

# TERMS & CONDITIONS

## 1. Definitions.

- (a) “Acquisition” has the meaning set forth on the Sales Order.
- (b) “Agreement” shall mean these Terms and Conditions together with the Sales Order.
- (c) “Client” has the meaning set forth on the Sales Order.
- (d) “Confidential Information” means any non-public information provided by one party to the other during the Term. For purposes of this Agreement, Confidential Information shall not include information the receiving party can document: (i) was or has become readily available to the public without restriction through no fault of the receiving party, its employees, or its agents; (ii) was received without restriction from a third party lawfully entitled to possess and disclose such information; (iii) was rightfully in possession of the receiving party without restriction prior to the other party’s disclosure of such information to the receiving party; or (iv) was disclosed pursuant to the written consent of the other party.
- (e) “Sales Order” means the Audient Company Sales Order signed by Client, and specifically incorporating these Terms and Conditions therein.

## 2. Term.

This Agreement shall become effective on the date that Client signs the Sales Order and, unless otherwise stated on the Sales Order, shall continue in effect for six (6) months.

## 3. Hardware, Software, and Database.

Audient Company shall obtain and maintain the computer hardware and software necessary to perform its obligations under this Agreement. Such hardware and software will not be dedicated hardware and software. Nothing in this Agreement shall grant to Client any right, title, or interest in or to Audient Company’s hardware, software, or Opt-In database.

## 4. Payment.

Client shall pay to Audient Company a fee as set forth in the Sales Order. Unless otherwise specified in the Sales Order, Client shall pay each Sales Order in full within thirty (30) days of receipt or other agreed upon payment terms as stated on the Sales Order. If Client fails to timely pay the full amount of the charges detailed in any Audient Company Sales Order as set forth herein, Client agrees to pay all of Audient Company’s costs of collection of such charges, including without limitation Audient Company’s reasonable attorneys’ fees, and Client agrees to pay interest on the amount of underpayment/nonpayment at the rate of eighteen percent (18%) per annum.

## 5. Indemnification by Client.

Client shall indemnify, defend, and hold harmless Audient Company from and against any and all third party claims, suits, and liabilities (including all reasonable costs, expenses, and attorneys’ fees actually paid) arising from or in connection with: (a) the products and/or services offered/advertised on the Client Website; (b) the content of the Copy; (c) the content of the Client website; or (d) Client’s breach of any of its obligations, representations, or warranties under this Agreement. Audient Company shall promptly notify Client in writing of all such claims and shall accommodate Client’s reasonable requests for cooperation and information. Audient Company shall agree to Client’s sole control over the defense and any settlement of such claims.

## 6. Indemnification by Audient Company.

Except for claims indemnified by Client pursuant to Section 10 above, Audient Company shall indemnify, defend, and hold harmless Client from and against any and all third party claims, suits, or liabilities (including all reasonable costs, expenses, and attorneys’ fees actually paid) arising from or in connection with: Audient Company’s breach of any of its obligations, representations, or warranties under this Agreement. Client shall promptly notify Audient Company in writing of all such claims and shall accommodate Audient Company’s reasonable requests for cooperation and information. Client shall agree to Audient Company’s sole control over the defense and any settlement of such claims.

**7. No Other Warranties.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AUDIENT COMPANY MAKES NO WARRANTY THAT COULD BE IMPLIED IN CONTRACT, IN LAW, OR IN EQUITY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, COMPLETENESS, RELIABILITY, OR PERFORMANCE, OR ARISING FROM USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.

**8. Limitation of Liability.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE LOSS, DAMAGE, OR EXPENSE (INCLUDING LOST PROFITS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. EXCEPT FOR INTEREST OR COLLECTION COSTS UNDER SECTION 4 OF THESE TERMS AND CONDITIONS, THE LIMIT OF EITHER PARTY'S LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) FOR ANY AND ALL CLAIMS RELATED TO THIS AGREEMENT SHALL NOT IN THE AGGREGATE EXCEED THE FEES PAYABLE TO AUDIENT COMPANY UNDER THIS AGREEMENT.

**9. Force Majeure.**

Neither party shall be liable for delays or nonperformance of this Agreement if such delay or nonperformance was caused by: (a) act of God, act of war, strike, fire, natural disaster, or accident; (b) lack of availability of materials, fuel, or utilities; or (c) any other cause beyond such party's control.

**10. Assignment.**

Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

**16. Relation of the Parties.**

The parties are independent contractors. There is no partnership, agency, or joint venture relationship between them.

**17. Confidentiality.**

For a period of three (3) years, beginning on the date client signs the Sales Order, each party will keep strictly confidential all Confidential Information disclosed by the other party, except to the extent an applicable governmental law, order, decree, regulation, rule, or process requires disclosure. In the event of such required disclosure, the receiving party shall provide written notice thereof to the disclosing party as soon as reasonably possible, and shall reasonably cooperate with the disclosing party in resisting the disclosure of or obtaining confidential treatment for such Confidential Information.

**18. Applicable Law, Jurisdiction, and Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to principles of conflict of laws. The exclusive jurisdiction and venue for any proceeding brought pursuant to this Agreement shall be Broward County, Florida.

**19. Entire Agreement.**

Except as expressly modified or supplemented by a writing executed by both parties on or after Client signs the Sales Order, the provisions of these Terms and Conditions and the Sales Order are the only representations, warranties, and understandings between the parties with respect to the products and/or services described in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right or of any subsequent breach or default.

**20. Severability.**

Should any provision of this Agreement be found invalid or unenforceable, all such provisions are to be enforced to the maximum extent permitted by law, and beyond such extent shall be deemed severed from this Agreement without affecting the validity or enforceability of any other provision.

**21. Headings.**

The headings and captions in these Terms and Conditions are for convenience only and are not to be used to construe the meaning of the provisions of these Terms and Conditions.