

# TERMS OF USE AND SERVICE AGREEMENT

**Effective date: February 27<sup>th</sup>, 2018**

## • 1. Scope of this Terms of Use and Service Agreement

1.1.Scope. This Terms of Use and Service Agreement (the “Terms of Use”) sets forth the standards of use of the website <http://www.artofclick.com/> (the “Site”), as well as the legal agreement between Art of Click Pte Ltd (“Art of Click” or “us”), and the Customers of this Site or of the services provided by Art of Click (the “Customer”). Art of Click is a Singaporean company with seat in 737A North Bridge Road Singapore 198705, registered in the Commercial Registry of Singapore.

- 1.2.Acceptance. The use of this Site entails full acceptance of the Terms of Use as published by Art of Click at the moment of such use. If you do not agree with the Terms of Use, you should immediately cease all usage of this Site.
- The use of the services provided by Art of Click, contracted either online or offline, entails the full acceptance and application of this Terms of Use as published by Art of Click at the moment of such use, unless Art of Click and the relevant Customer agree otherwise in writing.
- 1.3.Effectivity. Art of Click may change or amend this Terms of Use at any moment, without notice. An updated and effective draft of this Terms of Use is permanently accessible on the webSite through the url: <http://www.artofclick.com/terms-selfserve>. Customer should look at such url regularly to check for changes in the Terms of Use. Any changes to the Terms of Use will not apply retroactively and will become effective seven days after posting. Continued use of the services after any modification to the Terms of Use shall constitute acceptance thereof.

## • 2. Content of the Site

- 2.1.Ownership over the Site. The Art of Click webSite (“<http://www.artofclick.com/>”)Site is owned and managed by Art Of Click.
- 2.2.Use of the Site. Subject to the terms and conditions of this Terms of Use, Art of Click grants to Customer a non-exclusive, non-transferable, non-sublicensable license to access

and use the Site, solely for the purpose of obtaining the mobile DSP services provided by Art of Click.

- **2.3. Services modification.** Art of Click may modify without prior notice the design, layout and/or configuration of this Site, as well as some or all of its functionalities. Art of Click reserves the right to modify or discontinue the service with or without notice to the Customer. Art of Click shall not be liable to the Customer or to any third party should Art of Click exercise its right to modify or discontinue the services provided by means of the Site.

- **2.4. No guarantee of technical availability.** The Customer acknowledges that it is not technically possible that the Site is 100% available 100% of the time. However, Art of Click will strive to keep the Site available and functioning as much as possible. Brief anomalies or temporary suspension may affect Art of Click services, especially due to Site maintenances, security reviews, or capacity issues, and because of events that may not be controlled or influenced Art of Click (e.g. anomalies in public communication networks, power shortages, etc.).

- **3. Insertion orders**

- **3.1. Binding nature.** Where the Customer has submitted an Art of Click Insertion Order (“IO”) in order to engage the services provided by Art of Click, the terms contained in such IO shall be regarded as a binding agreement between the parties and shall be complementary to, but not a substitute of, this Terms of Use.

- **3.2. Relation with the Terms of Use.** The submission of the said IO shall not revoke or affect in any way the content and effect of these Terms of Use unless it is so laid down in the IO, or when there is discrepancy between the IO and these Terms of Use, in which case the IO shall prevail. If the IO and this Terms of Use establish a set of rules concerning one same matter (i.e. ad content policy), both set of rules shall apply at the same time, unless they are materially incompatible, in which case the IO shall prevail

- **3.3. Relation with IAB Terms.** IAB Standard Terms and Conditions for Internet Advertising for Media Buys (Version 3.0) (the “IAB Terms”), shall apply as subsidiary set of rules to this agreement. In case of discrepancy between the IAB Terms and either this Terms of Use or the applicable IO, the Terms of User or the applicable IO shall prevail.

