

## STANDARD TERMS AND CONDITIONS

A signed Order Confirmation from both parties will constitute acceptance of this Agreement. Any changes or additions to an Order Confirmation, these Standard Terms and Conditions or Schedule 1 must be agreed in writing by both parties. Gorkana reserves the right to determine whether or not such changes are included within the Charges.

### 1 DEFINITIONS

<b>Analysis Services</b>	means analysis of Input Material, as well as Cuttings and Mentions delivered by Gorkana in Monitoring and Social Media Services, in accordance with the Client's requirements set out in the Order Confirmation or otherwise agreed in writing;
<b>Automated Analysis</b>	means Analysis Services that are processed programmatically;
<b>Charges</b>	mean the charges payable by the Client to Gorkana for the Services as set out in the Order Confirmation;
<b>CLA</b>	means The Copyright Licensing Agency, Saffron House, 6-10 Kirby Street, London, EC1N8TS ( <a href="http://www.cla.co.uk">www.cla.co.uk</a> );
<b>Client</b>	means the person or persons named as the Client in the Order Confirmation for whom Gorkana has agreed to provide the Services in accordance with this Agreement;
<b>Client Content</b>	means any and all content, software and other information or materials owned or licensed by Client and provided by Client to Gorkana for use pursuant to this Agreement including the Client Data and the Input Material;
<b>Client Data</b>	means the data inputted onto the Media Database by the Client or on its behalf (including the Client's activity reports and additional journalist information inputted by the Client);
<b>Commencement Date</b>	shall have the meaning set out in the Order Confirmation;
<b>Confidential Information</b>	means any information or materials of any kind and in any form (whether disclosed before or after the date of this Agreement) relating to amongst others the disclosing party or any associated company of the disclosing party including information or materials (or copies thereof) relating to the disclosing party's business plans, intellectual property (to the extent that the same are not in the public domain), customers or suppliers lists, formats, plans or proposals or any other information whose confidential nature can be reasonably ascertained or presumed by the receiving party;
<b>Copyright Body</b>	means the NLA, CLA or other copyright owners or publishers;
<b>CRM</b>	means a software feature that is part of the Database Service which allows the Client to log their interactions with journalists;
<b>Cutting</b>	means an article from any media source other than Social Media, including but not limited to printed press or printed or digital editions of journals,

	magazines, periodicals, broadcast or other sources of news or current affairs;
<b>Database Licensed Materials</b>	means any of the following: the Media Database, the Gorkana Data, Gorkana Alerts, Forward Features, Media Requests and CRM;
<b>Database Services</b>	means the provision of Database Licensed Materials as set out in the Order Confirmation;
<b>Excessive Volume</b>	means monthly volumes of Cuttings at least 250% of the applicable Volume Band set out in the Order Confirmation;
<b>Excessive Volume Charge</b>	means a charge equivalent to the Volume Band charge which Gorkana shall have the right to add to the Charges each time the number of Cuttings that the Client is actually receiving reaches Excessive Volume in any month during the Term;
<b>Fair Usage Limits</b>	is a Mentions limit placed on Social Media Query-based Subscriptions as decided upon by Gorkana to ensure the optimal performance of the Service for all Clients;
<b>Fixed Term</b>	means an Agreement that has a 12 month Initial Term or as defined in the Order Confirmation;
<b>Force Majeure</b>	means in relation to either of the parties hereto any circumstances beyond the reasonable control of that party;
<b>Forward Features</b>	means a service of searchable data on planned features and supplements from a range of publications and media across the UK including email updates of relevant forward feature synopsis information;
<b>Gorkana Alerts</b>	means a daily alerts service covering the UK, Europe and the U.S. which details editorial changes in the media and focuses on (a) editorial changes from Monday to Thursday and (b) responsible editorial members on duty on the national newspapers over the weekend on Friday;
<b>Gorkana Content</b>	means any and all content, software and other information or materials owned or licensed by Gorkana and provided by Gorkana to Client for use or otherwise used by Gorkana pursuant to this Agreement including the Database Licensed Materials, the Media Database, the Gorkana Websites;
<b>Gorkana Data</b>	means journalist and influencers data researched by Gorkana from UK based media or other region specific media and subscribed to by Client (applicable if Database Services have been selected in the Order Confirmation and Gorkana Data included in Schedule 1). Gorkana Data outside of UK based media may have specific sector focus. At the date of this Agreement, the European data covers mainly financial and trade media within France, Germany, Italy, Switzerland, Austria, Belgium Netherlands and Luxembourg; while the U.S. data covers mainly financial services, legal professional and healthcare data although Gorkana reserves the right to change the scope and size of this coverage during the Term. For clarity,

