Axios HQ® Terms and Conditions

Axios HQ® is a proprietary subscription software and suite of professional services by Axios Media Inc. ("Axios") that helps organizations harness the power of Axios’ signature Smart Brevity® writing style. By executing any letter of agreement, statement of work, order form, purchase order, or other contractual instrument for access to and use of the Axios HQ Software or related Professional Services (any “Order Schedule”), the Customer agrees to be bound by these Axios HQ Terms and Conditions (together with the Order Schedules, the “Agreement”).

1. DEFINITIONS

Customer means the organization or entity identified in the Order Schedule and all its Users.

Customer Content means any editorial content and materials that Customer inputs into the Software or provides to Axios in connection with the Professional Services, including (without limitation) any text, images, photos, audiovisual components, Customer Data, and other files, whether or not ultimately used in Customer’s Newsletters.

Customer Data means any data or information that Customer inputs into the Software or provides to Axios in connection with the Software or Professional Services, including (without limitation) User and Recipient information (such as name and email). Customer Data is a subset of Customer Content.

Documentation means any technical manuals, functional manuals, operator and user guides, training materials, instructions, and other documentation and information regarding the Software and Professional Services provided by Axios to Customer in any format or medium (as updated by Axios from time-to-time).

Newsletters means the Smart Brevity® enabled electronic newsletters created by or on behalf of Customer using the Software or Professional Services, whether or not ultimately distributed to Recipients.

Professional Services means the training, editorial, consulting, and other professional services provided by Axios pursuant to an Order Schedule and all methods, processes, know-how, and information embodied therein.

Recipients means the individuals to whom the Newsletters are sent.

Software means the Axios HQ® software application subscription service and all ideas, concepts, inventions, systems, platforms, code, interfaces, tools, utilities, templates, forms, techniques, methods, processes, algorithms, know-how, trade secrets, technologies, implementations, and information embodied therein (excluding Customer Content).

Software Data means (i) any data input into the Software by or on behalf of Axios or else used by Axios in connection with the Professional Services (excluding Customer Data); and (ii) any aggregated and anonymized data extracted or derived from the Software, including usage data, statistical data, transactional data, metadata, market data, and account data.

Users means the employees, agents, and contractors of Customer and its affiliates who have access to the Software or Professional Service by virtue of their relationship to the Customer.

2. SOFTWARE AND PROFESSIONAL SERVICES

2.1 Software and Professional Services. Subject to the terms of this Agreement, including Customer’s timely payment of all fees, Axios shall make the Software and Professional Services available to Customer during the Term (defined in Section 7.1 below) in accordance with the applicable Order Schedule. Customer is permitted to access and use the Software and Professional Services solely to create and distribute Newsletters to its Recipients for its own business purposes.

2.2 Software License. If the applicable Order Schedule includes a Software subscription, Axios hereby grants to Customer a limited, nonexclusive, non-transferable license to access and use the Software and Documentation solely during the Subscription Term (defined in Section 7.1 below) and solely by the business units or number of Users specified in the Order Schedule.

2.3 Professional Services. If the applicable Order Schedule includes Professional Services, such Professional Services are subject to the Professional Services Terms found in Exhibit A in addition to the terms found in the body of this Agreement.

3. CUSTOMER RESPONSIBILITIES

3.1 Compliance with Laws. Customer shall at all times comply with all laws, rules and regulations applicable to its use of the Software and Professional Services, including any applicable marketing communications laws, rules, regulations and guidelines such as the CAN SPAM Act, Section 5(a) of the FTC Act, and state-level unfair and deceptive acts and practices laws. Customer shall also comply with any applicable industry self-regulatory guidelines, standards and best practices. Customer is solely responsible for its compliance with applicable laws, rules, regulations or self-regulatory guidelines in connection with this Agreement, and Axios disclaims all liability for Customer’s violation of the same.
3.2 **Customer Content.** Customer is solely responsible and liable for its Customer Content (including Customer Data). Customer warrants that it has all rights, titles, licenses, consents, and permissions necessary for use of the Customer Content in connection with the Software and Professional Services, and that such use will not infringe upon any third party’s rights of intellectual property, publicity or privacy. Customer additionally warrants and covenants that the Customer Content shall not (a) violate any applicable law, rule or regulation to which Customer or Axios is subject; (b) violate any contractual obligation to which Customer is bound; (c) contain materials that are obscene, inappropriate, offensive, harmful or defamatory, or which encourage or incite violence, illegal activity, discrimination or hate; or (d) contain any personally identifiable information or personal data which may be categorized as “sensitive” or “special” under any applicable data protection or privacy law or regulation; or (f) violate any “community guidelines”, “acceptable use policies”, or similar policy documents as may be provided by Axios from time-to-time.