- **4. Customer obligations**

- 4.1. Indemnity. Customer undertakes to make diligent use of the Site and the services provided by Art of Click, in full compliance with the relevant IO, this Terms of Use, the IAB Terms when applicable, and the relevant regulations. Customer shall indemnify and hold Art of Click (as well as its agents, affiliates, directors, officers, employees and partners), harmless of any damage, including any kind of cost, penalty, or loss profit, arising from the Customer's non-compliance with its obligations.
- 4.2. Information provided by the Customer. All information provided by the Customer through the Site shall be truthful. Customer guarantees the authenticity of all data communicated as a result of completing the forms necessary for the subscription and use of the services provided by Art of Click.
- Customer shall be held responsible for keeping constantly updated all information provided to Art of Click, so that said information is at all times accurate. Customer will be solely responsible for any false or inaccurate information provided to Art of Click, as well as for the damage caused to Art of Click or to third parties due to such unreliable information.
- 4.3. Registry. Art of Click may require at any moment that the Customer is registered in order to have access to any of the services provided by the Site. In such case, the Customer password may not be transferred or assigned, even temporarily, to any third person. In the event that the Customer knows or suspects that his or her password is being used by any third party, the Customer shall inform Art of Click of such undue use.
- 4.4. Use of the Site. Unless previous authorization is granted by Art of Click, the Customer may not commit the following:
  - a) To use software or scripts in connection with Site usage.
  - b) To block, overwrite, modify or copy the Site code, unless such action is necessary for the proper use of the services offered at the Site.
  - c) Any action that may impair the correct functioning of the Site, especially overloading its servers.
  - d) To use any of the materials and information contained in this Site for illegal aims, or by any aim expressly prohibited by these terms and conditions.
  - Art of Click retains the right to terminate, at its sole discretion, any accounts involved with botnets, related activities, or any violation of these Terms of Use.

- 4.5. Payment terms. Invoices issued by Art of Click shall become net and payable within thirty (30) calendar days from the date of issuance. In case of late payment, Art of Click shall apply different levels of penalties, including (i) stopping AdOps activities (quoting, reporting, launching new campaigns), (ii) stopping current campaigns, and (iii) a 1% daily default interest. Art of Click shall have the right, but not the obligation, to seek payment of past due amounts directly from the applicable advertiser represented by the Customer (if there be one), without reducing or limiting Customer's obligation in any way.
- 4.6. Ad standards. Art of Click, at its own discretion, may refuse to run any ad or campaign if it determines that such ad or campaign does not comply with Art of Click ad quality standards, mobile advertising good practices or applicable regulations, or would otherwise be inappropriate or damaging to Art of Click or its partners.
- Customer shall refrain from submitting, and Art of Click shall refuse to run, among others, (i) ads that promote or depict illegal content or activities, violence; (ii) ads that contain advocacy against any protected group (e.g., racial or ethnic origin, sexual orientation/gender identity, age, disability, sex, religion, color, national origin, or veteran status); (iii) ads that depict offensive content or activity; (iv) ads that infringe third party intellectual property; (v) ads that are deceptive or resemble Customer interface elements (e.g. text boxes) or feature excessive animation, shaking or smileys; (vi) ads that mislead the end user insofar as the ad doesn't match with the final product; (vii) ads that include rotating or auto-expanding rich media creative; (viii) deceptive ads that replicate the Customer interface of OS notifications; (ix) ads that contain creative with iframes; or (x) ads that include applications such as viruses, spyware, and malware.
- 4.7. Update of ad standards. Art of Click may set forth at any time (for instance, in its IO) further restrictions on ad content and creative attributes.
- 4.8. Fraudulent campaigns. Customer shall refrain from submitting campaigns that Art of Click regards as deceptive, malicious, or fraudulent ("fraudulent campaigns). A campaign shall be regarded as fraudulent when it generates queries, impressions, click-throughs, conversions, subscriptions, and/or other actions through any automated, deceptive, fraudulent or other invalid means (including click spam, robots, macro programs, and internet agents), or encourage or require end users to click on ads through offering incentives or any other methods that are manipulative, or attempt to create a substitute or similar service through access to any of the Art of Click services or proprietary information related thereto. A

campaign shall also be regarded as fraudulent when it starts any kind of action (such as a download, a subscription or a call), without the end user's informed consent and engagement.

