

AD LIGHTNING, INC.

STANDARD TERMS AND CONDITIONS

These Ad Lightning, Inc. Standard Terms and Conditions (“Standard Terms”) apply to users (each a “User”) of the Software and Services (defined below) who have executed a Subscription Services Order Form and Recurring Payment Authorization (the “Order”) with Ad Lightning, Inc. (“Ad Lightning”). These Standard Terms are in addition to the terms and conditions contained in the Order. Ad Lightning and User are each referred to individually as a “Party” and collectively as the “Parties.” Together, the Order and these Standard Terms constitute the agreement of the Parties (the “Agreement”).

1. **Definitions.** The following terms have the meanings given those terms as hereinafter set forth:
 - 1.1. “Documentation” means all related materials, documentation, and information delivered to User, including any published specifications for the Services.
 - 1.2. “Feedback” means any ideas, suggestions, modifications, alterations, concepts, feedback, or suggestions, made by User to or about the Services or information furnished hereunder.
 - 1.3. “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.
 - 1.4. “Services” means collectively or individually, the services provided by Ad Lightning as set forth in Order, including, where applicable, any support services and/or professional services.
 - 1.5. “Software” means Ad Lightning software products provided pursuant to these Standard Terms, together with all enhancements and updates, if any, which are generally made available by Ad Lightning to a User.
 - 1.6. “User Content” means all text, images, data, and other content to which access has been provided by User or on behalf of User in connection with the Services.
2. **Grant of License; Restrictions; Reservation of Rights.**
 - 2.1. License Grant. Subject to the terms and conditions of these Standard Terms, Ad Lightning hereby grants to User, and User hereby accepts from Ad Lightning, a non-exclusive, non-sublicensable, revocable, and non-transferable license to, during the Term (defined below): (a) access and use the Software and Services via the internet; and (b) use and reproduce and distribute, solely for internal purposes, any Documentation which may be delivered by Ad Lightning to User.
 - 2.2. User Restrictions. The license granted in these Standard Terms by Ad Lightning to User is conditioned upon User’s strict compliance with the following terms and conditions: (a) User may use the Software and Services only as expressly set forth in these Standard Terms; (b) User will not: (i) sell or lease the Software or Services to a third-party, or permit any third-party to otherwise use the Software or Services; (ii) use the Software or Services for commercial timesharing; (c) create derivative works of the Software or cause or permit others to do so; (d) modify, reverse engineer, translate, disassemble, or decompile the Software, or cause or permit others to do so; (e) propagate or transmit through the Software

or Services any virus, worms, Trojan horses or other programming routine intended to damage any system or data; or (f) remove any title, trademark, copyright and/or restricted rights notices or labels on the Software or Documentation.

2.3. Reservation of Rights. Ad Lightning hereby reserves all rights not expressly granted to User in these Standard Terms.

3. **Obligations of the Parties.**

3.1. User's Obligations. User will use the Software and Services for lawful purposes only, in compliance with all applicable laws and regulations and only as set forth in these Standard Terms. User will not upload, provide access to the Software or Services, sell the Software or Services, or transmit through the Software or Services any material which violates or infringes in any way upon the rights of others, which is unlawful, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. User will not upload or otherwise make available on or through the Software or Services any third-party material protected by copyright, trademark, or other proprietary right without the express permission of the owner of the copyright, trademark, or other proprietary right and the burden of determining that any material provided by User is not protected by copyright rests with User and not Ad Lightning. Any conduct by User that in Ad Lightning's sole discretion restricts or inhibits any other company or person from validly using or enjoying the Software or Services will not be permitted. User will be responsible for protecting the confidentiality of User's password(s), access codes, user IDs or other login information, and any other confidential information, if any. Except as otherwise agreed in writing between the Parties, User will be solely responsible for all User Content. User will be responsible for obtaining and maintaining all telephone, computer hardware, and other equipment needed for access to and use of the Software and Services and all charges related thereto.

3.2. Ad Lightning's Obligations. Ad Lightning shall have no duty or obligation to maintain service levels for the Software, update the Software, or otherwise provide User support for the Software or Services, except as expressly provided in these Standard Terms or the applicable Order.

4. **Fees; Payment.**

4.1. Fees; Payment. Ad Lightning will charge User the fees set forth in the applicable Order. Ad Lightning will automatically charge the credit card set forth in Order on a monthly basis, as specified in the Order.

4.2. Suspension of Service. If for any reason Ad Lightning is unable to charge User's credit card for authorized fees, Ad Lightning may, without limiting its other rights and remedies, suspend User's access to and use of the Software and Services until payment has been made.

