



## AD BLOCKING WRAPPER AGREEMENT

This Ad Blocking Wrapper Agreement (this “**Agreement**”) governs Customer’s use of the Licensed Software (defined below) provided by Ad Lightning, Inc. (“**Ad Lightning**”). By clicking a box online indicating acceptance of this Agreement, Customer agrees to all of the terms and conditions set forth below. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to this Agreement.

The Parties agree as follows:

### 1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth below or elsewhere in this Agreement:

“**Ad Content**” means all text, images, graphics, video, and other materials contained in online advertisements.

“**Ad Operations System**” means any Customer or third-party software, service or system used by Customer in the delivery, measurement or monitoring of ads (e.g., DoubleClick for Publishers (Google Ad Manager), AppNexus, Moat, Integral Ad Science).”

“**Customer**” means in the case of an individual accepting these Terms on his or her own behalf, such individual, or in the case of an individual accepting these Terms on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting these Terms.

“**Documentation**” means any written information (whether contained in user or technical manuals, training materials, specifications, or other similar materials) related to installation and use of the Licensed Software that Ad Lightning makes generally available to its customers.

“**Effective Date**” means the date on which Customer indicates acceptance of this Agreement.

“**Feedback**” means all ideas, improvements, enhancements, modifications, alterations, concepts, or suggestions communicated by Customer to Ad Lightning relating to the Licensed Software.

“**Fees**” means the fees agreed to by Customer in an Order Form for Customer’s license and use of the Licensed Software on a non-trial basis, including, without limitation, any set-up fees, subscription fees, professional services fees, and termination fees.

“**Force Majeure Event**” means event outside the reasonable control of a party, including, but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, power shortage (including where Ad Lightning ceases to be entitled to access the Internet for whatever reason), transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency.

“**Initial Term**” means the initial period during which Customer has agreed to pay Fees for Customer’s use of the Licensed Software.

“**Intellectual Property Rights**” means, collectively, copyright rights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade secret rights, rights of publicity, authors’ rights, moral rights, goodwill, and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the

laws of the United States, or any other state, country, or jurisdiction.

**“Licensed Software”** means the Ad Lightning ad-blocking wrapper made available to Customer pursuant to this Agreement, together with all enhancements and updates, if any, that Ad Lightning makes generally available to its customers.

**“Order Form”** means a separate ordering document entered into between Ad Lightning and the Customer specifying the terms governing Customer’s use of the Licensed Software following the Trial Term.

**“Renewal Term”** means any period following the Initial Term during which Customer is permitted to access and use the Licensed Software.

**“Term”** means the period during which this Agreement is effective, which starts on the Effective Date and continues until expiration or termination of this Agreement. The Term includes, as applicable, the Trial Term, Initial Term and Renewal Terms.

**“Trial Term”** means the period, if any, during which Customer is permitted to access and use the Licensed Software on a trial basis.

## **2. GRANT OF LICENSE; RESTRICTIONS**

**2.1. License Grant.** Subject to the terms and conditions of this Agreement, Ad Lightning hereby grants to Customer, and Customer hereby accepts from Ad Lightning, a royalty-free, non-exclusive, non-sublicensable, and non-transferable license, during the Term, to: (a) install and use the Licensed Software; and (b) use, reproduce and distribute, solely for internal purposes, any Documentation which may be delivered or made available by Ad Lightning to Customer.

**2.2. Reservation of Rights.** Ad Lightning hereby reserves all rights in and to the Licensed Software and Documentation not expressly granted to Customer in this Agreement.

**2.3. Use Restrictions.** Unless otherwise expressly permitted by this Agreement, Customer may not, and may not permit any other person or entity to:

(a) copy the Licensed Software, in whole or in part; provided that Customer may make one copy of the Licensed Software solely for testing, disaster recovery, or archival purposes. Any copy of the Licensed Software made by Customer: (a) will remain the exclusive property of Ad Lightning; (b) be subject to the terms and conditions of this Agreement; and (c) shall include all copyright or other Intellectual Property Rights notices contained in the original;

(b) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Licensed Software;

(c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software to any other person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(d) reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Software, in whole or in part;

(e) bypass or breach any security device or protection used for or contained in the Licensed Software;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any Intellectual Property Rights symbols, notices, marks, or serial numbers on or relating to any copy of the Licensed Software;

(g) use the Licensed Software in any manner or for any purpose that infringes, misappropriates, or

otherwise violates any Intellectual Property Right or other right of any person or entity, or that violates any applicable Law; or

(h) use the Licensed Software for purposes of: (i) benchmarking or competitive analysis of the Licensed Software; or (ii) developing, using or providing a competing product or service.

