

## PLATFORM AGREEMENT TERMS AND CONDITIONS

All capitalized terms used herein unless otherwise defined shall have the meanings set forth in the Statement of Work ("**SOW**")

**1. IgnitionOne Platform.** IgnitionOne and Customer are entering into this Platform Agreement pursuant to which IgnitionOne will provide to Customer certain services designed to improve Customer's online marketing performance (the "**Services**") using IgnitionOne's proprietary Software Platform that allows Authorized Users to access certain features and functions through a web interface to manage online marketing ("**Software**"). The Software, the Tags (as defined below) and any other agreed-upon services provided pursuant to this Platform Agreement or any SOW are collectively referred to as the IgnitionOne Platform ("**Platform**"). "**Authorized User**" means each of Customer's employees and independent contractors who are provided Access Protocols by Customer or IgnitionOne. "**Access Protocols**" means login information, passwords, security protocols, and policies through which Authorized Users access the Platform. Customer acknowledges that IgnitionOne may continually develop, deliver and provide to Customer ongoing innovation to the Platform, in the form of new features, functionality, and efficiencies. Accordingly, IgnitionOne reserves the right to modify the Platform from time to time. The Platform shall be provided pursuant to Statements of Work to be executed by the parties for each engagement (each, an "**SOW**" and collectively, the "**SOWs**"). Customer agrees and acknowledges that some services set forth in an SOW may be provided by Affiliates of IgnitionOne. For purposes of this Agreement, "**Affiliate(s)**" means any entity or indirectly controlling, controlled by, or under common control by IgnitionOne. "**Control**", "**Controlling**", "**Controlled by**", or "**Common Control**" means, with respect to any entity, the power to direct, or cause the direction of, the management and policies of the entity, whether through ownership of voting securities, by contract, or otherwise. This Platform Agreement along with SOWs executed by the parties from time to time are collectively referred to as the "**Agreement**". To the extent that the terms of this Platform Agreement and any SOW conflict, priority shall be given to the SOW.

**2. Access, Rights and Restrictions.** Subject to Customer's compliance with the terms and conditions contained in this Agreement, IgnitionOne hereby grants to Customer a non-exclusive, non-transferable, non-sublicenseable, right to allow Authorized Users to access certain features of the Platform. Customer will use reasonable commercial efforts to maintain the appropriate administrative, technical and physical security safeguards, and will use reasonable commercial efforts to ensure that all Authorized Users maintain similar safeguards with respect to the Access Protocols. Customer will be responsible for all acts and omissions of Authorized Users. Customer will notify IgnitionOne immediately if it learns of any unauthorized use of any Access Protocols or any other known or suspected unauthorized access or unauthorized acquisition of data as a result of breach of security. Customer will not: (a) adapt, alter, modify, improve, translate or create derivative works

of the Platform; (b) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Platform; and (c) except as may be specifically approved by IgnitionOne in writing, provide any third party access to the Platform or use the Platform on behalf of any third party, including as part of a time-sharing, outsourcing or service bureau environment. IgnitionOne owns all right, title and interest in and to the Platform (including, without limitation, their underlying technology) and all related intellectual and proprietary rights of any kind anywhere in the world. Except for the limited license expressly granted in this Section, nothing in this Agreement shall be construed as IgnitionOne granting to Customer any right, title or interest in or to the Platform or any right under any patent, trade secret or other intellectual property rights of IgnitionOne.

**3. Fees.** During the term of this Agreement ("**Term**"), Customer shall pay to IgnitionOne the fees set forth on the applicable SOW (collectively the "**Fees**"). Unless specified otherwise in any SOW, Customer shall pay the Fees to IgnitionOne no later than thirty (30) days after the applicable invoice date from IgnitionOne. In addition, Customer shall be responsible for all taxes in connection with the Platform (excluding taxes based on IgnitionOne's net income). All invoices shall be deemed accepted unless disputed in good faith within thirty (30) days after receipt thereof. If an invoice is disputed, Customer shall pay the undisputed portion of the invoice when due. Late payments shall accrue interest daily following the due date at the lesser of 1.5% per month or the maximum interest allowed by applicable law. In addition to any other rights and remedies provided by law or under this Agreement, IgnitionOne shall have the right to suspend Customer's access to the Platform in case of late payment. Customer shall also pay to IgnitionOne the costs and expenses, including reasonable attorney's fees, incurred in collection of any delinquent amounts.