4.3. 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"). User 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 pay Taxes for which User is responsible under these Standard Terms, the appropriate amount shall be paid by User.

5. **Intellectual Property Rights; License.**

Ad Lightning or its licensor, are the sole and exclusive owner of all right, title, and interest in and to the Software, Services, and Feedback, and all copies thereof including all enhancements, error corrections, new releases, updates, and modifications thereto including, but not limited to, ownership of all Intellectual Property Rights. This Agreement does not provide User with title or

ownership of the Intellectual Property Rights, but only a right of limited access and use. User recognizes and acknowledges the exclusive right of Ad Lightning and/or its licensors in and to all Intellectual Property Rights and that such Intellectual Property Rights are the sole and exclusive property of Ad Lightning and/or its licensors. Solely for the purpose of Ad Lightning providing the Software and Services, and for no other purpose, User hereby grants Ad Lightning a limited, non-exclusive license to, during the Term, reproduce, distribute, publicly display, or make derivative works of any and all User Content, as such may be modified from time-to-time. Subject to the limited license granted in this Section 5, Ad Lightning acquires no right, title or interest from User in such User Content. User will be solely liable for any damage to itself or Ad Lightning resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission by User.

6. Representations and Warranties.

- 6.1. Authority. Each Party represents and warrants that it has the right to (a) enter into these Standard Terms, and (b) grant the rights and licenses herein granted.
- 6.2. User's Content. User represents and warrants to Ad Lightning that Ad Lightning's use of the User Content as authorized under these Standard Terms will not in any way violate any law or constitute an infringement of any Intellectual Property Rights or other violation of any nondisclosure agreements, and/or other right of any third-party.
- 6.3. Warranty Disclaimers. TO THE MAXIMUM EXTENT PERMITTED BY LAW, User ACKNOWLEDGES AND AGREES THAT THE SOFTWARE, SERVICES AND DOCUMENTATION ARE PROVIDED TO USER ON AN "AS IS" BASIS WITH ALL FAULTS AND WITHOUT ANY WARRANTY OF ANY KIND. AD LIGHTNING EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OF LACK OF VIRUSES, OR OF ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AD LIGHTNING MAKES NO WARRANTY THAT THE SOFTWARE OR SERVICES WILL MEET USER'S REQUIREMENTS, THAT AD LIGHTNING WILL PROVIDE THE SERVICES IN AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE MANNER, OR THAT ANY FIXES, PATCHES, REVISIONS, UPDATES OR MODIFICATIONS, IF ANY, PROVIDED BY AD LIGHTNING WILL BE EFFECTIVE.

7. Damages and Limitation of Liability.

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SOFTWARE OR SERVICES, EVEN IF THAT PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR CLAIMS RELATING TO THIS AGREEMENT, THE SOFTWARE OR THE SERVICES, WHETHER FOR BREACH OF CONTRACT, IN TORT, OR OTHERWISE. IN ANY EVENT, AD LIGHTNING'S ENTIRE LIABILITY WITH RESPECT TO ANY SUBJECT MATTER RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY USER TO AD LIGHTNING UNDER THIS AGREEMENT.

8. Confidentiality. Each Party agrees that it will not disclose to any third-party any information concerning the other Party's trade secrets, methods, processes, procedures, or any other confidential, proprietary, financial, or business information of the other Party which it learns during the course of its performance of these Standard Terms, without the prior written consent of such other Party. This obligation will survive the cancellation or other termination of these Standard Terms.

9. **Indemnification.**

9.1. **Indemnification by Ad Lightning.** Ad Lightning will defend User against any claim, demand, suit or proceeding made or brought against User by a third-party alleging that the Software or Services infringes or misappropriates such third-party's intellectual property rights (a "Claim Against User"), and will indemnify User from any damages, reasonable attorney fees and costs finally awarded against User as a result of, or for amounts paid by User under a settlement approved by Ad Lightning in writing of, a Claim Against User, provided User (a) promptly give Ad Lightning written notice of the Claim Against User, (b) give Ad Lightning sole control of the defense and settlement of the Claim Against User (except that Ad Lightning may not settle any Claim Against User unless it unconditionally releases User of all liability), and (c) give Ad Lightning all reasonable assistance, at Ad Lightning's expense. If Ad Lightning receives information about an infringement or misappropriation claim related to the Software or Services, Ad Lightning may in its discretion and at no cost to User (i) modify the Software or Services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for User's continued use of the Software or Services in accordance with these Standard Terms, or (iii) terminate User's subscriptions for the Software or Services upon thirty (30) days' written notice and refund User any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against User arises from User Content or User's use of the Software or Services in violation of these Standard Terms or any applicable Documentation.

