



## STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Military and Veterans Affairs  
3423 North Martin Luther King Blvd Lansing, MI 48906

### NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **180000000112**

between

THE STATE OF MICHIGAN  
and

CONTRACTOR	Carahsoft Technology Corporation  1860 Michael Farada Drive Suite 100  Reston, VA, 20910  William Toti <a href="mailto:William.Toti@Carahsoft.com">William.Toti@Carahsoft.com</a> (703) 581-6599  Reston, VA  9693
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STATE	Program Manager	Angela Simpson Tara Premoe  517-481-8135 JFHQ 517-284-5012 DEQ  <a href="mailto:SimpsonA3@michigan.gov">SimpsonA3@michigan.gov</a> <a href="mailto:premoet@michigan.gov">premoet@michigan.gov</a>	DMVA DEQ
	Contract Administrat	Gregory Pawlak  517-481-7655  <a href="mailto:pawlakg@michigan.gov">pawlakg@michigan.gov</a>	DMVA

### CONTRACT SUMMARY

<b>DESCRIPTION:</b> Social Media Monitoring Services – Department of Military and Veterans Affairs (DMVA) - DEQ.			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
12/11/2017	9/30/2018	Four (4) One (1) year	N/A
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45			
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MISCELLANEOUS INFORMATION</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>	\$30,830.00		

**THIS IS NOT AN ORDER:** Orders for delivery will be issued directly by the Department of Military and Veterans Affairs (DMVA) through the issuance of a Purchase Order Form. This Contract agreement is awarded on the basis of our inquiry bearing the solicitation 051117B0011069.

FOR THE CONTRACTOR:

Carahsoft Technology Corporation  
Company Name

William Toti  
Authorized Agent Signature

William Toti  
Authorized Agent (Print or Type)

12/14/17  
Date

FOR THE STATE:

J. R. L.  
Signature

Conrad R. Adams, Diver-Mechanic  
Name & Title

12/14/17  
Date



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

Contract 180000000112

### Social Media Monitoring Services

DMVA - DEQ

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and Carahsoft Technology Corp. ("Contractor"). This Contract is effective on December 11<sup>th</sup>, 2017 ("Effective Date"), and unless terminated, expires on December 10<sup>th</sup> 2018.

This Contract may be renewed for up to four (4) additional one (1) year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in the Statement of Work, attached as **Schedule A** to this Contract (the "Contract Activities"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Schedule A**.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Gregory Pawlak, Buyer Specialist Department of Military and Veterans Affairs State Operations, Purchasing and Contracts Reserve Forces Support Center, Suite 320 3423 North MLK Blvd. Lansing MI, 48906 <a href="mailto:pawlakg@michigan.gov">pawlakg@michigan.gov</a> Telephone: 517-481-7655 Fax: 517-481-7644	Jeff Dawe – Hootsuite Field Account Executive Telephone: (604) 828-2024 Insert Full address Vancouver, Canada

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "Contract Administrator"):

State:	Contractor:
<p>Gregory Pawlak, Buyer Specialist          Department of Military and Veterans Affairs          State Operations, Purchasing and Contracts          Reserve Forces Support Center, Suite 320          3423 North MLK Blvd.          Lansing MI, 48906  <a href="mailto:pawlakg@michigan.gov">pawlakg@michigan.gov</a>          Telephone: 517-481-7655          Fax: 517-481-7644</p>	<p>Jeff Dawe – Hootsuite          Field Account Executive          Telephone: (604) 828-2024          Vancouver, Canada</p>

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State: DMVA	Contractor:
<p>Angela Simpson          Department of Military and Veterans Affairs          Public Affairs Office          Joint Forces Headquarters, Building 20          3423 North MLK Blvd.          Lansing, MI 48906  <a href="mailto:Simpsona3@michigan.gov">Simpsona3@michigan.gov</a>          517-481-8135</p>	<p>Jeff Dawe – Hootsuite          Field Account Executive          Telephone: (604) 828-2024          Vancouver, Canada</p>

State: DEQ	Contractor:
<p>Tara Premoe          Procurement Section          Office of Administration          Department of Environmental Quality    <a href="mailto:premoet@michigan.gov">premoet@michigan.gov</a>          Telephone: 517-284-5012</p>	<p>Jeff Dawe – Hootsuite          Field Account Executive          Telephone: (604) 828-2024          Vancouver, Canada</p>

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in **Schedule A**) if, in the opinion of the State, it will ensure performance of the Contract.

6. **End User License Agreement.** The terms of use for the on-line services are attached as **Schedule B** to this Contract.

7. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0. .
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide claims-made coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

8. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
9. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
10. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
11. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.
- In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.
12. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in **Schedule A**.
13. **Acceptance.** The Contract Activities will be deemed accepted when the State has been given access to the on-line services, and its users can access those services.
14. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Schedule A**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any

kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

15. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
16. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

17. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
18. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other

documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

19. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

20. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
21. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
22. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
23. **State Data.**

- a. All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("State Data"); this definition is to be construed as broadly as possible, provided that notwithstanding the foregoing no "Customer Content" or "Mentions" (as each is defined in Schedule B) shall be considered State Data for the purposes of this Section 23; Customer Content and Mentions shall be governed exclusively by the terms set forth in Schedule B. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in a mutually-agreed format. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in a mutually-agreed format.
- d. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than seventy-two (72) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence; (c) perform or take any other actions required to comply with applicable law as a result of the occurrence; and (d) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. This section survives termination or expiration of this Contract.

