



Version: February 26, 2019

1. Scope

The terms & conditions set forth in this document (“Terms & Conditions”) are applicable to any agreement (“Agreement”) between Icecat NV, Icecat International B.V., Icecat Nederland B.V., The Netherlands, or any of its affiliates (“Icecat”), and any client (“Client”).

2. Services

Icecat will provide the services requested by the Client on the Order Form (i.e., the page(s) describing the specific offer to Client) and described on each applicable addendum describing the services provided to the Client (the “Services”). The Services may include -but are not limited to- product management support services, channel services, online marketing, product information management, product reviews syndication, and product content distribution dual-licensed under the Icecat Content License or free Open Content License (“Icecat Information”) to business partners.

3. Payment of Fees

The Client agrees to pay Icecat the fees for the Services listed on the Order Form, which shall be due and payable within twenty (20) days unless expressed differently on the Order Form. In the event Client fails to pay an invoice as set forth on the invoice, Icecat may issue a notice of default, and may, at Icecat’s option, suspend the Services (without any refund or credit to Client) if the Client has not fully paid all invoices not disputed in good faith within ten (10) days of the default notice, and/or terminate this Agreement as set forth herein. The client shall pay all taxes or similar assessments or charges (including any interest and penalties imposed thereon), other than taxes based on the net income of Icecat, arising out of this Agreement.

4. Changes to Fees

Icecat may change any of the Fees (i.e., amounts as mentioned on the Order Form by giving thirty (30) days notice to the affected Client, which may be given in writing or by email to the address on file. In such event, Client may terminate the applicable Services by written or email notice no later than thirty (30) days after receipt of Icecat's notice to increase fees. If Client fails to deliver a termination notice to Icecat within that thirty day period, then Client shall have accepted the increased Fees. An automatically indexed inflation correction is not a reason for contract termination.

5. Term

The term of this Agreement (the "Term") shall begin on the date indicated on the Order Form (the "Effective Date") and continue until the date the final Service expires or terminates, or until this Agreement is terminated as provided below. If no expiration or termination date is mentioned in the Order Form, the Agreement is automatically renewed after each invoicing period, with a similar new period, unless cancelled taking into account a one month cancellation period before the end of the then-current term.

6. Termination

6.1 Termination for Cause.

Either party may terminate this Agreement for breach, provided the non-breaching party provides prior written, email, and/or other notice of such breach to the other party and an opportunity to cure such breach within ten (10) days of notice for breach of payment obligations, and thirty (30) days of notice for all other breaches. If the breaching party is not able to cure the breach within such time period, the non-breaching party may terminate this Agreement immediately. In addition to any other rights it may have under this Agreement or applicable law, either Party may terminate this Agreement, terminate any or all of the Addenda, or suspend service in the event of (i) a payment default that is not cured by the other Party within ten (10) business days of notice thereof, (ii) the other Party's failure to comply with any other obligation of the respective Party under this Agreement, or (iii) the

other Party's ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) days or making an assignment for the benefit of its creditors.

6.2 Effect of Termination

In the event of termination of this Agreement, Client and its business partners' passwords will be deactivated, Client's fee will not be refunded or prorated for the remainder of the period in which the Agreement is terminated, Client and its business partners shall no longer have access to or be able to use any of the Services upon termination of this Agreement by Icecat for any reason, no later than thirty (30) days following the termination date. Clauses 8, 9, 12, 13, 14 and 15 will survive termination of this Agreement.

7. Acceptable Use

7.1 Acceptable Use Policy

The Acceptable Use Policy of Icecat includes the complete avoidance of spamming; ripping; intellectual property violations; forging of message headers to mask the originator; privacy violations; illegal or unauthorized access to other computers or networks; distribution of internet viruses, worms, trojan horses, or other destructive activities; facilitating a violation of this acceptable use policy; other illegal activities; engaging in other activities, whether lawful or unlawful, that Icecat determines to be harmful to its subscribers, operations, reputation, goodwill, or customer relations.