3.3 **Regulated Industries and Topics.** If the Customer Content relates to any regulated industry or topic (such as medical, legal, tax or financial advice, or the sale or distribution of regulated products and services), Customer warrants and covenants that it is, and will remain throughout the Term, in possession of all licenses, certifications, credentialing, expertise and permits necessary and appropriate to the provision of such advice, products and services. Customer is solely responsible for including in its Newsletters any appropriate disclaimers as required by applicable law or industry guidelines.

3.4 **No Misrepresentation.** Customer shall not use its Newsletters to misrepresent itself, to commit fraud, to impersonate Axios or any third party, or to claim any false endorsement by Axios or any third party. Customer shall make it clear to Recipients that Customer is the source of the Newsletter and exclusively responsible for all of the Customer Content therein. Axios does not endorse the newsletters of any of its customers, nor any opinion, recommendation, or advice expressed therein.

3.5 **Axios Disclaimers.** Axios expressly disclaims any and all responsibility and liability for the Customer Content. Customer agrees to indemnify Axios in accordance with Section 11 (Indemnification) from and against any third-party claim arising in connection with the Customer Content.

4. **PROPRIETARY RIGHTS**

4.1 **Axios Intellectual Property.** Axios owns and shall at all times retain all rights in and to the Software, Software Data, Professional Services, Documentation, Feedback, and all materials embodied in or incorporated therein (including but not limited to images, text, software, scripts, graphics, photos, sounds, music, video files, interactive features and other materials, but excluding Customer Content), as well as any extensions, derivatives, translations, reformulations or developments derived therefrom ("Axios Intellectual Property"). Customer receives only such limited licenses to Axios Intellectual Property as are expressly provided in this Agreement. All other rights are reserved by Axios.

4.2 **Customer Content.** Customer retains all rights, title and interest in and to the Customer Content (including Customer Data). Customer Content shall be treated as Customer’s Confidential Information, as defined in Section 9 below (Confidentiality). Customer grants Axios a limited, non-exclusive, royalty free license to reproduce, display, modify, distribute, transmit and otherwise use the Customer Content during the Term on an ‘as needed’ basis in connection with the provision of the Software and Professional Services, and as otherwise specified in this Agreement.

4.3 **Newsletters.** Customer owns the Newsletters created using the Software or Professional Services during the Term; provided that Axios retains all rights in and to any underlying Axios Intellectual Property embedded therein (including underlying code and images from the Software’s image library), and Customer receives only a limited, non-exclusive, perpetual license to use the same solely as a component of the Customer’s Newsletters.

4.4 **Newsletter Analytics.** Subject to Axios’ rights in and to the Software Data, Customer owns the analytics data regarding Customer’s Newsletter sends and Recipient engagement, such as opens and click rates (“Newsletter Analytics”). Customer may extract its Newsletter Analytics data from its Accounts at any time during the Term. Axios is not required to maintain Newsletter Analytics data beyond the Term.

4.5 **Third Party Materials.** Customer acknowledges that the Software may integrate and/or interact with materials obtained through a third-party provider, such as third-party APIs, single sign-on or social login features, browser extensions, text, images (including those in the Software’s image library), and audiovisual components (collectively “Third-Party Materials”). All Third-Party Materials are provided as-is, and Axios makes no claim, representation or warranty of any kind, type or nature concerning the same. Axios may remove any Third-Party Materials from the Software at any time and for any reason without prior notice to Customer. Customer is solely responsible and liable for its use of any Third-Party Materials and agrees to read and comply with any applicable terms and conditions, use restrictions or other requirements imposed by the owner of such Third-Party Materials (“Third-Party Terms”). Customer hereby waives any and all claims that it may have against Axios arising in connection with its use of Third-Party Materials and further agrees to indemnify Axios in accordance with Section 11 (Indemnification) from and against any claim arising in connection with Customer’s violation of applicable Third-Party Terms.
5.7 Days following a Software Modification release, Axios may use Software Data both during and after the Term in any manner it chooses, including for improvements to the Software and Professional Services and the creation of new features or new products and services.

5.7 Software Data. Customer acknowledges and accepts that the Software may aggregate metadata and usage data from across multiple customer accounts in a manner that renders such data non-identifiable with respect to Customer or its Users. Customer agrees that such aggregated data will be deemed Software Data. Axios may use Software Data both during and after the Term in any manner it chooses, including for improvements to the Software and Professional Services and the creation of new features or new products and services.

5.7 Customer Feedback. Customer may volunteer or be asked to offer comments, input or other feedback regarding the Software and/or Professional Services (“Feedback”), but Customer has no obligation to provide Feedback. Customer agrees that if Customer provides any Feedback, Axios is free to use such Feedback in perpetuity, in any manner it chooses, including the improvement of the Software or Professional Services or the development of new products and services, without payment of compensation or any other obligation to Customer.