**24. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "Confidential Information" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any

unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

## **25. Information Security.**

- a. **Undertaking by Contractor.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining an information security program, including physical, technical, administrative, and organizational safeguards, that is consistent with industry best practices. However, Contractor cannot guarantee that unauthorized third parties will never be able to defeat those safeguards and expressly denies any responsibility for damages, monetary or otherwise, resulting from unauthorized third party access to the State's account or use, alteration, or disclosure of the Customer Content.
- b. **Audit by Contractor.** No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and, on request made no more than once annually, provide a copy of its most recent report of such audit findings to the State.

26. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
27. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
28. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
29. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
30. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
31. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
32. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
33. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
34. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15

business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

35. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
36. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
37. **Entire Agreement and Order of Precedence.** This Contract, together with all Schedules constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, representations and warranties, both written and oral, with respect to such subject matter. If there is any conflict between documents, the order of precedence is: (a) first, this Contract, excluding its Schedules; and (b) second, the Schedules. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
38. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
39. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
40. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
41. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

# STATE OF MICHIGAN

Contract No. 18000000112  
Social Media Monitoring Services  
DMVA - DEQ

## SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

### BACKGROUND

The Michigan Department of Military and Veterans Affairs (DMVA) as well as the Department of Environmental Quality (DEQ) would like to utilize an online web-based media monitoring service that compiles data and distribute information from media outlets as it relates to the DMVA, Michigan National Guard (MING) and the DEQ. The DMVA believes having information regarding the distribution and proliferation of news that relates to the MING assists the DMVA's public affairs office (PAO), in making decisions about what features and formats DMVA customers are interested in. The obtained information shall also assist the DMVA, MING and DEQ leadership when making decisions about topics for information sharing as well as alerting the state PAO to potential areas and topics where talking points and/or guidance are needed to clarify an issue or establish fact.

Currently the DMVA PAO is limited to Google® searches and alerts which require a significant amount of staff time and effort to compile yet yield only limited information regarding distribution of a message. In an effort to maximize organizational transparency and conveyance of information it is absolutely essential to operate using the most modern tool(s) available in gathering this information.

### SCOPE

The DMVA and the DEQ, would like to utilize an online web-based media monitoring provider that compiles data and distribute information from media outlets as it relates to the DMVA, MING and the DEQ on a 24-7 basis. Source contact data must be continuously updated to maximize accuracy.

### REQUIREMENTS

#### 1. General Requirements

- a. The Contractor service must be able to provide user set up and user lesson/s within the first 5 days of contract activation.
- b. The Contractors service must be able to support up to 15 data searches per day that include news and video broadcast media outlets including obscure blog posts, Facebook, Twitter, Instagram, YouTube and search of product/service review comments sections.
- c. The Contractors service must be able to provide a record of all media mention sources and contact information gathered during the media search.
- d. The Contractors service must be able to provide metrics that include at minimum: volume, reach, with the most prestigious media exposure listed first.
- e. The Contractors service must provide DMVA end users the ability to format reports as maps, graphics, charts, table or text, whatever format conveys the best meaning of the data.
- f. The Contractors service must allow DMVA the ability to compare multiple days of search activity.
- g. The Contractors service must provide the DMVA the ability to upload contacts and export media lists. The service must also provide the ability to Email and archive press releases, media advisories, hometown news/features.
- h. The Contractors services must allow comparison options for other states' Guard and Veterans

Affairs offices.

- i. The Contractors service must provide translation options for Spanish, French, Italian, Farsi, Latvian and a Liberian dialect yet to be determined.
- j. The Contractor should be aware that the DMVA estimates a possible 5, one-hour occasions each contract year of special support needs. The Contractor will credit DMVA for periods of time that the tool is unavailable for use which is not the fault of DMVA, during EST business hours.

#### **1.1 (IT) Environment**

The links below provide information on the State's Enterprise information technology (IT) policies, standards and procedures which includes security policy and procedures, eMichigan web development, and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

#### **Enterprise IT Policies, Standards and Procedures:**

[http://michigan.gov/dtmb/0.4568,7-150-56355\\_56579\\_56755---,00.html](http://michigan.gov/dtmb/0.4568,7-150-56355_56579_56755---,00.html)

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The MDTMB Project Manager must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and MDTMB, before work may proceed based on the changed environment.

#### **Enterprise IT Security Policy and Procedures:**

[http://www.michigan.gov/documents/dmb/1310\\_183772\\_7.pdf](http://www.michigan.gov/documents/dmb/1310_183772_7.pdf)  
[http://www.michigan.gov/documents/dmb/1310.02\\_183775\\_7.pdf](http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf)  
[http://www.michigan.gov/documents/dmb/1335\\_193161\\_7.pdf](http://www.michigan.gov/documents/dmb/1335_193161_7.pdf)  
[http://www.michigan.gov/documents/dmb/1340\\_193162\\_7.pdf](http://www.michigan.gov/documents/dmb/1340_193162_7.pdf)

### **2. Acceptance**

#### **2.1. Acceptance, Inspection and Testing**

The DMVA will use the acceptance process defined in Section 16, Acceptance, of the Standard Contract Terms.