7.2 Violation

Client will immediately notify Icecat if Client becomes aware of any violation of the terms of this Agreement, including violations of the Acceptable Use Policy as set forth below. Icecat reserves the right to terminate access to the Services if, in Icecat's sole discretion, Client is violating the Acceptable Use Policy.

8. License to Client Materials

Client hereby grants to Icecat a non-exclusive, worldwide, royalty-free license to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of, reproduce, create derivative works from, distribute, perform, display and otherwise use the Client Content as necessary to render the Services to Client and/or its business partners under this Agreement. "Client Content" means without limitation all company and feature logos, trademarks, texts, pictures, graphics, video and other data, whether owned by Client or a third party, supplied by Client to Icecat to be included in the Icecat Information, as such materials may be modified from time to time.

9. Ownership

The Client Content is the property of the Client. Icecat is the owner of all right, title and interest in and to the Icecat websites, the Icecat Information, the Services, any software or technology used to provide the Services, the Icecat name, services marks, logos, and all associated copyrights, trademarks, and other intellectual property rights. Icecat does reserve the right to hold and not release any Client Content should Client be in breach of this Agreement. Client will mention Icecat's copyrights on Icecat Information in line with how Icecat mentions its copyrights on its websites.

10. Promotion

10.1

Client shall have the right to use the Icecat name, trademarks, service marks and logo (together, the "Icecat Marks") in order to promote any of the Icecat services to its business partners. Prior to any such use, Client must obtain Icecat's written approval. Client understands and agrees that any use of Icecat marks in connection with this Agreement shall not create any right, title or interest, in or to the use of the Icecat Marks and that all such use and goodwill associated with the Icecat Marks will inure to the benefit of Icecat.

10.2

Icecat is allowed to mention in external communications that Client is making use of Icecat's Services.

11. Disclaimer of Warranties

THE SERVICES, INCLUDING ALL CONTENT INCORPORATED IN THE SERVICES AND TECHNOLOGY USED TO PROVIDE THE SERVICES, ARE PROVIDED "AS-IS" AND "WITH ALL FAULTS". ICECAT DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NONINFRINGEMENT. Icecat DOES NOT WARRANT THAT THE USE OR OPERATION OF THE SERVICES, THE ICECAT INFORMATION OR THE ICECAT WEBSITE WILL BE WITHOUT INTERRUPTION, SECURE, OR ERROR-FREE.

12. Limitation of Liability

of Icecat:

ICECAT, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES WILL NOT BE LIABLE FOR ANY LOSSES, DAMAGES, COSTS, OR EXPENSES RELATING TO (A) THE SERVICES, (B) THE TECHNOLOGY USED TO PROVIDE THE SERVICES, (C) THE CLIENT CONTENT, (D) THE RESULTS THAT MAY BE OBTAINED OR DECISIONS MADE USING ANY PART OF THE SERVICES, OR (E) ANY DAMAGES RESULTING FROM UNAUTHORIZED THIRD PARTY MISUSE OF THE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL ICECAT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OR LOST PROFITS, THAT RESULT FROM THIS AGREEMENT, INCLUDING THE USE OF, OR INABILITY TO USE ANY OF THE SERVICES, OR ACTION OR INACTION WITH RESPECT TO THE ICECAT WEBSITE, EVEN IF ICECAT IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY. ICECAT'S TOTAL LIABILITY TO CLIENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO ICECAT UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE LIABILITY ARISES.

of Client:

CLIENT, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES WILL NOT BE LIABLE FOR ANY LOSSES, DAMAGES, COSTS, OR EXPENSES RELATING TO (A) THE SERVICES, (B) THE TECHNOLOGY USED TO PROVIDE THE SERVICES, (C) THE RESULTS THAT MAY BE OBTAINED OR DECISIONS MADE USING ANY PART OF THE SERVICES, OR (D) ANY DAMAGES RESULTING FROM UNAUTHORIZED THIRD PARTY MISUSE OF THE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL CLIENT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OR LOST PROFITS, THAT RESULT FROM THIS AGREEMENT, INCLUDING THE USE OF, OR INABILITY TO USE ANY OF THE SERVICES, OR ACTION OR INACTION WITH RESPECT TO THE ICECAT WEBSITE, EVEN IF CLIENT IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY. CLIENT'S TOTAL LIABILITY TO ICECAT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO ICECAT UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE LIABILITY ARISES.

