

## BromBone Terms

**1. Definitions.** Capitalized terms used in this Agreement are defined in this section or in the section of this Agreement where they are first used.

1.1 **"Affiliate"** means any present or future entity controlled by, or under common control with a Party. Affiliate includes, but is not limited to, companies, legal entities, and natural persons who have a business relationship with the Client. Such relationships include, but are not limited to, parent-child, affiliation, shell, common ownership, and close working relationships.

1.2 **"Customer"** means Client and its Affiliates.

1.3 **"Customer Data"** means all electronic data or information submitted by Customer to BromBone for the purpose of obtaining the Services. This includes the html snapshots BromBone generates from the Customer's website.

1.4 **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.5 **"Party"** means Client and BromBone individually, and both may be referred to collectively as the **"Parties."** When referring to BromBone, "Party" or "BromBone" means the legal Kansas Corporation and not any natural person. When referring to the Client, "Party" or "Client" means the legal entity of the Client (if the Client is such an entity) or the natural person (if the Client is a natural person).

1.6 **"Services"** means the the services provided by BromBone as defined within the Scope of Work.

1.7 **"Sitemap XML"** means a file or files hosted by the Customer which lists URLs for BromBone to process and follows the protocol defined at <http://www.sitemaps.org/protocol.html>.

1.8 **"Third-Party Applications"** means online, Web-based applications and offline software products comprising the Services that are provided by third parties (not BromBone) and interoperate with and/or are incorporated into the Services.

1.9 **"URL" or "URLs"** means a Uniform Resource Locator, more commonly known as a web address.

1.10 **"Users"** means individuals who are authorized by Customer to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Customer (or by BromBone at Customer's request). Users may include but are not limited to employees, consultants, contractors and agents of Customer, or third parties with whom Customer transacts business.

## **2. Services.**

2.1 **Provision of Services.** BromBone shall make the Services available to Customer pursuant to this Agreement. Customer will provide payment to BromBone in accordance with Section 3.

2.2 **No Service Level Guarantee.** It is BromBone's intention for the service to run as described in this document and in the documentation page on BromBone.com with high uptime and availability. However no guarantee of uptime, responsiveness, or availability of BromBone's service is made with this agreement. Additionally BromBone makes no guarantee of the accuracy of the snapshots it generates.

2.3 **Customer Responsibilities.** Customer shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which it acquired Customer Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify BromBone promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with this Agreement and applicable laws and government regulations. Customer shall not (a) make the Services available to any third party other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

2.4 **Scope of Work.** BromBone Services consist of generating HTML snapshots from pages listed in the Customer Sitemap XML. BromBone hosts and makes those snapshots available to the Customer. All snapshots are also

accessible to various search engines and the general public. The Service will be provided for a number of URLs up to the Page Limit based on the customer's plan. Snapshots will be generated based upon their addition to the Sitemap XML. Snapshots will be updated based upon the last modified date, as specified in the sitemap.xml. Up to 10% of the maximum allowed snapshots will be generated/updated each day for new/updated URLs. New/updated pages in excess of the maximum may be processed the same day or queued for processing on subsequent days at the sole discretion of BromBone.

### **3. Fees and Payment.**

3.1 **User Fees.** Customer's credit card will automatically be billed each month..

3.2 **Payment Terms.** Fees are quoted and payable in United States dollars. Fees are based on services purchased and not actual usage.

3.3 **Taxes.** Unless otherwise stated, Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If BromBone has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides BromBone with a valid tax exemption certificate authorized by the appropriate taxing authority.

### **4. Proprietary Rights.**

4.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, BromBone reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.2 **Restrictions.** Customer shall not (i) permit any third party to access the Services except as permitted herein, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

4.3 **Ownership of Customer Data.** As between BromBone and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data, including any derivative works created by BromBone based upon Customer Data.

4.4 **Suggestions.** BromBone shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Services.

### **5. Warranties, Exclusive Remedies, and Disclaimers.**

5.1 **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting Party by the other Party).

5.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### **6. Indemnification.**

6.1 **Indemnification by Customer.** Customer shall defend BromBone against any Claim made or brought against BromBone by a third party alleging that the Customer Data, or Customer's use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall

indemnify BromBone for any damages finally awarded against, and for reasonable attorneys' fees incurred by, BromBone in connection with any Claim; provided that BromBone (a) promptly gives Customer written notice of the Claim, (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases BromBone of all liability), and (c) provides to Customer all reasonable assistance, at Customer's cost.

## **7. Limitation of Liability.**

**7.1 Limitation of Liability** IN NO EVENT SHALL BROMBONE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, (1) IN THE AGGREGATE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, (2) WITH RESPECT TO ANY SINGLE INCIDENT GIVING RISE TO LIABILITY, EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

**7.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**7.3 Exclusion of Server Access Damages.** Since the Services provided can include quickly and frequently accessing large amounts of data from the Customer's servers, BromBone shall not have any liability for damages caused from accessing the Customer's sitemaps or web pages within the Scope of Work.