	Gorkana Data excludes Client Data, Forward Features or Media Request data;
<b>Gorkana Radar</b>	means the password protected online platform accessible on, <a href="http://radar.gorkana.com">radar.gorkana.com</a> , <a href="http://mediacoverage.co.uk">mediacoverage.co.uk</a> or mygorkana.com on which Mentions are delivered;
<b>Gorkana Websites</b>	means password protected online portals of Gorkana and its affiliates made available by Gorkana to the Client in order that the Client may access the Services including but not limited to mygorkana.com, gorkanadatabase.com, <a href="http://gorkanapr.com">gorkanapr.com</a> , <a href="http://radar.gorkana.com">radar.gorkana.com</a> , <a href="http://mediacoverage.co.uk">mediacoverage.co.uk</a> , <a href="http://metrica.net/ukpulse/">metrica.net/ukpulse/</a> , <a href="http://apps.metrica.net/mm3/">apps.metrica.net/mm3/</a> , <a href="http://www.metrica.net">http://www.metrica.net</a> ;
<b>Initial Term</b>	shall have the meaning set out in the Order Confirmation;
<b>Input Material</b>	means any and all necessary Cuttings, documents, pictures or other images or other materials, and any data or other information provided by or on behalf of the Client to Gorkana to enable Gorkana to provide the Services;
<b>Intellectual Property Rights:</b>	means all present and future rights associated with works of authorship including patent rights and other industrial property rights, trade marks, designs, trade or business names, domain names, copyright and moral rights, database rights, topography rights, rights in know-how, trade secrets, rights of confidence and any other intellectual property rights or right of a similar nature anywhere in the world, whether arising by operation of law or otherwise, registered or unregistered, now known or hereafter invented and including applications for such rights and all extensions, renewals and reversions of such rights;
<b>International Monitoring</b>	means Monitoring Services from Northern Irish and non UK publications and media outlets;
<b>Managed Radar</b>	means a Service under which Gorkana will provide set up and ongoing maintenance of the Client's Social Media Service;
<b>Media Analysis Report</b>	means any report provided by Gorkana as part of the deliverable of the Analysis Services (applicable if Analysis Services have been selected in the Order Confirmation and Media Analysis Report included within Schedule 1), whether in documentary or electronic form;
<b>Media Database</b>	means Gorkana's proprietary database combining the Gorkana Data and Gorkana's press release distribution tool, accessible by means of the Gorkana Websites;
<b>Media List</b>	means a media list maintained and monitored by Gorkana, an updated copy of which is available at <a href="http://www.gorkana.com">www.gorkana.com</a> , that serves as a guide to the print publications, broadcast stations, programmes, newswires, internet sources and/or other media monitored by Gorkana;
<b>Media Request(s)</b>	means a service of requests from journalists for case studies, expert comment, competition prizes, interviewees or products sent to Gorkana from

	journalists for distribution on a daily basis which includes tailored sector based email alerts;
<b>Mentions</b>	means the WebPages or sections of WebPages that are found as a result of Queries set up on Social Media Services;
<b>Mentions-based Subscription</b>	means a Social Media Service where a Client can subscribe to an unlimited number of Queries but where the total number of Mentions is limited to a pre-defined amount;
<b>Monitoring Services</b>	means the provision of press cuttings, summaries, summary translations, downloads, transcripts and/or other content, services or information (whether in hard or soft copy form) that is provided by Gorkana to the Client in connection with the Services, whether in documentary or electronic format, in accordance with the Client's requirements set out in the Order Confirmation or otherwise agreed in writing;
<b>My Archive</b>	means a service offered by NLA giving access to cuttings beyond 28 days;
<b>NLA</b>	means The Newspaper Licensing Agency of 7 - 9 Church Road, Wellington Gate, Tunbridge Wells TN1 1NL ( <a href="http://www.nla.co.uk">www.nla.co.uk</a> );
<b>Order Confirmation</b>	means the written order confirmation between Gorkana and the Client, confirming the products and/or services that are to be provided by Gorkana to the Client;
<b>Permitted User</b>	means an individual employee or third party contractor of the Client who is authorised in writing by Gorkana and the Client to receive or access the Services;
<b>Query / Queries</b>	means a word or phrase tracked for Mentions in Social Media Services;
<b>Query-based subscription</b>	means a Service where a Client can subscribe to a defined number of Queries and where the Mentions are subject only to a Fair Usage Limit;
<b>Renewal Term</b>	shall have the meaning set out in clause 2.1;
<b>Rights Restricted Material</b>	means third party material and/or content in respect of which Gorkana does not own or has not been granted the necessary or relevant rights, permissions or licenses for use pursuant to this Agreement;
<b>Services</b>	means the services to be provided by Gorkana under this Agreement as selected in the Order Confirmation and as more particularly described in Schedule 1;
<b>Social Media</b>	means user generated content shared online through multiple channels including Twitter, blogs, video sharing sites, forums and message boards;
<b>Social Media Services</b>	means the tracking of Mentions in Social Media through the provision of a self service dashboard platform on <a href="http://radar.gorkana.com">radar.gorkana.com</a> or <a href="http://mygorkana.com">mygorkana.com</a> or <a href="http://mediacoverage.co.uk">mediacoverage.co.uk</a> in accordance with the Client's requirements set out in the Order Confirmation or otherwise agreed in writing;