5. SOFTWARE-SPECIFIC TERMS

5.1 Access of Software. In order to access the Software, Customer must register and create one or more accounts (“Accounts”). Customer represents and warrants that all information provided in connection with its Accounts will be accurate, complete and current. Customer is solely responsible and liable for the activity of its Users within its Accounts, for keeping its Accounts’ login information and passwords secure, and for immediately notifying Axios of any breach of security or unauthorized use of its Accounts.

5.2 Use of Software. Customer’s use of the Software shall at all times be (i) in its original form, without alteration or combination with other products, services, or software except as expressly authorized in any applicable Documentation; (ii) in accordance with the terms of this Agreement and the Documentation; and (iii) in compliance with all applicable laws, rules, regulations and industry standards.

5.3 Restrictions. Customer shall not attempt to (and shall not authorize or allow any third party to attempt to): (a) download or otherwise obtain a copy of the Software or any component thereof in any form; (b) reverse engineer, reverse compile, disassemble, or otherwise derive the source code of the Software; (c) circumvent, disable or otherwise interfere with security-related features of the Software, or features that enforce limitations on use of the Software; (d) sell, lease, license, sublicense, or distribute the Software, use the Software as a service bureau, or otherwise transfer the Software, in whole or in part; (e) use the Software to post, send, process or store material that is infringing, obscene, threatening, libelous, or otherwise unlawful or tortious, or material containing software viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (f) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of intellectual property rights that may be found within or affixed to the Software or any content therein; or (g) use any of the information or learnings obtained through the Software to create any service, software, product, documentation or data that is similar to any aspect of the Software or which otherwise competes with Axios. Axios reserves the right to immediately terminate this Agreement without prior notice to Customer if Axios reasonably suspects that Customer has violated any of the restrictions of this provision.

5.4 High-Risk Use Cases. THE SOFTWARE IS NOT INTENDED FOR USE IN HIGH-RISK USE CASES (AS DEFINED BELOW) AND ANY USE OF THE SOFTWARE BY CUSTOMER IN ANY HIGH-RISK USE CASE IS DONE AT CUSTOMER’S OWN RISK. AXIOS DISCLAIMS ALL LIABILITY FOR ANY USE OF THE SOFTWARE IN CONNECTION WITH HIGH-RISK USE CASES. As used herein, a “High-Risk Use Case” is any use case where the failure of the Software could cause serious risk of harm to persons or property, such as use of the Software for communications related to medical emergencies, national emergencies, weather alerts, and military applications.

5.5 Availability Limitations. The Software may be temporarily unavailable due to scheduled or emergency maintenance. Axios is not responsible or liable for any failure or unavailability of the Software resulting from factors beyond Axios’ reasonable control, including (i) failures in any telecommunications, network or other service or equipment outside Axios’ direct control (including Customer’s systems), and (ii) a Force Majeure Event (as defined in Section 12.5 below).

5.6 Monitoring and Response. Axios has the right, but not the obligation, to monitor Customer’s use of the Software (including the Customer Content therein) in order to (i) ensure proper functioning of the Software, (ii) detect abuse, and (iii) to enforce its rights under this Agreement. If Axios reasonably believes that Customer has materially violated any provision of Sections 3.1, 3.2, 3.5, or 5.3 of this Agreement, Axios may immediately and without prior notice to Customer (a) remove the offending Customer Content from the Software; (b) suspend Customer’s Accounts; and/or (c) terminate this Agreement for cause. Axios will use commercially reasonable efforts to provide prompt notice to Customer after taking such steps.

5.7 Software Modifications. Axios reserves the right to modify or discontinue any features, functionality, services, or products associated with the Software at any time, with or without notice to Customer (a “Software Modification”). Customer shall have thirty (30) days following the release of any material Software Modification to assess its impact. If Customer reasonably determines that a Software Modification materially and adversely impacts Customer’s use of the Software, Customer may (as Customer’s sole remedy) terminate their Software subscription and receive a prorata refund of pre-paid Software subscription fees. Customer’s continued use of the Software beyond the thirty (30) days following a Software Modification release will indicate Customer’s acceptance of the Software Modification.
6. DATA PROCESSING & SECURITY

6.1 Data Processing by Axios. If Axios processes any personally identifiable information or personal data of any individual pursuant to this Agreement (such as the names and email addresses of Customer’s Users or Recipients), such processing is done in the capacity of a processor or service provider to Customer. Axios shall process such data solely in accordance with this Agreement, Customer’s lawful instructions, and any applicable data privacy and protection laws. For the purposes of this provision, the terms “personal data”, “personally identifiable information”, “processor”, and “service provider” shall have the meanings set forth in applicable data privacy and protection laws.

6.2 Security. Axios shall maintain, throughout the Term, technical and organizational security measures appropriate to the scope and nature of the data and information processed in connection with the Software and Professional Services. Additional information about Axios HQ® security measures may be provided upon request. While Axios will maintain reasonable, industry standard security controls, Customer acknowledges and accepts that transmission of data over the Internet is never completely secure from interception or interference, and Axios cannot guarantee the security of data transmitted to or from the Software or Axios.

