

ADVERTISING DATABASE, INC.



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STANDARD TERMS AND CONDITIONS

BY DOWNLOADING OR USING ADVERTISING DATABASE'S CONTENT, INFORMATION, SERVICES, OR SOFTWARE FROM ITS CDS, WEBSITE(S), OR ANY OTHER SOURCE, YOU HEREBY ACCEPT THESE STANDARD TERMS AND CONDITIONS (THESE TERMS AND CONDITIONS, ALONG WITH THE INVOICE, COLLECTIVELY, "THIS AGREEMENT"). IF CUSTOMER DOES NOT AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, IT IS NOT ENTITLED TO USE THE SOFTWARE, WEBSITE(S), OR THEIR CONTENT IN ANY FORM. IF CUSTOMER DOES NOT UNDERSTAND OR AGREE TO THESE TERMS, PLEASE CONTACT US AT 212-956-0505, x 329 FOR A CLARIFICATION OR TO REQUEST A REFUND.

1. License.

(a) Subject to the terms and conditions of this Agreement, Advertising Database ("AdData") hereby grants to the Customer specified in the invoice a limited, nonexclusive, nontransferable, revocable license to use AdData Software or Website(s), or both (as specified on the Invoice), for the maximum number of users indicated by, and for the Term listed on, the Invoice, in object code form only, in exchange for fees specified in the Invoice, and solely for Customer's internal business purposes. For purposes of this Agreement, references to "the Software" and "the Website(s)" include, without limitation, the databases contained thereon. All Website users, including those downloading AdData software, must be named individuals who have completed the registration process, and must be the actual named users. Customer may substitute names up to its licensed user limit, but may not provide access to others through a single name being made available to multiple users on a network, nor otherwise share access codes within or without their companies. Customer is responsible for preventing such unauthorized use. If Customer believes there has been unauthorized use, it must notify Ad Data immediately.

(b) The Software and Website(s) are licensed, not sold, to Customer for use during the term of the Agreement. AdData reserves all rights not expressly granted to Customer in this Agreement. Without limitation, Customer shall not: (i) transfer, sell, sublicense, lend, rent, or otherwise distribute or make the Software or Website(s) (or any portion thereof) available to any third party; (ii) copy the Software or Website(s) or make the data on the Software or Websites available to any person or entity not expressly specified in the Invoice, including, without limitation, Customer subgroups, affiliated companies, or contractors; (iii) create derivative works from or otherwise modify the Software or Website(s); (iv) disassemble, decompile, reverse engineer, or otherwise attempt to obtain the source code of the Software or Website(s); (v) use the Software or Website(s) to provide services to any third party as a service bureau, application service provider, managed service provider, or the like; or (vi) authorize or encourage any third party to take any action prohibited by this Agreement. Customer shall not delete or in any manner alter the copyrights, trademarks, logos, and other proprietary rights notices appearing on the Software and Website(s). Customer shall reproduce such notices on any copy it makes of Software or Website pages. Customer agrees to bind its users to these restrictions and the other terms of the Agreement.

(c) **ADVERTISING DATABASE, INC.**, Advertising Database, Advertising Database Canvas, Advertising Database Express, Advertising Database Primer, addata.us, advertisingdatabase.com, addataexpress.com, addata.net, addata.info, and  are among the proprietary registered copyrights, trademarks, service marks, patents, and logos of Advertising Database, Inc., and Customer acknowledges and agrees not to expropriate, or to challenge Advertising Database's ownership, or use of, these and other such Advertising Database marks.

(d) Customer shall use the Software and Website(s) in compliance with applicable Federal, state, and international laws, including those pertaining to email transmissions (in particular, the CAN-SPAM Act, which entails the creation and proper use of in-house email suppression lists), privacy, broadcast faxing, and direct marketing.

(e) Customer shall not use the Software and Website(s) in relation to personal credit, employment, or insurance applications.

