

ADSINABOX CORPORATION
ADVERTISING PLATFORM STANDARD TERMS AND CONDITIONS

These House Advertising Standard Terms and Conditions ("Terms") apply to an Order Form referencing these Terms which is entered into between AdInABox Corporation., a Delaware corporation with headquarters at 2526 Qume Drive, San Jose, CA 95131 USA ("Company") and the customer identified on the Order Form ("Customer"). Capitalized terms used but not defined herein shall carry the meanings ascribed to them in the Order Form. These Terms together with the Order Form constitute a single, integrated agreement between Company and Customer (the "Agreement").

1. DEFINITIONS.

1.1 "Ad Server" means the software-as-a-service hosted and made available by Company that may be used to serve Advertisements for display or playback (as applicable) by devices which have the Ad Software correctly installed in connection therewith, as such software-as-a-service may be modified from time to time.

1.2 "Ad Software" means the Company's proprietary software which, when installed correctly on a compatible, Internet-connected USB dongle-style microcomputer device where such dongle is attached to a compatible high-definition television, is designed to communicate with the Ad Server and cause the display of Advertisements on such television.

1.3 "Advertisements" means audio, video, banner, rich media and other advertisements in formats that are supported by the Ad Server.

1.4 "Dongle" means a compatible USB dongle-style microcomputer device on which the Ad Software has been loaded in accordance with the Company's documentation.

1.5 "Effective Date" means the date on the Order Form designated as the Effective Date.

1.6 "House Advertisements" means Advertisements which are created or procured by Customer and which are served on Televisions by Customer through Customer's use of the Ad Server hereunder.

1.7 "Intellectual Property Rights" means all forms of proprietary rights, titles, interests, and ownership relating to patents, copyrights, trademarks, trade dresses, trade secrets, know-how, mask works, *droit moral* (moral rights), and all similar rights of every type that may exist now or in the future in any jurisdiction, including without limitation all applications and registrations therefore and rights to apply for any of the foregoing.

1.8 "Net Revenue" means the gross revenue actually collected by Company from advertisers for the display of Third Party Advertisements on the Televisions, less the following deductions: (i) any refunds to advertisers; and (ii) expenses related to discounts, rebates, payment transaction fees, taxes and currency exchange fees.

1.9 "Television" means a television owned or controlled by Customer to which a Dongle is connected and which is placed in a retail or other business location operated by Customer, where the Ad Software on such Dongle has been activated for use through an Internet connection to the Ad Server.

1.10 "Term" means the time period set forth on the Order Form.

1.11 "Third Party Advertisements" means Advertisements which are procured from third parties by or on behalf of Company and which are served by the Ad Server for display on Televisions.

1.12 "Agent" means the contractually bound party that makes monitors available for Advertisements served by the Company.

2. AD SERVER.

2.1 Ad Software. Proper installation of the Ad Software is required for any use of the Ad Server. Following mutual execution of this Agreement, Company shall make available the Ad Software for

download by Customer. The Ad Software is licensed, and not sold, to Customer pursuant to the end user license agreement accompanying the Ad Software.

2.2 Access to Ad Server. Subject to compliance with all terms and conditions of this Agreement, Customer shall have the right during the Term to access and use the Ad Server for purposes of serving House Advertisements for display on Televisions and configuring preferences regarding the serving of Third Party Advertisements on Televisions, solely in the manner enabled by Company and in accordance with all applicable documentation. Company reserves the right to modify and update the features and functionality of the Ad Server from time to time. Customer is solely responsible for purchasing and configuring all hardware, software and services that may be necessary or desirable for Customer's use of the Ad Server. Customer shall be responsible for the acts of any person accessing the Ad Server using a user name and password issued to Customer by Company. Customer agrees to use the Ad Server in compliance with all applicable laws, rules and regulations. Customer shall not use the Ad Server in a manner that may overburden it or adversely affect any other customer's use of it, including by storing House Advertisement content on the Ad Server which Customer does not intend to imminently use. Customer acknowledges that the Ad Server may limit individual file sizes of House Advertisements that may be uploaded to the Ad Server. As of the Effective Date, such limit is fifty megabytes.