6.3 No Sensitive Personal Data. CUSTOMER SHALL NOT, UNDER ANY CIRCUMSTANCES, INPUT INTO THE SOFTWARE OR OTHERWISE PROVIDE AXIOS WITH PERSONAL DATA OR PERSONAL INFORMATION WHICH COULD BE DEEMED “SENSITIVE” OR “SPECIAL” UNDER ANY APPLICABLE DATA PROTECTION AND PRIVACY LAWS, INCLUDING (WITHOUT LIMITATION) FINANCIAL ACCOUNT INFORMATION, GOVERNMENT-ISSUED IDENTIFIERS, AND PROTECTED HEALTH INFORMATION. CUSTOMER’S VIOLATION OF THE FOREGOING IS GROUNDS FOR AXIOS TO IMMEDIATELY TERMINATE THIS AGREEMENT FOR CAUSE WITHOUT PRIOR NOTICE TO CUSTOMER.

7. TERM AND TERMINATION

7.1 Term. For Professional Services—term of performance will be as specified in the Order Schedule or, if not specified, six (6) months from the Order Schedule effective date (the “Performance Term”). For Software—the subscription will have an initial term as specified in the Order Schedule or, if not specified, one (1) year (the “Initial Term”). Software subscriptions will automatically renew after the Initial Term for successive one-year periods (each, a “Renewal Term”) unless either party provides written notice to the other of its intent not to renew the Agreement at least thirty (30) days prior to the start of the next Renewal Term. The Initial Term and any Renewal Terms may collectively be called the “Subscription Term.” The Subscription Term together with any Performance Term may collectively be called the “Term.”

7.2 Termination. Either party may terminate this Agreement (a) for cause if the other party has materially breached this Agreement and has not cured the breach within thirty (30) days of receiving written notice thereof from the non-breaching party, or (b) immediately upon written notice in the event of the filing of a petition for bankruptcy or reorganization by or against the other party or the dissolution or liquidation of the other party. Axios further reserves the right to terminate this Agreement or any Order Schedule immediately and without prior notice as expressly provided in this Agreement or in the event of a material breach by Customer which Axios determines, in its sole discretion, cannot be adequately cured or else would expose Axios, its customers, or any third party to a significant risk of harm during the cure period.

7.3 Effect of Termination. Upon expiration or termination of this Agreement for any reason, all corresponding rights, obligations, and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including all payment obligations of Customer) shall survive and (b) any provisions of this Agreement which by its nature is intended to survive termination, including (without limitation) those of Section 4 (Proprietary Rights) and Sections 9 through 12, shall survive.

8. FEES & PAYMENT TERMS

8.1 Fees. Customer shall pay Axios the Software subscription fees and Professional Services fees in accordance with the applicable Order Schedule. If no payment schedule is specified in the Order Schedule, then all fees are due and payable in full upon Customer’s execution of the Order Schedule. Axios will not raise fees for the Software subscription license during the Initial Term except as mutually agreed by the parties. Axios reserves the right to increase the Software subscription fees at each Renewal Term, provided that Axios shall give Customer at least thirty (30) days’ advance written notice of such fee increase (email accepted).

8.2 Payment Terms. Unless otherwise stated in the Order Schedule, invoices will be in United States dollars. All undisputed amounts are due and payable by Customer within thirty (30) days of the invoice issuance date. Late payments on undisputed amounts will be subject to a service charge equal to the lesser of 1.5% per month or the maximum amount allowed by law. If any undisputed amount owed by Customer under this Agreement is more than fifteen (15) days overdue, Axios may (without limiting its other rights or remedies) suspend Customer’s access to the Software or Professional Services until payment is made in full.

8.3 Taxes. Fees are exclusive of taxes (including withholding taxes, sales taxes, and value added taxes), fees, duties, or governmental charges imposed by any taxing jurisdiction (“Taxes”). Taxes are the sole responsibility of Customer. If
any Taxes must be deducted from any amounts payable or paid by Customer, Customer shall pay such additional amounts necessary to ensure that Axios receives a net amount equal to the full amount specified in the Order Schedule.