<b>Streaming Broadcast</b>	means the broadcast Cuttings delivery that allows the consumption of video or audio content by the client;
<b>Territory</b>	means the United Kingdom; and
<b>Volume Band</b>	means the agreed maximum number of Cuttings per month for the Monitoring Services or the Analysis Services as set out in the Order Confirmation (applicable if Monitoring Services and/or Analysis Services have been selected within the Order Confirmation).

## 2 TERM

2.1 This Agreement shall commence on the Commencement Date and continue for the Initial Term and will renew for subsequent one (1) year periods (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless either party provides written notice to the other party at least thirty (30) days prior to the expiration of the then-current Initial Term or subsequent Renewal Term. Gorkana will send the Client a renewal notice, at least two (2) months in advance of the end of the Initial or Renewal Term.

2.2 Without prejudice to Gorkana's rights pursuant to clauses 5.7 to 5.8 (inclusive), if Gorkana wishes to vary or amend any contractual terms or Charges in this Agreement, it shall send to the Client, at least two (2) months in advance of the end of the Initial or Renewal Term, a written notice for the subsequent Renewal Term containing any variation in contractual terms or charges (a "**Revision**"), as part of or in addition to the renewal notice referenced in clause 2.1. The Client may reject the terms of any Revision and terminate this Agreement in writing provided it delivers notice of such termination to Gorkana at least thirty (30) days prior to the expiration of the then-current Initial Term or subsequent Renewal Term. If the Client accepts the terms of the Revision or does not respond to Gorkana within the foregoing time period (which shall constitute deemed acceptance), then this Agreement shall renew for a period of one (1) year on the revised terms contained in the Revision.

## 3 SUPPLY OF THE SERVICES

3.1 Gorkana shall provide the Services from the Commencement Date in accordance with this Agreement. Gorkana shall not be considered to be in breach of any of its obligations under this Agreement to the extent that performance of its obligations is prevented or delayed by any act or omission of Client nor shall Gorkana be liable for any losses sustained or incurred by the Client that arise from (a) such prevention or delay, (b) the Client's fraud or negligence, or (c) any Input Material or instructions provided by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form. Without prejudice to the generality of the foregoing, the Client agrees and acknowledges that in the event that the Client fails to provide or delays in providing Gorkana with access to such data, information and/or materials necessary for the performance of Gorkana's obligations pursuant to this Agreement, any applicable timescales to be achieved by Gorkana pursuant to the terms of this Agreement will be extended by such period as is reasonable and commensurate to the failure or delay caused by the Client.

3.2 Gorkana shall be entitled to assume that individuals employed by the Client have the necessary expertise and full authority to contractually bind the Client, request and approve changes or additions to the Services or this Agreement and otherwise act on Client's behalf in relation to the Services, unless advised in writing to the contrary by the Client.

3.3 Gorkana will offer such reasonable support and training to the Client as necessary for Client to comprehend and use the Services effectively but reserves the right to charge for any further support and training.

3.4 If additional charges apply under both clause 3.2 and 3.3, Gorkana shall not be required to carry out the change to the Services or additional training and support until the Client and Gorkana have agreed the additional charges in writing.

#### **4 CLIENT OBLIGATIONS**

4.1 The Client shall:

4.1.1 Co-operate with Gorkana in all matters relating to the Services; provide, in a timely manner, the Client Content and such other material, information and data as Gorkana may reasonably require to perform its obligations under this Agreement, and ensure that it is accurate in all material respects;

4.2 Neither party shall, without the prior written consent of the other party, at any time from the date of this agreement to the expiry of one (1) year after the termination of this Agreement, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee or consultant of the other party, other than as a result of a general advertising or other general recruitment campaign not specifically targeted at the other party's employees.

4.3 The Client is prohibited from making any permanent copy of any software used in the delivery of the Services or reverse engineering or decompiling any such software, or making derivative works incorporating any of the elements of it, or modifying or adapting it in any way, or extracting or re-utilising any data, save as is provided for in this Agreement.

#### **5 CHARGES**

5.1 In consideration of Gorkana providing the Services, the Client shall pay to Gorkana the Charges as specified in the Order Confirmation, and any additional sums that are agreed in writing between Gorkana and the Client for the provision of the Services.

5.2 Where the Client requests that the Services are provided to and/or invoiced to a third party, the Client shall remain liable for the payment of any Charges that relate to these Services.

