

## Service Terms and Conditions

The following service terms and conditions (the “**Terms**”) govern (a) your access to, and use of, [www.brandtotal.com](http://www.brandtotal.com) (together with its sub-domains, content and services, the “**Site**”); and (b) your access to, and use of, the BrandTotal software-as-a-service (“**SaaS**”) platform and related documentation, features, and services, as well as any fixes, updates or upgrades thereto (collectively, the “**Software**”). Therefore, please read these Terms carefully, since they set out the legal rights and obligations between you and **BrandTotal Ltd.** (together with our respective affiliates and subsidiaries, “**BrandTotal**”, “**we**”, “**our**” or “**us**”) with respect to the subject matter hereof. In these Terms, references to the “**Services**” shall include both the Site and the Software.

By clicking the “I ACCEPT” button or by otherwise accessing or using any part of the Service, you acknowledge that you have reviewed, and that you agree to be bound by, these Terms and BrandTotal’s Privacy Policy (as defined below). Furthermore, you represent and warrant that you are at least 18 years old and, if you are entering into these Terms on behalf of your employer or other legal entity, that you have full authority to bind said employer or other legal entity to these Terms. If you do not agree to these Terms, or do not have authority to bind your employer or other legal entity, please do not accept these Terms, nor access or use the Services. You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law.

1. **Description of Services.** The Site is intended for informational purposes only, although it does allow you to contact us and to access the Software and a demo version of the Software. We make the Software available to our customers (each, a “**Customer**”) on a SaaS basis through the Site. The Software allows Customers to monitor and identify marketing campaigns and audience analytics in Customer-selected fields.
2. **Modifications.** We reserve the right, at our discretion, to modify these Terms at any time. Such modification(s) will be effective 10 days following posting of the modified Terms on the Site, and your use of any part of the Software thereafter means that you accept such modifications. We therefore encourage you to check the Site regularly to see the most current Terms.
3. **Right to Use the Services.**
  - 3.1. Site Access. For such time as these Terms are in effect, we hereby grant you permission to visit and use the Site provided that you comply with these Terms and applicable law.
  - 3.2. Subscriptions to Software. Subject to your compliance with these Terms and payment of applicable subscription fees, BrandTotal hereby grants you, and you accept, a non-exclusive, non-transferable, non-sublicensable, and fully revocable right to access and use the Software, during the Subscription Term (as defined below), for your internal purposes only.
4. **Account.** In order to access and use the Software or a demo version of the Software, you are required to become a Customer. In order to become a Customer, you must create an account (“**Account**”). BrandTotal may, at its sole discretion, approve or reject the opening of the Account. You hereby agree: (i) not to allow anyone other than yourself to access or use your Account, not to create an Account for any third party and not to use the account of any third party without their permission; (ii) to provide accurate and complete Account and login information; (iii) to remain solely responsible and liable for the activity that occurs in connection with your Account; (iv) to keep your Account password secure; and (v) to notify BrandTotal immediately of any breach of security or unauthorized use of your Account. If you wish to delete your Account, you may send an email request to BrandTotal at: [info@brandtotal.com](mailto:info@brandtotal.com).
5. **Restrictions.**
  - 5.1. Restrictions on Use of the Site. You shall not, and shall not allow any third party to: (i) copy, distribute or modify any part of the Site without our prior written authorization; (ii) use, modify, create derivative works of, transfer (by sale, resale, license, sublicense, download or otherwise), reproduce, distribute, display or disclose Content (as defined below), except as expressly authorized herein; (iii) disrupt servers or networks connected to the Site; (iv) use or launch any automated system (including without limitation, "robots" and "spiders") to access the Site; and/or (v) circumvent, disable or otherwise interfere with security-related features of the Site or features that prevent or restrict use or copying of any Content or that enforce limitations on use of the Site.
  - 5.2. Restrictions on Use of the Software. You shall not, and shall not allow any third party to: (i) copy, distribute, broadcast, rent, lease, lend, use for timesharing or service-bureau services, export, modify, adapt, translate, enhance, customize, or otherwise create derivative works of, the Software or any part thereof; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of, the Software or any part thereof; (iii) remove or distort any proprietary notices, labels or legends on or in the Software (including when you download or print a copy of any Content); (iv) use any automated means to access or use the Software, nor circumvent or disable any security or technological features of the Software; (v) use, send, upload, post, transmit or introduce any device, code, routine or other item (including without limitation bots, viruses, worms, and Trojan horses) that interferes (or attempts to