(f) Systematic extraction of data from Software or Website(s) (whether manually or through an automatic process), or monitoring or copying information through programs, scripts, robots, spiders, and other automatic software or devices, is prohibited, unless explicitly licensed by AdData. To protect the Software and Website(s) from such extractions, the Customer's Invoice, Software, or Website access may restrict quantity, frequency, and other measures of content extraction by technical means or otherwise.

(g) Customer may not post content from Advertising Database Software or Website(s) to newsgroups; mail, phone, or fax lists; or electronic bulletin boards, without written permission from the Editor or Publisher.

(h) Customer shall not disrupt or interfere with the security or use of the Software or the Websites or interfere with or damage the Websites or Software, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial of service attacks, packet or IP spoofing, forged routing or electronic mail address information, or similar methods or technology.

(i) Customer shall not infringe any patent, trademark, trade secret, copyright, right of publicity, right of privacy, or other right of Advertising Database, Inc.

(j) AdData reserves the right to monitor use of its Software and Website(s) to ensure compliance with the License Agreement, and to interrupt service or cancel subscriptions if necessary, without further notice or refund, per Section 5, Term and Termination below.

2. Product and Service Delivery. AdData shall provide Software to Customer in downloadable electronic form, and, if contracted for in the Invoice, in CD-ROM format. AdData software is configured for Mac OS 10+ and Windows XP. AdData shall provide installation assistance for these operating systems; however, Customer shall bear primary responsibility for installation, and AdData will incur no liability in connection therewith. AdData may, at its discretion, offer Customer system integration and related services for additional fees agreed to by the parties, priced on a case-by-case basis, subject to Customer's purchase of any necessary hardware, software, and licenses, and agreement to service terms. The Website(s) are best accessed with MS Internet Explorer 6+ browsers. Customer shall bear all responsibility for browser compatibility, and AdData will incur no liability in connection therewith.

3. Price and Payment Terms. Prices are based on total users/computers within single business units, not on total users/computers company-wide. For example, a staff selling one channel, product, property, service, title, web site, etc., comprises a business unit, while a corporate sales group selling across such entities is a business unit unto itself. Corporate discounts are based on the number of total business units subscribing. Customer's independent rep firm executives and other non W-4 staff are not eligible for AdData service, except by written provision. Customer shall pay: (i) all fees as specified in the Invoice and (ii) all other invoices, without deduction or offset, within 30 days of invoice date, to earn any Prompt Payment Discount set forth in the Invoice. Outstanding amounts not paid when due will accrue interest at the lower of 1½% per month or the highest monthly rate allowed by applicable law, whichever is lower. All payments are non-refundable. The obligation to pay and the payment of any such interest will not operate to extend any payment due date or the term of this Agreement, and AdData waives no rights by accepting late payment with interest. Customer's payment of all sums due AdData is a condition precedent to Customer's rights under this Agreement; AdData may withhold Software, use of the Website(s), and other products and services until full payment is received. Customer renewal payments not received by first day of a renewal term may also result in withheld products and services, provided that AdData's renewal Invoice was sent at least thirty (30) days in advance of the renewal date. All amounts payable by Customer are subject to taxes imposed by any governmental entity on the transactions contemplated by this Agreement, excluding taxes based on AdData's net income. When AdData has the

legal obligation to pay or collect such taxes, it will invoice Customer, unless Customer provides AdData with a valid tax exemption certificate authorized by the appropriate taxing authority.

4. Content and Modifications.

(a) **Intellectual Property Policy.** AdData respects the intellectual property rights of others and expects its users to do the same. AdData may remove content that in its sole discretion appears to infringe the intellectual property rights of others. In addition, AdData will terminate the accounts of users who infringe the intellectual property rights of others. If you believe that a user of the Website(s) or the Software has infringed your intellectual property rights, please notify AdData's Intellectual Property Agent, and provide the following information:

- A physical or electronic signature of the person authorized to act on behalf of the owner of the intellectual property right.
- An identification of the intellectual property claimed to have been infringed.
- A detailed description of the material that you claim is infringing, so that we may locate it, including the URL where the infringing material appears.
- Your address, telephone number, and email address.
- A statement by you that you have a good faith belief that the allegedly infringing use is not authorized by the intellectual property rights owner, its agent, or the law.
- A statement, made under penalty of perjury, by you that the above information is accurate and that you are authorized to act on behalf of the owner of the intellectual property rights involved.