5.3 All charges quoted to the Client for the provision of the Services are exclusive of any value added tax or applicable local sales tax for which the Client shall be additionally liable at the applicable rate from time to time.

5.4 Unless otherwise agreed, all fees due under the Agreement shall be made by the Client in pounds sterling and the Client shall be liable for any exchange rate fluctuations and currency conversion or other banking charges.

5.5 The Charges shall be paid by the Client within thirty (30) days of the date of Gorkana's invoice. If payment is not made on the due date, Gorkana shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of four per cent (4%) above the base rate of Barclays plc from the due date until the outstanding amount is paid in full.

5.6 Gorkana shall have the right to vary all Charges pursuant to clause 2.2.

5.7 Those aspects of the Services with charges based on Volume Bands of Cuttings will be specified in the Order Confirmation. These charges will be maintained by Gorkana for the duration of the Initial Term or Renewal Term subject to the average monthly volume of Cuttings not exceeding the relevant Volume Band set out in the Order Confirmation. If (a) the average volume of Cuttings during any consecutive three (3) month period of the Term exceeds the applicable Volume Band or (b) the Client requests a change to the Services that will result in the monthly volume of Cuttings averaging above the Volume Band, then the parties will, acting in good faith, negotiate a revised Volume Band and Charges to apply through to the end of the current Initial or Renewal Term. If the parties are unable to agree a revised Volume Band and Charges, Gorkana may either (a) restrict the Services to bring the Cutting volumes within the Volume Band or (b) terminate this Agreement, upon written notice to the Client. If in any month during the Term, the Client receives or is likely to receive an Excessive Volume of Cuttings, then Gorkana shall have the right, upon notification to the Client, to either (a) restrict the Services to bring the Cutting volumes within the applicable Volume Band or (b) increase the Charges for that month of Excessive Volume to include an Excessive Volume Charge.

5.8 Notwithstanding charges for Monitoring or Analysis Services can be based on Volume Bands of Cuttings, certain types of Cuttings will be charged in arrears on a variable price basis based on actual volume. These include but are not limited to Streaming Broadcast and International Monitoring Services sourced by Gorkana from third party suppliers. Any variable price charged Cuttings will be set out in the Order Confirmation.

## **6 INTELLECTUAL PROPERTY RIGHTS**

6.1 All Intellectual Property Rights belonging to a party prior to the signing of this Agreement will remain vested in that party. Gorkana will own all rights (including all Intellectual Property Rights) in the Gorkana Content. The Client will own all rights (including all Intellectual Property Rights) in the Client Content.

6.2 Nothing in this Agreement shall operate to transfer any Intellectual Property Rights from Gorkana to the Client.

6.3 Subject to the Services selected in the Order Confirmation and any restrictions related thereto, Gorkana hereby grants to the Client during the Term and in the Territory a non-exclusive, non-transferable licence to use such of the Gorkana Content for the Client's internal business use in the normal and proper course of its business as is strictly necessary to receive the benefit of the Services selected in the Order Confirmation and as more particularly described in Schedule 1.

6.4 The Client may print a reasonable number of extracts from the Services in hard copy solely for internal business purpose provided any and all copyright and proprietary notices are kept intact. The Client may not otherwise copy, alter, vary or modify or transfer its rights to use the Services to any third party unless Gorkana has given its prior written consent.

6.5 The Client agrees that it shall not at any time pass, whether directly or indirectly, to any competitor or potential competitor of Gorkana the Gorkana Content or any other information concerning Gorkana, the Services or its system or methodologies.

6.6 The Client shall promptly notify Gorkana in the event that it becomes aware of any unauthorised use of the Services or any actual or suspected infringement of any of Gorkana's Intellectual Property Rights.

6.7 Gorkana reserves the right to suspend provision of the Services and the Client's access to the Gorkana Content or any of them on becoming aware of any legal regulation, claim, or restriction which requires it to do so or which may expose it to any liability or claim if it does not do so. In this situation, Gorkana shall inform the Client in writing of such suspension of the Client's access. If such suspension continues for more than thirty (30) days, the Client shall be entitled to terminate this Agreement forthwith by notice in writing to Gorkana. Gorkana shall, in the event of termination under this clause and provided the Client is not at fault, without prejudice to any of the Client's other rights and remedies arising under this Agreement refund to the Client any Charges paid on a pro-rata basis from the date on which the Services are suspended up to and including the date on which termination of this Agreement takes effect or the Service recommences (as the case may be).

## **7 ACCESS RIGHTS**

7.1 Access to the Services and the Gorkana Websites is limited to Permitted Users and those specific systems and time periods authorised by Gorkana. Use of the Services and the Gorkana Websites during other time periods or by individuals not authorised by Gorkana is expressly prohibited.