**4. Tags and Data.** Customer will deploy on the web sites for which Customer is accessing the Platform as defined in the applicable SOW ("**Sites**") certain code provided by IgnitionOne (a "**Tag**") which is designed to send anonymous data with respect to a Site (including relevant non-identifiable and non-personal transaction information) to IgnitionOne ("**Data**"). Customer shall not alter, copy, modify, sell, reuse, or divulge any Tags or other IgnitionOne code without the prior written consent of IgnitionOne. Customer agrees to leave the Tags up on the Sites for the Term in a properly functioning manner for the delivery of the Platform. Upon IgnitionOne's request, Customer shall promptly update or remove the Tags immediately on any Sites specified by IgnitionOne. Customer grants to IgnitionOne a non-exclusive, worldwide, license to use the Data for its internal business and marketing purposes, including without limitation, building statistical models and scoring cookies.

**5. Customer's Representations, Warranties and Responsibilities.** Customer represents and warrants that:

(a) it has the right to enter this Agreement and to grant the rights granted herein; (b) the content on the Sites and any ads activated pursuant to this Agreement (collectively, "**Customer Content**") will not violate any third-party rights or applicable laws; and will not include or promote pornography, violence, racism, hate, illegal drugs, illegal weapons, adware, malware, bit torrent, illegal file sharing, or other matters that IgnitionOne reasonably considers in good faith to be offensive or otherwise inappropriate; and (c) Customer has provided the appropriate disclosures regarding the collection and use of Data in the form of a privacy policy that is prominently displayed on the Site and, where applicable, Customer has obtained consents from users of the Sites under applicable law for the collection and use of Data.

**6. License to Customer Marks.** Customer grants to IgnitionOne a non-exclusive, worldwide, limited license to use and reproduce Customer's trademarks, trade names and logos (collectively, "**Customer Marks**") in connection with performing its obligations under the applicable SOW and for marketing and promoting the Platform. All use of the Customer Marks shall be in accordance with Customer's trademark usage guidelines and shall inure to the benefit of Customer.

**7. Term and Termination.** This Platform Agreement shall commence on the Effective Date and, unless terminated earlier pursuant to the terms of the Platform Agreement, shall remain in force for so long as there is a SOW in effect ("**Term**"). In the event of a material breach of this Agreement which is not cured within thirty (30) days of written notice thereof, the non-breaching party may terminate this Agreement upon written notice. IgnitionOne may terminate this Agreement or suspend Customer's access to the Platform at any time upon written notice on behalf of any one or all of the Sites if the Customer Content violates the terms of this Agreement or if Customer endangers the security or availability of the Platform. Either party may terminate this Agreement upon written notice in the event that the other party files a petition in bankruptcy or proceedings in bankruptcy are instituted against it, or any court assumes jurisdiction of such party and its assets pursuant to proceedings under any bankruptcy or reorganization act, or a receiver is appointed of that party's assets or that party makes an assignment for the benefit of its creditors. Following any termination, Customer shall pay to IgnitionOne the Fees incurred through the date of termination. Customer agrees to immediately remove all Tags upon termination of this Agreement in its entirety, or to remove Tags from a specific Site in case of termination with respect to that Site. The provisions of this Agreement that are intended to survive shall so survive after termination.

**8. Confidentiality.** "**Confidential Information**" shall mean any information of either party which is, or should be, reasonably understood to be confidential or proprietary to the disclosing party, including, but not limited to, any information concerning: (i) the disclosing party's proprietary technology and products, including without limitation, the Platform, and (ii) the disclosing party's operations and business or financial plans or strategies, including the terms