AdData's Intellectual Property Agent can be reached at:

Advertising Database
Attention: Intellectual Property Agent
12 East 32nd Street, Floor 7
NY, NY 10016
Ph: 212.956.0505
FAX: 212.696.0814
email: trip@addata.net

(b) Your Content.

(1) By its users (authorized or not) submitting, posting, storing, or transmitting any suggestions, corrections, observations, opinions, or any other content, to Website-designated "Member Feedback" Fields, or by its users submitting content by phone, fax, or email to AdData, Customer hereby grants AdData a perpetual, worldwide, transferable, non-exclusive, royalty-free, sublicensable, right and license to use, modify, copy, display, perform, create derivative works from, distribute, have distributed, transmit, and sublicense such matter in any form, in all media now known or hereinafter created, anywhere in the world. AdData has no obligation to post such content on any Website and may, in its sole discretion, remove it at any time.

(2) The license granted in this Section 4(b) only applies to content stored in the "My Notes" Fields to the extent necessary for AdData to host and maintain such content on the Website and engage in other uses required by law.

(3) AdData is, and will be, under no obligation: (i) to maintain any content in confidence; (ii) to pay to Customer or any third party any compensation for any content; or (iii) to respond to any content. Customer is, and shall remain, solely responsible for any content its users submit, post, store, or transmit.

(c) **Objectionable Content.** Customer is solely responsible for its users' interactions with other users of the Website(s) and any content such users submit, post, store, or transmit. AdData will not be liable for any damage or harm resulting from any content or such users' interactions with other users of the Website(s). AdData reserves the right, but has no obligation, to monitor interactions on the Website(s) and take any other action to restrict access to, or the availability of, any material that AdData or another user of a Website may consider to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable (including, without limitation, because it violates this Agreement).

(d) **Modifications.** AdData reserves the right to modify the Software and Website(s) at any time without liability to Company. Such modification will not constitute grounds for termination. Without limitation, AdData may add or delete information or functionality based on the execution or termination of agreements with third parties.

5. Term and Termination.

(a) The term of this Agreement (the "Term") will correspond to the License Dates as set forth in the Invoice, unless earlier terminated as provided below. Renew until forbid applies, and AdData will reinvoice 30+ days before the license renewal date at AdData's then-lowest-qualified rate.

(b) AdData may immediately suspend individual users' rights under this Agreement when it suspects unlicensed use of its Software and Website(s), or their contents, by Customer's representatives, agents, or others posing as either.

(c) AdData may immediately terminate this Agreement: (i) if Customer breaches any of its obligations under this Agreement, including, without limitation, payment or license restrictions; or (ii) for convenience, provided, however, that if AdData terminates this Agreement for convenience, it will make a pro-rata refund of any advance payments made based on the time remaining in the Term. Termination will be effective immediately upon written notice, without further notice or action by either party.

(d) AdData reserves the right to investigate complaints or reported violations of this Agreement and to take any immediate action it deems appropriate, including, but not limited to (1) blocking access from particular Internet addresses and Customer computers to AdData Software, Websites, and their respective features, which may follow from attacks on same; (2) reporting suspected illicit activity to Customer officials, law enforcement officials, regulators, or other third parties; and (3) disclosing any information necessary or appropriate to such persons or entities relating to user profiles, e-mail addresses, usage history, posted materials, IP addresses, and traffic information.

(e) AdData reserves the right to seek all remedies available at law and in equity for violations of this Agreement.