7.2 Permitted Users accessing the Services and the Gorkana Websites externally shall do so only through secured systems. Gorkana will allocate each Permitted User with a unique username and password. In the event that any Permitted User with access to any of the Gorkana Websites ceases to be employed by the Client, or if the Client wishes to replace any individual, it shall notify Gorkana in writing and may nominate an alternative person to become a Permitted User. On receipt of such notice, Gorkana shall immediately cancel the relevant usernames and passwords and (where a new person is nominated by the Client) shall issue to the new person a fresh username and password to allow that person to gain access to the Service.

7.3 The Client shall use all commercial efforts to scan any Client Content it provides to Gorkana for any viruses, Trojan horses, disabling code, malware or similar hostile items. The Client agrees that, in the event a virus or similar item is found to have been introduced by the Client, the Client shall assist Gorkana (at the Client's sole expense) in eliminating them, mitigating their effects and restoring the affected systems to their prior state.

## **8 REPRESENTATIONS AND WARRANTIES**

8.1 Each party warrants, represents and undertakes to the other that:

8.1.1 it has full power and authority to enter into this Agreement;

8.1.2 it has not entered into (and will not enter into) any agreement with any third party which might conflict with the terms of this Agreement;

8.1.3 it is able to grant the rights granted or purported to be granted under the Agreement and is able fully to perform its obligations hereunder;

8.2 Gorkana represents and warrants that:

8.2.1 it shall use reasonable skill and care in the performance of its obligations under this Agreement;

8.2.2 it shall use commercially reasonable efforts to maximise the functioning time of the Gorkana Websites, and in the event of any downtime arising will strive to restore operation as soon as reasonably practicable, but any warranty, term or condition in respect of the content or operation of the Gorkana Websites is hereby specifically excluded.



8.3 The warranties expressly set out in this Agreement are the entire and exclusive warranties made by Gorkana to the Client with respect to the Services and Gorkana Content. Without prejudice to Gorkana's other obligations under this Agreement, to the maximum extent permitted by governing law, all other warranties and representations in respect of the Services and Gorkana Content, whether express or implied, are excluded, and, in particular, Gorkana does not warrant that the operation of the Services and Gorkana Content will be uninterrupted or error-free; or that the Services and Gorkana Content are of satisfactory quality, fit for any particular purpose, accurate or complete; or that use by the Client of the Services and Gorkana Content with any other software unless expressly authorised by Gorkana, or with inappropriate hardware, will not cause any disturbance to the Services and Gorkana Content or to such other software.

8.4 The Client represents and warrants that:

8.4.1 the Client Content including all information it provides upon registration, or at any time, about itself, its affiliates and users, is true, accurate, current and complete and that it will ensure that this information is kept accurate and up to date at all times. Gorkana may alter the Permitted User passwords from time to time upon reasonable prior written notice of the fact of alteration and the new password being given to the Client or with immediate effect if Gorkana reasonably believes a password is no longer secure;

8.4.2 it shall not upload, post, publish, transmit or transfer to any of the Gorkana Websites any Input Material, software, files or other material which: (a) is misleading, inaccurate, defamatory, illegal, obscene, threatening, deceptive, abusive, profane or offensive (or is likely to be perceived as such); (b) is in breach of any Intellectual Property Rights, or damaging to data, software or the performance of the Media Database or other Services, or adversely affects the performance or availability of the Media Database or other Services; (c) is in breach of any applicable law or regulation; (d) contains any unauthorised advertising, promotion or solicitation; or (e) materially misrepresents facts which may be damaging or injurious to Gorkana or its clients or users. Gorkana reserves the right to remove any such software, files or material which would contravene these prohibitions;

8.4.3 it shall not allow any person other than the Permitted User access to any of Gorkana's password restricted online platforms, password, or user ID or account given to the Client by Gorkana or assist any other person to do so;

8.4.4 it shall not reproduce, copy (including electronically), distribute, display, sell, publish, broadcast, circulate, delivery or transmit any content or material which Gorkana has identified as Rights Restricted Material either internally or to any third party; and

8.4.5 it shall be responsible for ensuring that its systems are capable of accessing the Services. Accordingly, Gorkana shall not be responsible for any failure of the Client to access any element of the Services due to a failure of the Client's systems or computer equipment, or third party systems and / or equipment employed by the Client.

## **9 LIMITATION OF LIABILITY**

9.1 Nothing in this Clause 9 shall limit either party's liability for death or personal injury resulting from such party's negligence or for fraud.

9.2 Gorkana shall only be liable to the Client for direct loss caused by the negligence, wilful misconduct or wilful default of Gorkana or its employees, officers and/or directors.

9.3 Neither party shall be liable, in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

9.3.1 any loss arising from or in connection with loss of profits, contracts or business or failure to realise anticipated savings; or

9.3.2 any loss of goodwill or reputation; or

9.3.3 any indirect or consequential losses,

suffered or incurred by the other party arising out of or in connection with any matter under this Agreement.