and existence of this Agreement and product pricing, disclosed to the receiving party by the disclosing party, either directly or indirectly, in writing, orally, electronically, or by drawings or inspection of materials or facilities. Confidential Information shall not include information which the receiving party can demonstrate: (a) is known to the receiving party at the time of the disclosure by the disclosing party, as evidenced by written records of the receiving party, (b) has become publicly known and made generally available through no wrongful act of the receiving party, (c) has rightfully been received by the receiving party from a third party who is authorized by the disclosing party to make such disclosures, (d) was independently developed by the receiving party without any use of the Confidential Information of the disclosing party and by employees of the receiving party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development, (e) is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement, or (f) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. The receiving party shall treat as proprietary and shall maintain in strict confidence all Confidential Information of the disclosing party and shall not, without the express prior written consent of the disclosing party, disclose such Confidential Information to third parties or use any such Confidential Information other than in furtherance of its obligations hereunder. The receiving party will only disclose such information to its officers, directors, employees, agents and contractors to the extent they have a need to know the information in order to perform its obligations under this Agreement and shall ensure that these persons are bound in writing to provisions no less stringent than those contained in this Section. Confidential Information may only be copied to the extent reasonably necessary for the purposes of this Agreement on a strict need to know basis and all such authorized copies shall include the same proprietary, copyright and/or trade secret legends as the original. Upon the disclosing party's request or termination of this Agreement, receiving party shall destroy all copies of disclosing party's Confidential Information and all tangible embodiments thereof and provide written certification thereof except that one copy of all such Confidential Information may be retained by the receiving party's legal function solely for the purpose of ensuring compliance with this Agreement.

**9. Privacy.** Each party understands and agrees that it will ensure that it: (i) adheres to applicable privacy law and regulation; including, but not limited to, Section 5 of the FTC Act, and the Self-Regulatory Principles for Online Behavioral Advertising (located at <http://www.aboutads.info/principles>, the "**DAA Code**") (collectively the "**Privacy Laws and Regulations**"), and (ii) posts a privacy policy and other applicable disclosures on its Sites (including on the use of cookies) that are in accordance with all Privacy Laws and Regulations. Both parties shall further ensure that their actual privacy practices comply with their respective privacy policies. Customer shall obtain all legally required

permissions from Site visitors in connection with placing cookies and the use of Data as contemplated by this Agreement. In no event shall Customer transmit to IgnitionOne, its information providers, licensors, licensees, consultants, contractors, agents, attorneys or employees, and IgnitionOne shall not solicit or collect, Sensitive PII of the visitors or customers to the Sites. "**Sensitive PII**" shall mean personally identifiable and non-personally identifiable information that is considered to be sensitive as defined by the Privacy Laws and Regulations and the Digital Advertising Alliance and the Network Advertising Initiative, including without limitation, credit card numbers, social security numbers, government IDs, and personal health information. Customer acknowledges that IgnitionOne is a participant in the EU and Swiss Privacy Shield programs administered by the U.S. Department of Commerce, and that some Data processed by IgnitionOne pursuant to the provision of the Services may be stored on servers located in the United States. To the extent that the provision of the Services involves any transfers of Data that include PII that is subject to data transfer restrictions or requirements under Directive 95/46/EC or any successor legislation: (a) Customer shall use and disclose the information only for the purposes permitted by the Agreement; and (b) Customer will provide at least the same level of protection for the information as is available under the EU-U.S. and Swiss-U.S. Privacy Shield frameworks. If Customer determines that it can no longer provide this level of protection: (a) Customer will promptly notify IgnitionOne of this determination; (b) IgnitionOne shall have the right to terminate the Agreement without penalty upon notice to Customer; and (c) Customer will cease processing the information or take other reasonable and appropriate steps to remediate the situation. Customer authorizes IgnitionOne to provide this Section of the Agreement to the Department of Commerce upon its request (as required under the Accountability for Onward Transfer Principle of the Privacy Shield).

10. **Governing Law; Jurisdiction.** The construction and interpretation of this Agreement shall at all times and in all respects be governed by and construed according to the laws of the State of New York without regard to any conflict of law provisions thereof. The parties agree to bring any dispute relating to this Agreement in a federal or state court located in New York, NY and hereby irrevocably submit to the exclusive jurisdiction of such courts.

11. **Warranty Disclaimer.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IGNITIONONE, ITS AFFILIATES, SUPPLIERS, LICENSORS AND PARTNERS AND ALL OF THEIR OFFICERS, SHAREHOLDERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES ("**THE IGNITIONONE PARTIES**") DO NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE PLATFORM, INCLUDING WITHOUT LIMITATION THE SOFTWARE, OR DELIVERABLES PROVIDED HEREUNDER OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY THIRD PARTY SOFTWARE, OR SERVICES USED IN CONNECTION WITH THE PLATFORM) REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED

WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. THE IGNITIONONE PARTIES DO NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR THAT THERE WILL BE NO FAILURES, ERRORS, OR OMISSIONS OR LOSS OF TRANSMITTED INFORMATION.

