own expense and option, to: (i) procure for you the right to continue to use the Platform and/or the Website as set forth hereunder; (ii) replace the infringing components of the Platform and/or the Website with other components with the equivalent functionality; or (iii) suitably modify the Platform and/or the Website so that it is non-infringing and functionally equivalent. If none of the foregoing options are available to us on commercially reasonable terms, we may terminate the applicable Agreement without further liability to you, and we shall refund to you an amount equal to a pro rata portion of any Subscription Fees prepaid by you for the Service. This Section 12.3, together with the indemnity provided under Section 12.1, states your sole and exclusive remedy, and our sole and exclusive liability, regarding infringement or misappropriation of any intellectual property rights of a third party.

12.4 Indemnification by You. You will defend, indemnify, and hold harmless us and our officers, directors, managers, and employees from any and all liabilities, costs, and expenses (including reasonable attorneys' fees) in connection with any third-party action, claim, or proceeding arising from your or any of your Authorized Users' breach or violation of the Agreement; provided, however, that the foregoing obligations shall be subject to our: (i) promptly notifying you of the claim; (ii) providing you, at your expense, with reasonable cooperation in the defense of the claim; and (iii) providing you with sole control over the defense and negotiations for a settlement or compromise.

13. GENERAL PROVISIONS.

13.1 Assignment. Neither Party may assign or otherwise transfer any of its rights or obligations under an Agreement without the prior, written consent of the other Party; provided, however, that a Party may, upon written notice to the other Party and without the consent of the other Party, assign or otherwise transfer an Agreement: (i) to any of its Affiliates; or (ii) in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or otherwise), provided that in all cases, the assignee agrees in writing to be bound by the terms and conditions of the Agreement. Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, each Agreement will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. We may subcontract the Professional Services, in whole or in part, in our discretion.

13.2 Waiver. No failure or delay by either Party in exercising any right or remedy under an Agreement shall operate or be deemed as a waiver of any such right or remedy.

13.3 Governing Law. Each Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard for choice of law provisions thereof.

13.4 Exclusive Forum. The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in Philadelphia, Pennsylvania for all suits, actions, or proceedings directly or indirectly arising out of or relating to any Agreement, and waive any and all objections to such courts, including but not limited to, objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the exclusive jurisdiction of such courts in any suits, actions, or proceedings arising out of or relating to any Agreement.

13.5 Modifications. Any modification to an Agreement must be in a writing signed by both Parties; provided, however, that we may modify these Master Terms and Conditions at any time by posting such modification on the Platform and providing you notice of such update, and any such modification shall automatically go into effect thirty (30) days after it is so posted.

13.6 Notices. All notices required under an Agreement (other than routine operational communications) must be in writing in one of the following forms. Notices shall be effective upon: (i) actual delivery to the other Party, if delivered in person, or by facsimile, or by e-mail, or by national overnight courier; or (ii) five (5) business days after being mailed via U.S. postal service, postage prepaid.

13.7 Independent Contractors. The Parties are independent contractors. Neither Party shall be deemed to be an employee, agent, partner, joint venturer, or legal representative of the other for any purpose, and neither shall have any right, power, or authority to create any obligation or responsibility on behalf of the other.

13.8 Severability. If any provision of an Agreement is found invalid or unenforceable by a court of competent jurisdiction, that provision shall be amended to achieve as nearly as possible the same economic effect as the original provision, and the remainder of the Agreement shall remain in full force and effect. Any provision of an Agreement, which is unenforceable in any jurisdiction, shall be ineffective only as to that jurisdiction, and only to the extent of such unenforceability, without invalidating the remaining provisions hereof.

13.9 Force Majeure. Except for your obligations to pay any sums due hereunder, neither Party shall be deemed to be in breach of an Agreement for any failure or delay in performance to the extent caused by reasons beyond its reasonable control, including, but not limited to, acts of God, earthquakes, strikes, or shortages of materials or resources.

13.10 Third-Party Beneficiaries. Except as set forth in Section 13.1 and Section 13.4, there are no other third-party beneficiaries under any Agreement.

13.11 Export. You shall not permit Authorized Users or any third parties to access or use the Platform, the Website, or the Service in violation of any United States export embargo, prohibition, or restriction.

13.12 Complete Understanding. These Master Terms and Conditions and the executed Order to which they are attached constitute the final and complete agreement between the Parties regarding the subject matter hereof, and supersedes any prior or contemporaneous communications, representations, or agreements between the Parties, whether oral or written, including, without limitation, any confidentiality or non-disclosure agreements.

13.13 Counterparts. Any Order may be executed electronically or in counterparts (which may be exchanged by facsimile or PDF), each of which will be deemed an original, but all of which together will constitute the same Agreement.