



## TERMS AND CONDITIONS

### APPLICABLE TO AUDIENCE ANALYTICS LICENSE OR DATA LICENSE

#### 1. SERVICES AND SUPPORT

1.1 Subject to the terms of the Purchase Order and these Terms & Conditions (together, the “Agreement”), Company will use commercially reasonable efforts to provide Customer the Audience Analytics and Data described in the Purchase Order. As part of the registration process, Customer will identify an administrative username and password for Customer’s Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company’s standard practice.

#### 2. LICENSE

2.1 Grant. During the Term (as defined above) and subject to the terms and conditions of the Agreement, Company hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license to use each of (i) the Software (as defined below) solely for internal purposes and not for resale, and (ii) the Data specified in the Order Form (the “Audiences” and, together with the Software, the “Licensed Services”) for the sole purpose of engaging in online advertising campaigns (“Campaigns”), subject to the use restrictions set forth in the Order Form. Customer accepts the terms and conditions of this Agreement and accepts full responsibility for performance by its employees, contractors and agents (collectively, “Customer Representatives”) of obligations under this Agreement.

2.2 Reservation of Rights. As between the parties, Company owns all Intellectual Property Rights (as defined herein) and other proprietary interests that are embodied in, or practiced by, the Licensed Services. “Intellectual Property Rights” means the exclusive rights held by the owner of a copyright, patent, trademark, or trade secret, including (i) the rights to copy, publicly perform, public display, distribute, adapt, translate, modify and create derivative works of copyrighted subject matter; (ii) the right to exclude another from using, making, having made, selling, offering to sell, and importing patented subject matter and from practicing patented methods, (iii) the rights to use and display any marks in association with businesses, products or services as an indication of ownership, origin, affiliation, endorsement, or sponsorship; and (iv) the rights to apply for any of the foregoing rights, and all rights in those applications. Intellectual Property Rights also include any and all rights associated with particular information that are granted by law and that give the owner, independent of contract, exclusive authority to control use or disclosure of the information, including enforceable privacy rights and any rights in databases recognized by applicable law.

2.3 Restrictions. Customer shall not, and shall not permit any Representative to: (i) resell, sublicense, distribute or otherwise provide access to the Licensed Services to any third party or use the Licensed Services outside the scope of the license granted herein; (ii) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Licensed Services; (iii) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Licensed Services for any purpose without the express written consent of Company; (iv) combine Licensed Services with personally identifiable information for the purpose of targeted advertising; (v) use the Licensed Services to conduct or promote any illegal activities; (vi) use the Licensed Services to generate Campaigns in violation of a third party website’s terms of use; (vii) use the Licensed Services to stalk, harass or harm another individual; (viii) impersonate any person or entity, or otherwise misrepresent its affiliation with a person or entity; or (ix) use any portion of the Licensed Services or Company’s tradenames or trademarks in any manner that may give a false or misleading impression, attribution, or statement as to Company, or as to any third party. Customer agrees to use the Licensed Services only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing authorities or industry self-regulatory groups. Fair housing laws apply to a real estate professional’s use of advertising platforms, including but not limited to social media and any form of online advertising. If Customer is subject to Fair Housing Laws, Customer is responsible for ensuring that any advertisements, including the use of targeted advertising and the Licensed Services, complies with all Federal, state and local fair housing laws. Customer shall indemnify, defend and hold Company harmless against any damages, losses, claims or judgments arising out of any violation of Section 2 of this Agreement.

#### 3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

3.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR

section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

3.3 Customer represents, covenants, and warrants that Customer (i) will use the Services only in compliance with Company’s standard published policies then in effect, including, without limitation, any terms and conditions listed on Company’s website that are applicable to the Services and the Company’s privacy policy listed on its website (the “Policy”) and all applicable laws and regulations, (ii) will comply with all applicable laws, rules and regulations regarding data collection on its website, including but not limited to obtaining proper consent from a customer or offering opt-outs, and (iii) will not collect nor provide or give access to Company any data from individuals under 13, and otherwise will comply with COPPA. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

3.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

#### **4. CONFIDENTIALITY; PROPRIETARY RIGHTS**

4.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services (“Customer Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

4.2 (i) If you provide or upload data to Company or its platform for use in connection with the Services, then we will use such data for your benefit and as authorized by you herein and during the Term, and both parties may possess and use such data for its business and agree to use all such data in compliance with all applicable laws. You may be required to provide such data through a third-party service. (ii) We may provide, or you may have access to, data owned and/or provided by third parties for use in connection with the Services. You agree to comply with all terms, conditions, and guidelines regarding such third-party data to the extent they are made available to you. (iii) The Service may generate data through the performance of advertising campaigns on your behalf, including by observing the performance of your campaigns and collecting data from the delivery of advertisements. Both parties may possess and use such data for its business and agree to use all such data in compliance with all applicable laws. (iv) Pixel or “Tag” data: We may provide to you a pixel (or “Tag”) to place on your website or creative assets or elsewhere, to track website visitors, conversions, performance of campaigns or any combination thereof. Both parties may possess such and use such data for its business and agree to use all such data in compliance with all applicable laws. To the extent required by applicable law, you agree to make all disclosures necessary on your website to enable us to collect and use such data. (v) Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing. You acknowledge you have read and understand Company’s privacy policy set forth on its website which describes further its data collection and use.

4.3 Notwithstanding anything to the contrary, Company shall have the right collect, analyze and use data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) use and disclose such data solely in de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

#### **5. PAYMENT OF FEES**

5.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the “Fees”). If Customer’s use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the

closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

5.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income. If you have provided a credit card or similar method of payment, you hereby authorize us to automatically charge your payment method for the fees due herein plus a 3% service fee, including in respect of unpaid fees due upon termination. Fees will be based solely on Company's internal calculations.

## **6. TERM AND TERMINATION**

6.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **7. WARRANTY AND DISCLAIMER**

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **8. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, OR LOST PROFITS, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, WHETHER OR NOT COMPANY AND/OR ITS SUBSIDIARIES OR AFFILIATES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. During the term of this Agreement and for two years thereafter, Company and/or an independent auditor on behalf of Company will have the right to audit Customer's applicable systems, books and records, to ensure Customer's compliance with the terms and conditions of this Agreement. Each party will pay the costs that it incurs in the course of the audit. If the audit reveals an underpayment, or a failure by Customer to fully comply with all the payment terms and conditions of this Agreement or any Order, then Customer will immediately pay Company the underpaid amount, with interest in accordance with Section 5 of this Agreement, from the date such amount is due until the date such amount is finally paid in full. In addition, if any audit reveals an underpayment of more than three (3%) percent for any reporting period, then, without limiting Company's other rights and remedies at law or in equity, Customer will also reimburse Company for its reasonable costs incurred in

conducting such audit. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions. You agree that we may use your name, trademark and logo for our promotional purposes to identify you as a user of the Service. If you reasonably object to any such usage, we will make commercially reasonable efforts to stop such usage upon receipt of written notice from you. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request.

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