

## Terms of Service / Software License Agreement

### Important – Please Read Carefully

(version 103.3972)

#### 1. INTRODUCTION

1. This agreement (“Agreement”) IS A CONTRACT entered into by and between Lookout and "you," as defined below. Apart from the exception below, YOU AGREE TO BE BOUND by this Agreement, including (for example) its limitations on authorized use, warranties and liability, and transferability. In the event of a conflict between these Terms of Service/Software License Agreement and another written agreement between you and Lookout (for example, an Order Form as defined below), the terms of the other written agreement shall prevail.
2. EXCEPTION - IF: (1) You are being presented with this Agreement as part of a Web site sign-up process, or during installation of software on your computer, and (2) you and Lookout have previously agreed in writing to another agreement that governs your use of the Web site or of the software and excludes the applicability of this Agreement and that remains in effect; THEN: The other agreement, NOT this Agreement, will control your use of that Web site and/or software.
3. This Agreement grants you a limited, non-exclusive right to use Lookout's 'Technology,' subject to the terms and conditions of this Agreement and the relevant 'Order Form,' as defined below. This right is expressly conditioned on your payment of any required fees and on your compliance with the provisions of this Agreement and of the Order Form.
4. Asterisks indicate the existence of related additional provisions in the available Platinum Contract Addendum to this Agreement, which applies only if expressly so stated in this Agreement or in the relevant Order Form.

#### 2. Definitions and usages

1. An “affiliate” of a first individual or organization is a second individual or organization that controls, is controlled by, or is under common control with the first organization. For purposes of this definition, “control” of an organization refers to the direct or indirect possession of:
  1. voting control of securities of the organization carrying at least the specified percentage of the aggregate right to vote for the organization's board of directors or comparable governing body, or
  2. the right to select, or to prevent the selection, of a majority of the members of such board or other body.
    1. "Includes" (and its derivatives, e.g., including), "for example," and similar language are used by way of example and not of limitation unless expressly stated otherwise.
    2. "Order Form" refers to an order form from you that is accepted by Lookout. • An order form may take the form of (for example) a purchase order; a quotation signed by you to place an order; an invoice; or an on-line sign-up form for obtaining access to the Service or for downloading a copy of the Software. • An Order Form may refer to one or more usage plans, service plans, maintenance plans, or similar

documents, in which case the provisions of the referenced plan(s) or other document(s) are deemed part of the Order Form.

3. "Lookout" refers to Lookout Services, Inc., a Texas corporation.
4. "Service" refers to a Lookout online service; if you are attempting to obtain access to such a service as you read this, then the term specifically includes (for example) that service.
5. "Software" refers to one or more items of software provided by Lookout; if you are in the process of installing such an item of software on your computer as you read this, then the term specifically includes (for example) that software.
6. "Technology" refers to the Service or the Software, as the case may be.
7. "Usage plan" refers to a specific offering by Lookout, such as for example a license for a stated period of time, an authorized-usage package, or a maintenance plan.
8. "You" refers to the corporation or other organization whose employee or other representative is either signing a hard copy of this Agreement, or signifying assent to this Agreement by clicking on "I agree" or taking comparable action.
9. "Program Administrator" refers to your authorized representative with authority to manage and oversee your I-9 and E-Verify Program which are designated at the time of set-up.

### 3. License provisions applicable to both the Service and the Software

1. Your submission of an order form, or your assent to this Agreement after submitting an order form, constitutes your representation that the information you provided to Lookout for calculation of your license fee is accurate.
1. From time to time you may make use of the Technology for reasonable disaster-recovery testing and disaster-recovery operations, even if such use technically exceeds the use authorized by the Order Form, so long as such excess use does not amount to regular business use.
2. During the term of any license you purchase for an item of Technology, Lookout will provide you, at no additional charge, with support in accordance with Paragraph 5.8 below.
3. You may not use the Technology in providing services to third parties where those services consist substantially of functions performed by the Technology unless otherwise provided in the applicable Order Form.
4. You are exclusively responsible for the supervision, management and control of your use of the Technology, and for the provision and proper maintenance of your hardware and supporting software (such as, for example, operating-system updates and virus-protection software).
5. You may not disable or work around any usage-control mechanism that may be built into the Technology.
6. You may not decompile, disassemble, or reverse engineer any part of the Technology, nor permit or assist others to do so. If applicable law permits you to engage in such activity notwithstanding this Agreement, you agree to provide Lookout with advance notice and reasonably detailed information concerning your intended activities.
7. You may not rent, lease, sell, or sublicense any part of the Technology except to the extent, if any, permitted by the applicable usage plan. (See also the Assignments provisions in the General Provisions section of this Agreement.)
8. Lookout is free to make use of any feedback or suggestion for improvement that you may make, without obligation to you.