- Customer acknowledges that fraudulent campaigns may result in a direct damage to Art of Click (including costs, penalties or loss profit, as well as Art of click' exclusion from real time bidding markets). Customer shall fully indemnify and hold Art of Click (including its affiliates, directors, agents or employees), harmless of any such damage caused by a fraudulent campaign, including income lost due to Art of Click' exclusion from a real time bidding market.

- **4.9. Compliance check.** At any given moment Art of Click may require Customer to provide further evidence that its campaigns comply with the regulations set forth in this Terms of Use and in the IO. As an example, Art of Click may require screenshots of the landing pages or tracking systems for any current, past or oncoming campaign managed by a Customer. Such compliance shall be specially required in case of mobile content subscription campaigns.

- **5. Disclaimer. Warranties and liability**

- **5.1. Disclaimer.** Except where expressly provided in this Terms of Use and in the applicable regulatory framework, Art of Click is not responsible for damages of any kind that may result from the lack of accuracy, completeness or timeliness, or from errors or omissions in the contents of the Site and the services provided to the Customer, unless the provision of such contents in certain conditions has been specifically guaranteed by Art of Click to the Customer.

- **5.2. No warranty.** The Site is provided by Art of Click on an "as is" and on an "as available" basis. To the fullest extent permitted by applicable law, Art of Click makes no representations or warranties of any kind, express or implied, regarding the use or the results of this Site and the services provided by means of this Site, in terms of its correctness, accuracy, reliability, or otherwise. Art of Click shall have no liability for any interruptions in the use of this Site. Art of Click disclaims all warranties with regard to the information provided, including the implied warranties of merchantability and fitness for a particular purpose, and non-infringement.

- **5.3. No liability.** Art of Click excludes any liability for damages of any kind (including any special, indirect, consequential, or incidental damages, or damages for lost profits, loss of revenue, or loss of use) that may be due to lack availability, continuity, or accuracy of the Site, and the services rendered through the Site.

- 5.4.Third party information. While Art of Click makes every effort to ensure that the information on the Site is accurate, no representations or warranties are made as to the accuracy or reliability of any information provided on this Site, specially the information provided by publishers or third parties of any kind.

## • **6. Links to third party webSites**

- 6.1.Inclusion of third party links. Art of Click may include in the Site links to third party sites with the aim of facilitating access to relevant information available on the Internet. Art of Click shall not be held responsible for the contents of the links between the Site and third party sites not managed by Art of Click. Such links or references are for informational purposes only and in no way imply an endorsement, approval, or commercial relationship of any kind between Art of Click and the persons who manage or own the said third party sites. The Customer's browsing and interaction on any third-party site or service, including those that have a link on the Site, are subject to that third party's own rules and policies. Customer agrees that by using the Site and Art of Click services, Customer expressly relieves Art of Click from any and all liability arising from the use of any third-party site. If Customer opts to utilize a third-party site or service, it is done at the Customer's own risk.

## • **7. Intellectual Property Rights**

- 7.1.Copyright. The Intellectual Property contents of this Site, including its code, are subject to Copyright © 2018 – Art of Click Pte Ltd. Consequently, all economic and/or exploitation rights in connection with the contents of the Site are held by Art of Click, unless they have been licensed to Art of Click by a third party. The reproduction, transmission, adaptation, translation, modification, public communication or any other use of all or part of the contents of this Site, in any form and by any means, is strictly prohibited unless it has been authorized in written form by Art of Click.
- 7.2.Content of the Site. The text, graphics, images, audio, databases, logos, structure, brands and other elements of this Site protected by intellectual property rights are held by Art of Click and/or by any third party owners who have duly authorized their inclusion on the Site by means of the corresponding agreement with Art of Click.
- 7.3.Trademark. Art of Click, the Art of Click logo, and all related marks and logos, are registered trademarks of Art of Click. All other marks are the property of their respective owners. Such use of trademarks or links to the web sites of third parties is not intended to

imply, directly or indirectly, that such third parties endorse or have any affiliation with Art of Click.