9.4 The entire aggregate liability of Gorkana to the Client under or in connection with the Agreement, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise in respect of all claims in any consecutive 12 month period, shall not exceed the amount of the Charges paid by the Client in that period.

## **10 ASSIGNMENT/SUBCONTRACTING**

10.1 Neither party shall without the prior written consent of the other party, assign at law or in equity (including by way of a charge or declaration of trust), sub-license or deal in any other manner with this Agreement or any rights under this Agreement, or sub-contract any or all of its obligations under it or purport to do any of the same provided that the other party's consent need not be obtained in relation to the assignment of this Agreement in connection with a merger, corporate reorganisation, or sale of all or substantially all of its assets or stock as long as the assignee agrees in writing to be bound by this Agreement.

10.2 Nothing in this Agreement shall prevent Gorkana from carrying out the Services or any similar services for any other person, firm or company.

## **11 TERMINATION**

11.1 Either Gorkana or the Client shall be entitled forthwith to terminate this Agreement by written notice to the other if:

11.1.1 the other party commits any material breach of any of the provisions of this Agreement, and in the case of a breach capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

11.1.2 an encumbrance takes possession or a receiver is appointed over any of the property or assets of that other party; or

11.1.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or

11.1.4 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction); or

11.1.5 Gorkana will be entitled to terminate if any invoice remains unpaid for forty five (45) days after it has been sent to the Client.

11.2 Sections 5, 6, 7, 8, 9, 10, 11, 12, 17 and 19 will survive the termination of this Agreement for any reason. The termination of this Agreement will not affect any claims or remedies either party may have for breaches of this Agreement that occurred before its termination. Upon any termination of this Agreement: (a) any licences or rights granted by Gorkana to Client shall immediately cease; (b) all Permitted User accounts will be rendered void; (c) Client will cease using the Services and the Gorkana Websites and will immediately pay Gorkana any Charges due and payable to Gorkana under or in connection with this Agreement; (d) at the request of Gorkana, Client will return or destroy all copies of any Gorkana Content and any other information or materials owned or licensed by Gorkana and provided to Client for use or otherwise used by Client pursuant to this Agreement.

## **12 CONFIDENTIALITY**

12.1 The parties shall each at all times during the continuance of this Agreement and after its termination:

12.1.1 use all reasonable endeavours to keep all Confidential Information confidential and not disclose any Confidential Information to any other person except to its officers, employees, representatives and professional advisers and those of members of its group of companies from time to time as strictly necessary to comply with its obligations pursuant to this Agreement, or as required by law, regulation or request of any governmental or regulatory authority, copyright holder or licensing body;

12.1.2 not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement.

12.2 Upon receipt of a written request, the parties undertake to return immediately to the other all copies of the Confidential Information and to expunge all Confidential Information from any device containing it.

12.3 Notwithstanding clause 12.1 above, either party shall be entitled to disclose Confidential Information of the other:

12.3.1 to their respective insurers or legal advisors;

12.3.2 to a third party to the extent that this is required by any court of competent jurisdiction, or by a governmental or regulatory authority,

12.3.3 provided that in the case of sub-clause 12.3.2 where reasonably practicable (and without breaching any legal or regulatory requirement) not less than two (2) business days' notice in writing is first given to the other party.

## **13 FORCE MAJEURE**

13.1 Neither Gorkana nor the Client shall be deemed to be in breach of this Agreement or otherwise be liable to the other by reason of any delay in performance or non-performance by any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure, and the time for performance of that obligation shall be extended accordingly.

13.2 In the event that such delay or non-performance continues for a period of fourteen (14) days, the Client shall be entitled to terminate the Agreement forthwith by written notice to Gorkana.

## **14 NOTICES**

14.1 All notices to be sent from one party to the other in connection with the Agreement shall be delivered by hand or sent by post to the address of the relevant party or such other address as may be notified by either party to the other from time to time.

The address for Gorkana is as follows:

Gorkana Group Limited  
28-42 Banner Street,  
London,  
EC1Y 8QE

14.2 Notices sent by post shall be deemed to have been received two days after posting.

14.3 Gorkana shall also accept notice by e-mail to Client's dedicated account director, account manager or Client service executive provided that a read receipt is sent by Gorkana.

## **15 WAIVER**

15.1 No failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **16 ENTIRE AGREEMENT**

16.1 This Agreement constitutes the entire agreement between the parties, supersede any previous agreement or understanding. In the event of any subsequent terms agreed between the parties which appear to conflict with this Agreement then this Agreement shall take precedence unless the subsequent Agreement expressly varies this Agreement.

