



MASTER SERVICES AGREEMENT Standard Terms and Conditions

Set forth below are the standard terms and conditions (“T&C’s”) which shall be integrated into and become part of a Master Services Agreement (“Agreement”) entered into between ADARA, Inc., a California corporation with its principal office located at 1070 E. Meadow Circle, Palo Alto, CA 94303 (“ADARA”), and a customer (“Customer”) authorized by ADARA pursuant to these T&C’s and a Service Order (“SO”) executed between the parties to allow the Customer to have limited access to ADARA’s proprietary online advertising platform (“Platform” as further defined below) for the purpose of running Customer’s advertising campaigns (“Campaigns” as further defined below) through the Platform. By executing an SO each party agrees that they have accepted these T&C’s as they appear on the URL <http://adara.com/adara-magellan-hospitality-terms> and have agreed that these T&C’s and the executed SO form the Agreement for use of the Platform by Customer. In the case of any conflict between the T&C’s and an SO the SO shall control. All SOs and any amendments thereto must be signed by authorized representatives of each party before the SO or amendment will become effective.

Under the Agreement ADARA will also apply the Platform to collect, organize and interpret various Data (as defined below) to develop Segments (as defined below) to be matched with Customer for the purpose of running its Campaigns.

1. Definitions. For the purposes of the Agreement the following terms shall have the following meanings:
 - A. **“Advertiser(s)”** means where the Customer is an advertising agency and is entering Campaign Information and executing Campaigns through the Platform on behalf of advertisers Customer represents, the actual advertiser for whom the Campaigns is being executed.
 - B. **“Agreement”** means this Master Services Agreement.
 - C. **“ADARA IP”** means ADARA’s proprietary pixel/cookie technology, technology and analytics used to evaluate and organize Visitors into Segments, algorithms that analyze and select optimal advertising or offers to be directed to Visitors, all related software and information employed in the Platform, all User ID’s and Passwords that may be made available to, or may be created by, Customer to enter the Platform, all other ADARA proprietary information which may be utilized and/or made available to Customer hereunder, advertising campaign data developed by ADARA, and all trademarks, logos and copyright materials owned by ADARA.
 - D. **“Campaigns”** means those advertising campaigns of Customer, or Advertisers represented by Customer as an agency, for its products and/or services which Customer desires to run through the Platform.
 - E. **“Campaign Information”** means the information, such as number of advertising impressions Customer desires to buy from ADARA for each Campaign, the dates the Campaign is to run, creative materials for the Campaign, and such other information as the parties may agree Customer will provide to ADARA through the Platform.



F. "**CPM**" means the cost per thousand of advertising impressions purchased by Customer from ADARA under this Agreement.

G. "**Customer IP**" means the Campaign Information and Customer trademarks, graphic designs and other materials, provided by Customer to ADARA, including, if Customer is an advertising agency, the Campaign Information, trademarks, graphic designs and other materials of Advertiser represented by Customer.

H. "**Data**" means advertising campaign data, and the non-personally identifiable information such as, but not limited to, anonymous demographic and behavioral information, obtained through the application of ADARA's proprietary pixel/cookie technology.

I. "**Effective Date**" means the effective date of this Agreement as first set forth in the relevant SO.

J. "**IAB T&C's**" means the Interactive Advertising Bureau Standard Terms and Conditions as the same may be amended from time to time.

K. "**Password**" means the Password provided by ADARA to Customer, and those Passwords created by Customer, used to enter the Platform to record Campaign Information and order Campaigns.

L. "**Platform**" means the online data collection, analysis and advertising platform owned and operated by ADARA

M. "**Segments**" means those high value audience segments identified by ADARA through the Platform.

N. "**SO**" means the Service Order entered between ADARA and Customer which becomes part to the Agreement.

O. "**Term**" has the meaning set forth in the SO.

P. "**User ID**" means the User ID provided by ADARA to Customer, and those User ID's created by Customer, used to enter the Platform to create and manage campaigns.

Q. "**Visitors**" means individuals who visit the Websites and from which Data is collected by ADARA for the application of the Platform.

R. "**Websites**" means the websites through which ADARA collects Data to be utilized to develop Segments for the implementation of Campaigns.

2. IAB T&C's. The Parties agree that the IAB T&Cs shall apply to the transactions contemplated herein, except that in the case of a conflict between the IAB T&Cs and the provisions of this Agreement, the provisions of this Agreement shall control.



3. ADARA's Obligations – ADARA agrees to undertake the following obligations during the Term of this Agreement. ADARA reserves the right to perform activities itself or to use third party service providers to perform such activities to meet the obligations set forth below.