## • **8. Privacy and personal data protection**

- 8.1. Art of Click privacy policy. Art of Click privacy policy regarding end user data is located in URL: <http://www.artofclick.com/creative-policy/>. In such URL, Art of Click maintains a means for end users to opt-out of having their information collected for advertising purposes. Art of Click will not provide to Customer any Personally-identifiable Information that would allow the personal identification of a particular end user.
- 8.2. Customer compliance and privacy policy. Customer represents and warrants that, at all times during the term of this agreement it shall maintain a posted privacy policy accessible by direct link from the Customer's home that (a) complies with all applicable laws, rules and regulations, (b) accurately discloses the data collection, use and disclosure practices applicable; and (c) discloses the use of one or more third parties for advertising. Customer shall ensure that on each website where information is being collected by pixel, beacon or similar technology for retargeting purposes, such website displays a privacy policy disclosing such practice and a conspicuous opt-out link. It is prohibited to send any personally identifiable information to Art of Click. Art of Click may from time to time require Customer to provide specific additional notice mechanisms consistent with applicable laws or industry self-regulations.
- 8.3. Children's Privacy. Art of Click does not knowingly collect any personal information from children ("Children's Content") without insisting that they seek prior parental consent if required by applicable law. We will only use or disclose personal data about a child to the extent permitted by law, to seek parental consent pursuant to local law and regulations or to protect a child. The definition of "child" or "children" should take into account applicable laws as well as national and regional cultural customs.

If a parent or guardian believes that Art of Click has in its database the personally-identifiable information of a child, please contact us immediately at [privacy@artofclick.com](mailto:privacy@artofclick.com) and we will use our best efforts to promptly remove such information from our records.

Art of Click will not actively monitor Customer's Site or Customer's service for Children's Content and compliance with Personal Data Protection Act of Singapore, therefore, we

disclaim liability for Customer's failure to prior notify us and honor its obligations under applicable laws and per Art of Click's Privacy Policy.

- 8.4. Data Ownership. Customer and Art of click understand that all data, including, but not limited to, information provided by end-users in response to an ad and/or any or all reports, results, and/or information created, compiled, analyzed and/or derived by a party with respect to an end-user from such data shall be owned as follows: Customer owns any data it collects and Art of Click owns any data it collects.
- 8.5. Personal Data Protection Act of 2012. In accordance with the provisions of Singaporean Law, concerning the Protection of Personal Data (hereinafter Personal Data Protection Act), Art of Click informs the Customer of the existence of personal data files concerning the personal data of the Customer and/or its team, created and managed by Art of Click as data controller. The Customer has the right to access, rectify, erase or block the personal data controlled by Art of Click. These rights can be exercised by means of an email addressed to the address [privacy@artofclick.com](mailto:privacy@artofclick.com), quoting the above subject, or by regular mail addressed to 737A North Bridge Road Singapore 198705.
- 8.6. Customer Data Processing. In addition to the foregoing, the Parties acknowledge that in some rare and extraordinary instances Customer may transfer to Art of Click, or Art of Click may independently collect, certain personal data necessary for the purposes of executing the advertising campaigns entrusted by Customer to Art of Click ("Customer Personal Data"). For what concerns such processing of Customer Personal Data, the Parties agree that Customer shall be regarded as personal data controller and Art of Click as personal data processor.

Thus:

- (i). Customer Personal Data shall be processed by Art of Click exclusively for the purpose of providing the Art of Click service contracted by Customer, under the instructions of the Customer. In no event shall Customer Personal Data be transferred to any third party, unless such transfer is necessary for providing the Art of Click services.
- (ii). When Processing Customer Personal Data, Art of Click shall ensure that it implements and maintains compliance with appropriate technical and organizational security measures for the processing of such data, in 737A North Bridge Road Singapore 198705 accordance with the Personal Data Protection Act.