#### 4. License provisions applicable specifically to the Service

1. You represent that all registration information you have provided to us is complete and accurate in all material respects. If we ever have grounds to suspect otherwise, we may in our discretion suspend your access to the Service until the issue is cleared up.
2. You will not knowingly permit an unauthorized individual to access or use the Service.
3. For the avoidance of doubt, as between you and Lookout, you are solely responsible for the content of any information you send to, or store on, the Service. You will defend and indemnify Lookout and its officers, directors, and employees from any third-party claim of any nature concerning such content.
4. Without limiting your other obligations under this Agreement, you may not use the Service in a manner that unreasonably interferes with the Service or with others' use of it.

#### 5. License provisions applicable specifically to Software

1. For the avoidance of doubt, if you are provided with a new or different version of an item of Software, that will not in itself increase the number of license units for which you are licensed even if the new or different version has a different license code. You may not use both the new or different version and another version if such use would exceed the use permitted by the Order Form.
2. The Software is licensed, not sold. Lookout or its supplier(s), as applicable, retain title and all ownership rights, of whatever nature, to the Software and to any tangible copy or copies of the Software provided to you by Lookout.
3. All rights not expressly granted herein are reserved by and to Lookout or its suppliers, as applicable.
4. The Software and its documentation remain the confidential property of Lookout or its suppliers.
5. You may not provide copies of the Software, nor disclose any license keys or license codes needed to operate it, to third parties except as permitted by this Agreement or with Lookout's prior written consent.
6. You may make a reasonable number of copies of the Software for backup purposes.
7. Upon Lookout's request with at least 10 days' notice, you will provide Lookout with information about your installation and usage of the Software sufficient to confirm compliance with the license-unit restrictions of this Agreement.
  - (1) This information must include a report stating the numbers of each type of license unit in connection with which you are using the Software, determined using one or more software utilities that Lookout may provide to you as part of the Software or otherwise.
  - (2) The report must include electronic and/or hard-copies of any output of such utilities.
  - (3) Lookout may audit such information upon reasonable notice to you.
  - (3) Lookout will not disclose or use any such information except to help ensure your compliance with this Agreement.
8. While you are licensed for an item of Software, Lookout will provide your Program Administrators with general telephone support services for the item of Software during its normal business hours.

9. While you are licensed for an item of Software, Lookout will respond to your reports of errors in the Software in the same manner as provided in the Performance Warranty section of this Agreement.
10. Support for 'outdated' Software versions (that is, any version more than six months after release of a subsequent major- or minor version) may require a separate contract and/or additional fees.
11. Lookout has the option of renewing your license automatically as follows. If Lookout wishes to do so, it must first send you a written renewal reminder, including the renewal price, at least 60 days before the expiration date. You may cancel the renewal by so advising Lookout in writing no later than the expiration date.