### **3. Staffing**

#### **3.1. Contractor Representative**

The Contractor must appoint an individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative"). The individual assigned to the state is:

William Toti  
Customer Account Manager  
[William.Toti@Carahsoft.com](mailto:William.Toti@Carahsoft.com)  
Phone: (703) 581-6599

#### **3.2. Customer Service Toll-Free Number**

The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST. These numbers are:  
Carahsoft Toll-Free number: 1-888-66-CARAH (1-888-662-2724)  
Hootsuite Toll-Free number: 1-888-350-5191

### **3.3. Technical Support, Repairs and Maintenance**

- a. The Contractor toll-free number for the State to make contact with the Contractor for technical support, repairs and maintenance is identified above. The Contractor must be available for calls and service during the hours of 8 am to 5 pm EST.
- b. The Contractor when providing technical support, the Call Center must resolve the caller's issue within 30 minutes.
- c. The Contractor will provide technical and creative support during normal EST business hours and pre-approved evening or weekend support should special projects require assistance.

### **3.4. Work Hours**

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

### **3.5. Key Personnel**

- a. The Contractor must appoint a minimum of two highly qualified individuals who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 2 hours

The Contractor's Key Personnel may be requested on-site at DMVA/MING Joint Forces Headquarters, however, twice per calendar year should be sufficient if teleconferencing options are unsatisfactory to meet a specific project/inquiry need.

- b. The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

Jeff Dawe – Hootsuite  
Field Account Executive  
(604) 828-2024

Vancouver, Canada  
Duties Include:

Through an open and engaged dialogue, Natalia will work Customer Success Manager to ensure that all requirements outlined in RFO have been met, SLA's attained and customer is satisfied with the service. Should DMVA/MING need to add training, services and additional features/product, Natalia will be the main point of contact.

Cris Cravetz  
Sales Executive  
t: 646-712-9441 ext. 110  
m: 917-743-7006  
e: [c.cravetz@talkwalker.com](mailto:c.cravetz@talkwalker.com)

New York, NY 10017  
Duties Include: Through an open and engaged dialogue, Cris will work with Hootsuite Enterprise team to provide pertinent information (may include but not limited to: roadmap

Customer Success Manager to be appointed when the contract is signed  
Location: Vancouver, BC or Toronto, BC

Duties include:

All Hootsuite Enterprise accounts receive a dedicated Customer Success Manager who is focused on supporting your organization's social media strategy and initiatives through the life of your Hootsuite Enterprise account (including the training of additional users). Via an

engaged and ongoing dialogue, your Customer Success Manager will be your primary resource for ensuring that your team is maximizing the power and value of the Enterprise platform.

### **3.6. Organizational Chart**

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

#### **Organizational Chart Carahsoft Technology Corporation**

Carahsoft has 600+ employees under the leadership of founder and President Craig P. Abod.

In addition to Mr. Abod, Carahsoft's executive team includes the following individuals:

Ellen Lord, Director of Contracts  
Jillian Szczepanek, Controller  
Karina Woods, Director of Customer Operations  
Jennifer Taha, Director of Proposals  
Julie Denworth, Director of Marketing  
Courtney Steiner, Director of Adobe

#### **Organizational Chart Hootsuite Media Inc**

Executive team:

Ryan Holmes, CEO

Ryan Holmes is the founder and CEO of Hootsuite. He started the company in 2008 and has helped grow it into the world's most widely used social relationship platform, with 15-million-plus users, including more than 800 of the Fortune 1000 companies.

Sujeet Kini, CFO

Sujeet leads our finance, facilities and legal departments. He has an extensive background in corporate finance and accounting at public and private companies, including leadership roles at OpenText, GT Group Telecom, and PwC.

Bob Elliott, Global SVP Sales

Bob leads all aspects of Hootsuite's global enterprise sales strategy and execution. He brings more than 20 years of leadership experience in building high-performing sales teams and driving revenue growth. Prior to Hootsuite, Bob was Managing Director, SAP Canada.

Penny Wilson, CMO

Penny leads our global marketing strategy—driving market leadership, awareness and demand generation. She has over 30 years of international experience delivering business growth in the technology industry.

#### **Organizational Chart Talkwalker Inc**

Robert Glaesene, CEO

Robert joined Talkwalker as CEO in 2010 after launching and heading up online brokerage bank Internaxx, now part of TD bank. His leadership expertise is spearheading the growth of the company. Talkwalker now holds a dominant position as a crawling and search technology company that allows customers worldwide to search, analyze and monitor online and social media.

Christophe Folschette, Global Sales Director & Co-founder

Christophe is co-founder and global sales director at Talkwalker. He left business consulting at Accenture to follow his entrepreneurial spirit and firm belief in the value of social media intelligence for businesses. From years of meeting with clients and developing Talkwalker, Christophe has become a cross-functional specialist in understanding the data and analytics requirements for clients' business needs. Christophe holds an MSc degree in computer science and economics from the Munich University of Technology. During this time he created

two tech startups and won an innovation and entrepreneurship competition.