9. CONFIDENTIALITY

9.1 Confidentiality. The parties acknowledge that, by virtue of this Agreement, each party may receive certain proprietary or non-public information regarding the other party or its business which derives value from not being generally known and which the receiving party knows (or reasonably should know based on the contents and circumstances of the disclosure) was disclosed under an expectation of confidentiality (“Confidential Information”). Each party shall: (1) protect the Confidential Information of the other party using a reasonable standard of care; (2) use the other party’s Confidential Information solely to perform its obligations and exercise its rights under this Agreement; (3) not disclose the other party’s Confidential Information to any third party except as provided herein; and (4) promptly notify the other party upon becoming aware of any unauthorized access or use of its Confidential Information. Notwithstanding the foregoing, a party may disclose the other party’s Confidential Information (a) if the other party has given its written consent; (b) if and to the extent such Confidential information is required to be disclosed by law, any regulatory authority, or a court of competent jurisdiction, provided that such party shall, unless prohibited by law, notify the disclosing party of the requirement of disclosure so that the disclosing party may seek a protective order or other limitation on disclosure before making such disclosure and shall comply with any protective order or other limitation on disclosure obtained by the disclosing party; (c) to its professional advisors, attorneys, auditors, accountants and other agents who are bound by a duty of confidentiality; and (d) to its respective directors, employees, agents, subcontractors and personnel to the extent necessary to perform its obligations hereunder (provided that all such persons or entities are bound by obligations of confidentiality similar to those found herein). The terms of this Agreement will be considered Confidential Information of both parties. Upon termination of this Agreement for any reason, each party shall promptly destroy or return to the other party all of the other party’s Confidential Information to any third party except as provided herein; (a) if the other party has given its written consent; (b) if and to the extent such Confidential Information is retained).

10. WARRANTIES & DISCLAIMERS

10.1 Software Warranties. Axios warrants that, during the Term, the Software will operate in substantial conformity with the Documentation. Axios’ sole liability, and Customer’s sole and exclusive remedy, for any breach of the foregoing warranty shall be for Axios, in its sole discretion, to (i) use commercially reasonable efforts to provide an error-correction or work-around for the reported non-conformity, or (ii) terminate this Agreement and provide Customer a pro-rata refund of any prepaid Software subscription fees. Axios shall have no obligation with respect to a Software warranty claim unless notified of such claim promptly and within the Subscription Term. The foregoing Software warranty will not apply if the non-conformity results from factors beyond Axios’ reasonable control, including failures of, or incompatibility with, Customer Systems.

10.2 Professional Services Warranties. Axios warrants that the Professional Services will be performed by reasonably qualified personnel and in a professional and workmanlike manner. Axios’ sole liability, and Customer’s sole and exclusive remedy, for any breach of the foregoing Professional Services warranty shall be reperformance of the Professional Services.

10.3 Disclaimers. EXCEPT AS PROVIDED UNDER THIS AGREEMENT AND THE DOCUMENTATION, THE SOFTWARE AND PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH ALL FAULTS, WHETHER OR NOT IMMEDIATELY APPARENT. TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, AXIOS HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE AND THE PROFESSIONAL SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES IMPLIED BY USAGE OF TRADE OR CUSTOM OF DEALING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AXIOS DOES NOT WARRANT THAT: (i) THE USE OF THE SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED, ERROR-FREE OR VIRUS FREE; (ii) THE SOFTWARE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (iii) DATA OBTAINED BY CUSTOMER THROUGH THE SOFTWARE WILL BE ACCURATE AND COMPLETE; (iv) ALL REPORTED DEFECTS WILL BE CORRECTED; (v) THE SOFTWARE OR PROFESSIONAL SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS; OR (vi) USE OF THE PROFESSIONAL SERVICES OR SOFTWARE WILL DELIVER ANY SPECIFIC RESULTS, INCLUDING IMPROVED NEWSLETTER ENGAGEMENT, IMPROVED SUBSCRIBER RETENTION, OR INCREASED PROFITS.

11. INDEMNIFICATION & LIMITATION OF LIABILITY

11.1 By Customer. Customer shall indemnify, defend and hold harmless Axios and its parent company, subsidiaries, affiliates, officers, employees, agents, partners, suppliers, and licensors from and against any liabilities, judgments, damages, losses, fees, fines, and costs (including court costs and reasonable attorneys’ fees) (“Losses”) arising in connection with any third-party claim, demand, suit, or action (“Claim”) alleging Customer’s breach of any representation, warranty or covenant of this Agreement.
11.2 **By Axios.** Axios shall defend Customer and its parent company, subsidiaries, affiliates, officers, employees, agents, and partners from and against any third-party Claim alleging that the Software infringes on a third party’s United States patent, copyright, trademark, or trade secret (an “Infringement Claim”) and shall indemnify and hold Customer harmless against any Losses in connection therewith which are finally awarded against Customer by a court of competent jurisdiction or arise from a court-approved settlement or binding mediation or arbitration. If Customer’s use of the Software is, or in Axios’ opinion is likely to become, the subject of an Infringement Claim, or if Axios otherwise determines it to be commercially advisable, Axios may: (a) substitute the allegedly infringing element of the Software with functionally similar software; (b) procure for Customer the right to continue using the Software; or (c) terminate this Agreement and provide Customer a pro-rata refund of prepaid Software subscription fees. Axios shall have no duty to indemnify or defend an Infringement Claim to the extent the alleged infringement arises from Customer’s: (i) alteration or modification of the Software; (ii) use of the Software in combination with other non-Axios products, services, hardware, software or processes except as permitted in the Documentation; (iii) use of the Software in violation of this Agreement; or (iv) failure to implement a patch or fix provided by Axios that would have rendered the Software non-infringing. This Section 11 Sets Forth Axios’ Sole Liability and Customer’s Sole and Exclusive Remedy with Respect to Any Infringement Claim.