## 6. Noninfringement of third-party rights

1. This Section 6 sets forth Lookout's obligations if a third party makes a claim that the Lookout software delivered to you does not infringe any valid patent, copyright, trademark, or trade secret right of the third party.
2. In such an event, Lookout will defend you, your affiliates, and the officers, directors, and employees of each of them (each a "protected person") against the claim, at its own expense, and indemnify each protected person against any resulting court costs and damage awards, if any, subject to the conditions below.
3. For a protected person to be entitled to the above defense and indemnity, either you or the protected person must:
  - (a) promptly notify Lookout of the claim, in writing;
  - (b) not make any non-factual admissions in respect of the claim;
  - (c) give Lookout sole control of the defense;
  - (d) not settle the claim without Lookout's consent; and
  - (e) assist Lookout in the defense if it so requests, at its expense.
4. Lookout will take action as described in section 6.5 below if any of the following events occurs:
  - (a) a court of competent jurisdiction orders you to stop using the Technology as a result of a third-party infringement claim covered by this section, and Lookout is unable to have the order stayed or overturned on appeal before you do stop; or
  - (b) Lookout settles the claim on terms that require you to cease using the Technology; or
  - (c) if Lookout reasonably determines that you should stop using the Technology.
5. In any of the cases described in section 6.4, Lookout will, at its option and expense, do one or more of the following:
  - (a) procure the right for you to continue using the Technology; and/or
  - (b) offer to replace or modify the Technology to make it non-infringing while still performing the same or substantially the same functions; and/or
  - (c) if in Lookout's judgment neither of options (a) or (b) is commercially feasible:
    - (1) recommend to you (by notice in accordance with this Agreement) that you stop using the Technology, and
    - (2) refund a prorated amount of the fee(s) that you paid for the usage period in question, prorated monthly as of the date you stop using the Technology, at which time your right to use the Technology will automatically be terminated.
6. Except for a reasonable transition period, Lookout will not be responsible for any infringing use that you may make of the Technology after Lookout takes action as provided in section 6.5.

## 7. Performance

1. This section 7 sets forth Lookout's responsibilities concerning the performance of the Technology.
2. During the term of your license for any item of the Technology, Lookout will use commercially reasonable efforts to supply you with a correction or workaround for errors in that item of the Technology that you report to Lookout during the periods set forth below. This commitment is referred to for convenience as the "Performance Commitment."
  - (a) You acknowledge that, depending on the circumstances, commercially reasonable efforts may consist of supplying a correction or workaround in the next regular release of that item of the Technology.
  - (b) You must provide Lookout with such information about the failure as Lookout reasonably requests.
3. IF: For any reason Lookout does not comply with its obligations under the Performance Commitment in response to your confirmed report of a material error in the Technology; THEN:
  - (a) By written notice to Lookout, you may terminate your relevant license; in which case,
  - (b) Lookout will refund a prorated portion of your relevant license fee for your then-current usage period the subscription fee, computed as of the date you first reported the material error or the start date of the then-current usage period, whichever is later.
4. The foregoing is the EXCLUSIVE REMEDY for any failure by Lookout to comply with the Performance Commitment and for any errors or malfunctions in the Technology.
5. Unless Lookout agrees otherwise in writing, you must make any such refund request by notice to Lookout no later than 90 days after your notice to Lookout of its failure to comply with the Performance Commitment, whichever is later.

## 8. Disclaimer of other warranties, representations, etc.

1. Except as expressly stated above, all aspects of the Technology are provided AS-IS, WITH ALL FAULTS AND WITH NO WARRANTY, EXPRESS OR IMPLIED. In particular:
  1. LOOKOUT DOES NOT WARRANT that the Technology will be error free, will meet your needs, or will operate without interruption.
  2. LOOKOUT DOES NOT WARRANT that the Software will perform as documented in cases of hardware malfunction, misuse of the Software, modification of the Software by any party other than Lookout (the foregoing shall not be construed as granting you the right to make or have made any such modification), use of the Software with other software not described in the documentation, or bugs in other software (for example, operating systems, instant-messaging clients, or add-ons to any of them) with which the Software interacts.
2. Except to the extent (if any) explicitly stated otherwise in this Agreement, THE TECHNOLOGY IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, including but not limited to any application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage.
3. On behalf of Lookout and its suppliers, to the maximum extent permitted by law, LOOKOUT DISCLAIMS ANY AND ALL WARRANTIES, DUTIES, CONDITIONS, OR REPRESENTATIONS (express or implied, oral or written), with respect to the Technology or any part thereof, that are not expressly stated in this Agreement or in a document expressly incorporated by reference herein.

4. The above disclaimers extend, without limitation, to any implied warranties, duties, conditions, or representations (as opposed to those expressly stated in this Agreement) of title, non-infringement, quiet enjoyment, merchantability, fitness or suitability for any purpose (whether or not Lookout or any of its suppliers have reason to know, have been advised, or are otherwise in fact aware of any such purpose), absence of viruses, results, workmanlike effort, or implied term of quality, whether alleged to arise by law, by reason of custom or usage in the trade, or by course of dealing. Except to the extent expressly provided otherwise in this Agreement, LOOKOUT ALSO DISCLAIMS, for itself and its suppliers, any warranty, duty, condition, or representation to any person other than you with respect to the Technology.