13. Indemnity

Client shall indemnify and defend Icecat and the officers, directors, attorneys and employees of Icecat (each, an "Indemnified Party") against any claim, suit or proceeding brought against any of the Indemnified Parties and agrees to pay all reasonable costs (including reasonable attorney's fees) finally awarded against any of the Indemnified Parties or which any of the Indemnified Parties shall incur or suffer which arise out of, result from or are related to: (i) any material breach by Client of this Agreement; (ii) the results obtained, products obtained, transactions attempted or processed, or decisions made by Client or any other of its users of any Service; (iii) any claim, cost, expense, damages or loss arising as a result of any act, omission, misuse or use of any portion of the Services by Client or any of Client's business partners; (iv) any claim of any nature brought by any third party or entity who may suffer damages of any sort as a direct or indirect result of Client Content or Client's activities relating to or in connection with any Service, including but not limited to any dispute with one or more of Client's business partners; or (v) any claims of infringement of any copyright, patent or trade secret or other proprietary rights arising

from the Client Content, or from any unauthorized modification, enhancement or misuse of any Service by Client. Client shall not settle any such claim without Icecat's prior written consent. Icecat shall promptly notify Client in writing of any claim arising or potentially arising under this indemnity.

14. Confidentiality

Client and Icecat understand and agree that in the performance of this Agreement each party may have access to private or confidential information of the other party, including, but not limited to, trade secrets, marketing, and business plans, and technical information, which is designated as confidential by the disclosing party in writing, whether by letter or by the use of a proprietary stamp or legend, prior to or at the time it is disclosed to the other party ("Confidential Information"). Both parties agree that the terms of this Agreement, including without limitation, its financial terms such as the payments and the information contained in reports shall be deemed Confidential Information owned by the other party. Client acknowledges and agrees that the technical and functional specifications and the code and design of the Icecat Information and all tools and utilities supplied by Icecat to Client are Confidential Information of Icecat. In addition, information that is orally disclosed to the other party shall constitute Confidential Information if within 10 days after such disclosure the disclosing party delivers to the receiving party a written document describing such Confidential Information and referencing the place and date of such oral disclosure and the names of the employees of the party to whom such disclosure was made. Each party agrees that: (i) all Confidential Information shall remain the exclusive property of the owner; (ii) it shall maintain, and shall use prudent methods to cause its employees and agents to maintain, the confidentiality and secrecy of the Confidential Information; (iii) it shall not, and shall use prudent methods to ensure that its employees and agents do not, copy, publish, disclose to others or use (other than pursuant to the terms hereof) the Confidential Information; and (iv) it shall return or destroy all copies of Confidential Information upon request of the other party. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it (i) is or becomes a part of the public domain through no act or omission on the part of the receiving party, (ii) is disclosed to third parties by, the disclosing party without restriction on such third parties, (iii) is in the receiving party's possession, without actual or constructive knowledge of an obligation

of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement, (iv) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto, (v) is independently developed by the receiving party without reference to the disclosing party's Confidential Information or (vi) is released from confidential treatment by written consent of the disclosing party.

15. Miscellaneous

15.1 Disputes

The Agreement shall be governed by the laws of the Netherlands. The parties consent to personal jurisdiction to the appropriate courts in Amsterdam, The Netherlands and waive any objection in any proceeding in such courts.

15.2 Notices

Except as otherwise specifically provided in this Agreement, all notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by email or fax, upon confirmation of receipt, (b) on the first business day following the date of dispatch if delivered by a recognized next day courier service, or (c) on the third (3rd) business day following the date of mailing if delivered by registered or certified mail return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Client:

The address and/or email address listed on the Order Form

If to Icecat:

Icecat N.V.