(f) Upon termination or expiration of this Agreement, Customer shall immediately delete or destroy all copies of the Software and any portion of any of the foregoing (including, without limitation, any proprietary information taken from the Software and Website(s), and any documentation in its possession or control, and shall terminate its representatives' and agents' AdData Software and Website use. Within 30 days following the date of such termination or expiration, an officer of Customer shall certify in writing to AdData that Customer has complied with the terms of this Section. All liabilities accruing up to the expiration of the Term or any termination of this Agreement will survive such date. The following provisions will survive expiration or termination: 1(b)-(j), 3, 5(c), and 6 through 13.

(g) Because internet technology and law change frequently, Advertising Database reserves the right to change Standard Terms and Conditions at any time. Updated versions of the Standard Terms and Conditions will appear on AdData's Website(s) and in its Software downloads, and are effective immediately. Customer is responsible for regularly reviewing the Standard Terms and Conditions, as provided on the Website(s). Customer's continued use of AdData Website(s) and Software after such changes have been posted therein constitutes consent to the changes.

6. **Disclaimer of Warranties.** ADDATA MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE SOFTWARE, WEBSITE(S), DOCUMENTATION, OR ANY OTHER MATERIAL OR SERVICES PROVIDED BY ADDATA HEREUNDER. FURTHER, ADDATA DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SOFTWARE, WEBSITE(S), DOCUMENTATION, OR ANY INFORMATION OR SERVICES CONTAINED THEREIN OR OTHERWISE PROVIDED PURSUANT TO THIS AGREEMENT. ADDATA DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE OR WEBSITE(S) WILL BE UNINTERRUPTED, SECURE, ERROR-FREE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT DEFECTS WILL BE CORRECTED. ADDATA MAKES NO WARRANTIES REGARDING THE CORRECTNESS, ACCURACY, OR TIMELINESS OF THE INFORMATION WITHIN THE SOFTWARE OR WEBSITE(S). ADDATA MAY MAKE CHANGES TO ITS FEATURES, FUNCTIONALITY, OR CONTENT AT ANY TIME. WITHOUT LIMITING THE FOREGOING, ADDATA SPECIFICALLY DISCLAIMS ALL WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

7. **Limitation of Liability.** NEITHER ADDATA NOR ITS LICENSORS SHALL BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT, OR FOR ANY LOST DATA OR LOST PROFITS, REGARDLESS OF THE CAUSE OF ACTION ON WHICH THEY ARE BASED, EVEN IF ADDATA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. ADDATA SHALL NOT BE LIABLE TO CUSTOMER UNDER THIS AGREEMENT FOR ANY CLAIM ARISING FROM, RELATING TO, OR CONNECTED WITH THE SOFTWARE, WEBSITE(S), DOCUMENTATION, SERVICES, OR ANY OTHER SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN THE AGGREGATE, IN EXCESS OF THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO ADDATA HEREUNDER.

8. **Indemnification.** YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS ADDATA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, SUPPLIERS AND ANY THIRD PARTY INFORMATION PROVIDERS TO THE SOFTWARE AND WEBSITE(S) FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, AND COSTS, INCLUDING ATTORNEYS' FEES, ARISING FROM, RELATING TO, OR CONNECTED WITH ANY ALLEGED VIOLATION OF THESE TERMS OF USE BY YOU.

9. **Third Party Rights.** THE PROVISIONS OF PARAGRAPHS 6 (DISCLAIMER), 7 (LIMITATION OF LIABILITY), AND 8 (INDEMNIFICATION) ARE FOR THE BENEFIT OF ADDATA AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, SUPPLIERS, AND ANY THIRD PARTY INFORMATION PROVIDERS TO THE SOFTWARE AND WEBSITE(S). EACH OF THESE INDIVIDUALS OR ENTITIES SHALL HAVE THE RIGHT TO ASSERT AND ENFORCE THOSE PROVISIONS DIRECTLY AGAINST YOU ON ITS OWN BEHALF.