2.3 Restrictions. Customer acknowledges that use of the Ad Server is provided for Customer's benefit only, and agrees not to permit any third party to access the Ad Server, other than a third party service provider of Customer who uses the Ad Server solely for Customer's benefit and within the scope otherwise authorized hereunder. Customer shall be liable for all acts and omissions of such service provider. Customer agrees not to, not to attempt to or allow any third party to: (i) copy, distribute, rent, lease, lend, sublicense, transfer or make the Ad Server available to any third party or use the Ad Server on a service bureau basis, (ii) decompile, reverse engineer, or disassemble the Ad Server, (iii) create derivative works based on the Ad Server; or (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Ad Server or during the use and operation thereof.

2.4 Suspension/Termination. Company may terminate Customer's access to or use of the Ad Server and/or terminate this Agreement at any time if: (i) in the reasonable discretion of Company, such action is necessary to prevent errors or harm to any system or network, or to limit Company's liability; (ii) Customer attempts to access or use the Ad Server in an unauthorized manner, including without limitation any attempt to gain access to the accounts of other Company customers or use that infringes third party Intellectual Property Rights; or (iii) Customer's use of storage or bandwidth is, in Company's reasonable discretion, unreasonable or excessive.

2.5 Availability. Company shall be responsible for operating the servers that make the Ad Server available, and shall use commercially reasonable efforts to maintain availability of the Advertisement delivery functionality of the Ad Server (and not the user interface) of at least 99.5%, calculated monthly on a per-minute basis. Customer acknowledges and agrees that the Ad Server may be unavailable from time to time due to (i) equipment, software or service malfunctions; (ii) maintenance and update procedures or repairs; or (iii) causes beyond the control of Company, including, without limitation, interruption or failure of telecommunication or digital transmission links, malicious attacks, the unavailability, operation, or inaccessibility of websites or interfaces, network congestion or other failures, and that Company shall not be liable for any unavailability caused by any of the foregoing. In the event that the Advertisement delivery functionality of the Ad Server is unavailable (calculated as set forth in this Section 2.5) for more than 8 hours per month for any reason other than as set forth in the foregoing (i), (ii) or (iii) for at least 2 consecutive months, Customer may, as its sole remedy and Company's exclusive liability for unavailability of the Ad Server, terminate this Agreement upon written notice to Company.

2.6 Support. Provided that Customer timely makes all payments due under this Agreement, Company shall make available technical support regarding the Ad Server as may be reasonably requested by Customer via e-mail and telephone during Company's business hours.

2.7 Content. Customer acknowledges and agrees that Company has no obligation or ability to monitor or edit the content contained within any House Advertisements. Customer acknowledges and

agrees that it may not use the Ad Server in connection with any House Advertisement containing or promoting illegal activities, hate speech, pornography, profanity, obscenity or sexually explicit material.

2.8 Data. Customer agrees that Company may use and disclose any data collected in connection with the operation of the Ad Server and Customer's use thereof as follows: (i) Company may use such data for purposes of providing Customer with use of the Ad Server as provided for hereunder and for Company's internal business purposes; (ii) Company may disclose such data to its third party service providers that assist it in making the Ad Server available as is reasonably necessary for such assistance; (iii) Company may disclose such data as may be required by law or legal process; and (iv) Company may disclose such data where it is aggregated with data unrelated to Customer and is not identified as relating to Customer.

3. THIRD PARTY ADVERTISEMENTS.

3.1 Sales and Insertion. Customer hereby grants Company the right to sell and have sold Advertisement inventory on the Televisions and to insert Third Party Advertisements within such inventory during the Term, including the right to list such inventory, pending the approval of Agent, in pitch materials to prospective Advertisers. In addition, Customer hereby grants Company a nonexclusive license during the Term to use Customer's trademarks and logos in connection with exercising the foregoing right. Company is solely responsible for, and has final authority on, decisions related on how to sell Advertisement inventory, including packaging, pricing, promotional offers, and all other related deal terms and conditions.