11.3 **Indemnification Process.** A party seeking indemnification under this Agreement (the “Indemnified Party”) must provide the party from whom indemnification is sought (the “Indemnifying Party”) with: (a) prompt notice of any Claim (and in any event notice in sufficient time for the Indemnifying Party to respond without prejudice); (b) the exclusive right to control the defense and settlement of such Claim; and (c) such assistance as may be reasonably requested by the Indemnifying Party, at the Indemnifying Party’s expense. The Indemnified Party reserves the right to participate in the defense of any Claim with counsel of its choosing at its own expense. The Indemnifying Party may not settle a Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld or delayed) unless such settlement: (i) involves only the payment of monetary damages by the Indemnifying Party; and (ii) includes a full release of responsibility and liability for the Indemnified Party.

11.4 **Limitations of Liability.** Except with regards to (i) Claims for Indemnification, (ii) Customer’s infringement of Axios Intellectual Property, or (iii) the willful misconduct of the party seeking to limit its damages hereunder, in no event shall either party be liable to the other party, based on any theory of law, equity, tort, contract or otherwise, for: (A) special, indirect, incidental, punitive, or consequential damages, including but not limited to, loss of profits, loss of revenue, loss of use, loss of data, or costs of cover, in connection with this Agreement, even if such party was advised of the possibility of such damage; or (B) damages exceeding the total amount of the fees payable to Axios by Customer during the term. Axios’ maximum aggregate liability for indemnification claims shall not exceed two (2) times the fees payable under the order schedule giving rise to the claim.

12. **GENERAL TERMS**

12.1 **Interpretation.** As used herein: (a) the terms “including” and “includes” mean “including, but not limited to” and “includes without limitation”; (b) the phrases “such as” or “for example” are followed by non-inclusive lists and shall be read as “such as (or for example), but not limited to”; (c) the term “herein” or “hereunder” refers to the Agreement as a whole and not a specific provision; and (d) terms appearing in the singular include the plural, and terms appearing in the plural include the singular. The section headings and subheadings used herein are intended solely for convenience of reference and are not to be used in the interpretation of any provision.

12.2 **Notices.** All notices under this Agreement shall be in writing and will be deemed duly given: (i) when received, if personally delivered; (ii) the day after being sent, if sent for next day delivery by recognized overnight delivery service; (iii) upon reply by phone or non-automated email confirming receipt, if sent by email; or (iv) three (3) days after being sent by certified or registered mail, return receipt requested. Notices to Axios will be sent to Axios Media Inc., Attn: Legal, 3100 Clarendon Blvd #1300, Arlington, VA 22201 with a copy to legal@axios.com. The parties may designate other addresses for notice from time to time by written notice to the other.

12.3 **Assignment.** Customer may not assign this Agreement or any of its licenses, rights or duties under this Agreement without the prior written consent of Axios. Subject to the previous sentence, the rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors and assignees.

12.4 **Publicity.** Axios may reference Customer in lists of Axios HQ® customers published on the Axios HQ website and in Axios HQ promotional materials. Customer consents to its inclusion in such lists and grants Axios a limited license to use Customer’s tradename, trademark and logo for such purposes.

12.5 **Force Majeure.** Except with regards to Customer’s payment obligations, neither party will be liable for any failure or delay in its performance under this Agreement resulting from causes beyond its reasonable control, including (without limitation) fire, epidemic, flood, earthquake, riot, war, terrorism, labor issues, infrastructure failure, sabotage, acts of God, or governmental, civil or military action (“Force Majeure Event”). During a Force Majeure Event, the affected party’s performance shall be extended for the duration of the delay or failure, provided that the affected party must
(i) give the other party prompt written notice of the Force Majeure Event; and (ii) use reasonable efforts to mitigate or correct its failure or delay in performance. If a Force Majeure Event prevents Axios’ performance under this Agreement for more than thirty (30) days, Customer may terminate the Agreement and receive a pro-rata refund of fees paid in advance.

12.6 Independent Contractors. The parties to this Agreement are independent contractors, and nothing contained in the Agreement will be construed as creating a partnership, joint venture, co-ownership, or other joint undertaking.