### **3. FEES; PAYMENT**

**3.1. Trial Term.** Ad Lightning may make the Licensed Software available to Customer on a limited trial basis. If Customer has elected to use the Licensed Software on a trial basis, Ad Lightning will provide the Licensed Software to Customer free of charge for the duration of the Trial Term.

NOTWITHSTANDING SECTION 5.2 (PERFORMANCE WARRANTY), SECTION 6 (EXCLUSION OF DAMAGES AND LIMITATIONS OF LIABILITY), AND SECTION 8.1 (INDEMNIFICATION BY AD LIGHTNING) BELOW, DURING THE TRIAL TERM THE LICENSED SOFTWARE IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND AD LIGHTNING SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE LICENSED SOFTWARE PROVIDED DURING THE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE AD LIGHTNING'S LIABILITY WITH RESPECT TO THE LICENSED SOFTWARE PROVIDED DURING THE TRIAL TERM SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, AD LIGHTNING DOES NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE LICENSED SOFTWARE DURING THE TRIAL TERM WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE LICENSED SOFTWARE DURING THE TRIAL TERM WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) ANY DATA PROVIDED DURING THE TRIAL TERM WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO AD LIGHTNING FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE LICENSED SOFTWARE DURING THE TRIAL TERM, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

**3.2. Fees; Payment.** Customer will pay Ad Lightning the Fees specified in the applicable Order Form for use of the Licensed Software beyond the Trial Term.

**3.3. Billing Information.** Unless otherwise agreed to by Ad Lightning in writing, Customer will provide Ad Lightning with valid and updated credit card information. Customer is responsible for providing complete and accurate billing and contact information to Ad Lightning and notifying Ad Lightning of any changes to such information. Customer authorizes Ad Lightning to charge the credit card for all amounts due under this Agreement and each applicable Order Form. Such charges will be made monthly, in advance, or in accordance with any different billing frequency agreed to by Ad Lightning in writing.

**3.4. Late Payments.** Without limiting Ad Lightning's other rights or remedies, all late payments (including by reason of a declined credit card) shall accrue interest of 1.5% per month, or the maximum rate allowable by law, whichever is less, until paid in full.

**3.5. Suspension of Service.** If any amount owing by Customer under this Agreement is thirty (30) or more days past due, Ad Lightning may, without limiting its other rights and remedies, suspend Customer's access to and use of the Licensed Software until such amounts are paid in full.

**3.6. Taxes.** Unless otherwise stated, fees do not include any direct or indirect local, state, or federal taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Ad Lightning's net income or property. If Ad Lightning has the legal obligation to collect or remit Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be paid by Customer.

### **4. INTELLECTUAL PROPERTY RIGHTS; FEEDBACK**

**4.1. Ad Content.** Subject to the terms and conditions of this Agreement, Customer grants Ad Lightning a

revocable, royalty free, non-exclusive, non-transferable right, during the Term, to copy, cache, store, reproduce, display, use, and transmit the Ad Content for the purpose of providing the Licensed Software to Customer pursuant to this Agreement. Subject to the limited rights granted in this Section 4.1, Ad Lightning acquires no right, title or interest in or to any Ad Content.

**4.2. Licensed Software and Documentation.** Customer acknowledges and agrees that as between Ad Lightning and Customer, all rights, title and interest in the Licensed Software and Documentation, including related Intellectual Property Rights therein, will remain the exclusive property of Ad Lightning subject only to the rights of third parties in any open source components and materials and information, in any form or medium, that are not proprietary to Ad Lightning and the limited license granted to Customer under this Agreement. No right or license is granted or implied under any of Ad Lightning's Intellectual Property Rights to use the Licensed Software or to license or authorize others to use the Licensed Software beyond the rights and restrictions set forth in this Agreement. Customer shall not let the Licensed Software be accessed or used by any person other than Customer's employees or contractors whose duties require such access or use.

