

[version 2.0, March 20<sup>th</sup>, 2020]

## TERMS OF SERVICE

The following Terms of Service (“**Terms**”) are the only terms that govern and apply to digital advertising services provided by **RTB House Inc.**, a Delaware corporation with its office located at: 33 E. 33rd Street 6th FL New York, NY 10016, United States of America (“**RTB House**”), and specify the related rights and obligations of RTB House and its client (“**Client**”) (collectively referred to as the “**Parties**” and each individually as a “**Party**”).

### 1. DEFINITIONS

- 1.1. “**Advertising Materials**” – any images, graphics, videos, fonts, information, text, data, or other materials provided by the Client to RTB House, to be included in the Banner Creations;
- 1.2. “**Affiliate**” – a Party’s subsidiary, its holding company, the subsidiary of its holding company and any other company which directly or indirectly is controlled by the Party, controls the Party or is under common control with the Party;
- 1.3. “**Agreement**” – an agreement for the provision of Services concluded between the Client and RTB House, which shall consist of these Terms and the Order;
- 1.4. “**Authorized Recipients**” – a Party’s Affiliates or such Party’s and Affiliates’ directors, officers, employees, sub-contractors and professional advisors who need to process the Confidential Information for the purpose of performance of the Agreement, necessary business reporting or auditing procedures within the Party’s corporate group or other legitimate reason;
- 1.5. “**Banner Creation**” – a digital advertisement of the Client’s products or services, created by RTB House on the basis of Advertising Materials for the purpose of displaying on the Inventory;
- 1.6. “**Confidential Information**” – any non-public information, including information of commercial value, in particular concerning the disclosing Party’s or its Affiliates’ technology, business, financial situation, personnel, trade secrets, strategies, operations, assets, liabilities, historical, current and projected sales or marketing and advertising plans, in whatever form it is disclosed by or on behalf of the disclosing Party to the receiving Party, whether or not marked as confidential;
- 1.7. “**Data Processing Addendum**” – a separate agreement executed by the Parties concerning processing of personal data of Users for the purpose of providing the Services;
- 1.8. “**Intellectual Property Rights**” – any patents, industrial designs, copyrights, trademarks, geographical indications, trade secrets and other legal interests recognized or protected as intellectual property under applicable laws;
- 1.9. “**Inventory**” – digital advertising space on third-party websites and mobile applications, on which the Banner Creations are to be displayed.
- 1.10. “**Order**” – an order for Services, executed by the Parties which specifies the scope, duration and remuneration for the Services as well as any additional terms of providing the Services;
- 1.11. “**Services**” – digital advertising services specified in the Order, provided by RTB House;
- 1.12. “**User**” – an end user visiting digital properties, including websites and mobile applications, controlled by the Client to whom personalized Banner Creations are to be displayed on the Inventory.
- 1.13. “**Working Day**” - any day which is not a Saturday, Sunday or a bank or public holiday in Delaware.

### 2. CONCLUSION OF THE AGREEMENT AND SETTING UP THE SERVICES

- 2.1. The Agreement will be entered into by the Parties upon execution of the Order.
- 2.2. The Order may be executed by the authorized representatives of the Parties: (a) in written form – by exchange of signed documents; (b) in electronic form – by exchange of scanned copies of signed documents via e-mail; or (c) by using e-signature – in accordance with relevant provisions of the applicable laws.

- 2.3. Upon commencement of the Agreement and if applicable RTB House will provide the Client with guidance on the implementation of RTB House tracking technologies (tags) on digital properties controlled by the Client, necessary to collect information on Users' activity on such digital properties and to perform the Services. RTB House will comply with Client's requests as to the types of tags to be implemented on the Client's digital properties and upon Client's specific instructions will also: (i) provide additional, customized tags to be implemented on the Client's digital properties, to the extent that it does not adversely affect the Services; and (ii) use additional data provided by the Client for the purpose of Client's campaign optimization.
- 2.4. Based on the Advertising Materials supplied by the Client, RTB House will develop Banner Creations for provision of the Services. RTB House will send draft Banner Creations for Client's approval before their display on the Inventory. If the Client does not respond within **5 (five) Working Days** from receipt of the draft Banner Creation, such Banner Creation is deemed to have been accepted by the Client for display.
- 2.5. The selection and display of Banner Creations by RTB House to the Users will be based in particular on the Banner Creations placement context or the Users' profiles containing information on their prior activity on the Client's digital properties. The User profile data will be processed by RTB House exclusively in order to provide Services for the Client and will remain separated from data processed by RTB House on behalf of other clients or its own datasets.
- 2.6. Upon request, the Client will be granted access to the Client panel, enabling management of advertising campaigns conducted on its behalf.