12.7 Non-Solicitation. During the Term of this Agreement and for one (1) year thereafter, Customer shall not directly or indirectly solicit for employment, employ, or engage for services any person who was employed by Axios during or after the Term. The term “solicit” does not include general job postings not targeted at Axios’ employees. In the event of a breach of this non-solicitation provision, Customer agrees to pay Axios liquidated damages equal to the applicable Axios’ employee’s annual salary.

12.8 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Virginia without regard to conflict of law principles. Any dispute arising out of this Agreement shall be brought before the federal and state courts sitting in Alexandria, Virginia, and each party expressly consents to the personal jurisdiction of such courts and waives any objection to venue. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.9 Dispute Resolution. The parties agree to negotiate any dispute in good faith for at least thirty (30) days prior to filing a claim in court. Each party agrees to use commercially reasonable efforts to minimize any damages that may be incurred as a result of the other party’s breach of this Agreement. To the fullest extent permitted by applicable law, Customer hereby irrevocably waives any and all right to a trial by jury in any legal proceeding arising out of or in connection with this Agreement. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys’ fees and court costs in addition to any damages awarded. Except as otherwise expressly provided in the Agreement, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Any claim by Customer against Axios shall be brought within twelve (12) months of the events giving rise to the same.

12.10 Equitable Remedies. Notwithstanding Section 12.9 above, either party may seek equitable relief from any court of competent jurisdiction, without the necessity of notifying the other party or posting any bond, to restrain or prevent a breach or threatened breach of confidentiality or an infringement of their intellectual property rights.

12.11 Waiver. The failure of either party to enforce its rights under this Agreement at any time or for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

12.12 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the unenforceable provision shall be modified to reflect its original intent and economic effect. If such modification is not possible, the provision will be struck. In either instance, the remainder of the Agreement shall remain unmodified and in full force and effect.

12.13 Entire Agreement. This Agreement, including the Exhibit and Order Schedule(s), constitutes the entire understanding between the parties, and supersedes all prior discussions, representations, understandings, or agreements between the parties with respect to the subject matter herein. In the event of a conflict between the terms of this Agreement and the terms of an Order Schedule, the terms of this Agreement shall prevail unless the Order Schedule specifically references the provision of this Agreement to be superseded, in which case the revised terms shall apply only with regards to the Software and Professional Services provided under such Order Schedule. ANY ADDITIONAL OR INCONSISTENT TERMS INCLUDED IN ANY RELATED PURCHASE ORDER, CONFIRMATION FORM, STATEMENT OF WORK, OR SIMILAR CUSTOMER-SUPPLIED DOCUMENT SHALL HAVE NO EFFECT UNDER THIS AGREEMENT, EVEN IF SIGNED BY THE PARTIES HEREAFTER. Axios reserves the right to change the terms of this Agreement from time to time by updating the HQ Terms and Conditions and posting the revised terms online and/or in the Software’s interface. Any such change will become effective when so posted. If Customer objects to any such change, Customer’s sole recourse will be to terminate the Agreement within thirty (30) days of the change’s effective date and receive a pro-rata refund of fees paid in advance. Continued use of the Software and Professional Services beyond thirty (30) days of a change becoming effective indicates Customer’s acknowledgement of and agreement to be bound by such change.
EXHIBIT A

PROFESSIONAL SERVICES TERMS

To the extent the Order Schedule includes Professional Services, the terms of this Exhibit shall apply. These terms are in addition to (and not in lieu of) the terms in the body of the Agreement; provided that Software-specific provisions of the Agreement will not apply to the Order Schedule if Customer does not receive access to or use of the Software. Capitalized terms used herein and not defined will have the meaning set forth in the body of the Agreement.

1. ASSIGNMENT OF AXIOS PERSONNEL. Axios will assign one or more qualified individuals to provide the Professional Services specified in the Order Schedule (the “Axios Personnel”). Axios reserves the right, in its discretion, to substitute any Axios Personnel with another, similarly qualified member of Axios’ staff without prior notice to or consent from Customer. If Customer, acting reasonably and in good faith, becomes dissatisfied with any assigned Axios Personnel, Customer must notify Axios of its complaint in writing (email accepted). Axios and Customer shall work together in good faith to resolve the complaint within thirty (30) days of such notice, which resolution may include assigning a different Axios staff member as Axios Personnel.

2. CUSTOMER COOPERATION. Customer must cooperate with Axios in its performance of the Professional Services. Such cooperation shall include: (a) providing Axios such access to Customer’s premises, employees, contractors, and equipment as reasonably required to provide the Professional Services; and (b) responding promptly to any reasonable requests from Axios for instructions, information, materials, or approvals in connection with its provision of the Professional Services. Axios is not responsible for any delay in performance of the Professional Services resulting from Customer’s failure to cooperate with Axios.