- (iii). In no event shall Customer transfer to Art of Click any personal data that may be included in the specially protected data categories defined in the Personal Data Protection Act.
- (iv). The control of Personal Data remains with Customer, and as between Customer and Art of Click, Customer will at all times remain the data controller for the purposes of this clause. Customer is responsible for compliance with its obligations as data controller under data protection laws, and shall inform any and all Data subjects of their right to access, rectify, erase or block the said personal data, and shall provide the means for effectively exercising such right. Customer must provide visible notice to, and where necessary, obtain consent from, its customers (including end users) regarding the scope of Customer's and Art of Click's collection, sharing, and use of data in the context of the services provided by Art of Click to Customer.
- (v). Art of Click may engage third party subcontractors to assist in the provision of the Art of Click services –for instance in the provision of hosting services–; as a consequence, such third parties may take part in Customer Data processing. Customer acknowledges and authorizes this circumstance.
- (vi). Following termination of the Art of Click services, Art of Click will return or otherwise make available for retrieval Customer's Personal Data processed by Art of Click. Following return of the data, Art of Click will promptly delete or otherwise render inaccessible all copies of Customer Personal Data, except as may be required by law.
- (vii). Art of Click and/or its partners, such as Ad Exchanges, may transfer, storage, and use data in the United States, and in certain countries where data protection laws may be different from the Singaporean regulations. Customer shall provide its customers with sufficient notice thereof, and when necessary obtain their consent for such transfer, storage and use.
- 8.7. Art of Click Data Processing. In the same sense, the Parties acknowledge that in some rare and extraordinary instances Art of Click may transfer to Customer certain personal data ("Art of Click Personal Data") which may be necessary for the purposes of fulfilling Customer's rights and obligations under this agreement. For what concerns such processing

of Art of Click Personal Data, the Parties agree that Art of Click shall be regarded as data controller and Customer as data processor. Thus:

- (i). Art of Click Personal Data shall be processed by Customer exclusively for the purpose of fulfilling its rights and obligations under its agreement with Art of Click, under the instructions of Art of Click. In no event shall Art of Click Personal Data be transferred to any third party, or subprocessed by a third party, unless such transfer is previously authorized by Art of Click.
  - (ii). When Processing Art of click Personal Data, Customer shall ensure that it implements and maintains compliance with appropriate technical and organizational security measures for the processing of such data, in accordance with the Personal Data Protection Act.
  - (iii). In no event shall Art of Click transfer to Customer any personal data that may be included in the specially protected data categories defined in the Personal Data Protection Act (i.e. data requiring “medium level” or “high level” security measures).
  - (iv). Following termination of the campaign in which the Art of Click Personal Data were transferred to Customer, Customer will return or otherwise make available for retrieval Art of Click Personal Data processed by Customer. Following return of the data, Customer will promptly delete or otherwise render inaccessible all copies of Art of Click Personal Data, except as may be required by law.
- 8.8. Data processing by third parties. In the context of the services provided by Art of Click to Customer, Customer may instruct Art of Click to transfer certain data to third parties such as ad serving or tracking companies (hereinafter “third party data processors”). In such event, Customer warrants to Art of Click that it has entered into a data processing agreement with the relevant third party data processor, and that such third party data processor will use the transferred data (i) in compliance with all applicable laws; (ii) exclusively for the purpose of providing services to the Customer related to the ad campaigns run by Art of Click; (iii) that the third party data processor will neither store nor share such data with a third party; and (iv) that the third party shall implement appropriate technical and organizational measures to protect the data against destruction or loss, alteration, unauthorized disclosure or access.

Customer shall hold Art of Click free and harmless from any liability arising from the processing by such third party data processors.

- 8.9. Cookies. Art of Click may use at any moment first-party or third-party cookies, aimed at increasing site Customer experience, site customization, or at facilitating access to information reserved to certain Customers. In accordance with the company data protection policy, the Customer is informed that the cookies, if used, shall be associated to an anonymous Customer and its computer. Therefore, the cookies shall not provide the name and surname of the Customer, or any other identifying personal information. The cookies shall not retain any information of a confidential or sensitive nature, such as political affiliation of a person. The Customer may reject the use of cookies by means of selecting the appropriate settings on its browser or device.

- **9. Governing law and dispute resolution**

- 9.1. Applicable law and competent jurisdiction. These terms and conditions are governed by Singaporean law. Any dispute arising from the use and/or contents of this Site shall be submitted to the exclusive jurisdiction of the courts of Singapore.