12. **Limitation of Liability; Indemnification.** EXCEPT TO THE EXTENT PROHIBITED BY LAW, IGNITIONONE AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE) WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF IGNITIONONE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLAIMS FOR DAMAGES MUST BE MADE BY CUSTOMER WITHIN ONE (1) YEAR OF THE INCIDENT TO WHICH THEY RELATE OR BE FOREVER BARRED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, IGNITIONONE'S TOTAL LIABILITY TO CUSTOMER UNDER ANY AND ALL CIRCUMSTANCES SHALL NOT EXCEED THE AGGREGATE FEES (EXCLUDING PASS THROUGH FEES PAID TO THIRD PARTIES) PAID BY CUSTOMER TO IGNITIONONE UNDER THIS AGREEMENT DURING THE SIX MONTHS PRECEDING THE DATE THAT THE CLAIM IS MADE GIVING RISE TO THE LIABILITY. Customer agrees to defend, indemnify and hold IgnitionOne, its Affiliates and all of their directors, officers, employees, agents, shareholders, partners, members or other owners, harmless against any and all actions, suits, proceedings, claims, judgments, damages, costs and expenses, including reasonable attorney's fees, and other liabilities collectively, "**Claims**") arising from or related to the Customer Content, the Customer Marks, the Data or Customer's breach of its express representations and warranties in this Agreement. IgnitionOne agrees to defend, indemnify and hold Customer, its Affiliates and all of their directors, officers, employees, agents, shareholders, partners, members or other owners, harmless against any and all Claims that the Software infringes any third party intellectual property rights. IgnitionOne's indemnification obligation will not apply if the alleged Claim arises, in whole or in part, from: (a) any use of the Software by the Customer or any Authorized User not in accordance with this Agreement; (b) any modification of the Software by any person other than IgnitionOne or its authorized agents; or (c) any use of the Software in combination with other products, equipment, software or data not supplied by IgnitionOne. The foregoing indemnification obligations are conditioned upon the indemnified party: (a) providing prompt written notice to the indemnifying party of any such Claim (provided that the failure to provide prompt notice shall only relieve the indemnifying party of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (b) permitting the indemnifying party to assume and control the defense of such Claim; and (c) providing to the indemnifying party at the indemnifying party's reasonable expense all available information and assistance reasonably necessary for the indemnifying party to defend such Claim. The indemnifying party will not enter into any settlement or compromise of any such Claim, which settlement or compromise would result in any liability to the

indemnified party, without the indemnified party's prior written consent.

13. **Miscellaneous.** All notices under this Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given upon receipt and may be delivered by (a) hand, (b) express courier with a reliable system for tracking delivery, (c) confirmed facsimile with a copy sent by another means specified in this Section, or (d) registered or certified mail, return receipt requested, postage prepaid, and addressed to the recipients as set forth above. This Agreement represents the entire agreement between the parties with respect to the subject matter covered by this Agreement. No other agreement (whether written or oral), statement, or promise made by any party, or by any employee, officer, or agent of any party regarding this subject matter, that is not contained in this Agreement shall be binding or valid, unless such agreement shall be in writing and signed by the parties hereto after the execution of this Agreement. Customer may not assign this Agreement without the prior written approval of IgnitionOne which shall not be unreasonably withheld or delayed. Any assignment in violation of this Section shall be void ab initio. The failure of either party to this Agreement to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and

compel strict compliance with every provision of the Agreement. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations (other than Customer's payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond the reasonable control of such party. IgnitionOne shall endeavor to guard against any loss to Customer as the result of the failure of media or other suppliers to properly execute their commitments, but IgnitionOne shall not be responsible for any such failure. In the event that any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect. The relationship of IgnitionOne to Customer is that of an independent contractor, and this Agreement shall not create any franchise, joint venture, partnership, or similar relationship. Neither party shall represent itself as an agent or employee of the other party.

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