A. Subject to Customer's compliance with the obligations set forth in Section 4. below during the Term ADARA will (i) provide Customer with the limited access to the Platform as provided for in the Agreement, (ii) provide Customer with a User ID and Password, or allow Customer to create appropriate User ID's and Passwords in numbers agreed to by ADARA in its sole discretion, to enter the Platform, (iii) make advertising placements available for purchase by Customer with regard to Campaigns entered into the Platform by Customer, and (iv) employ the Platform and ADARA IP for the purposes of delivering targeted advertisements to Visitors on third-party websites.

B. ADARA will be responsible for acquiring all advertising impressions inventory to be sold by ADARA to Customer under this Agreement. Pricing for Campaigns will be established by agreement of ADARA and Customer and will be set forth in the respective SO.

4. Customer's Obligations.

A. Customer will be responsible for entering all the Campaign Information required for each Campaign into the Platform.

B. Customer agrees to strictly observe the guidelines set forth in Exhibit A and the terms and conditions of this Agreement in the utilization of the Platform. Customer shall not use the Platform for any purpose, or access the Platform, except as expressly provided for in this Agreement. Customer acknowledges that the rights granted to it hereunder are for the benefit of Customer only, or if Customer is an advertising agency, for the purposes of executing Campaigns for its Advertisers, and Customer shall not provide the User IDs or Passwords for entry to the Platform, or any other information for utilization of the Platform, to any third party, including Customer's Advertisers, without the written permission of ADARA first obtained. All equipment required by Customer to access and utilize the Platform, other than the servers used by ADARA for hosting the Platform, shall be the responsibility of Customer.

C. Customer will designate an employee as the contact person for Customer to receive the User ID and Password provided by ADARA to allow Customer access to the Platform. Customer will have the right to create other User ID's and Passwords for a limited number of additional employees or agents, the number to be approved by ADARA, to access the Platform for the purposes of creating and managing Campaigns. Customer shall at all times be responsible for the security of all such User ID's and Passwords and will be responsible for the costs of all Campaigns entered into the Platform through the use of all such User ID's and Passwords, whether authorized by Customer or not. Customer will provide ADARA with a list of all User ID's and Passwords it has issued. ADARA shall have the right to revoke access to the Platform for any or all User ID's and Passwords at any time. Customer acknowledges, as provided above, that all User ID's and Passwords, whether created by ADARA or Customer, are the property of ADARA and Customer may use said User ID's and Passwords only as provided for in this Agreement.



5. Payments to ADARA.

A. Payment Terms and Conditions. The Parties agree that the IAB T&Cs will apply to transactions contemplated herein, except that in the case of a dispute between the IAB T&Cs and the terms and conditions of this Agreement, this Agreement shall control. Payments for Campaigns purchased by Customer from ADARA shall be made in accordance with the pricing set forth in the SO. ADARA will invoice Customer on a monthly basis for all Campaigns run through the Platform during the previous month. Payments shall be made by Customer to ADARA within thirty (30) days of receipt of each invoice from ADARA by Customer. If Customer's credit becomes impaired ADARA may require payment in advance.

B. Agency Payment Liability. Section III of the IAB T&Cs shall apply if Customer is an advertising agency, including the right of ADARA to collect payments for Campaigns directly from the Advertiser if ADARA does not receive payment from Customer within the thirty (30) day period specified above. ADARA agrees to give Customer five (5) business days written notice before contacting the Advertiser directly for payment.

C. Customer agrees to make every reasonable effort to collect and clear payment from the Advertiser on a timely basis.

6. Limited License and Intellectual Property Ownership Rights.

A. ADARA hereby grants to Customer a non-transferable, non-assignable and limited license to use the Platform, the User ID's and the Passwords during the Term set forth in the relevant SO solely for the purposes set forth in, and in accordance with the provisions of, this Agreement. Customer shall use the Platform for its benefit only, or if Customer is an advertising agency, then for the benefit of its Advertisers only.

B. Customer shall be exclusively responsible for the supervision, management, and control of its use of the Platform, including, but not limited to using the Platform in accordance with the provisions of Exhibit A, establishing appropriate operating safe guards, and implementing security procedures acceptable to ADARA and sufficient to satisfy Customer's obligations for security under the Agreement.

C. Customer acknowledges and agrees that the Platform, all related ADARA IP, and all Passwords, User ID's, site entry procedures and Platform use information is the property of ADARA, and except to the extent expressly authorized by this Agreement, Customer shall receive no rights in or to the same.