Thibaut Britz, CTO & Founder

Thibaut is Founder and CTO at Talkwalker. At the age of 17 he designed, developed and ran blue.lu, the first local full text search engine in Luxembourg. Since the launch of the company in 2009 he has made use of his expertise in software development, crawling technology and data extraction to establish Talkwalker as the leading European web data collector and search company.

Thibaut holds a MSc degree in Computer Science from the Swiss Federal Institute of Technology in Zurich (ETH) and has won talent awards in 2011 and 2012.

### 3.7. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

To best meet DMVA/MING requirements, we propose a Hootsuite Enterprise solution in Partnership with TalkWalker Inc.

Hootsuite and Talkwalker are technology partners bound by contracts and SLA's negotiated by Hootsuite Partner Management team.

Hootsuite has previously engaged Talkwalker on numerous Federal and State level government RFPs. We are happy to share more details about the scope and nature of these contracts if Hootsuite moves to the next step in the RFP process.

As a subcontractor, Talkwalker Inc will provide Hootsuite Media Inc guidance on solution selection, as well as, deliver and ensure the solution is operational and complies with Hootsuite Media Inc SLAs. Talkwalker will not have access to DMVA/MING contract activities, project manager information or specific requests from the client.

Talkwalker Inc.  
205 E.42nd St., 19th Floor  
New York, NY 10017  
[www.talkwalker.com](http://www.talkwalker.com)

Talkwalker offers advanced listening and analytics capabilities covering 150+ million sources including blogs, forums, videos, news, review sites and 10+ social networks. Combining Talkwalker with Hootsuite allows enterprises to effectively define and categorize the conversations that matter using over 50 filters so they can make informed decisions on how to engage with their audience. Talkwalker has advanced social listening capabilities such as sophisticated Boolean search (i.e. NEAR/x, wildcards, geo-location, etc.), influencer identification (i.e. creating influencer lists, filtering by influencer lists, etc.), automated tagging/rules (i.e. automatically change sentiment to negative anytime "shooting" is mentioned, etc.), and some more advanced alerting, filtering and exporting capabilities.

Key Talkwalker Contact  
Cris Cravetz  
Sales Executive  
t: +1 646 712 9441 ext. 110  
m: +1 917 743 7006  
e: [c.cravetz@talkwalker.com](mailto:c.cravetz@talkwalker.com)

### 3.8. Security

The Contractor will be subject the following security procedures:

The Contractor must explain any additional security measures in place to ensure the security of State facilities.

The Contractor's staff may be required to make deliveries to or enter State facilities and assure the security of state facilities at all times. The Contractor may be required to provide documentation of background checks of staff assigned to this contractual agreement. The State may require the Contractor's personnel to wear State issued identification badges.

Hootsuite is a SOC2 certified company and is also a certified B- corp  
a) SOC2 certification, Penetration testing, PCI DSS AoC, CSA STAR Registered  
b) Internal control structure is evaluated as part of the financial external audit.  
c) SOC 2 certification, PCI DSS AoC, CSA STAR Registered

Hootsuite's Talent Acquisition and People teams perform reference checks on candidates, confirm the identity and immigration status of candidates, and obtain SIN numbers upon hire. Criminal background checks are done for specific, sensitive positions only, such as certain positions in finance and IT security. Those checks are provided by SterlingBackcheck

## 4. Project Management

### 4.1. Project Plan

The Contractor will be required to maintain a project plan under this contractual agreement. Project plan should identify items such as the required contact personnel; timeline of the project plan must be submitted to the State; project management process; project breakdown identifying sub-projects, tasks, and resources required; expected frequency and mechanisms for updates/progress reviews; process for addressing issues/changes; and individuals responsible for receiving/reacting to the requested information.

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a project plan to the Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals, (b) the project breakdown showing sub-projects, tasks, and resources required; and (c) standard user set-up, search instructions and common use parameters/commands...

Professional Services are provided by our integrated team of Launch Specialists, Implementation Consultants and Engagement Managers. The Professional Services team offers extensive product expertise and are dedicated to providing a successful setup and deployment of Hootsuite and any partner products.

The on-boarding projects are tailored to address clients' needs while aligning the dashboard setup & workflow with the organizational strategy. The Service project can be done in a single or different waves to guarantee best tool adoption by the different users. The Professional Services team can provide the on boarding and training at a cost, which is dependent on client needs and number of users to be on-boarded. Our Professional Services team help set up workflow, governance and security.

Our Professional Services team will manage the implementation activities. This includes requirements gathering, the development and sign-off on a comprehensive project plan, as well as weekly project status updates and meetings. Additionally Hootsuite will be providing training and support for all products and bringing in partner services when needed for external products.



#### 4.3. Reporting

The Contractor must submit, to the Program Manager, the following written reports:

- a. An exportable weekday report of media mentions based on a keyword search that includes a minimum of the following search terms: Michigan Department of Military and Veterans Affairs, Michigan National Guard, Michigan Army National Guard, Michigan Air National Guard, Michigan Veterans Affairs Agency and the Department of Environmental Quality.
- b. A customized dashboard that includes the DMVA MING and DEQ logo and simplified menus that aid regular users when compiling reports or distributing information.