## 9. Limitation of remedies

1. You agree to the remedy limitations of this Agreement as part of its overall allocation of risk between the parties. You agree that each remedy limitation is to be enforced: (1) to the maximum extent permitted by applicable law; (2) independently of any other applicable remedy limitation, even if a particular remedy is held to have failed of its essential purpose; and (3) independently of any warranty-disclaimer provisions of this Agreement. You acknowledge that otherwise Lookout would not have accepted the Order Form on the economic terms stated in it, and agree not to seek remedies in excess of such limitations.
2. Except as expressly provided otherwise in this Agreement, NEITHER LOOKOUT NOR ITS SUBSIDIARIES, PARENT COMPANY, EMPLOYEES, OFFICERS, DIRECTORS OR AFFILIATES, IF ANY, WILL BE LIABLE TO YOU OR ANY PERSON CLAIMING THROUGH YOU IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES, arising from or relating to any alleged or actual breach of this Agreement or from the use of, the results of the use of, or the inability to use the Technology, including, as examples but not limitations, lost profits or other economic loss, loss of privacy, loss of confidential information, arising from the use of, the results of the use of, or the inability to use the Technology, even if Lookout has been advised of the possibility of such damages.
3. Except as expressly provided otherwise in this Agreement, to the greatest extent permitted by law, THE MAXIMUM AGGREGATE LIABILITY OF LOOKOUT and its suppliers, subsidiaries, parent company, or affiliates, if any, to you, or to any person claiming rights through you, in respect of any and all claims arising from or related to this Agreement, in contract, tort, or otherwise, WILL BE THE AGGREGATE AMOUNT OF THE APPLICABLE FEES PAID BY YOU FOR THE THEN-CURRENT USAGE PERIOD.
4. EXCEPTION: The maximum-aggregate-liability limitation of this clause does not apply to any provision of this Agreement that requires one party to provide a defense to another party against third-party claims.
5. No remedy limitation of this Agreement will apply in any case where enforcement of the limitation would be contrary to law, including for example in cases of injury (including death) to persons or tangible property that proximately result from breach of this Agreement.
6. Some jurisdictions do not permit limitation or exclusion of remedies under some circumstances, so some or all of the foregoing limitations may not apply to you.

## 10. Confidential information

1. Lookout will:
  - (a) use commercially reasonable efforts to safeguard any non-public information owned or maintained by you or your affiliates to which it may obtain access pursuant to this Agreement; and
  - (b) not use or disclose such information except:
    - (1) with the prior written consent of you or your affiliate, as applicable, or
    - (2) to the extent required by law with prior written notice to you or your affiliate.

## 11. Data privacy protection

1. You represent that, to the best of your knowledge, applicable law does not prohibit you from using the Technology.
2. You undertake to comply at all times with all applicable laws, regulations, and requirements concerning the protection of privacy and personal information, including without limitation all applicable federal, state, and local laws (collectively, "Privacy Law"). You acknowledge that Privacy Law may require, for example, that you register as a data controller with a local privacy data office and obtain the consent of the licensed user of the Software before you install and use it.
3. Except as provided in Section 12.4 below, you acknowledge and agree that Lookout has not made any representations or warranties on any of the matters that are the subjects of this Data Privacy Protection section and that you are not relying on any putative representations or warranties.
4. During the term of your license, Lookout will:
  - (a) make reasonable efforts to process only information or data collected, hosted or otherwise processed in connection with this Agreement ("Data") to the extent necessary to perform its obligations under this Agreement or otherwise in accordance with your instructions from time to time;
  - (b) implement and maintain appropriate operational and technical measures to guard against unauthorized or unlawful access to or processing of such Data and against accidental loss or destruction of, or damage to, the Data;
  - (c) cause your data to be stored at a hosting facility within the United States having at least a SAS 70 Type II certification (or applicable equivalent); and
  - (d) make reasonable efforts to ensure that:
    - (1) only such Lookout employees who are engaged in the provision of the Service shall have access to the Data;
    - (2) such employees are reliable and have been made aware of, understand and will comply with the terms of this Agreement; and
    - (3) such employees have undergone training in privacy law and in the care and handling of Data and have been selected as suitable to handle and maintain the security and confidentiality of the Data.
5. With your prior written consent, Lookout has the right to use your company name and logo on its Website and in other marketing materials; Lookout will promptly stop doing so if you so request.
6. You agree that Lookout may collect and store information you provide to Lookout, including for example personal financial information. Lookout will use such information solely for the purposes of this Agreement and will disclose it to third parties only with your consent or as required by law. For the avoidance of doubt, this section 11.6 does not preclude Lookout from using such data in the preparation of aggregated- or consolidated information that does not contain personally-identifiable information.
7. You agree to notify Lookout promptly if you suspect • that someone else has obtained access to your user ID or password, or • that a breach of security has