D. Customer agrees that any disclosure of confidential and proprietary information regarding the Platform by Customer to a third party, including Advertisers, without the express written approval of ADARA will constitute a material breach of this Agreement and shall terminate the license granted hereunder.

E. In addition to any monetary damages ADARA may be entitled to for material breach of the non-disclosure provisions of this Agreement Customer agrees that monetary damages will not be a sufficient remedy for any such breach and that ADARA shall be entitled to specific performance and/or injunctive relief as a remedy for any such breach, but said remedies shall be in addition to all other remedies available at law or in equity. No failure or delay by ADARA to enforce its rights hereunder shall operate as a waiver of any right, power or



privilege under this Agreement, nor shall any single or partial exercise thereof preclude any other or further exercise thereof.

F. As between Customer and ADARA, Customer shall own all Customer IP. Customer hereby grants to ADARA a limited non-transferable license to use the Customer IP as may be necessary to carry out ADARA's obligations under this Agreement. If Customer is an advertising agency it hereby represents that it has the right to grant ADARA the limited license set forth above with regard to both Customer's and Advertiser's portions of the Customer IP. All rights, titles and interests in and to the Customer IP, shall remain the property of Customer and ADARA shall have no interest therein except the right to use same as provided for herein.

7. Term and Termination.

A. Term. The Term of this Agreement will commence as of the Effective Date and continue from year to year thereafter so long as an SO remains in effect between the parties, provided, that unless otherwise specified in the SO either party may terminate the Agreement at any time after the Effective Date by providing thirty (30) days prior written notice to the other party.

B. Termination for Breach. In the case of a material breach of this Agreement by either party, the non-breaching party shall have the right to terminate this Agreement upon twenty (20) days prior written notice to the breaching party and said termination shall be effective at the end of said twenty (20) day period unless the breach is cured to the reasonable satisfaction of the non-breaching party. Exercise by either party of its right to terminate under any provision of this Agreement will not affect or impair its right to enforce its other rights or remedies under this Agreement. All obligations of each party that have accrued before termination or that are of a continuing nature, including without limitation any indemnity provisions in this Agreement, shall survive the termination or expiration of this Agreement.

8. Confidentiality.

For purposes of this Agreement, "**Confidential Information**" means non-public information, know-how and trade secrets, whether provided in written or oral form, that is designated as being confidential, or that a reasonable person knows or reasonably should understand to be confidential; provided, however, that the following shall not be considered Confidential Information: (i) information that is, or becomes, publicly available without a breach of this Agreement, (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential, (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential, or (iv) is independently developed without use of the disclosing Party's confidential information. The Parties agree to use the Confidential Information solely for the purpose of performing their obligations hereunder. Both Parties will refrain from disclosing any Confidential Information to any third-party, except to the extent that (a) such disclosure is necessary to perform its obligations or exercise its rights under this Agreement, (b) such disclosure is required by applicable law, provided that the Party required to make such disclosure must use reasonable efforts to give the other Party advance notice thereof so as to afford that party an opportunity to seek an order or other relief for protecting its Confidential Information from any unauthorized use or disclosure and the Confidential Information is only disclosed to the extent required by law, (c) such disclosure is made with the consent of the



disclosing Party, or (d) such disclosure is to employees, consultants or agents of the disclosing party who have a need to know such confidential information in order to assist the disclosing party in carrying out its obligations hereunder, and said employee, consultant or agent is bound by the same obligation of confidentiality as the receiving Party under this Agreement.

9. Force Majeure. Neither Party shall be liable for delays or failure in performance under this Agreement caused by acts of God, war, acts of terrorism, strike, labor dispute, work stoppage, fire, act of government, or any other cause, whether similar or dissimilar, beyond the control of that Party.

10. Dispute Resolution.

A. Escalation. Any dispute or controversy between the Parties arising out of or relating to this Agreement (each, a "Dispute") shall be resolved by good faith negotiations between the respective managers responsible for the relationship set forth in this Agreement. If such negotiations fail to produce a resolution to the Dispute within 20 business days after the date written notice of such Dispute was provided by one Party to the other Party, the Dispute shall be escalated to the representatives of each party set forth in the SO. If negotiations by such representatives fail to produce a resolution to the Dispute within 20 business days after the date the Dispute was escalated, the Dispute may, upon mutual agreement of the parties, be referred to arbitration under Section 9.B. below, unless otherwise provided for in the SO.