3.2 Content. Company shall not knowingly serve Third Party Advertisements that contain or promote illegal activities, hate speech, pornography, profanity, obscenity or sexually explicit material.

3.3 Televisions. If Customer enables the serving of Third Party Advertisements, Customer agrees to ensure that each Television is always on during normal business hours and actively displaying the Companies content, and is positioned prominently in a high-traffic area of the applicable retail or other business location such that the full screen is viewable by the maximum number of individual patrons. Customer agrees to comply with any reasonable Company requests regarding Television placement.

4. ECONOMIC TERMS

4.1 Fees. With respect to House Advertisements, Customer shall pay Company the fees as set forth in the Order Form (the "Fees"). Company shall invoice Customer following the end of each calendar month, with each such invoice covering Fees incurred during such month. All Fees will be based on House Advertisements served by the Ad Server as measured by the Ad Server. Customer agrees to pay each invoice within thirty (30) days of receipt. All payments will be made in U.S. dollars. Any amounts due Company under this Agreement not received by the date due will be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. Customer shall pay the amounts due under each invoice without deducting any taxes that may be applicable to such payments.

4.2 Revenue Share. With respect to Third Party Advertisements, Company shall pay Customer the percentage of Net Revenue as set forth on the Order form. All Fees will be based on Third Party Advertisements served by the Ad Server as measured by the Ad Server. To the extent Company is paid a flat fee by an advertiser for distribution of a Third Party Advertisement across televisions that include the Televisions, Company shall be entitled to reasonably determine the portion of such flat fee which constitutes Net Revenue hereunder. Company agrees to pay Customer within 30 days after the last day of the month in which Company received the applicable Net Revenue, provided that no check will be issued for any amount less than \$50 U.S. For the avoidance of doubt, revenue share payments made to Customer are based on amounts actually received by Company. All unpaid earnings will rollover to the next pay period. All payments will be made in U.S. dollars (\$U.S.).

4.3 Taxes. Customer is responsible for paying any and all withholding, sales, value added or other taxes, duties or charges applicable to this Agreement, other than taxes based on Company's net income.

5. OWNERSHIP. As between the parties, Company owns all right, title and interest (including all Intellectual Property Rights) in and to the Ad Server, Ad Software and any software, technology, materials

and information owned by Company prior to the Effective Date or created, authored, developed, conceived or reduced to practice after the Effective Date. Nothing herein shall be construed to transfer any rights, title or ownership of any software, technology, materials, information or Intellectual Property Rights to Customer. Customer is not required to provide any ideas, feedback or suggestions (“Feedback”) to Company. To the extent Customer does provide any Feedback to Company, Customer agrees to assign and hereby does assign all right, title and interest in and to such Feedback to Company and acknowledges that Company may freely use such Feedback in any manner without payment of any compensation to Customer.

6. TERM; TERMINATION

6.1 Term. This Agreement is effective as of the Effective Date and shall continue in full force and effect until the end of the Term unless earlier terminated as set forth herein.

6.2 Termination.

(a) Either party may terminate this Agreement effective immediately if the other party is in material breach of any obligation, representation or warranty hereunder and fails to cure such material breach (if capable of cure) within thirty (30) days (or ten (10) days in the event of breach of payment obligations) after receiving written notice of the breach from the non-breaching party.

(b) The Company may terminate this Agreement for any reason or for no reason upon thirty (30) days prior written notice to Customer.

(c) Either party may terminate immediately upon written notice at any time if: (i) the other party files a petition for bankruptcy or is adjudicated as bankrupt; (ii) a petition in bankruptcy is filed against the other party and such petition is not removed or resolved within sixty (60) calendar days; (iii) the other party makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to bankruptcy law; (iv) the other party discontinues its business; (v) a receiver is appointed over all or substantially all of the other party’s assets or business; or (vi) the other party is dissolved or liquidated.