**4.3. Feedback.** Customer hereby grants Ad Lightning a perpetual, irrevocable, worldwide license to use any Feedback, excluding Feedback which contains Customer Confidential Information, that Customer communicates to Ad Lightning during the Term, without compensation, without any obligation to report on such use, and without any other restriction. Ad Lightning's rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any and every way, as well as the right to grant sublicenses.

## **5. REPRESENTATIONS AND WARRANTIES**

**5.1. Mutual Representations and Warranties.** Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, and authorizations it grants and is required to grant under this Agreement;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**5.2. Performance Warranty.**

**5.2.1.** Subject to the limitations, conditions, and exclusions set forth in Sections 5.2 and 5.3, Ad Lightning warrants to Customer that during the Term (the "**Warranty Period**"): (a) the Licensed Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with the terms and conditions of this Agreement; and (b) no update, upgrade, release, or other adaptation or modification of the Licensed Software that Ad Lightning may provide from time to time during the Term to customers of the Licensed Software ("**Maintenance Release**"), when correctly installed by Customer in accordance with the Documentation, this Agreement, and any instructions of Ad Lightning, will materially decrease the features or functionality of the Licensed Software.

**5.2.2.** The performance warranty set forth in Section 5.2.1 may be enforced only if Customer: (a) notifies Ad Lightning in writing of an alleged breach of the performance warranty before the expiration of the Warranty Period (a "**Breach of Warranty Notice**"); (b) with respect to the Licensed Software, has promptly installed all Maintenance Releases to the Licensed Software that Ad Lightning made available to Customer; and (c) as of the date of notification, is in compliance with all material terms and conditions of this Agreement (including the payment of all undisputed Fees then due and owing).

**5.2.3.** Notwithstanding any provisions to the contrary in this Agreement, the performance warranty set forth in

Section 5.2.1 does not apply to problems arising out of or relating to:

- (a) Licensed Software, or the media on which it is provided, which has been modified or damaged by Customer or its agents, other than any modification approved in writing by Ad Lightning;
- (b) any operation or use of, or other activity relating to, the Licensed Software other than as specified in the Documentation, including any incorporation in the Licensed Software of, or combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation, unless otherwise expressly permitted by Ad Lightning in writing;
- (c) repairs, alterations, and/or modifications of the Licensed Software which are performed by a person or entity other than Ad Lightning or its representatives, with or without authorization;
- (d) Customer's failure to promptly install all Maintenance Releases for Licensed Software that Ad Lightning has previously made available to Customer;
- (e) the operation of, or access to, Customer's or a third party's system or network, including configuration changes to, improper maintenance by Customer of, or malfunction of its computer systems or networks; or
- (f) Customer's breach of any material provision of this Agreement.

**5.2.4.** If Ad Lightning receives a Breach of Warranty Notice as set forth in Section 5.2.1, Ad Lightning will, within thirty (30) days, at no cost to customer, either: (a) repair the Licensed Software; or (b) replace the Licensed Software with a functionally equivalent replacement (which replacement will constitute Licensed Software hereunder). If Ad Lightning reasonably determines that (a) or (b), above, are not commercially practicable, Ad Lightning or Customer may terminate this Agreement and Ad Lightning shall promptly refund to Customer, on a *pro rata* basis, fees prepaid by Customer for the future portion of the Term that would have remained but for such termination. THIS SECTION 5.2.4 SETS FORTH CUSTOMER'S SOLE REMEDY AND AD LIGHTNING'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE PERFORMANCE WARRANTY SET FORTH IN SECTION 5.2.1.

**5.3. Warranty Disclaimers.** CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE LICENSED SOFTWARE AND DOCUMENTATION ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS WITH ALL FAULTS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, AD LIGHTNING DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, LACK OF VIRUSES, AND ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS. WITHOUT LIMITING THE FOREGOING, AD LIGHTNING DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL BE ERROR-FREE WITH RESPECT TO (A) ADVERTISEMENTS IDENTIFIED AS PROBLEMATIC OR TO BE BLOCKED, OR (B) REPORTING TO THIRD PARTIES REGARDING ADVERTISEMENTS DISPLAYED. CUSTOMER ACKNOWLEDGES THAT USE OF THE LICENSED SOFTWARE MAY RESULT IN ALTERATIONS TO CUSTOMER'S AD OPERATIONS SYSTEM SETTINGS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AD LIGHTNING MAKES NO WARRANTY THAT THE LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT ANY FIXES, PATCHES, REVISIONS, UPDATES OR MODIFICATIONS, IF ANY, PROVIDED BY AD LIGHTNING WILL BE COMPLETELY EFFECTIVE.