## **8. Term and Termination.**

**8.1 Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Warranties and Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Return of Customer Data," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

## **9. Compliance with Laws.**

**9.1 Generally.** BromBone warrants that it has complied with or will comply with all applicable international, federal, state, local laws and ordinances now or hereafter enacted, including data protection and privacy laws. Upon request, BromBone agrees to issue certificates certifying compliance with any of the aforementioned laws or regulations as may be applicable to any goods, services or deliverables being furnished in this Agreement, at the Customer's expense..

**9.2 Export Administration Regulations.** Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the goods, services and deliverable furnished under this Agreement. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) BromBone shall not permit any individual to access or use information provided by Customer in violation of any U.S. export embargo, prohibition or restriction.

**9.3 Equal Opportunity.** BromBone represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age, physical or mental disability, veteran status, or any other unlawful criterion and that it shall comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof including, but not limited to, Executive Order 11246. BromBone further warrants that it shall comply with all applicable provisions of the Americans with Disabilities Act ("ADA").

**9.4 Anti-Corruption.** It is the intent of the parties that no payments or transfers of anything of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage. BromBone represents and warrants that it shall comply with all international anti-corruption laws, such as the Foreign Corrupt Practices Act 15 U.S.C. § 78dd-1, *et seq.* and that, with respect to BromBone's performance of any of its activities hereunder:

- (a) No portion of any fees paid or payable by Customer to BromBone will be paid to, or accrued

directly or indirectly for the benefit of, any person, firm, corporation or other entity other than BromBone and its owners.

(b) BromBone has not, and will not at any time, directly or indirectly, pay, offer, authorize or promise to pay, offer, or authorize the payment of, any monies or any other thing of value to: (i) any officer or employee of any government, department, agency or instrumentality thereof; (ii) any other person acting in an official capacity for or on behalf of any government, department, agency or instrumentality thereof; (iii) any political party or any official or employee thereof; (iv) any candidate for political office; (v) any other person, firm, corporation or other entity at the suggestion, request or direction of, or for the benefit of, any government officer or employee, political party or official or employee thereof, or candidate for political office; or (vi) any other person, firm, corporation or other entity with knowledge that some or all of those monies or other thing of value will be paid over to any officer or employee of any government department, agency or instrumentality, political party or officer or employee thereof, or candidate for political office.

## 10. General Provisions.

10.1 **Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. Neither BromBone nor the Customer are Agents of the other, and have no actual authority to enter into contracts on behalf of the other party.

10.2 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

10.3 **Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv), except for notices of breach, termination or an indemnifiable claim ("**Legal Notices**"), the first business day after sending by email. Notices to Customer shall be addressed to the attention of its SVP, GCSS, with a copy to its General Counsel. All service-related notices to Customer shall be addressed to the relevant Service system administrator designated by Customer. Billing-related notices to Customer shall be emailed to the Customer email address on page one. Legal Notices to BromBone shall also be addressed to BromBone's signatory of this Agreement and emailed to chad@brombone.com.

10.4 **Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

10.5 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

10.6 **Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. A Party's sole remedy for any purported assignment by the other Party in breach of this section shall be, at the non-assigning Party's election, termination of this Agreement upon written notice to the assigning Party. In the event of such a termination, BromBone shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

10.7 **Governing Law.** This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Kansas, without regard to its conflicts of laws rules or the Uniform Computer Information Transactions Act or United Nations Convention on the International Sale of Goods.

10.8 **Arbitration.** The Parties understand that the Parties would have had a right or opportunity to litigate disputes through a court and to have a judge or jury decide the case, BUT THE PARTIES CHOOSE TO HAVE ANY DISPUTES RESOLVED THROUGH ARBITRATION. The Parties agree that any claim or dispute between the Parties, and any claim by either Party against any agent, employee, successor, or assign of the other Party, including, to the full extent permitted by applicable law, third parties who are not signatories to this agreement, whether related to this agreement or otherwise, including past, present, and future claims and disputes, and including any dispute as to the validity or applicability of this arbitration clause, shall be resolved by BINDING ARBITRATION administered by the National Arbitration Forum under the Code of Procedure in effect when the claim is filed.

10.9 **Venue; Waiver of Jury Trial.** In the event that section 11.8 is deemed unenforceable for any reason, the Parties agree to the following provisions. The state and federal courts located in Kansas shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts. To the extent permitted by applicable law, each Party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

10.10 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, this Agreement supersedes the terms of any online Master Subscription Agreement electronically accepted by Customer. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.