occurred, is about to occur, or is being planned, where the breach concerns the Technology.

## 12. Payment; taxes

1. If you have not paid by credit card, then unless otherwise agreed in writing, for example in the Order Form, all invoices are due in U.S. dollars net 30 days from the date of your order.
2. Unless otherwise agreed in writing, Lookout will (1) separately itemize any applicable sales taxes on the relevant invoice(s); and (2) timely report and remit those sales taxes to the proper authorities. For purposes of this Agreement, "sales tax" refers to any sales, excise, use, or similar tax, but not to any tax imposed on Lookout's net income.
3. If any amount due under the applicable Order Form or otherwise under this Agreement is not timely paid, Lookout may suspend or terminate your access to the Service, including permanently deleting stored information after the end of any applicable grace period.
4. Lookout reserves the right to charge interest on amounts remaining unpaid 30 days after the due date, beginning on that date, at 1.5% per month or the maximum amount permitted by law, whichever is less. Any interest charged in excess of that maximum amount will be deemed the result of a mistake and refunded with interest at the maximum legal rate.

## 13. Export controls

1. You will not transfer the Software, or any other software or documentation provided by Lookout, except in compliance with U.S. export-control regulations or other applicable export laws. For example, you will not export or re-export any of the foregoing (i) to any person on a government-promulgated export restriction list, nor (ii) to any U.S.-embargoed countries. NOTE: Under U.S. law, unauthorized exports of the Software can occur, among other ways, by physical shipment; by electronic transmission of the Software; or by transfer or disclosure to a non-U.S. citizen within the U.S.
2. It is your responsibility to assure that any export, re-export, or other transfer (including, but not limited to, any electronic transfer) of the Software: (1) satisfies the requirements of section 740.17(b)(3) of the EAR for export under license exception ENC; or (2) is otherwise authorized, in accordance with the applicable EAR provisions.
3. You represent and warrant that: (a) you are not listed in any export restriction list; (b) you are not a citizen or resident of any U.S.-embargoed country; (3) you have not had your export privileges suspended, revoked, or denied by a governmental authority having jurisdiction.
4. If Lookout so requests, you will sign written assurances and other export-related documents as may be required to comply with applicable export laws.
5. The information on export laws provided in this Agreement is not necessarily complete. For more information on export laws, please refer to the United States Commerce Department Bureau of Export Administration at (202) 482-2440, or (202) 482-4811.

## 14. Beta testing



1. This section applies if the parties agree that you will be a beta tester of a new version of the Technology or some portion thereof ("Beta Technology").
2. You will advise Lookout of any problems that you encounter in using the Beta Technology. Lookout will have the right to adopt, adapt, and/or use any ideas or suggestions that you make or give to Lookout relating to the Beta Technology, permanently and throughout the world, without compensation to you. You will provide Lookout with reasonable information about the performance of the Beta Technology upon request;
3. You may not, without Lookout's prior written consent, disclose any information about the Beta Technology, its design and performance specifications, its code, or the existence of the beta test and its results to anyone other than your employees who are performing the testing; and
4. The test period will last from the date Lookout delivers the Software to you until Lookout gives you notice that the testing period is ending. Your right to use the Beta Technology Software will terminate at the end of the test period or when Lookout asks you to cease using the Beta Technology, whichever occurs first. Upon the conclusion of the testing period or at Lookout's request, you will promptly destroy the original and all copies of any software provided to you as part of the Beta Technology.