## **6. EXCLUSION OF DAMAGES AND LIMITATIONS OF LIABILITY**

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, OR LOST BUSINESS, LOST REVENUE, OR LOST PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE LICENSED SOFTWARE, EVEN IF THAT PARTY IS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. AD LIGHTNING SHALL HAVE NO LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATED TO AD CONTENT. EXCEPT FOR A BREACH OF ITS CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS, AD LIGHTNING'S ENTIRE LIABILITY, IN THE AGGREGATE, WITH RESPECT TO ANY SUBJECT MATTER RELATING TO THIS AGREEMENT,

THE LICENSED SOFTWARE, AND THE DOCUMENTATION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO AD LIGHTNING UNDER THIS AGREEMENT.

## 7. CONFIDENTIALITY

**7.1. “Confidential Information”** means: (a) non-public business or technical information, including product plans, designs, source code, marketing plans, business opportunities, personnel, research, development or know-how (all of the foregoing as they relate to the goods and services of Ad Lightning, are Ad Lightning’s Confidential Information, and all of the foregoing as they relate to Customer’s business, are Customer’s Confidential Information); and (b) information designated by the disclosing party as “confidential” or “proprietary” or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential. Confidential Information includes information disclosed prior to or during the Term of this Agreement. Confidential Information shall not include information which: (i) is or becomes generally available to the public other than as a result of wrongful disclosure by the receiving party; (ii) is or becomes available to the receiving party on a non-confidential basis from a third party that rightfully possesses the Confidential Information and has the legal right to make such disclosure; or (iii) is developed independently by the receiving party without use of any of disclosing party’s Confidential Information and by persons without access to such Confidential Information.

**7.2.** Customer and Ad Lightning each agree not to use any Confidential Information of the other party for any purpose other than as necessary to perform its obligations under this Agreement. During and after the Term, neither receiving party will disclose any Confidential Information of the disclosing party to any third party without the prior written consent of the disclosing party, except (a) where such disclosure is necessary for the performance of the receiving party’s obligations under this Agreement; or (b) as may be required by Laws (provided that the party obligated to make the disclosure shall give the other party advance notice of such requirement to the extent legally permitted). Each receiving party shall be responsible for compliance with this Section 7 and applicable provisions of this Agreement by its employees and contractors, and shall have or obtain the agreement by each employee and contractor to keep the Confidential Information of the disclosing party confidential and to use it solely as required for the performance of the receiving party’s obligations hereunder.

## 8. INDEMNIFICATION

**8.1. Indemnification by Ad Lightning.** Ad Lightning will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the Licensed Software infringes or misappropriates such third party’s Intellectual Property Rights (a “**Claim Against Customer**”), and will indemnify Customer from any damages, reasonable attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Ad Lightning in writing of, a Claim Against Customer, provided Customer: (a) promptly gives Ad Lightning written notice of the Claim Against Customer; (b) gives Ad Lightning control of the defense and settlement of the Claim Against Customer (except that Ad Lightning may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability); and (c) gives Ad Lightning all reasonable assistance, at Ad Lightning’s expense. If Ad Lightning receives information about an alleged third-party infringement or misappropriation claim related to the Licensed Software, Ad Lightning may in its discretion and at no cost to Customer: (i) modify the Licensed Software so that is no longer claimed to infringe or misappropriate the Intellectual Property Rights; (ii) obtain a license for Customer’s continued use of the Licensed Software in accordance with this Agreement; or (iii) terminate this Agreement and promptly refund to Customer, on a *pro rata* basis, the share of any fees prepaid by Customer for the future portion of the Term that would have remained but for such termination. The foregoing obligations of this Section 8.1 do not apply to the extent that such Claim Against Customer arises from or relates to:

