

**AD LIGHTNING**  
**TRIAL TERMS AND CONDITIONS**

**Last Updated:** 10/29/2019

These Trial Terms and Conditions (these “**Terms**”) govern Customer’s use of the Licensed Software during the Trial Period and incorporate the terms of the Order Form entered into by and between Ad Lightning, Inc. (“**Ad Lightning**”) and the other party identified in the Order Form signature block (“**Customer**”). These Terms will remain in effect for the Trial Period identified in the Order Form. By signing the Order Form Customer agrees to these Terms.

The Parties agree as follows:

**1. DEFINITIONS**

Capitalized terms used in these Terms shall have the meanings set forth below or elsewhere in these Terms:

**1.1. “Ad Content”** means all text, images, graphics, video, and other materials contained in online advertisements made accessible to Ad Lightning by Customer pursuant to these Terms during the Trial Period.

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

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

**1.4. “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.

**1.5. “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.

**1.6. “Licensed Software”** means the Ad Lightning software made available to Customer during the Trial Period, as further described on the Order Form.

**1.7. “Order Form”** means an ordering document entered into between Ad Lightning and the Customer specifying the Licensed Software, the Trial Period, and additional terms, if any, governing Customer’s use of the Licensed Software during the Trial Period.

**1.8. “Set-up Fee”** means the set-up fee set forth in the Order Form, if any.

**1.9. “Trial Period”** means the period during which Customer is permitted to use the Licensed Software on a trial basis, as indicated on the Order Form.

**2. GRANT OF LICENSE; RESTRICTIONS**

**2.1. License Grant.** Subject to these Terms, 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 Trial Period, 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 under these Terms.

**2.3. Use Restrictions.** Unless otherwise expressly permitted by these Terms, 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: (1) will remain the exclusive property of Ad Lightning; (2) be subject to these Terms; and (3) 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: (1) benchmarking or competitive analysis of the Licensed Software; or (2) developing, using or providing a competing product or service.

### **3. SET-UP FEE; PAYMENT**

**3.1. Set-up Fee; Payment.** Customer will pay Ad Lightning the Set-up Fee specified in the Order Form, if any. Unless otherwise specified in the Order Form, Ad Lightning will invoice Customer and Customer will pay the invoiced Set-up Fee on or before the first day of the Trial Period.

**3.2. 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 these Terms, the appropriate amount shall be paid by Customer.

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

**4.1. Ad Content.** Subject to these Terms, Customer grants Ad Lightning a revocable, royalty free, non-exclusive, non-transferable right, during the Trial Period, to copy, cache, store, reproduce, display, use, and transmit the Ad Content for the purpose of providing the Licensed Software to Customer during the Trial Period. Subject to the limited right 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 during the Trial Period. 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 these Terms. Customer shall not let the Licensed Software be accessed or used by any person other than Customer’s employees 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 Trial Period, 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 these Terms;
- (c) the execution of the Order Form by its representative whose signature is set forth at the end of the Order Form has been duly authorized by all necessary corporate or organizational action of such party; and
- (d) these Terms constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with these Terms.

**5.2. 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 COMPLETELY ERROR-FREE WITH RESPECT TO (A) ADVERTISEMENTS IDENTIFIED AS PROBLEMATIC, OR (B) REPORTING TO THIRD PARTIES REGARDING ADVERTISEMENTS DISPLAYED. 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 THESE TERMS OR ORDER

FORM, 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'S ENTIRE LIABILITY, IN THE AGGREGATE, WITH RESPECT TO ANY SUBJECT MATTER RELATING TO THESE TERMS AND THE LICENSED SOFTWARE SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO AD LIGHTNING UNDER THESE TERMS AND ORDER FORM. NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT: (I) AD LIGHTNING'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; OR (II) ANY OTHER LIABILITY, WHICH CANNOT BE EXCLUDED BY LAW

## 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 Trial Period. Confidential Information shall not include information which: (a) is or becomes generally available to the public other than as a result of wrongful disclosure by the receiving party; (b) 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 (c) 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 these Terms. During and after the Trial Period, 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 these Terms; 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 these Terms 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. MONITORING; DATA COLLECTION

**8.1. Monitoring.** Ad Lightning will have the right, but not the obligation, to monitor use of the Licensed Software to determine compliance with these Terms and to comply with any law, regulation, or authorized government request.

**8.2. 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 Ad Lightning's 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 Data with any third party.

**8.3. 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 these Terms 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 customers that has also been de-identified ("**Anonymous Aggregated Data**"). Ad Lightning may use Anonymous Aggregated Data to: (a) improve the Licensed Software, and (b) 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.

## 9. TERM; TERMINATION

**9.1. Term.** These Terms shall become effective on the date on which both parties have signed the Order Form and, unless earlier terminated as provided herein, shall terminate on the last day of the Trial Period.

**9.2. Termination.** These Terms and may be immediately terminated by either party at any time, for convenience, upon receipt of written notice of termination by the other party. Email notice with confirmed receipt shall be sufficient.

**9.3. Effect of Termination or Expiration.** Upon expiration or termination of these Terms: (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 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 these Terms that, by its nature or giving effect to its meaning or purpose, should survive termination or expiration of these Terms, will survive any expiration or termination of these Terms.

## 10. NOTICES

All notices shall be in writing and shall be addressed to each party at the address for the party set forth on the Order Form, or to such other address as such party may have specified by earlier notice to the other party. A notice given in accordance with these Terms will be effective upon the earlier of actual receipt and the fifth business day following mailing or transmission by email.

## 11. MISCELLANEOUS

**11.1. Export Regulation.** Customer will not itself, nor 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 legally required undertakings (including obtaining any necessary export license or other governmental approval).

**11.2. Force Majeure.** In no event will either party be liable or responsible the other party, or be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any obligations under these Terms (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 these Terms by providing written notice of termination to the other party if a Force Majeure Event results in a failure or delay in fulfilling or performing any obligations under these Terms for a continuous and uninterrupted period of fourteen (14) days or more.

**11.3. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms 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.

**11.4. No Third-Party Beneficiaries.** These Terms are 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 these Terms.

**11.5. Amendment and Modification; Waiver.** No amendment to or modification or waiver of these Terms is effective unless it is in a physical writing and manually signed by an authorized representative of each party. Except as otherwise set forth in these Terms, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from these Terms 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.

**11.6. Severability.** If any provision of these Terms is found to be invalid or otherwise unenforceable, the further conditions of these Terms 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.

**11.7. Governing Law; Jurisdiction.** These Terms are 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.

**Entire Agreement.** These Terms, including the terms of the Order Form which are incorporated herein, constitute the entire agreement between Ad Lightning and Customer with respect to the subject matter of these Terms and supersede any prior written or oral agreement between them with respect to this subject matter. Customer may not assign these Terms or any of the rights or obligations granted herein and any attempt to the contrary shall be null and void.