## 15. Amendments & modifications

1. Lookout reserves the right, at any time it deems appropriate, to modify the Technology; to offer new service plans and discontinue existing ones (subject to your existing rights under your then-current subscription); and to modify its pricing on a going-forward basis.
2. This Agreement will govern any new features or enhancements to the Technology that Lookout may release from time to time (in our sole discretion) unless Lookout elects to release them under a separate agreement.
3. Any subsequent version of Lookout's license agreement to which you agree will supersede this Agreement in respect of the applicable Software.
4. Except as provided below, Lookout may unilaterally amend this Agreement, or any exhibit, schedule, or appendix of this Agreement, by giving you at least 30 days prior notice.
  - (a) IF: You are unwilling for your license to continue under the amended Agreement; THEN: You must cease using the Technology and terminate the Agreement by giving notice to Lookout no later than the effective date of the amendment. If you continue to use the Technology after that date, you will be deemed to have assented to the amendment.
  - (b) For the avoidance of doubt:
    - (1) No unilateral amendment will retroactively modify any binding dispute-resolution provision of this Agreement (for example, a binding-arbitration provision) in respect of any then-accrued claim of breach of the Agreement by one signatory party against another unless those parties expressly agree otherwise; and
    - (2) without your express written agreement, a unilateral amendment will not retroactively eliminate or modify any right you have already exercised, including for example any right to demand that Lookout perform an obligation, under the Agreement.
5. Otherwise, this Agreement may be amended only by a writing that so states and is signed by the parties; each party agrees not to assert otherwise in any forum.
6. If you provide Lookout (or previously provided Lookout) or an authorized Lookout reseller with a purchase order or similar document, any terms, conditions, or

provisions appearing therein will be given effect if and only if the purchase order meets the conditions of this "Amendments & modifications" section.

## 16. Breach

1. **Notice of breach:** The nonbreaching party will inform the breaching party in writing of any breach promptly after learning of circumstances alleged to constitute a breach of this Agreement.
2. **Cure periods for specific breaches:** The breaching party will have a cure period as follows: • *Failure to pay an undisputed amount when due, or breach of an insurance obligation:* 10 business days. • *Curable failure to meet an agreed written deadline without a specified cure period:* 5 business days. • *Curable breach of a confidentiality obligation:* 3 business days. • *Curable breaches not otherwise specified:* 30 days. • *Non-curable breaches:* no cure period.
3. **Suspension:** If you materially breach this Agreement, Lookout reserves the right to immediately suspend your right to use the Service by notice to you. By way of example and not of limitation, pursuant to the safe-harbor provisions of the Digital Millennium Copyright Act (DMCA), if we conclude that you have infringed the intellectual property rights (for example, copyrights, trademarks, patents, rights in confidential information) of Lookout or its providers, or that you are inducing, permitting, or knowingly assisting others to do so, we have the right to suspend your right to use the Service.

## 17. Relationship maintenance

1. **Status review conferences:** Each party will participate in conferences, by phone or in person, to review status and assumptions and to plan future actions, as reasonably requested by either party. The parties anticipate that the standard agenda for such conferences will include, as appropriate: (1) progress made in agreed undertakings; (2) problems encountered or anticipated; (3) plans for future action; and (4) assumptions being made.
2. **Early neutral evaluation (non-binding):** In any dispute, at either party's request the parties will jointly consult an experienced, knowledgeable, neutral individual, informally and in confidence, for non-binding advice as to what would constitute a responsible resolution of the dispute. Any procedural disagreement concerning the consultation will be resolved by reference to the Early Neutral Evaluation Procedures of the American Arbitration Association, to the extent not inconsistent with this Agreement.

## 18. Termination

1. **Termination for material breach:** If a material breach of this Agreement is not timely cured (see Breach), then the nonbreaching party may terminate this Agreement by written notice of termination to the breaching party.
2. **Survival after termination:** Termination of this Agreement will not affect already-accrued rights and obligations. The rights and obligations set forth in herein (if any) concerning the following subjects will survive termination, no matter how caused: • confidentiality • indemnification and defense against third-party claims • intellectual-property ownership • warranty rights and -disclaimers • remedy limitations.