interfere) with the operation or integrity of the Software, nor any content that is unlawful, infringing, defamatory, deceptive, obscene fraudulent, harassing, pornographic, or abusive; (vi) use the Software to design or develop any competing product or service that competes with the Software; (vii) use the Software for any unlawful or fraudulent purpose, to breach these Terms, or infringe or misappropriate any third party intellectual property, privacy, or publicity right; (viii) take any action that imposes or may impose, as determined in BrandTotal's sole discretion, a disproportionately large load of incoming requests on the Software infrastructure; or (ix) violate or abuse password protections governing access to the Software.

## 6. Customer Data.

6.1. License to Customer Data. While using the Software, you may choose to provide, upload, import, transmit, post, or make accessible (collectively, "**Provide**") to BrandTotal certain data or software (the "**Customer Data**"). You hereby grant BrandTotal a royalty-free, irrevocable, non-exclusive license to use, process, display, copy and store the Customer Data (as defined below) in order: (i) to provide the Software to you; and (ii) to administer and make improvements to the Software as well as carry out related tasks; and (iii) to collect, use and publish Anonymous Information (defined below), and disclose it to its third party service providers, to provide, improve and publicize BrandTotal's Software and services.

6.2. Availability of the Customer Data. You hereby agree and acknowledge that: (i) the Software does not operate as an archive or file storage service and BrandTotal does not store all of your Customer Data ; and (ii) you are solely responsible for the backup of your own Customer Data. You may download certain Customer Data that you Provide to BrandTotal at any time during the respective Subscription Term, or as otherwise set forth herein.

6.3. Responsibility. You shall remain solely responsible and liable for the Customer Data and you hereby expressly release BrandTotal from any and all liability arising from BrandTotal's use of the Customer Data as permitted herein.

7. **Representation and Warranties**. You hereby represent and warrant that: (i) you own or have obtained the rights to all of the intellectual property rights subsisting in the Customer Data and that you have the right to Provide BrandTotal the license granted herein to use such Customer Data in accordance with these Terms; (ii) the Customer Data does not infringe or violate any patents, copyrights, trademarks or other intellectual property, proprietary or privacy or publicity rights of any third party; and (iii) you agree to comply with all applicable international, national, state, regional and local laws and regulations in accessing and/or using the Software (or any part thereof) and in performing you obligations hereunder, including without limitation laws relating to privacy, data protection, and exports.

8. **Privacy Policy**. You acknowledge and agree that your use of the Services including, without limitation, any information transmitted to or stored by BrandTotal, is governed by the BrandTotal Privacy Policy, which is available at [http://privacy.brandtotal.com/privacy\\_policy.pdf](http://privacy.brandtotal.com/privacy_policy.pdf) ("**Privacy Policy**").

## 9. Intellectual Property; Trademarks.

9.1. Site Content and Marks. The (i) content included and/or incorporated in the Services, including without limitation, the text, documents, articles, brochures, descriptions, products, software, graphics, photos, sounds, videos, interactive features, and services (collectively, the "**Content**"); and (ii) the trademarks, service marks and logos contained therein (the "**Marks**"), are the property of BrandTotal and/or its licensors and may be protected by applicable copyright or other intellectual property laws and treaties. The BrandTotal logo, and other marks are Marks of BrandTotal or its affiliates. All other trademarks, service marks, and logos used in the Services are the trademarks, service marks, or logos of their respective owners. We reserve all rights not expressly granted in and to the Content.

9.2. Rights to Services. All right, title and interest, and full and exclusive ownership rights, in and to the Services, and any and all parts thereof, and all reproductions, corrections, modifications, enhancements, improvements, upgrades, customizations and derivative works (whether or not permitted under these Terms), and all related patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill, including data related your usage thereof, and BrandTotal's intellectual property, and any rights therein not explicitly granted to you hereunder, are reserved to and shall remain solely and exclusively proprietary to BrandTotal (or its licensors).

Customer Data. The intellectual property and all other rights, title and interest of any nature in and to the Customer Data are and shall remain the exclusive property of you and your licensors. Except as expressly set forth herein, nothing in this Agreement shall be construed as transferring any rights, title or interests in or to Customer Data to BrandTotal or any third party.