### 5. Ordering

#### 5.1. Authorizing Document

The appropriate authorizing document for the Contract will be Purchase order release off Master Agreement.

### 6. Invoice and Payment

#### 6.1. Invoice Requirements

All invoices shall be submitted by agency to each Program Manager. All invoices to the State must include: (a) date; (b) purchase order doc ID #; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid. Invoices for services shall be sent to the Program manager identified on this contract. The program manager for each agency will be responsible for invoice approval.

#### 6.2. Payment Methods

The State will make payment for Contract Activities via Electronic Fund Transfer (EFT).

# STATE OF MICHIGAN

Contract No. 18000000112  
Media Web-based online Media Monitoring Services  
DMVA and DEQ

## PRICING MATRIX

1. The Contractor pricing schedule for the proposed Contract Activities using the below table.
2. Pricing was established by submitting proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

User Location	Users	Cost Per user	Total Per Year Cost
DMVA Lansing	15	\$ 766.50  <u>Note:</u> Actual number of users is unlimited. This amount was calculated by dividing the Total Per Year Cost by 15, as requested.)	\$ 11,497.50  <u>Note:</u> Does not include one-time Service fee of \$1,600.00 (includes both locations)

User Location	Users	Cost Per user	Total Per Year Cost
DEQ Lansing	5	\$ 766.50  <u>Note:</u> Actual number of users is unlimited. This amount was calculated by dividing the Total Per Year Cost by 5, as requested.)	\$ 3,832.50  <u>Note:</u> Does not include one-time Service fee of \$1,600.00 (includes both locations)

Pricing include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing). Travel not included.

**Schedule B**  
**Contract No. 180000000112**  
**DMVA Media Web-based online Media Monitoring Services**

**Hootsuite End User License Agreement (“EULA”)**

Wherever used in this EULA, “you”, “your”, “Customer”, and similar terms mean the State.

**A. Terms Applicable to All Services**

**1. Definitions.**

“Affiliate” means a person or entity that owns, is owned by, or is under common control with a Party, and “control” in this definition means that a person or entity owns more than 50% of the equity interest of any entity and/or has the ability to control the management of such entity.

“Authorized Users” means individuals who are authorized by you to use the Services with varying levels of control and access as specifiable by you and who have been supplied user identifications and passwords by you. Authorized Users may include your employees, consultants, contractors, agents, or other designees or those of your Affiliates, but will not include any employee or agent of any Hootsuite competitor.

“Customer Content” means all information and data (including text, images, photos, videos, audio, and documents) or any other content in any media and format provided or made available to Hootsuite by you or on your behalf in relation to the use of the Services, but excluding Customer Information.

“Customer Information” means information and data submitted by or for you to Hootsuite in connection with the creation and management of your account for the Services.

“Mentions” means the information, including links, posts, and excerpts, that has been made publicly available and obtained by Hootsuite on your behalf from the Internet, and data derived therefrom, including reports, summaries, graphs, and charts.

“Order Form” means a document issued by us or the Solution Partner and executed or otherwise agreed upon by your authorized representative that specifies a description of the Services and any other details related to the Services.

“Party” means either of you or us and “Parties” means, collectively, you and us.

“Seat” means a single subscription associated with a single log-in to a Service, assigned to one Authorized User.

“Services” means the products and services that are ordered by you under an Order Form and made available by us, but expressly excluding any Third-Party Services (as defined herein).

“Solution Partner” means the Contractor, who is reselling the Services to you pursuant to an agreement between the Contractor and Hootsuite.

“Supported Platform(s)” means the social networking site(s) supported by the Services, including Twitter, Facebook, LinkedIn, Instagram and other social networking sites as described via <http://www.hootsuite.com>.

**2. Hootsuite Services.**

**2.1 Services.** During the Term (as defined herein), subject to the terms and conditions of this EULA, and solely for your internal business purposes, we shall make the Services available to you in accordance with the applicable Order Form describing such Services. You acknowledge that the Services may be subject to usage limits, including any quantities specified in an Order Form. If you exceed a usage limit, we may work with you to seek to reduce your usage so that it conforms to that limit. If, notwithstanding our efforts, you are unable or unwilling to abide by a usage limit, you will execute an Order Form for additional quantities of the applicable Services and promptly pay any invoice for excess usage.

**2.2 Updates and Functionalities.** You acknowledge that from time to time we may apply updates to any of the Services and that such updates may result in changes in the appearance and/or functionality of such Services (including the addition, modification, or removal of functionality, features, or content). Excluding the addition of wholly new products, we will provide, implement, configure, install, support, and maintain at our own cost any and all updates, upgrades, enhancements,

improvements, releases, corrections, bug fixes, patches, and modifications to the Services (collectively, the "Updates"). You acknowledge that the Services may interoperate with several Supported Platforms and that such Services are highly dependent on the availability of such Supported Platforms. If at any time any Supported Platforms cease to make their features or programs available to us on reasonable terms, we may cease to provide access to such features or programs without entitling you to refund, credit, or other compensation.