3. **Post-termination actions:** Upon any termination of this Agreement, the parties will take such action as may be reasonably necessary to wind up their relevant business together in a responsible manner, each at its own expense unless otherwise agreed in writing.

## 19. General provisions

1. **Applicability:** For the avoidance of doubt, this Agreement governs your use of any updates, supplements or add-on components of the Technology that Lookout may provide or make available to you, unless accompanied by separate standalone terms that exclude the applicability of this Agreement.
2. **Assignment restrictions:** • In the context of assignments of this Agreement, the term "restricted party" refers to: Each party. • A restricted party may not assign this Agreement without the prior written consent of the other party except to the extent (if any) expressly authorized by this Agreement. Any other purported assignment of this Agreement by a restricted party will be void.
3. **Assignment with business assets:** Either party may assign this Agreement without consent in conjunction with assignment of substantially all the assets of its business related specifically to this Agreement.
4. **Assignment - prompt notice afterwards:** Any party assigning this Agreement will notify the other party promptly thereafter.
5. **Assignment - any prior notice is confidential:** IF: a party elects to give another party prior notice of an impending assignment in connection with a transaction that has not been publicly announced; THEN: At the assigning party's request the other party will keep all information disclosed to it about the transaction (including for example the existence or the pending negotiation of the transaction) in strict confidence, including compliance with any applicable insider-trading laws, until the disclosed information becomes publicly known.
6. **Authorized signatures:** Each person signing this Agreement on behalf of a party other than himself or herself (whether by signing a hard copy, clicking on "I agree" or comparable language, or in any other manner) represents that he or she has been duly authorized to do so.
7. **Change of address:** You agree to notify Lookout promptly if your email address or other contact information changes.
8. **Effective date – when signed or clicked:** This Agreement is effective as follows: • IF: This Agreement is being signed in hard copy, or if it is incorporated by reference in a signed hard-copy agreement (such as, for example, a Lookout sales quotation signed by you); THEN: This Agreement is effective when signed by the last party to do so. • IF: You are presented with this Agreement on-screen as part of a Web site sign-up process or during installation of software on your computer; THEN: This Agreement is effective when you click on "I agree" or take comparable action.
9. **Email and FAX communications:** You authorize Lookout to communicate with you by email and FAX as well as postal and delivery services.
10. **English language:** By express agreement of the parties, this Agreement and certain of its appendixes, exhibits, and attachments, if any, are written in and shall be interpreted for all purposes in accordance with the English language as used in the United States of America. *[French translation: Les parties conviennent expressément que le présent Accord ainsi que toutes ses annexes seront rédigés en langue Anglaise et interprétés par référence à la terminologie utilisée aux Etats-Unis.]* In the event of a disparity between the English version and any non-English version of this Agreement, the English version will govern.