B. Arbitration. A Dispute shall be submitted to arbitration by written notice to the other party (a "Notice of Arbitration"), no later than 10 business days after the escalation process ends. The arbitration shall take place in San Francisco, CA and be conducted in accordance with the procedures in this Agreement and the Commercial Dispute Resolution Process ("AAA Rules") of the American Arbitration Association ("AAA"). In the event of a conflict, the provisions of this Agreement shall control. The arbitration shall be conducted before a panel of three arbitrators, to be selected as provided in the AAA Rules. Any issue concerning the extent to which any Dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. The arbitrators shall have no power to award (i) damages inconsistent with this Agreement or (ii) punitive or exemplary damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. Discovery shall be limited to reasonable document requests. Other forms of discovery shall not be permitted in connection with the arbitration unless it is expressly authorized by the arbitration panel. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrators may disclose the existence, content, or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. An award shall be rendered within 180 business days after submission of the Notice of Arbitration, unless all parties agree to extend that time period. The award shall be reflected in a written decision setting forth the basis for the decision in reasonably specific detail (including detailed findings of fact and conclusions of law)



11. Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a partnership, joint venture, or formal business entity of any kind or create a fiduciary or similar relationship among the parties; and the rights and obligations of the parties shall be limited to those expressly set forth in this Agreement. Each party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither party nor its agents or employees is the representative of the other party for any purpose and neither party has the power or authority as agent, employee, or any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

12. Non-Assignment. Neither Party may assign this Agreement or any of its rights or obligations under this Agreement to any third party without the written consent of the other Party, except that a Party may assign its rights and obligation hereunder in the case of a sale of all or substantially all of its assets to another party who is not a competitor of the non-assigning Party. Any violation of this provision will be cause for immediate termination of this Agreement or, at the option of the non-assigning Party the non-assigning Party may declare the assignment of any of the rights or obligations under this Agreement null and void as of the date of the purported assignment. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each Party to this Agreement.

13. Indemnification.

A. Except as otherwise provided in this Agreement, each party (the "Indemnitor") will indemnify, defend and hold harmless the other party, and its respective employees, representatives, agents and Affiliates (the "Indemnitees"), from and against any and all liabilities, damages, fines, judgments, or expenses and losses of any kind (including reasonable attorney's fees and costs) incurred by Indemnitee, in connection with any demands, claims, actions, suits, administrative or judicial proceedings, or investigations of any kind brought by any third party (including, without limitation, any claim of trademark, patent or copyright infringement, defamation, libel, slander, breach of confidentiality, privacy violation, false or deceptive advertising or sales practices), arising out of (i) Indemnitor's performance or failure in performance of any of its obligations under this Agreement, or (ii) any infringement of a third party's copyright, U.S. patent, trademark, service mark, trade secret, or other intellectual property rights when Indemnitee uses materials provided by Indemnitor pursuant to and in accordance with the terms of this Agreement; all except to the extent caused by the negligence or willful misconduct of Indemnitee.

B. Survival: The indemnification, defense and hold harmless obligations pursuant to this Section 13 are of a continuing nature and shall survive the termination of this Agreement.

14. Limitation of Liability. EXCEPT FOR (I) ANY LIABILITY ARISING OUT OF THE INDEMNITY OBLIGATIONS AS SET FORTH IN PARAGRAPH 13 ABOVE, OR (II) ANY LIABILITY TO THE OTHER PARTY FOR DAMAGES ARISING OUT OF THE INTENTIONAL OR WILLFUL MISCONDUCT OF A PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE OR LOST PROFITS, ARISING



FROM ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY RELEASES AND WAIVES ANY CLAIMS AGAINST THE OTHER PARTY REGARDING SUCH DAMAGES.

15. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

16. Governing Law and Jurisdiction. This Agreement and any dispute arising under or in connection with this Agreement, including any action in tort, shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without regard to any conflicts of laws or principles which may direct the application of the laws of any other jurisdiction.

17. Notices. Any notices required to be sent under this Agreement shall be sent by first class mail, postage prepaid, or any more expedient written means. Notices sent via electronic means (e.g., e-mail or facsimile) will be effective immediately if received prior to 5:00 p.m. local time of the recipient. All other notices shall be effective the first business day after receipt. Notices shall be sent to each party at the address set forth in the SO.

18. Entire Agreement. These T&C's, attached exhibits and the relevant SO constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements, written and oral, with respect thereto. No change, amendment, or modification of any provision of this Agreement shall be effective unless set forth in an SO or an amendment to an SO signed by an authorized representative of each party.