2.3     Acceptable Use. You shall:

- (i)     be responsible for your Authorized Users' compliance with this EULA and for any breach of this EULA by your Authorized Users as if it were your breach;
- (ii)    be solely responsible for the accuracy, quality, integrity, and legality of Customer Content and of the means by which you acquire or generate Customer Content;
- (iii)   use commercially reasonable efforts to prevent unauthorized access to or use of the Services, including keeping passwords and user names confidential and not permitting any third party to access or use your (or any of your Authorized Users') user name, password, or account for the Services;
- (iv)    be solely responsible and liable for all activity conducted through your account in connection with the Services;
- (v)    promptly notify us if you become aware of or reasonably suspect any security breach relating in any way to the Services, including any loss, theft, or unauthorized disclosure or use of your (or any of your Authorized Users') user name, password, or account;
- (vi)    use, or otherwise access in connection with your use thereof, the Services only in accordance with applicable laws and government regulations; and
- (vii)   comply in all respects with all applicable terms of the Third-Party Services that you access or subscribe to in connection with the Services, including the applicable terms for Supported Platforms, such as the Twitter Terms of Service published at [www.twitter.com/tos](http://www.twitter.com/tos), the Facebook Statement of Rights and Responsibilities published at [www.facebook.com/legal/terms](http://www.facebook.com/legal/terms), and the LinkedIn User Agreement published at [www.linkedin.com/legal/user-agreement](http://www.linkedin.com/legal/user-agreement), as applicable.

You must not:

- (a)    make the Services available to anyone other than your Authorized Users;
- (b)    except as expressly provided herein, allow more than one individual Authorized User to use a Seat (if applicable);
- (c)    sell, trade, or otherwise transfer your Seats to another party;
- (d)    use the Services to store or transmit any content, including Customer Content, that may be infringing, defamatory, threatening, harmful, or otherwise tortious or unlawful, including any content that may violate intellectual property, privacy, rights of publicity, or other laws, or send spam or other unsolicited messages in violation of applicable law;
- (e)    upload to, or transmit from, the Services any data, file, software, or link that contains or redirects to a virus, Trojan horse, worm, or other harmful component;
- (f)    attempt to reverse engineer, de-compile, hack, disable, interfere with, disassemble, modify, copy, translate, or disrupt the features, functionality, integrity, or performance of the Services or the Supported Platforms (including any mechanism used to restrict or control the functionality of the Services or the Supported Platforms), any third-party use of the Services or the Supported Platforms, or any third-party data contained therein (except to the extent such restrictions are prohibited by applicable law);
- (g)    attempt to gain unauthorized access to the Services, the Supported Platforms, or related systems or networks or to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection or monitoring mechanisms of the Services or the Supported Platforms;
- (h)    access the Services in order to build a similar or competitive product or service or copy any ideas, features, functions, or graphics of the Services or the Supported Platforms; or
- (i)    authorize, permit, or encourage any third party to do any of the above.

You agree that we may temporarily suspend your access to the Services for a violation of this Section 2.4 or for any abusive practices that degrade the performance of any Service for you and/or our other customers. Examples of abusive practices include tracking singular high-frequency terms such as "love", "yes", or "the" and using the Services for redistribution, syndication, or deceitful activities.

**2.4 Mentions.** You understand that, by using the Services, you may be exposed to third-party content, information, and Mentions that might be unlawful, offensive, harmful, inaccurate, or otherwise inappropriate. Unless you create the content of the Mentions, Mentions shall not be considered "Customer Content" under any circumstances. We have no obligation to preview, verify, flag, modify, filter, or remove any Mentions, even if requested to do so, although we may do so in our sole discretion. Your use of Mentions is at your sole risk, and we shall not be liable to you or any third party in relation to Mentions.

**2.5 Third-Party Products and Services.** You acknowledge that the Services may enable or assist you to access, interact with, and/or purchase services from Supported Platforms and other third parties via third-party websites or applications (collectively, the "Third-Party Services"). When you access the Third-Party Services, you do so at your own risk. Any use of Third-Party Services is subject solely to the terms and conditions governing such Third-Party Services (and you shall comply with all such terms and conditions), and any contract entered into, or any transaction completed via any Third-Party Services, is between you and the relevant third party, and not Hootsuite. We make no representation and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third-Party Services or any contract entered into and any transactions completed by you with any such third party. Further, you acknowledge and agree that, if you install or enable a Third-Party Service, you grant us permission to allow the provider of such Third-Party Service to access your Customer Content and Customer Information solely to the extent required for the interoperation of the Third-Party Service with the Services or as you may otherwise authorize or direct. Without limiting the generality of the foregoing, if you subscribe in an Authorization Form to any Third-Party Services listed in the Third-Party Services — Applicable Terms of Use published at [www.hootsuite.com/legal/third-party-terms](http://www.hootsuite.com/legal/third-party-terms), you are expressly agreeing to be bound by the terms and conditions applicable to such services. Without limiting the foregoing, your access to and use of any Third-Party Services offered by Talkwalker is governed by the Talkwalker end user license agreement published at <http://www.talkwalker.com/en/terms-of-service>.

**2.6 Non-Exclusivity.** You acknowledge that the rights granted to you under this EULA and any Order Form are non-exclusive and that nothing in this EULA or any Order Form will be interpreted or construed to prohibit or in any way restrict our right to license, sell, or otherwise make available the Services to any third party or perform any services for any third party.