10. **Confidential Information.** Confidential Information means information and materials (regardless of whether in oral, written, or electronic form) concerning a party's operations, business, or intellectual property rights, that are designated as confidential or that, based on its nature or the nature of its disclosure, a reasonable person would know is confidential, including, without limitation, the terms of this Agreement, the Software, the Website(s), and the information contained within the Software and Website(s). "Confidential Information" does not include information that: (i) is known by such party at the time of receipt from the other party and is not subject to an independent obligation of confidentiality; (ii) is now or becomes generally known in the industry through no fault of the receiving party; (iii) is acquired from a third party in rightful possession thereof and under no obligation of confidentiality; or (iv) is otherwise lawfully and independently developed by such party without reference to the other party's Confidential Information. AdData and Customer each shall: (a) not use or authorize the use of the Confidential Information of the other party for any purpose other than to fulfill its obligations under this Agreement; (b) hold such Confidential Information in strict confidence and protect such Confidential Information with the same degree of care (but no less than a reasonable degree of care) normally used to protect its own similar Confidential Information; (c) take reasonable

steps as may be reasonably necessary to prevent such Confidential Information from being revealed to any person or entity other than to those of its employees who have a need to know such Confidential Information to enable it to fulfill its obligations under this Agreement; and (d) not copy or reproduce any Confidential Information in any media (except as may be strictly necessary to enable it to fulfill its obligations under this Agreement). AdData and Customer further agree that if either party is directed to disclose any portion of any Confidential Information of the other party by operation of law, rule, or regulation, it shall immediately notify the other party and, at the sole cost of the other party, shall assist the other party in seeking a suitable protective order or assurance of confidential treatment.

11. Venue and Jurisdiction. This Agreement and all matters arising from, relating to, or connected with this Agreement will be governed by the laws of the State of New York without regard to conflicts of laws principles. With respect to any litigation arising from, relating to, or connected with this Agreement, each party irrevocably: (i) submits to the exclusive jurisdiction of any state or federal court located in New York County, New York and (ii) waives, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction, inconvenient forum, and improper venue.

12. Notice. All notices required by or permitted to be given under this TOS will be in writing and delivered to the other party by any of the following methods: (i) hand delivery, (ii) certified U.S. mail, return receipt requested, postage prepaid, (iii) overnight courier, or (iv) electronic mail. If Customer gives notice to AdData, it must use the address shown on the Invoice. If AdData provides notice to Customer, AdData must use the contact information provided by Customer to AdData on the Invoice. All notices will be deemed received as follows: (i) if by hand-delivery, on the date of delivery, (ii) if delivery by U.S. Mail, on the date of receipt appearing on a return receipt card, (iii) if by overnight courier, on the date receipt is confirmed by such courier service, or (iv) if by electronic mail, 24 hours after the message was sent, if no "system error" or other notice of non-delivery is generated. Each party agrees that any notice that it receives from the other party electronically satisfies any legal requirement that such communications be in writing.

13. Miscellaneous. AdData and Customer are independent contractors, and no joint venture, partnership, employment, agency, or similar arrangement is created between them. Neither party has the right or power to act for or on behalf of the other or to bind the other in any respect. This Agreement will be binding on each party and its successors and permitted assigns. This Agreement may not be assigned by either party without the other party's prior written consent, except that AdData may assign this Agreement in connection with a merger, sale of its business relating to this Agreement, stock purchase, reorganization, or the like. This Agreement contains the entire understanding of the parties regarding its subject matter, and supersedes all prior and contemporaneous agreements and understandings between the parties regarding thereto. Except as expressly provided in this Agreement, this Agreement may only be modified, supplemented, amended or waived in a writing signed by both parties. No failure or delay by a party in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof. There are no third-party beneficiaries under this Agreement. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, all of which will remain in full force and effect. This Agreement will be construed as if drafted jointly by the parties, and either party's failure to obtain legal counsel or other advice in connection with this Agreement, constitutes a waiver of any objection or claim that may be based on such failure. This Agreement may be executed in counterparts, both of which taken together will constitute one and the same document. Facsimile signatures will be treated in all respects as having the same effect as an original signature.

TERMS OF LICENSE AGREEMENT ACCEPTED __TERMS OF LICENSE AGREEMENT NOT ACCEPTED__

*****END OF STANDARD TERMS AND CONDITIONS*****