De Liesbosch 12D
NL-3439LC NIEUWGEIN

The Netherlands
info@Icecat.biz

15.3 Entire Agreement; Severability; Interpretation.

The Agreement, including these Terms & Conditions, the Order Form and the applicable Addenda, contains the entire understanding and agreement of the parties with respect to its subject matter, and supersedes any prior written or oral agreements between them with respect thereto. Except as specifically set forth in this Agreement, there are no representations, agreements, arrangements or understandings, written or oral, between the parties with respect to the subject matter of this Agreement. If any provision, in whole or in part, of this Agreement is held illegal or invalid by any court or administrative agency of appropriate jurisdiction, such provision or appropriate portion thereof will be deemed severable and the illegality or invalidity of such provision or portion thereof will not effect any of the remaining portions of this Agreement. In such event, the Agreement will be considered as if the illegal or invalid provision or portion thereof had not been contained in this Agreement. Where possible, the terms of these Terms and Conditions and those of the Order Form, and the applicable Addenda shall be interpreted in such a manner as to avoid conflict. However, in the event of a conflict between any of the above mentioned documents, the documents shall be interpreted in the following order of precedence: Terms and Conditions, Order Form, and finally the Addenda.

15.4 Authority

By entering into an Agreement, the representative of Client represents and warrants that he or she is authorized by Client to enter into this Agreement, that Client has taken all necessary action to enter into this Agreement, and Client agrees to be bound by and subject to the terms of this Agreement.

15.5 No Agency; No Third Party Beneficiaries.

This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative joint arrangement between the parties, and it shall be construed strictly in accordance with its terms. Client is not authorized to and will not, undertake or assume any obligation of any kind, express or implied, to conduct any business on behalf of Icecat. This Agreement is made solely for the benefit of Icecat and Client and does not and shall not be construed to grant any rights or remedies to any other person or entity.

15.6 No Waiver

The failure of either party to require the performance of any term, condition, or portion of this Agreement or the waiver by either party of any breach of this Agreement will not prevent the subsequent enforcement of such term, condition, or provision, nor be deemed as a waiver of any subsequent breach.

15.7 Amendments

These Terms & Conditions may be modified or amended in whole or in part by Icecat immediately upon providing notice to Client in writing or email. Client's continued use of the Services following the posting of the modification or amendment shall be conclusively deemed an acceptance of the modification or amendment, and Client's only right with respect to any dissatisfaction with any such modifications is to terminate this Agreement. Notwithstanding the foregoing, the Order Form may be modified or amended only by a writing signed by both parties, or by Client submitting a subsequent Order Form, in which case the subsequent Order Form will replace the prior Order Form.

15.8 Force Majeure

If either of the parties is unable to perform or observe any or all of its duties or obligations or to exercise any or all of its rights hereunder, in whole or substantial part, inevitable accident, fire, lockout, strike, or other labor dispute, riot or civil commotion, the act of a public enemy, governmental act, regulation or rule, failure in whole or in part of technical facilities, a national day of mourning, vicious attacks (including, but not limited to, hacks, denial of service attacks and malicious introduction of viruses and disabling devices), or because of any other reason beyond the control of Client or Icecat (or its subcontractors) that is generally regarded as "force majeure," then all other obligations of the parties shall continue, and when such force majeure has ceased, then the parties shall in good faith negotiate a fair and equitable adjustment of the rights, duties, and obligations under this Agreement.

15.9 Assignment

Client will have the right to assign or otherwise transfer its rights or obligations under this Agreement only with the prior written consent of Icecat. In the event of any assignment (whether by consent of Icecat or otherwise), all covenants, stipulations, and promises in this Agreement will be binding upon and inure to the benefit of the parties hereto and their

respective successors. Icecat shall have the full right to assign this Agreement.

15.10 Remedies Cumulative

Subject to the express limitations set forth elsewhere in this Agreement, all remedies in this Agreement are cumulative and in addition to and not in lieu of any other remedies available to a party at law or in equity.

15.11 No Setoff

The existence of any claim, demand, action or cause of action of Client against Icecat, whether or not based upon this Agreement, will not constitute a defense to the enforcement by Icecat of any covenant or agreement of Client contained herein.



Read further: [Terms](#)

icecat