### **3. REPRESENTATIONS AND OBLIGATIONS OF RTB HOUSE**

- 3.1. RTB House hereby represents that: (a) it has all necessary rights and authority to enter into and perform its obligations under the Agreement; (b) the conclusion of this Agreement and the performance of its respective obligations hereunder do not violate any agreement to which RTB House is a party or by which it is otherwise bound; (c) it holds all necessary rights to its display advertising technology; (d) the tags to be implemented on the Client's digital properties (if applicable) will not contain any malware, in particular viruses, "Trojan horses", "computer worms", "time bombs" or data erasers.
- 3.2. RTB House undertakes to perform the Services in a professional and efficient manner, in accordance with best market practices.
- 3.3. RTB House may engage such subcontractors as in RTB House's reasonable judgement may be advantageous to perform its obligations under the Agreement.
- 3.4. While providing the Services, RTB House will endeavor to take reasonable and appropriate measures to protect the Client's brand and goodwill, in particular through diligent selection of the Inventory for display of Banner Creations.
- 3.5. The Services are provided on an "as is" basis and RTB House disclaims all warranties, including but not limited to any implied warranties of merchantability, title, or fitness for a particular purpose of the Services. RTB House makes no representations regarding the specific commercial results that the Client may obtain from the provided Services.

### **4. REPRESENTATIONS AND OBLIGATIONS OF THE CLIENT**

- 4.1. The Client hereby represents that: (a) it has all necessary rights and authority to enter into and perform its obligations under the Agreement; (b) it holds all necessary rights, including, without limitation, Intellectual Property Rights or required licenses to the Advertising Materials supplied to RTB House to be included in Banner Creations and for further display; (c) the Advertising Materials supplied to RTB House will: (i) not violate any Intellectual Property Rights or any other rights of third parties; (ii) not include any content which is contrary to applicable laws or regulations; (iii) not contain any material which is indecent, vulgar, abusive, defamatory, obscene or pornographic, promote aggression or hate speech; (iv) not contain any malware, in particular viruses, "Trojan horses", "computer worms", "time bombs" or data erasers; and (v) comply at all times will all applicable laws or regulations, advertising and marketing codes of practice in any of the jurisdictions where the Client's Banner Creations are displayed; and (d) it will be solely liable towards third parties for the contents and quality of the Advertising Materials supplied to RTB House.
- 4.2. The Client declares that the information provided to RTB House, especially the data included in the Order, is true, complete and up-to-date. If any such information becomes outdated after conclusion of the Agreement, the Client

will inform RTB House hereof by sending a message to the following e-mail address: [finance.usa@rtbhouse.com](mailto:finance.usa@rtbhouse.com) as promptly as practicable and in any event within **three (3) Working Days** after the occurrence of such change.