9.3. Anonymous Information. BrandTotal owns all Anonymous Information collected or obtained by BrandTotal via the Software. "**Anonymous Information**" means information about use of the Software which does not enable identification of an individual, such as aggregated and analytics information about use of the Software.

9.4. License to Feedback. If you contact us with feedback data (e.g., questions, comments, suggestions or the like) about the Service (the "**Feedback**"), you hereby grant to BrandTotal a royalty-free, fully-paid, non-exclusive,

irrevocable, sublicensable, transferrable, perpetual, and worldwide license to use, reproduce, modify, perform, create derivative works from, distribute, display, and otherwise fully exploit, any such Feedback (or any portion thereof) in any manner and for any purpose.

- 9.5. Trademarks. BrandTotal has U.S. and common law trademark rights pending. Any questions with respect to licensing, use, and/or legal matters with respect to DARK MARKETING brand should be directed to at [info@brandtotal.com](mailto:info@brandtotal.com).

## 10. Term and Termination.

- 10.1. Term. These Terms shall become effective on the date that you first access to or commence use of the Site, until such time as these Terms are terminated in accordance with Section below.
- 10.2. Subscription Term. Your subscription to the Software shall commence on the earlier of: (i) the date that you commence access to or use of the Software; or (ii) the date that we receive payment of any applicable Service subscription fee, and shall continue for a period of 1 month therefrom (the “**Initial Term**”). Thereafter, subject to your payment of any applicable subscription fees, you subscription to the Software shall automatically renew for successive 1-month subscription periods (each a “**Renewal Term**”, and together with the Initial Term, the “**Subscription Term**”). The Subscription Term shall terminate upon the earlier of: (i) termination of the subscription in accordance with Section 11 below; (ii) or termination of these Terms, in accordance with Section 11 below.

## 11. Termination.

- 11.1. Termination by BrandTotal. You acknowledge and agree that BrandTotal may at any time, for any reason, and without notice to you: (i) discontinue or modify any aspect of the Service, or any part thereof; (ii) terminate this Agreement, with or without cause; and/or (iii) suspend or terminate your access to the Site and/or you subscription to the Software with or without cause, and BrandTotal shall not be liable to you or any third party for any of the foregoing.
- 11.2. Termination By You. If you object to any term or condition of these Terms, or becomes dissatisfied with the Serviced in any way, your only recourse and sole remedy is: (a) in the event you have an Account, cancel the Account (“**Account Cancellation**”) and immediately cease using the Software; and (b) in the event you are a Site user, immediately cease using the Site. You may also terminate your subscription to the Software by completing Account Cancellation. You agree, however, that any Account Cancellation or termination of these Terms or you Subscription to the Software in accordance with this Section 11.2, shall not derogate from any payment obligations you may have towards BrandTotal under these Terms.
- 11.3. Suspension. If we believe that you using the Software in a manner that may cause harm to BrandTotal or any third party then we may, without derogating from our right to terminate your access to and use of the Site and/or Software for any breach hereof, suspend your access to and use of the Software until such time as we believe the threat of harm, or actual harm, has passed.

## 12. Effect of Termination.

- 12.1. General. Upon termination of these Terms and/or your subscription to the Software, you shall immediately discontinue all access and use of the applicable Service (cease using the Software and/or access to the Site, as applicable) and shall promptly, but in any event within three (3) days, permanently delete all copies of the any documentation provided to you in connection with the Software, that are in your possession or control.
- 12.2. Access to Customer Data. Upon termination of these Terms, you will lose all access to any Customer Data that BrandTotal may be storing in order to make available the Software to you. It is your responsibility to download its Customer Data prior to termination of these Terms. Notwithstanding the foregoing, for a period of 30 days from the effective date of termination of these Terms, BrandTotal will provide you, upon your written request, with a reasonable opportunity to download the Customer Data. BrandTotal reserves the right to permanently delete any Customer Data that may be contained in your Account at any time following said 30-day period, and you agree to waive any legal or equitable rights or remedies it may have against BrandTotal with respect to Customer Data that is deleted in connection thereto.
- 12.3. Survival. This Section 12.3, and any section intended to survive termination of these Terms, including without limitation, Sections 6.1 (“*License to Customer Data*”), 7 (“*Representation and Warranties*”), 8 (“*Privacy Policy*”), 9 (“*Intellectual Property*”), 13 (“*Links and Advertisements*”), 14 (“*Disclaimer of Warranties*”), 15 (“*Limitation of Liability*”) and 18 (“*Miscellaneous*”), shall so survive.