(a) modification of the Licensed Software other than: (i) by Ad Lightning or its agent(s); or (ii) with Ad Lightning’s express written authorization and in strict accordance with Ad Lightning’s written directions and specifications;

(b) a failure by Customer to promptly implement any Maintenance Release made available to Customer by Ad Lightning;

(c) Ad Content;

(d) events or circumstances outside of Ad Lightning's commercially reasonable control (including any third-party hardware, software, or system bugs, defects or malfunctions not contained within the Licensed Software at the time of delivery to Customer); or

(e) actions or losses for which Customer is obligated to indemnify Ad Lightning pursuant to Section 8.2.

**8.2. Indemnification by Customer.** Customer will defend Ad Lightning against any claim, demand, suit or proceeding made or brought against Ad Lightning by a third party arising from Customer's breach of any representation or warranty made hereunder and Customer's use of the Licensed Software in violation of the Agreement, the Documentation, or applicable law (each a "**Claim Against Ad Lightning**"), and Customer will indemnify Ad Lightning from any damages, reasonable attorney fees and costs finally awarded against Ad Lightning as a result of, or for any amounts paid by Ad Lightning under a settlement approved by Customer in writing of, a Claim Against Ad Lightning, provided Ad Lightning: (a) promptly gives Customer written notice of the Claim Against Ad Lightning; (b) gives Customer control of the defense and settlement of the Claim Against Ad Lightning (except that Customer may not settle any Claim Against Ad Lightning unless it unconditionally releases Ad Lightning of all liability); and (c) gives Customer all reasonable assistance, at Customer's expense.

**8.3. Exclusive Remedy.** This Section 8 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 8.

## **9. MONITORING; DATA COLLECTION**

**9.1. Monitoring.** Ad Lightning will have the right, but not the obligation, to monitor the use of the Licensed Software to determine compliance with this Agreement and any operating rules established by Ad Lightning and to satisfy any law, regulation, or authorized government request.

**9.2. Analytical Data.** Customer acknowledges and agrees that Ad Lightning may collect and analyze information regarding Customer's use of the Licensed Software ("**Analytical Data**"), for internal use only, for the purpose of improving the Licensed Software. Analytical Data shall constitute Customer's confidential information, and Ad Lightning will not share Analytical Information with any third party.

**9.3. Use of Anonymous Aggregated Data.** Notwithstanding anything to the contrary contained herein, Ad Lightning may collect information relating to Ad Content, de-identify such data (which for the purpose of this Agreement shall mean to modify such data such that it cannot be used in any way to directly or indirectly identify any person or entity, including Customer or Customer's clients), and aggregate such data with ad data of Ad Lightning's other clients that has also been de-identified ("**Anonymous Aggregated Data**"). Ad Lightning may use Anonymous Aggregated Data solely to: (1) improve the Licensed Software, and (2) create and distribute (including to third parties) reports and other materials that include or are based on Anonymous Aggregated Data. Ad Lightning shall not identify or disclose to any third parties that Customer is a source of, or is a contributor in any way to, any particular components, categories or subcategories of such Anonymous Aggregated Data.

## **10. TERM; TERMINATION**

**10.1. Term.** Unless earlier terminated in accordance with this Agreement: (a) upon expiration of a Trial Term, this Agreement will automatically terminate unless Customer and Ad Lightning have entered into an Order Form; and (b) upon expiration of the Initial Term, if any, this Agreement will automatically renew for successive periods equal in duration to the Initial Term.

### **10.2. Termination**

**10.2.1. Trial Term.** During the Trial Term, if any, this Agreement may be immediately terminated by either party at any time, for convenience, upon receipt of written notice by the other party. Email notice with confirmed

receipt shall be sufficient.

#### **10.2.2. Following Trial Term.**

(a) Following the Trial Term, this Agreement may be terminated by either party for cause: (i) upon fourteen (14) days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In the event of a termination for cause by Ad Lightning, Customer shall remain obligated to pay all amounts owed pursuant to this Agreement, including any paid and unpaid Fees covering the remainder of the the-current Term. In the event of a termination for cause by Customer, Ad Lightning shall refund Customer a pro-rata portion of prepaid Fees applicable to the period of the Term remaining following the effective date of termination.