- 4.3. The Client will closely cooperate with RTB House during the term of the Agreement, provide RTB House with all information required for proper provision of the Services and comply with all technical requirements and specifications related to the Services provided by RTB House. The Client will also inform RTB House about any changes or occurrence of any events which may impact provision of the Services or mutual cooperation of the Parties (including, but not limited to any decision on the Client's liquidation, declaration of bankruptcy or scheduled technical breaks) as promptly as practicable and without undue delay.
- 4.4. If the Client is an advertising agency which procures the Services for its customer ("**End Customer**"), the Client shall ensure that all of Client's obligations under this Agreement are also fulfilled by such End Customer. The Client shall contractually impose on its End Customer obligations which are not less onerous to the Client's obligations under this Agreement and shall be liable towards RTB House for any acts or omissions of its End Customer which are in breach of the provisions of this Agreement.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1. In order for RTB House to provide the Services under the Agreement, the Client will grant or cause RTB House and RTB House Affiliates to be granted for the period of provision of the Services a royalty-free, non-exclusive, worldwide license to use the Advertising Materials, which includes the name, logo, trademarks of the Client for developing the Banner Creations and displaying the Banner Creations on the Inventory.
- 5.2. The above license shall encompass in particular the right to: (a) display and make the Advertising Material available to the public; (b) reproduce, edit, alter, modify and distribute the Advertising Material, in electronic storage media of any kind, as well as to compile and combine them with other content or materials, including the right to use, display, make available or distribute the edits, alterations, modifications and compilations of the above in media of any kind; (c) record the Advertising Materials (in a machine-readable form) and to store them electronically in its own database; and (d) exercise on behalf of the creators of the Advertising Materials the right to decide on the integrity of these Advertising Materials.
- 5.3. Unless expressly provided herein, this Agreement does not transfer ownership of, or create any licenses (implied or otherwise) in, any Intellectual Property Rights existing prior to the commencement of this Agreement and/or created by either Party during the term of this Agreement.
- 5.4. All Intellectual Property Rights in and/or arising out of or in connection with the Services shall be owned by RTB House (but excluding the Intellectual Property Rights in the Advertising Materials, which will remain the property of the Client). For the avoidance of doubt, RTB House will own: (a) any content developed by or on behalf of RTB House and included in the Banner Creations (but excluding the Advertising Materials); (b) the design of the Banner Creations; (c) any RTB House technology used in connection with the Services; and (d) any documentation or other materials regarding the use thereof and related thereto.
- 5.5. RTB House hereby grants the Client, for the period of provision of the Services, a non-exclusive, non-assignable worldwide license to use the Client's panel to the extent necessary and practicable for the performance of the Agreement. The license shall constitute an integral part of the Services and is granted in consideration of the payment of the remuneration referred to in Section 6.1.

## **6. PAYMENTS**

- 6.1. For the provision of Services RTB House shall be due monthly remuneration from the Client. The method of calculation of the remuneration will be specified in the Order.
- 6.2. The remuneration due to RTB House are exclusive of any applicable taxes, value added tax and any other similar sales or use tax (collectively, "**Taxes**"). In the event the RTB House is required to pay any Taxes, RTB House may invoice Client for the full amount of such Taxes, together with the fees or by separate invoice, and Client agrees to reimburse RTB House for such Taxes by the payment deadline stated in such invoice. The Client will also cover all charges related to the completion of payment, in particular, bank charges for the transfer.

- 6.3. The payments for Services must be made in the full amount, free of any deductions or withholdings. If there is any mandatory withholding or deduction, the Client shall gross up the payment so that RTB House receives the amount indicated in the invoice. The Client will be responsible for settlement of any mandatory withholdings and deductions.
- 6.4. The remuneration shall be paid via bank transfer, by check or via electronic bank transfer (or as set forth within the Order) on or before the deadline stated in the invoice, in the currency indicated in the Order. The date which appears on RTB House's bank statement as the date of receipt of payment is considered the date of payment. In case of failure to meet the deadline for payment indicated in the invoice, the Client will pay interest on due amounts at the rate specified in the Order, for each day of default.

## **7. CONFIDENTIALITY**

- 7.1. Subject to Section 7.2 and 7.3 below each Party undertakes to: (a) keep secret and confidential all Confidential Information of the other Party; (b) not disclose any Confidential Information to any person other than Authorized Recipients, except as permitted under this Agreement; (c) use the Confidential Information only for purposes related to the performance of the Agreement or as otherwise permitted under this Agreement; (d) exercise at least the same standard of care and security to protect the confidentiality of the Confidential Information received by it as it uses to protect its own similar confidential information.
- 7.2. The receiving Party's obligations under Section 7.1 will not apply to Confidential Information that: (a) has been independently developed by such receiving Party; (b) is, or becomes, generally available to the public other than as a result of the information being disclosed by the receiving Party or its Authorized Recipients or in breach of this Section 7; (c) was available to the receiving Party or its Authorized Recipients on a non-confidential basis prior to disclosure by the other Party; (d) was, is, or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's actual knowledge, is not under any confidentiality obligation in respect of that information; (e) was lawfully in the possession of the receiving Party before the information was disclosed by the disclosing Party; (f) the Parties agree in writing to be not confidential.
- 7.3. The receiving Party may disclose Confidential Information of the disclosing Party if and to the extent that it is required to do so by the binding provisions of law or by the court or regulatory agency or other public authority, provided that the receiving Party: (a) to the extent permitted by law, notifies the disclosing Party with reasonable prior written notice of the required disclosure; and (b) limits the disclosure to the extent expressly required.
- 7.4. The confidentiality obligation set out in this Section 7 will be binding during the term of the Agreement and for a period of 3 (three) years after its termination or expiration.
- 7.5. The Parties hereby acknowledge that due to the fact that, as a part of providing Services to the Client, Banner Creations displayed on the Inventory will include RTB House's name and logo, the fact of an ongoing commercial cooperation between the Parties does not constitute Confidential Information.