13. **Links and Advertisements**. The Services may: (i) contain links to third party websites that are not owned or controlled by BrandTotal; and (ii) display advertisements and other materials not operated or endorsed by BrandTotal. You acknowledge that we assume no responsibility over the items in subparts (i) and (ii) (including the privacy, and other, practices of the third parties that operate or control them) and you agree that we shall not be liable under any circumstances for any loss, damage or injury that results directly or indirectly therefrom.

Your use or reliance upon such websites and advertisements is at your sole risk and we encourage you to review the applicable privacy policies and terms of use.

14. **Disclaimer of Warranties.** BRANDTOTAL HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BRANDTOTAL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. BRANDTOTAL DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT, INFORMATION, OR RESULTS THAT YOU OBTAIN THROUGH THE SERVICES. YOUR USE OF AND RELIANCE UPON THE SERVICES OR CONTENT IS ENTIRELY AT YOUR SOLE DISCRETION AND RISK, AND BRANDTOTAL SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER TO YOU IN CONNECTION WITH ANY OF THE FOREGOING. YOU AGREE THAT WE WILL NOT BE HELD RESPONSIBLE FOR ANY CONSEQUENCES THAT MAY RESULT FROM TECHNICAL PROBLEMS INCLUDING WITHOUT LIMITATION IN CONNECTION WITH THE INTERNET (SUCH AS SLOW CONNECTIONS, TRAFFIC CONGESTION OR OVERLOAD OF OUR OR OTHER SERVERS) OR ANY TELECOMMUNICATIONS OR INTERNET PROVIDERS. Applicable law may not allow the exclusion of certain warranties, so to that extent such exclusions may not apply.
15. **Limitation of Liability.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL BRANDTOTAL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF INCOME, PROFITS, GOODWILL, REPUTATION, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE UNDER THESE TERMS OR THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE SERVICE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation may not apply to you. BRANDTOTAL'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES AND LOSSES UNDER THESE TERMS, OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SERVICE, SHALL NOT UNDER ANY CIRCUMSTANCE EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY YOU TO BRANDTOTAL UNDER THESE TERMS WITHIN THE THREE (3) MONTHS, IF ANY, PRECEDING THE DATE OF BRINGING A CLAIM.
16. **Indemnification.** You agree to defend, indemnify and hold harmless BrandTotal and our affiliates and our respective officers, directors, agents, consultants and employees from any third party claims, damages, liabilities, costs, and expenses (including reasonable attorney's fees) arising from: (i) your use of the Services or any part thereof; and/or (ii) your breach of these Terms.
17. **Assignment.** These Terms and any rights or obligations hereunder: (i) may not be transferred or assigned by you without the prior written consent of BrandTotal; but (ii) may be transferred or assigned by BrandTotal. Subject to the foregoing conditions, these Terms shall be binding upon and inure to the benefit of each party and its respective assigns. Any prohibited assignment shall be null and void.
18. **Miscellaneous.**
  - 18.1. **Independent Contractors.** The parties are independent contractors. Nothing in these Terms shall create a partnership, joint venture, agency, or employment relationship between the parties. Neither party may make, or undertake, any commitments or obligations on behalf of the other.
  - 18.2. **Governing Law and Jurisdiction.** These Terms shall be governed by the laws of the State of Israel, without reference to its conflict of laws rules. The exclusive jurisdiction and venue for all disputes hereunder shall be the courts located in Tel Aviv-Yaffo, and each party hereby irrevocably consents to the jurisdiction of such courts. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are excluded from these Terms. Notwithstanding the foregoing, BrandTotal reserves the right to seek injunctive relief in any court of competent jurisdiction.
  - 18.3. **General.** These Terms comprise the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior understandings, oral and written, between the parties relating to the subject matter of these Terms. If any part of these Terms is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of these Terms shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced. No failure or delay in exercising any right hereunder by either party shall operate as a waiver thereof, nor will any partial exercise of any right hereunder preclude further exercise. YOU AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE ARISING OUT OF OR RELATED TO THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

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