6.3 Effect of Termination. All rights and obligations of the parties hereunder shall terminate upon expiration or termination of this Agreement, provided that Sections 1, 2.3, 2.7, 2.8, 3.4, 4 (with respect to accrued but unpaid obligations), 5, 6.3 and 7 through 11 shall survive expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES; INDEMNITY

7.1 Mutual. Each party represents, warrants and covenants to the other party that: (i) it has the full power and authority to enter into this Agreement; (ii) the execution of this Agreement and performance of its obligations under this Agreement does not violate any other agreement to which it is a party; and (iii) this Agreement constitutes a legal, valid and binding obligation when executed and delivered.

7.2 Customer. Customer represents, warrants and covenants to Company that: (i) it has all rights, title, and interest in and to all House Advertisements that are necessary for use in connection with the Ad Server and this Agreement; (ii) it shall not use the Ad Server in relation to any House Advertisement or activity that would violate any law, rule or regulation, including without limitation applicable FTC regulations or guidelines; and (iii) the House Advertisements do not and will not (x) infringe upon, violate, or misappropriate the Intellectual Property Rights or other proprietary rights of any third party or (y) slander, defame, or libel any person.

7.3 Indemnity. Customer agrees to indemnify, defend, and hold Company and its affiliates, and their directors, officers and employees harmless from and against any liabilities, damages, costs or expenses (including reasonable attorneys’ fees) arising out of or relating to any claim, demand, action, or proceeding initiated by a third party to the extent attributable to the alleged or actual breach by Customer of any covenant, representation or warranty of this Agreement or Customer’s use or misuse of the Ad Server (except in each case to the extent the claim, demand, action, or proceeding arises out of the gross negligence or willful misconduct of Company), provided that Company: (i) promptly notifies Customer in writing of the claim, except that any failure to provide this notice promptly only relieves Customer of its responsibility pursuant to this Section 7.3 to the extent its defense is materially prejudiced by the delay;

(ii) grants Customer sole control of the defense and/or settlement of the claim, provided that Customer may not agree to any settlement that admits fault by Company or purports to bind Company without Company's prior written consent; and (iii) provides Customer, at Customer's expense, with all assistance, information and authority reasonably required for the defense and/or settlement of the claim.

7.4 IP Claims. Company agrees to defend and/or settle any claim made by a third party alleging that the Company-owned technology underlying the Ad Server infringes such third party's United States patent, copyright, trademark or trade secret (a "Claim"), provided that Customer provides Company with (i) prompt written notice of the Claim, except that any failure to provide this notice promptly only relieves Company of its responsibility pursuant to this Section 7.4 to the extent its defense is materially prejudiced by the delay, (ii) sole control over the defense and settlement of the Claim; and (iii) all assistance, information and authority reasonably required for the defense and/or settlement of the Claim. If a Claim is sustained in a final judgment from which no further appeal is taken or possible, then Company will pay or otherwise satisfy any monetary award entered against Customer as part of such final judgment to the extent that such award is adjudged in such final judgment to arise from such infringement. If Company, in its sole discretion, believes a Claim or an adverse judgment in connection with a Claim is likely, then Company may, at its option, (a) obtain a license from such third party claimant that allows Customer to continue the use of the Ad Server, (b) modify the Ad Server so as to be non-infringing, or (c) if neither (a) nor (b) is available to Company at a commercially reasonable terms, terminate this Agreement upon written notice to Customer. This Section 7.4 sets forth the entire liability of Company and the sole and exclusive remedy of Customer in the event of any claim that the Ad Server infringes any third party Intellectual Property Right.

8. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH PARTY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. COMPANY AND ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE FUNCTIONALITY PROVIDED BY THE AD SERVER WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. COMPANY DOES NOT WARRANT THE RESULTS OF USE OF THE AD SERVER. IN ADDITION, COMPANY MAKES NO REPRESENTATION OR WARRANTY REGARDING THE NUMBER OR QUALITY OF THIRD PARTY ADVERTISEMENTS, THE TIMING OF DELIVERY OF THIRD PARTY ADVERTISEMENTS OR THE AMOUNTS OF REVENUE SHARE PAYMENTS CUSTOMER SHALL BE PAID PURSUANT TO SECTION 4.2. COMPANY MAY AT ANY TIME REMOVE ANY THIRD PARTY ADVERTISEMENTS FROM DISTRIBUTION IN ITS SOLE AND ABSOLUTE DISCRETION.