## **8. PRIVACY**

- 8.1. The Parties acknowledge that, to provide the Services to the Client, RTB House uses cookies and similar tracking technologies (such as mobile device identifiers) that involve storing information or gaining access to the information stored in Users' terminal equipment.
- 8.2. The Client undertakes to inform Users about RTB House's use of cookies and similar tracking technologies and to obtain all necessary consents for and comply with any other obligation pursuant to applicable privacy and data protection laws, in particular related to storing information or gaining access to the information stored in the terminal equipment of such Users by RTB House or its Affiliates.
- 8.3. The Client undertakes to publish on its digital properties a privacy policy that includes information about the use of RTB House technology on such digital properties and a link to the RTB House Services Privacy Policy. RTB House undertakes to include in each Banner Creation displayed during performance of Services for the Client a direct link to RTB House Opt-Out page.
- 8.4. The Parties undertake to comply with any privacy and data protection laws to the extent such laws are applicable to the provision of the Services by RTB House. If required, then the Parties shall enter into a separate Data Processing Addendum, which shall exclusively regulate any matters related to the processing of the personal data of end users

visiting the Client’s digital properties in connection with the performance of Services, including the rights and obligations of the Parties related to the collecting and processing of personal data and liability for any unlawful or inappropriate handling of such data. Once duly executed by the Parties, such data processing agreement will constitute an integral part of this and any subsequent Agreement for the provision of Services concluded between RTB House and the Client, unless otherwise agreed by the Parties.

## 9. INDEMNITY & LIABILITY

- 9.1. The Client agrees to indemnify, hold harmless and defend RTB House, its Affiliates and their respective directors, employees and agents (“**RTB House Indemnified Parties**”) from and against any and all claims, suits, demands, judgements and proceedings of any kind (collectively “**Claims**”) asserted or filed against any RTB House Indemnified Party by any third party or any government or industry organization, and any damages, losses, expenses, liabilities or costs of any kind (including but not limited to reasonable attorneys’ or witness’ fees and court costs) incurred in connection with such Claims (including those necessary to successfully establish the right to indemnification), arising out of or related to any breach or alleged breach of any warranty, representation or covenant made by the Client, in particular related to any actual or alleged infringement or violation of any Intellectual Property Rights or other proprietary right of a third party by the Advertising Materials supplied by the Client.
- 9.2. Should the circumstances described above occur, RTB House will provide the Client with a prompt written notification of such Claim, and the Client will immediately provide RTB House with all necessary documents and information which could have an impact on the outcome of relevant proceedings as well as with assistance in connection with such Claim. RTB House will have full control and authority to investigate, defend and settle such Claim, provided that any settlement of such Claim requires prior consent of the Client (which shall not be unreasonably withheld).
- 9.3. Except for the obligation to make payment of fees under the Agreement as well as liability related to indemnification and processing of personal data, in no event shall either Party’s aggregate liability arising out of or related to the Agreement for whatever cause, such as breach of contract, tort or otherwise, exceed the total value of the amounts due to RTB House pursuant to the Agreement in the six (6) month period preceding the event giving rise to the Claim. This represents the maximum foreseeable damage at the conclusion of the Agreement and both Parties agree that calculation of remuneration charged by RTB House for the Services is based on a division of risks between the Parties.
- 9.4. Notwithstanding anything to the contrary herein, RTB House will not be liable for any damage connected with provision of the Services and resulting from: (a) termination of the Agreement or discontinuity in provision of the Services as a result of RTB House’s use of rights referred to in Section 10.3, Section 10.6 or Section 10.7; (b) action or omission, including violation of any provision of the Agreement, by the Client or any third party for which the Client is liable.
- 9.5. Except for liability arising from indemnification obligations, each Party’s liability towards the other Party will cover solely direct money damages and each Party’s liability for any consequential, exemplary, special, indirect, incidental or punitive damages, including but not limited to, damages for loss of profits, loss of use and business interruption, is hereby excluded, even if such damages were foreseeable or whether or not such Party has been advised of the possibility of such damages.
- 9.6. Neither Party will be liable for delay or default in the performance of its respective obligations under the Agreement if such delay or default is caused by conditions beyond its reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures or labor disputes.