3. IN-PERSON PROFESSIONAL SERVICES. Where requested by Customer, Axios may agree to provide the Professional Services in person at Customer’s facilities, rather than remotely. If Axios provides any in-person Professional Services, Customer shall reimburse Axios for all actual and reasonable travel expenses incurred in addition to the Professional Services fees set forth in the Order Schedule. Customer shall undertake all reasonable efforts to protect the health and safety of Axios Personnel while performing any in-person Professional Services, and Customer agrees to defend, indemnify, and hold Axios harmless from and against any claims for personal injury or death brought by any Axios Personnel to the extent caused by Customer’s breach of the foregoing covenant.

4. CANCELATION. If Customer cancels any Professional Service, Customer shall remain liable for all associated fees, plus any costs and expenses actually incurred by Axios in association therewith. Professional Services not scheduled by Customer during the performance period specified in the Order Schedule are considered cancelled by Customer.

5. PROFESSIONAL SERVICE- TRAINING.

5.1. Training. Axios will provide remote or in-person training to Customer on how to create Smart Brevity® enabled Newsletters, with or without use of the Software, if and as specified in the applicable Order Schedule (each, a “Training”). Each Training will be scheduled as mutually agreed by the parties. A Training may not be rescheduled during the two (2) week window prior to the agreed Training date except where Axios deems it necessary due to circumstances beyond Axios’ reasonable control.

5.2. Training Materials. If Axios provides Customer with guidance documents, instructions, and training materials in connection with the Training (“Training Materials”), such Training Materials may only be used by the business units or number of individuals specified in the Order Schedule. Customer may not make the Training Materials available to any other business units, internal groups, teams or employees without Axios’ express written consent. Under no circumstances shall Customer make the Training Materials available to third parties.

5.3. Recordings. Axios does not allow Trainings to be recorded. If Axios consents in writing to allow a Training to be recorded, such recording will be considered part of the Training Materials.

5.4. Rights and Licenses. The Training, Training Materials, and all intellectual property, knowledge, know-how, methods and information contained therein are considered Axios Intellectual Property. Customer receives only a limited, non-transferable license to use the contents of the Training and the Training Materials in accordance with this Agreement.

6. PROFESSIONAL SERVICE- EDITORIAL CONSULTING.

6.1. Editorial Consulting. Axios will provide editorial support services to Customer’s editorial writers to assist the Customer in the application of Smart Brevity® to its Newsletters if and as specified in the Order Schedule (collectively, “Editorial Consulting”).

6.2. Scope of Support. Editorial Consulting is purchased in multi-hour blocks, as specified in the Order Schedule. Axios HQ® editors will provide up to the number of Editorial Consulting hours set forth in the Order Schedule or, if not specified, no more than two (2) hours of review per Newsletter. Editorial Consulting services will be performed only on weekdays, excluding Axios company holidays.
6.3. **Software Access.** To the extent that Customer accesses or uses the Software in connection with the Editorial Consulting services, all terms of the Agreement specific to the Software shall apply to Customer’s access and use thereof.

6.4. **Ownership and Responsibility for Content.** All Newsletter content will be authored by Customer’s own editorial writers and the Axios HQ® editors will merely provide editorial support to improve adherence to Smart Brevity® best practices. All Newsletter content is considered Customer Content under the Agreement, and Axios is not responsible or liable for the Customer Content by virtue of providing Editorial Consulting.

7. **PROFESSIONAL SERVICE- HIRING CONSULTING.**

7.1. **Hiring Consulting.** Axios will provide Customer with certain consulting assistance regarding sourcing, evaluating and hiring one or more persons to internally perform editorial services related to creation of Customer’s Newsletters, if and as specified in the Order Schedule (“Hiring Consulting”).

7.2. **Scope of Services.** Hiring Consulting may consist of the following services (as mutually agreed by Customer and Axios and captured on the Order Schedule): (i) help crafting a job description for a Newsletter author; and/or (ii) assistance in evaluating candidates for the Newsletter author role. As part of the candidate evaluation process, Axios may review writing samples and resumes, interview candidates, and/or provide test writing assignments for candidates to perform, each to the extent specified in the Order Schedule. Any test writing assignments are Axios Intellectual Property.

7.3. **Disclaimers.** Notwithstanding anything to the contrary in the Agreement, all Hiring Consulting is provided on an “as-is” basis, without any warranty whatsoever, express or implied. Customer is solely responsible for any decisions pertaining to the employment of any potential candidate (whether or not recommended by Axios), and such decisions will be at Customer’s sole risk. Axios disclaims all liability whatsoever in connection with the employment decisions of Customer, whether or not informed by the Hiring Consulting service.

8. **PROFESSIONAL SERVICES- OTHER.**

8.1. **Other Services.** Axios may agree to provide additional services if and as specified in the applicable Order Schedule (“Other Services”).

8.2. **Additional Terms.** Axios reserves the right to impose additional terms and conditions on such Other Services as it may make available to Customer from time to time. Such terms may be incorporated into the applicable Order Schedule or added to the Agreement via an amendment.