11. **Entire agreement:** This Agreement, including any exhibits, attachments, riders, or appendices as well as any other document expressly incorporated by reference, is the parties' final, complete, exclusive, and binding statement of the terms and conditions of their agreement concerning its subject matter. • For the avoidance of doubt, in entering into this Agreement, neither party is relying on any promise or representation by the other party that is not stated in (or expressly incorporated by reference into) this Agreement. • Other or additional terms and conditions may apply to specific portions or features of the Technology; in case of a conflict between them and this Agreement, the former will control, but only as to your use of the relevant portion or feature.
12. **Force majeure:** (a) Except as expressly provided otherwise in this Agreement: (1) Neither party (the 'nonperforming party') will be liable for failure of timely performance if: • the failure resulted from one or more events beyond the reasonable control of the nonperforming party, and • the failure-causing effect of the event(s) could not reasonably have been avoided by the nonperforming party. (2) As one specific but non-limiting example, Lookout will not be liable for any failure to log instant messages from a network it has represented it is currently capable of logging if the failure is due to a change by the network provider, where the effect of the change on Lookout's ability to log is beyond Lookout's reasonable control. (b) In any such case: • the nonperforming party will keep the other party reasonably informed about any such failure; and • any deadlines for performance will be equitably extended. (c) Failure to pay money due is excused by this clause only if the failure resulted from a failure in third-party payment systems.
13. **Forum selection:** The court(s) having subject-matter jurisdiction in Houston, Texas, USA will have non-exclusive jurisdiction of any action or proceeding arising out of this Agreement that is not required to be arbitrated.
14. **Governing law:** All disputes arising out of this Agreement are to be decided in accordance with the law of the United States of America and the State of Texas that would be applied, by the courts having jurisdiction there, to contracts made and performed entirely there by residents thereof.
15. **Governing law - exclusion of UN CISG Convention:** The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods.
16. **Governing law - exclusion of UCITA:** The Uniform Computer Information Transactions Act will not govern this Agreement.
17. **Headings:** The headings in this Agreement are used for convenience only and are not to be deemed as expanding or limiting any right or obligation herein.
18. **Independent contractors:** Except as may be expressly provided otherwise in this Agreement, the parties intend for their relationship defined by this Agreement to be strictly that of independent contractors; each party will conduct itself accordingly.
19. **Independent contractors - specific requirements:** • Neither party will hold itself out as an employee, agent, partner, joint venture, division, subsidiary, or branch of the other party. • Neither party has, nor will it hold itself out as having, authority to make commitments or representations on behalf of the other party except to the extent, if any, that this Agreement expressly states otherwise.
20. **Invalidity of provision:** If any provision of this Agreement is held to be invalid, void, unenforceable, or otherwise defective by a court or other tribunal of competent jurisdiction, then: • all other provisions will remain enforceable, and • the provision will be deemed modified, solely in the jurisdiction in question, to the minimum extent necessary to cure the defect.
21. **Legal challenges:** If a court or other authority issues a ruling or order, or a legislative or administrative body enacts a statute, regulation, or interpretation, and Lookout concludes that an aspect of the Service or of this Agreement may be in

conflict therewith, then Lookout reserves the right to suspend or terminate all or any relevant aspect of the Service.

22. **Limitation period:** Any action for breach of this Agreement, in any judicial or other forum, must be commenced within one year following the accrual of the right of action.
23. **Mitigation of damages:** In the event of a breach of this Agreement, the non-breaching party will use reasonable efforts to mitigate its damages arising from or relating to the breach.
24. **Notices:** We may give any notice under this Agreement (i) by making it available on our Web site and displaying a suitable advisory on the site while you are accessing it, or (ii) sending you an email to the address you have listed in our records. All other notices required or permitted by this Agreement: (i) must be in writing; (ii) must be marked for the attention of a specific individual or position; and (iii) are effective when received or refused by that individual or position as shown for example by delivery-service confirmation or an email "delivered" or "read" confirmation message. .
25. **Notices - additional provisions:** (1) Notices may be sent to the parties' respective addresses shown in this Agreement, or to such other address as a party designates by notice or by other reasonable written communication. (2) Any party sending notice of breach or termination is encouraged (but not required) to separately send a courtesy copy, by any reasonable method, to the attention of the general counsel of the party being notified.
26. **Prohibitions:** Wherever this Agreement prohibits or restricts a party from doing something, that party is also prohibited or restricted from attempting to do so and from inducing, soliciting, permitting, or knowingly assisting anyone else to do so, whether for its own benefit or otherwise.
27. **Redlining:** Each party represents that it has "redlined" or otherwise flagged its revisions (if any) of drafts of this Agreement and associated documents that it has sent to the other party.
28. **Signature & delivery of this Agreement:** This Agreement may be signed and delivered (including by FAXing signature pages or electronic delivery of copies in PDF format) in separate counterpart originals. All signed counterparts constitute one and the same instrument. Any counterpart may comprise one or more duplicates, any of which may be signed by less than all of the parties provided that each party whose execution is required signs at least one of the same.
29. **Third-party beneficiaries disclaimed:** For the avoidance of doubt, no individual or organization is entitled to claim any right, remedy, or benefit, of any kind, under this Agreement except for: • the signatories to this Agreement and their respective successors and permitted assigns; and • to the extent, if any, that this Agreement expressly states otherwise.
30. **Waivers:** A waiver by either party of a particular condition, right, or obligation arising under this Agreement (A) is to be given effect only if it is expressly stated in a document signed by that party, and (B) is to be strictly construed.