## 10. TERMINATION OF THE AGREEMENT & SUSPENSION OF SERVICES

- 10.1. The term of the Agreement will be defined in the Order.
- 10.2. Each Party will have the right to terminate the Agreement at any time, subject to a **30 (thirty) days’** notice period, by sending to the other Party a written notice by post or as a scan copy by e-mail to an authorized representative of the other Party specified in the Order.
- 10.3. Each Party will have the right to terminate the Agreement with immediate effect if the other Party: (a) breaches the provisions of the Agreement (in particular related to payment obligations) or the Data Processing Addendum and does not remedy the breach within **5 (five) days** from the receipt of the notice sent by the other Party electronically;

(b) materially violates generally applicable laws; (c) makes a general assignment for the benefit of creditors, is adjudicated bankrupt or becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors, (d) terminates the Data Processing Addendum.

- 10.4. The Agreement between the Parties will be terminated automatically should the Client not start to use the Services within **90 (ninety) days** of the commencement of the Agreement or if the provision of Services has been suspended for any reason and has not been resumed for a period of **90 (ninety) days**.
- 10.5. On expiry or termination of this Agreement for any reason, the Client shall pay to RTB House all outstanding unpaid invoices and interest, and, in respect of Services supplied but for which no invoice has been submitted, RTB House shall submit an invoice, which shall be payable by the Client in accordance with Section 6 and any payment terms specified in the relevant invoice.
- 10.6. The provision of Services will be suspended: (a) at any time, upon each Party's **2 (two) days'** notice; and (b) upon the exhaustion of the campaign budget specified in the Order.
- 10.7. RTB House will also be entitled to suspend the provision of Services with an immediate effect in case of technical problems that may affect the proper provision of Services or if the Client fails to meet any of its obligations under the Agreement (in particular fails to make payment in accordance with the Agreement) or if the necessity to suspend provision of the Services results from the provisions of law, judicial or administrative decision or any claims raised by third parties, in particular in relation to Advertising Materials.
- 10.8. The suspension of provision of Services does not release the Client from the obligation to pay remuneration due to RTB House for Services provided until the date of such suspension.

**11. FINAL PROVISIONS**

- 11.1. Any matters not covered by the Agreement will be governed by the laws of Delaware. The Parties undertake to make all their endeavors to settle amicably any disputes arising out of or in connection with the Agreement. Should the Parties fail to reach an amicable agreement, such disputes will be submitted to the exclusive jurisdiction of the Delaware courts.
- 11.2. Unless otherwise explicitly specified in the Agreement, the Parties may deliver any notice by e-mail, registered mail, personal delivery or renowned express courier to the addresses or e-mail addresses indicated in the Order.
- 11.3. Should any of the provisions hereof be considered invalid or unenforceable by any court or administrative body, this will be without impact on the validity or enforceability of the remaining provisions of the Agreement. The invalid or unenforceable provision will be replaced by another provision with the purpose equivalent or possibly the closest to the purpose of the invalid or unenforceable provision.
- 11.4. Neither Party is authorized to assign their rights or obligations under the Agreement, whether in whole or in part, without the previous written consent of the other Party.
- 11.5. By placing the Order, the Client acknowledges that it has read the Terms and fully accepts their provisions, notwithstanding any contrary provision or rule that may be contained in any of the Client's regulations.
- 11.6. These Terms along with the Order constitute the entire agreement between the Parties within the matter specified thereof, which supersedes any and all other prior understandings between the Parties whether oral or written, expressed or implied and exclude the application of any other terms that the Client may seek to impose or incorporate. In case of any discrepancies between the Order and these Terms, the provisions of the Order will take precedence.
- 11.7. If these Terms have been made in various different language versions, in case of any discrepancies between the English version of Terms and other language version, the English version will prevail.

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