**2.7 App Directory.** You may access the Hootsuite App Directory located at <http://appdirectory.hootsuite.com/> (the "App Directory") in order to install and use one or more software applications, technology, data and other digital materials (each, an "App") in connection with the Services. By installing an App, you hereby agree to the Hootsuite App Directory Terms of Service published at <https://hootsuite.com/legal/app-directory-tos>.

### **3. Intellectual Property and Security.**

**3.1 Services.** As between you and us, we retain all right, title, and interest in and to the Services. Nothing herein shall be construed to restrict, impair, encumber, alter, deprive, or adversely affect the Services or any of our rights or interests therein or any other of our intellectual property, brands, information, content, processes, methodologies, products, goods, services, materials, or rights, tangible or intangible. All rights, title, and interest in and to the Services not expressly granted in this EULA are reserved by us.

**3.2 Feedback.** You may from time to time provide suggestions, comments, or other feedback to us with respect to the Services ("Feedback"). Feedback, even if designated as confidential by you, shall not create any confidentiality obligation for us. You shall, and hereby do, grant to us a non-exclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up license to use and exploit the Feedback for any purpose.

**3.3 Customer Content and Customer Information.** You hereby grant us a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.1) license, without a right of sublicense, to access, use, reproduce, electronically distribute, transmit, perform, format, display, store, archive, and index your Customer Content for the purpose of providing the Services to you and supporting your use of the Services. We may also use Customer Content for the purpose of developing the Services, provided that when doing so, we shall only use Customer Content in an anonymized and aggregated way. Subject only to the limited license expressly granted herein, you and your Authorized Users shall retain all right, title, and interest in and to, and all intellectual property rights in, your Customer Content and your Customer Information. Nothing in this EULA will confer on us any right of ownership or interest in or to, or the intellectual property rights in, the Customer Content or the Customer Information.

**3.4 Responsibility for Customer Content and Mentions.** You are solely responsible for the Customer Content that Authorized Users upload, publish, display, link to, or otherwise make available via the Services, and you agree that the Services

are only a passive conduit for the online distribution and publication of the Customer Content and the online display of Mentions. We will not review, share, distribute, or reference any Customer Content or Mentions, except as provided herein, as provided in our privacy policy published at <https://hootsuite.com/legal/privacy> (the "Privacy Policy") and our copyright policy published at <https://hootsuite.com/legal/copyright> (the "Copyright Policy"), or as may be required by law. Notwithstanding the foregoing, we retain the authority to remove any Customer Content uploaded that we deem in violation of this EULA, in our sole discretion.

**3.5 Security Requirements.** We have implemented technical and organizational security measures consistent with the prevailing industry standards. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures and we expressly deny any responsibility for damages, monetary or otherwise, resulting from unauthorized third-party access to your account or use, alteration, or disclosure of your Customer Content or Customer Information.

**4. Termination.**

**4.1 Termination for Cause.** A Party may immediately terminate this EULA (i) upon 30 days' written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or (ii) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

**4.2 Effects of Termination.** Upon termination of this EULA for any reason, all Order Forms will automatically terminate and: (i) you shall immediately cease all use of the Services; and (ii) you will have no further access to its accounts provided by Hootsuite. If you terminate this EULA in accordance with Section 4.1, Hootsuite or the Solution Partner will refund to you any Fees that you paid in advance for the Services for the period after the date of such termination. If Hootsuite terminates this EULA in accordance with Section 4.1, then, without limiting any other remedies that may be available, you will pay any unpaid Fees covering the remainder of the term of each Order Form after the date of termination. In no event will termination relieve you of your obligation to pay any amounts payable for the period prior to the date of termination.

**4.3 Survival.** Any provision of this EULA which, either by its terms or to give effect to its meaning, must survive, and such other provisions which expressly, or by their nature, are intended to survive termination shall survive the expiration or termination of this EULA.

**5. Warranty Disclaimer.**

SOME COUNTRIES AND JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED TERMS IN CONTRACTS WITH CONSUMERS AND AS A RESULT THE CONTENTS OF THIS SECTION MAY NOT APPLY TO YOU. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, WE EXPRESSLY EXCLUDE AND DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE SPECIFICALLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, AND NONINFRINGEMENT, THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT OUR SERVICES WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ERROR-FREE. IN ADDITION, WE DO NOT WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

WE DISCLAIM ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE CONTENT MADE AVAILABLE THROUGH THE SERVICES, INCLUDING CUSTOMER CONTENT, MENTIONS, AND ANY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. WE DO NOT CONTROL OR VET CUSTOMER CONTENT OR MENTIONS AND WE ARE NOT RESPONSIBLE FOR WHAT OTHER USERS POST, TRANSMIT, OR SHARE ON OR THROUGH THE SERVICES. WE ARE NOT RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY SUPPORTED PLATFORMS OR THIRD-PARTY SERVICES ASSOCIATED WITH OR UTILIZED IN CONNECTION WITH THE SERVICES, INCLUDING THE FAILURE OF ANY SUCH SUPPORTED PLATFORMS OR THIRD-PARTY SERVICES. WE EXPRESSLY DENY ANY RESPONSIBILITY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