## **17 REMEDY**

17.1 The parties acknowledge and agree that (a) Confidential Information, the Gorkana Content and the Services contain valuable trade secrets and proprietary information; (b) any actual or threatened use of the foregoing in violation of this Agreement, or any actual or threatened breach of Section 8 by either party, will constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy; and (c) the non-breaching party will be entitled to injunctive relief as an appropriate remedy to any breach and threatened use.

## **18 NO PARTNERSHIP**

18.1 Nothing in this Agreement shall be construed as constituting a partnership, joint venture, association, or other co-operative entity or agency relationship between the parties and neither party shall have any authority to act on behalf of the other nor to bind the other in any way, except as expressly permitted by the provisions of this Agreement.

## **19 GOVERNING LAW AND JURISDICTION**

19.1 The Agreement shall be construed in accordance with and governed by English Law and shall be subject to the exclusive jurisdiction of the English Courts.

## **SCHEDULE 1**

### **SERVICES**

#### **DATABASE SERVICES**

In addition to the terms and conditions set out in the Standard Terms and Conditions, the Client shall comply with the following specific terms and restrictions with respect to any use of the Database Services:

##### **1. Client Obligations**

The Client shall comply with all reasonable instructions as to the use of the Database Licensed Materials which may be given by Gorkana to the Client from time to time in writing or posted on the Media Database from time to time, and shall comply with all applicable laws in exercising its rights under this Agreement.

##### **2. General**

Gorkana reserves the right to revise or amend the format and/or content of the Database Licensed Materials from time to time but shall, if possible, provide the Client with advance written notice of any such changes. If Gorkana does so amend the format and/or content of the Database Licensed Materials, it shall use commercially reasonable efforts to ensure that there is no adverse change in the content, quality or performance of the Database Licensed Materials.

## **MONITORING SERVICES**

In addition to any terms and conditions set out in the Standard Terms and Conditions, the Client shall comply with the following specific terms and restrictions with respect to any use of the Monitoring Services:

### **1. Volume Bands**

1.1 Where the Monitoring Services charges are fixed based on agreed Volume Bands, credits for irrelevant Cuttings will not be given. However the number of any irrelevant Cuttings will be taken into account when reviewing average volumes as part of Section 3 of these Terms and Conditions provided that any Cuttings are returned to Gorkana within seven (7) days of their original provision where the reason for the return of the Cutting is a genuine fault on the part of Gorkana.

### **2. General**

2.1 Where Monitoring Services are charged on variable basis, Gorkana will credit the Client in respect of such of the charges as may be due on any Cuttings that are returned to Gorkana within seven (7) days of its original provision where the reason for the return of the cutting is a genuine fault on the part of Gorkana;

2.2. Gorkana reserves the right without notice to not supply Cuttings or other information or material which it reasonably considers unlawful, in breach of applicable regulations, obscene, defamatory or breaches the Intellectual Property Rights or other rights of third parties.

2.3. Whilst Gorkana shall use its reasonable endeavours to accurately maintain the Media List, it reserves the right to vary the media that are covered by the Services at any time and without notice.

2.4 Whilst Gorkana will use its reasonable endeavours to provide the Client with a reasonably acceptable level of accuracy and timeliness in performing the Services, and will apply such time, attention, resources, trained personnel and skill as may be reasonably necessary or appropriate for the due and proper performance of the Services hereunder, the Client acknowledges and accepts that, having due regard to the manner in which the Media List is monitored and the Cuttings are collected, and the volume of material from which the Cuttings are derived, and where applicable Gorkana is relying upon third party suppliers when performing the Services, no warranty, guarantee or representation is made by Gorkana that the Monitoring Services will be complete, accurate and/or fit for the purpose;

2.5. Gorkana is licensed by the Copyright Bodies including the NLA, the CLA, and other copyright owners or publishers (including the Financial Times) to scan print publications and/or digital content, electronically copy and distribute articles found. The Copyright Bodies reserves the right to prevent Gorkana from distributing Rights Restricted Material

to Clients. The Client acknowledges that Gorkana is unable to supply such material to the Client. Unless licensed by the relevant Copyright Body or copyright owner the Client shall not:

2.5.1 further reproduce, copy (including electronically), distribute, display, sell, publish, broadcast, circulate, delivery or transmit Copies (whether in electronic or hard copy) either internally or to any third party (with the exception of licensed Public Relations Consultancies and/or Trade/Professional Associations) so as to infringe the intellectual property rights vested in the relevant Copyright Body.

2.5.2 use E-Fax software and/or equipment to receive Copies.

2.6. The Client will destroy all Copies in respect of which the Client has been notified directly or indirectly by the relevant Copyright Body as potentially or actually causing legal liability to third parties. The Client will treat such notices as confidential.

2.7. To the extent that the Client requires an electronic service then the Client must:

2.7.1 limit the access to Copies for its own use to Permitted Users only;

2.7.2 obtain a licence issued by the relevant Copyright Body, including but limited to:

(i) the NLA if the service relates to print or digital content for which the NLA has responsibility, and produce such to Gorkana on demand unless the Client only has one Permitted User who accesses the service.