9.2. **Indemnification by User.** User will defend Ad Lightning against any claim, demand, suit or proceeding made or brought against Ad Lightning by a third-party alleging that any User Content infringes or misappropriates such third-party's intellectual property rights, or arising from User's use of the Software or Services in violation of the Agreement, the Documentation, or applicable law (each a "Claim Against Ad Lightning"), and User 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 User in writing of, a Claim Against Ad Lightning, provided Ad Lightning (a) promptly gives User written notice of the Claim Against Ad Lightning, (b) gives User sole control of the defense and settlement of the Claim Against Ad Lightning (except that User may not settle any Claim Against Ad Lightning unless it unconditionally releases Ad Lightning of all liability), and (c) gives User all reasonable assistance, at User's expense.

9.3. **Exclusive Remedy.** This Section 9 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 9.

10. **Monitoring; Data Collection.**

10.1. **Monitoring.** Ad Lightning will have the right, but not the obligation, to monitor the content of the Software or Services to determine compliance with these Standard Terms and any operating rules established by Ad Lightning and to satisfy any law, regulation or authorized government request. Ad Lightning will have the right in its sole discretion to remove any material submitted to or through the Software or Services.

10.2. **Data Collection.** User acknowledges and agrees that: (a) Ad Lightning may collect and analyze non-confidential information regarding User's use of the Software or Services for the purpose of improving the Software or Services ("Data"); and (b) Ad Lightning shall exclusively own the Data.

11. **Term and Termination.**

11.1. **Term.** The term of the Agreement commences on the date User signs the Order (the "Effective Date") and, unless earlier terminated in accordance with these Standard Terms,

shall continue until the last day of the month in which the recurring payment “End Date” specified in the Order falls, or if no recurring payment “End Date” is specified in the Order, for a period of one year (the “Initial Term”). If no recurring payment “End Date” is specified in the Order, then, at the end of the Initial Term, the Agreement shall automatically renew for successive additional terms of one year (each a “Renewal Term”). The Initial Term and each Renewal Term (if any) constitutes the “Term” of the Agreement.

11.2. Termination. The Agreement may be terminated by either Party for any reason or no reason by providing thirty (30) days’ written notice to the other Party. The termination shall become effective on the last day of the month in which the 30-day notice period ends. Either Party may terminate the Agreement for cause: (i) upon seven (7) days’ written notice of a material breach to the other Party if such breach remains uncured at the expiration of such 7-day 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.

11.3. Effect of Termination or Expiration. Upon termination or expiration of the Agreement all licenses granted herein shall be immediately revoked and terminated. The rights and obligations of the Parties set forth in Sections 1, 4-9, 11.3, and 12 shall survive termination or expiration of the Agreement.

11.4. Notice. All notices shall be in writing and shall be addressed:

if to Ad Lightning, to:

Ad Lightning, Inc.
111 S Jackson St., Suite 500
Seattle, WA 98104
Email: support@adlightning.com

if to User, to:

the “Customer Address” indicated on the Order

or to such other address as a 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

In the event any one (1) or more of the terms or provisions of the Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of Agreement will not in any way be affected or impaired, except that, in such an event, the Agreement will be deemed revised in order to provide the Party adversely affected by such declaration with the benefit of its expectation, evidenced by the provision(s) affected by such a declaration, to the maximum extent legally permitted. User will carry out its duties and obligations under the Agreement as an independent contractor and not as a joint venture with Ad Lightning or an agent of Ad Lightning, and User’s performance will not be subject to supervision or control by Ad Lightning, but will be subject solely to the terms of these Standard Terms. Subject to the further provisions of this Section 12, the Agreement will be binding upon and will inure to the benefit of the Parties hereto, and their respective legal representatives and successors. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and any and all prior understandings and agreements, expressed or implied, between the Parties hereto in respect of the subject matter hereof are superseded hereby. No waiver of any breach of these the Agreement will be effective unless it is in a writing which is executed by the Party charged with the waiver. No delay in

enforcing any right or remedy as a result of a breach of the Agreement will constitute a waiver thereof. The Agreement may not be modified or amended except by an instrument in writing signed by all of the Parties hereto. The Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Washington, excluding its choice of law provisions. All disputes under the Agreement will be resolved exclusively by a state or federal court located in the state of Washington and each Party agrees to submit to the personal jurisdiction of such courts and waives all objections to personal jurisdiction therein.