**6. Limitation of Liability.**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT SHALL OUR AGGREGATE LIABILITY TO YOU FOR ALL CLAIMS OF ANY KIND, INCLUDING ANY CLAIMS ARISING OUT OF OR RELATED TO THIS EULA, WHETHER BY STATUTE, CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE FEES PAID BY YOU FOR

THE SERVICES HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE. YOUR EXCLUSIVE REMEDIES FOR ANY INTERRUPTION OR CESSATION OF ACCESS OR TRANSMISSION TO OR FROM THE SERVICES ARE SET FORTH IN THE APPLICABLE SERVICE LEVEL AGREEMENT. FOR CLARITY, THE CALCULATION OF OUR LIABILITY UNDER THIS SECTION 9 EXCLUDES ANY FEES PAID BY YOU TO THIRD PARTY OR AS PAYMENT FOR ANY THIRD-PARTY SERVICES, EVEN WHERE OUR SERVICES ARE BUNDLED WITH OR OTHERWISE PROVIDED IN CONJUNCTION WITH SUCH THIRD-PARTY SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HOOTSUITE, ITS DIRECTORS, EMPLOYEES, AGENTS, OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL USE, OR DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THE SERVICES OR ANY OTHER ASPECT OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL HOOTSUITE BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR CUSTOMER'S ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 9 IS TO ALLOCATE THE RISKS UNDER THIS EULA BETWEEN THE PARTIES AND LIMIT THEIR POTENTIAL LIABILITY GIVEN THE FEES CHARGED FOR THE SERVICES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF HOOTSUITE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THESE TERMS. NOTHING IN THIS EULA IS INTENDED TO EXCLUDE OR RESTRICT OR SHALL BE CONSTRUED AS EXCLUDING OR RESTRICTING THE LIABILITY OF HOOTSUITE FOR (I) DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF HOOTSUITE OR OF ITS EMPLOYEES OR ITS AGENTS; (II) WILLFUL MISCONDUCT OF EITHER PARTY; OR (III) ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

## 10. General.

10.1 Assignment. Neither Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other parties (not to be unreasonably condition, delayed or withheld), and any attempted assignment without such consent will be void. Notwithstanding the foregoing, we may assign this EULA in its entirety, without your consent, to our Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets or business.

10.2 Relationship of the Parties. No agency, partnership, joint venture, or employment relationship is created as a result of this EULA and neither Party has any authority of any kind to bind the other in any respect.

10.3 Force Majeure. A Party shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond such Party's reasonable control, including the elements; fire; flood; severe weather; earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of God and the public enemy; acts of war; acts of terrorism; riots; civil or public disturbances; strikes lock-outs or labor disruptions; and any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts.

10.4 Severability. Each provision of this EULA is severable. If any provision of this EULA is or becomes illegal, invalid, or unenforceable in any jurisdiction, the illegality, invalidity, or unenforceability of that provision will not affect the legality, validity, or enforceability of the remaining provisions of this EULA or of that provision in any other jurisdiction.

10.5 Notices. For purposes of service messages and notices about the Services, we may place a banner notice across the Services or the Hootsuite website ([www.hootsuite.com](http://www.hootsuite.com)) to alert you of certain changes. Alternatively, notice may consist of an email from us to an email address associated with your account, even if we have other contact information. For communication about your account and services associated with Hootsuite, we may also communicate with you or your Authorized Users through your Hootsuite account or through other means including email, mobile number, telephone, or delivery services including the postal service about your Hootsuite account or services associated with Hootsuite. You acknowledge and agree that we shall have no liability associated with or arising from your failure to maintain accurate contact or other information, including, but not limited to, your failure to receive critical information about the Services. Notices to us must be delivered by email to [legal@hootsuite.com](mailto:legal@hootsuite.com) with a duplicate copy sent via registered mail to the following address: Hootsuite Inc, 5 East 8th Avenue, Vancouver, British Columbia, V5T 1R6; Attention: General Counsel. This email address provided may be updated as part of any update to this EULA.

10.6 Waivers. No waiver of any provision of this EULA is binding unless it is in writing and signed by all Parties, except that any provision which does not give rights or benefits to particular Parties may be waived in writing, signed only by those Parties who have rights under, or hold the benefit of, the provision being waived if those Parties promptly send a copy of the executed

waiver to all other Parties. No failure to exercise, and no delay in exercising, any right or remedy under this EULA will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this EULA will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

**10.7 Export Compliance and Use Restrictions.** You shall not use or access the Services if you are located in any jurisdiction in which the provision of the Services is prohibited under Canadian, U.S. or other applicable laws or regulations (a "Prohibited Jurisdiction") and you shall not provide access to the Services to any government, entity or individual located in any Prohibited Jurisdiction. You represent, warrant and covenant that (a) you are not named on any Canadian or U.S. government list of persons or entities prohibited from transaction with any Canadian or U.S. person; (b) you are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) you shall not allow Authorized Users to access or use the Services in violation of any Canadian, U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) you shall comply with all applicable laws regarding the transmission of data exported from the country in which you (or your Authorized Users) are located to Canada and the United States. Hootsuite will have the right to terminate this EULA and your access to the Services with immediate effect if it deems that the provision of Services may be a breach of any international and national export control laws, restrictions and regulations that apply to the Services.