(ii) the CLA if the service relates to print or digital content for which the CLA has responsibility, where client accesses any individual digital Cutting more than once or make more than a single copy printed out (whether by the access of multiple users or one user making multiple accesses or otherwise);

2.7.3 not remove, conceal or alter any copyright notices contained on the Copies as delivered;

2.7.4 not store Cuttings in electronic form as part of any library or archive of information;

2.7.5 provide a statement at Gorkana's request setting out the number of Permitted Users and confirming that Cuttings supplied have not been dealt with or used other than by Permitted Users.

2.8 The Client hereby agrees and acknowledges that Gorkana is required under the terms of the licences that it has signed with the NLA, the CLA or other copyright owner or Publisher (including the Financial Times) to provide the relevant organisation with the contact details and certain additional information in respect of any Client to whom the Monitoring Services are supplied electronically. Accordingly, the Client hereby consents to the provision by Gorkana to the relevant Copyright Body or other copyright owner or publisher the Client's name, address and any other necessary information including, but not limited to, the date on which delivery started, a description of the service (electronic or hard copy), and details of Cuttings supplied. In the case of electronic delivery the average number of Permitted Users and the number of times each cutting was viewed by Permitted Users will also be reported. The Copyright Bodies or applicable copyright owner or publisher may contact the Client directly using the information supplied in these circumstances.

2.9. All Cuttings, transcripts, recorded material, article summaries and translations are supplied for the private use of the Client and shall not be reproduced, circulated, resold or copied (whether in whole or in part) without the Client obtaining the prior written approval where relevant of the copyright holder or broadcast authority (as the case may be).

2.10. For the avoidance of doubt, Gorkana shall not be responsible for obtaining any of the consents for the Client referred to in this section.

2.11. Gorkana shall not be liable for any claims or proceedings brought against the Client by any publisher of copyrighted material or by any other copyright holder that results from the Client's use of delivered Cuttings without the consent of the relevant copyright holder (where required), or from any other breach of copyright by the Client

2.12. Due to the terms of licences with Copyright Bodies pursuant to which Gorkana is able to provide the Monitoring Services, Gorkana shall not be obliged to store any electronic copy of a Cutting without subscription of My Archive after 28 days from publication and may earlier withdraw any Cutting previously available if required to do so by a Copyright Body.



## **ANALYSIS SERVICES**

In addition to the terms and conditions set out in the Standard Terms and Conditions, the Client shall comply with the following specific terms and restrictions with respect to any use of the Analysis Services:

### **1. Client Obligations**

1.1 Where the Input Material for Analysis Services are not provided by Gorkana, the Client shall at its own expense supply Gorkana with the Input Material within sufficient time to enable Gorkana to provide Analysis Services in accordance with these Terms and Conditions. The Client shall be responsible for the accuracy of all Input Material provided by itself or on its behalf by third parties apart from Gorkana. The Client may request the return of the Input Material. Otherwise, after delivery of the Media Analysis Report Gorkana shall be free to dispose of the Input Material without any liability to the Client.

1.2 Each time that the Client uses the Media Analysis Report, or any part of it, the following acknowledgement shall be added: "Source: ©Gorkana [year in which Media Analysis Report generated]".

## SOCIAL MEDIA SERVICES

In addition to the terms and conditions set out in the Standard Terms and Conditions, the Client shall comply with the following specific terms and restrictions with respect to any use of the Social Media Services:

### 1 General

1.1. Clients on a Mentions-based Subscription will be sent email notifications as they approach their Mention limit. If they breach the limit Gorkana will contact them to ask them whether they would like to upgrade their account or reduce their Queries.

1.2 The Client may use all data received through proper use of the Social Media Service for its own business purposes, and for no other purpose. The Client agrees not to use the Social Media Service for any purpose for which it is not authorised, or for any illegal, immoral or offensive purpose, or for any purpose which infringes a third party's rights, and not to use the Service to communicate any material which is obscene, defamatory, offensive, abusive, illegal, in breach of a third party's rights or otherwise unacceptable to Gorkana, or for spamming, hacking or any other such activities.

1.3. Where a Query in a Query-based subscription is deemed by Gorkana to track multiple large brands or is a Query that in any other way is so large that it degrades the performance of the Service for the Client or for other customers of Gorkana, then Gorkana reserves the right to provide only a sample of Mentions for this Query. Examples of Queries for which Gorkana may exercise this right include, but are not limited to, tracking all social media websites for common words like "the" or "lol" or trying to track all European airline companies in a single Query. Where Gorkana has applied this Fair Usage Policy it will make best efforts to contact you first to inform you and discuss ways in which Gorkana can track all Mentions.