9. CONFIDENTIALITY. Each party shall keep confidential all information and materials provided by the other party that is marked as confidential or proprietary ("Confidential Information"). The features and functionality of the Ad Server, as well as any information regarding planned modifications or updates thereto or future Company products and services constitutes Confidential Information of Company. Each party shall keep and instruct its employees and agents to keep Confidential Information confidential by using at least the same care and discretion as used with that party's own confidential information, but in no case less than a prudent and reasonable standard of care. Neither party shall use Confidential Information other than for purposes of performing its obligations hereunder or as authorized by the disclosing party. Information or materials shall not constitute Confidential Information if it is: (i) in the public domain through no fault of the receiving party, (ii) known to the receiving party prior to the time of disclosure by the disclosing party, (iii) lawfully and rightfully disclosed to the receiving party by a third party on a non-confidential basis, (iv) developed by the receiving party without reference to Confidential Information or (v) required to be disclosed by law or legal process, provided that the receiving party promptly provide notice to the disclosing party of such request or requirement so the disclosing party may seek appropriate protective orders. If any party, its employees or agents breaches or threatens to breach the obligations of this Section 9, the affected party may seek injunctive relief from a court of competent jurisdiction, in addition to its other remedies, as the inadequacy of monetary damages and irreparable harm are acknowledged.

10. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO SECTIONS 7.3 OR 7.4 OR EITHER PARTY'S BREACH OF SECTION 9, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST BUSINESS, REVENUE, OR PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT WITH RESPECT TO SECTIONS 7.3 OR 7.4, EITHER PARTY'S BREACH OF SECTION 9 OR CUSTOMER'S BREACH OF SECTION 4, IN NO EVENT WILL EITHER PARTY'S LIABILITY AND DAMAGES UNDER THIS AGREEMENT EXCEED THE SUM OF THE TOTAL AMOUNTS PAYABLE UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. THE PARTIES AGREE THAT THE LIMITATIONS AND DISCLAIMERS OF LIABILITY SET FORTH IN THIS SECTION 10 WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11. MISCELLANEOUS

11.1 Relationship of the Parties. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship. No party shall have any right to obligate or bind any other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties.

11.2 Assignment. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that either party may assign its rights and obligations under this Agreement without the consent of the other party in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement inures to the benefit of and shall be binding on the parties' permitted assignees, transferees and successors.

11.3 Force Majeure. Except for payment obligations, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

11.4 Notices. All notices under the terms of this Agreement shall be given in writing and sent by internationally recognized overnight carrier with delivery confirmation or shall be delivered by hand to the addresses noted in Order Form. Notices to either party shall be sent to the attention of "Legal Department." All notices shall be presumed to have been received when they are hand delivered, or on the business day following the day of delivery by overnight carrier.

11.5 Amendments. An amendment of this Agreement shall be binding upon the parties so long as it is either in writing and executed by both parties or is presented by Company electronically via the Ad Server and accepted by Customer by clicking on "I Accept" or similar language. No regular practice or method of dealing between the parties shall modify, interpret, supplement or alter in any manner the express terms of this Agreement.

11.6 Construction. This Agreement shall be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either party. Each party has had the opportunity to consult with counsel in the negotiation of this Agreement. Section headings are for reference purposes only, and should not be used in the interpretation hereof

11.7 Severability; Waiver; Counterparts. If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality, or enforceability of the remaining provisions of this

Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable, and distinct. A waiver of any provision of this Agreement will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect. This Agreement may be signed in counterparts. Each of them is an original, and all of them constitute one agreement.

11.8 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without reference to conflicts of laws principles. The parties agree that the federal and state courts in the county of Santa Clara, California will have exclusive jurisdiction and venue under this Agreement, and the parties hereby agree to submit to such jurisdiction exclusively.

11.9 Entire Agreement. This Agreement constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.