(b) Following the Trial Term, this Agreement may be terminated by either party at any time, for convenience, by written notice to the other party. Email notice with confirmed receipt shall be sufficient. Termination made pursuant to this Section 10.2.2(b) shall become effective thirty (30) days following the non-terminating party's receipt of notice of termination.

**10.3. Effect of Termination or Expiration.** Upon expiration or termination of this Agreement: (a) all rights, licenses, and authorizations granted herein by either party shall immediately terminate; (b) Customer shall immediately cease all use of the Licensed Software and Documentation; and (c) all unpaid amounts payable by Customer to Ad Lightning under this Agreement shall be paid no later than fifteen (15) business days after the effective date of the expiration or termination. Any right, obligation or provision under this Agreement that, by its nature or giving effect to its meaning or purpose, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

### **11. NOTICES**

All notices shall be in writing and shall be addressed:

**if to Ad Lightning, to:**

Ad Lightning, Inc.  
1525 4<sup>th</sup> Ave., 3rd Floor  
Seattle, WA 98101  
Email: support@adlightning.com

**if to Customer, to:**

the email address provided by  
Customer

or to such other address as such party may have specified by earlier notice to the other party. A notice given in accordance with this agreement will be effective upon the earlier of actual receipt and the fifth business day following mailing or transmission by email.

### **12. MISCELLANEOUS**

**12.1. Export Regulation.** Customer will not itself, or permit any other person to, export, re-export or release, directly or indirectly the Licensed Software to any country, jurisdiction or person to which the export, re-export or release of the Licensed Software: (a) is prohibited by applicable law; or (b) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval).

**12.2. Force Majeure.** In no event will either party be liable or responsible the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligation), when and to the extent such failure or delay is caused by a Force Majeure Event. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

**12.3. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have



authority to contract for or bind the other party in any manner whatsoever.

**12.4. Entire Agreement.** This Agreement, together with an Order Form, if any, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

**12.5. Assignment.** A party will not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without the other party's prior written consent, which consent may not unreasonably be delayed or withheld. Notwithstanding the foregoing, either party may assign this Agreement to an acquirer or successor in interest in connection with a Change of Control of such party, without the prior written consent of the other party, provided that such party provides the other party with written notice of any such assignment. "**Change of Control**" means the earlier of a public announcement of an agreement in principle or the closing of: (a) a merger, consolidation or similar transaction providing for the acquisition of the direct or indirect ownership of more than fifty percent (50%) of a party's shares or similar equity interests or voting power of the outstanding voting securities or that represents the power to direct the management and policies of a party; or (b) the sale of all or substantially all of a party's assets related to the subject matter of the Agreement. Any purported assignment, delegation or transfer in violation of this Section 12.5 is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

**12.6. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**12.7. Amendment and Modification; Waiver.** No amendment to or modification or waiver of this Agreement is effective unless it is in a physical writing and manually signed by an authorized representative of each party (e.g., no e-mail correspondence or other form of electronic contracting shall serve to amend, modify or waive any portion of this Agreement), provided that signatures delivered: (a) by facsimile; (b) by scanned and e-mailed .PDF format (or equivalent) file; and (c) through a nationally or internationally recognized digital transaction management service (e.g., DocuSign), shall be deemed a manually executed physical writing. No other course of conduct shall operate to waive, amend or modify this Agreement. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**12.8. Severability.** If any provision of this Agreement is found to be invalid or otherwise unenforceable, the further conditions of this Agreement will remain fully effective and the Parties will be bound by obligations which approximate, as closely as possible, the effect of the provision found invalid or unenforceable, without being themselves invalid or unenforceable.

**12.9. Governing Law; Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Washington. Subject to Section 12.10, the parties irrevocably consent to the exclusive jurisdiction of the state or federal courts located in King County, Washington, over any suit, action or proceeding arising out of or relating to this Agreement. THE PARTIES UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT.

**12.10. Equitable Remedies.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 2.3 (Use Restrictions), Section 4 (Intellectual Property Rights; Feedback), 7 (Confidentiality), or Section 8 (Indemnification) of this Agreement would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such

breach or threatened breach, the other party will be entitled to seek equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.