Publishers Terms and Conditions
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These Terms and Conditions for Publishers together with designated Special Terms and Conditions for specific service (the "**Designated Service Terms**") and/or the Insertion Order ("**IO**"), to the extent applicable, entered into by and between Elastic Ads or any of its affiliated companies as per the applicable service ("**Elastic Ads**") (this "**Agreement**") govern use by and the publisher listed therein ("**Publisher**") with respect to the relevant service being provided by Elastic Ads.

Publisher acknowledges that (i) taking any step to order or to request the Elastic Ads Service, or to otherwise use the Elastic Ads Service or (ii) clicking "I agree to the terms and conditions" box or the like, shall be deemed as acceptance and agreement to the terms and conditions set forth herein.

Elastic Ads and Publisher together hereafter shall be referred to as: "Parties" and individually as: "Party".

1. <u>DEFINITIONS</u>. FOR PURPOSES OF THIS AGREEMENT, THE FOLLOWING TERMS HAVE THE MEANING SET FORTH BELOW:

1.1 "**Elastic Ads Service**" means the digital media services provided by Elastic Ads in connection with distributing and/or promoting and/or displaying the Ads or as otherwise agreed by the Parties in connection with the fulfillment of Action(s) determined by the Advertiser.

1.2 "**Action(s)**" means the fulfillment of certain predefined actions by End Users in connection with the Ads.

1.3 "**Ad**" or "**Advertisement**" means text-based, graphical, interactive, rich media and video, or other digital advertisements, including, without limitation, banners, buttons, towers, skyscrapers, pop-ups, pop-unders and video advertisements.

1.4 "**Advertiser**" means the person or entity providing the Advertisement and duly and contractually registered as the advertiser of such Ads.

1.5 "**Chargeback(s)**" means that an Advertiser or Elastic Ads may apply a debit to the Publisher's account in circumstances of (i) duplicate entry or other clear error; (ii) non-bona fide Actions; (iii) non receipt of payment from, or refund of payment to an

End-User by the Advertiser; or (iv) Publisher's failure to comply with any Elastic Ads Service terms or other applicable restrictions.

1.6 "Collected Data" means all End-User and other information gathered by the use of Elastic Ads Service in combination with the placement and/or use of the Ad on a Site.

1.7 "**Confidential Information**" has the meaning given in Section 12.

1.8 "**End-User(s)**" means the users of a Publisher Website and also the identified or identifiable natural persons to whom the Personal Data relates.

1.9 "**Fees**" means those certain fees indicated in the associated IO or the Designated Service Terms.

1.10 "**Intellectual Property Rights**" means all works of authorship, registered copyrights, common law copyrights, registered trademarks, common law trademarks, trade dress, labels, designs, logos, patents, patent applications, know-how, trade secrets, database rights, design rights and all other intellectual property rights and associated good will (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

1.11 "**Network**" means Company's proprietary platform, system and related tools that enable an Advertiser to purchase inventory and make the Ads available for distribution and/or promotion through the Network. At the same time, the Network allows Publisher to receive, download and make available Ads for presentation to its End-Users on Publisher Websites.

1.12 "**Publisher Website**" or "**Site**" means a web and/or mobile and/or other agreed digital site used by the Publisher in connection with relevant Ads and/or Elastic Ads Service.

2. <u>USE OF NETWORK</u>.

2.1 Use of Network. Publisher agrees to use, and Elastic Ads agrees to make available, the Network during the term in order to receive, download and make available Ads from Advertiser to Publisher for use on Publisher Websites according to the terms and conditions of this Agreement and/or any additional limitations or restrictions provided in connection with the relevant Ads. Publisher will be solely responsible for the marketing and distribution activities used by it in connection with the distributing and/or displaying the Ads, and for any costs or expenses connected therewith.

2.2 License Grant Subject to the terms and conditions of the Agreement, Elastic Ads hereby grants to Publisher a limited, revocable, non-exclusive, non-assignable, non-transferable, non-sub-licensable, license to use the Ads solely for the limited purpose of providing the Elastic Ads Service (the "**License**"). The License will immediately and automatically terminate if Publisher does not comply with any of its obligations hereunder. All rights, which are not expressly granted herein, are reserved by Elastic Ads. Publisher may not make any use of the Ads in whole or in part in any manner not expressly permitted by the Agreement.

2.3 Availability of Network. Publisher understands and agrees that from time to time the Network may be inaccessible, unavailable or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Elastic Ads may undertake from time to time; or (iii) causes beyond the control of Elastic Ads or which are not reasonably or digital foreseeable by Elastic Ads, including, without limitation, interruption or failure of telecommunication transmission links, hostile network attacks, the unavailability, operation, or inaccessibility of Sites or interfaces, Network congestion or other failures.

2.4 Publisher Site Requirements. Publisher acknowledges that each Publisher Websites must meet the following criteria: (i) Publisher Website is permanently available to End-Users and meets industry standard technical and graphical expectations; (ii) Publisher either owns or is entitled to use the content displayed on all URLs on which the Ad is made available to End-Users; (iii) Publisher Website does not violate any applicable laws or regulations, including without limitation, false or deceptive or comparative advertising laws, gaming and gambling laws, competition laws, criminal laws, spamming, privacy, obscenity, or defamation). You agree that you will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited email to any third party; (iv) Publisher Website does not contain content that is defamatory, violates any rights of privacy or publicity or constitutes a misrepresentation; (v) Publisher Website does not produce or contain adult content; (vi) the content of Publisher Website does not and will not infringe any Intellectual Property Rights or other proprietary rights; (vii) Publisher does not engage in, promote or knowingly facilitate activities such as pirating, hacking or any other activities which are illegal; and (viii) Publisher operates and maintains an efficient "notice-and-take-down" mechanism and policy that complies with applicable law in respect of unlawful activity or content contributed to Publisher Website without Publisher's knowledge or awareness of its unlawfulness; Publisher agrees that if it uses the Network to use the Elastic Ads Service, Publisher will protect the privacy and legal rights of individuals and comply with the General Data Protection Regulation (GDPR), and it must provide a legally adequate privacy notice on the Publisher Website or in the app metadata, as further detailed in Section 4.2 below.

2.5 No Modification of Ad. Unless expressly permitted otherwise, Publisher will not edit or modify the Ad in any way, including without limitation resizing, altering, and changing the Ad. Publisher will display the Ads in accordance with all applicable specifications, limitation and restrictions. Elastic Ads may change or revise the content that is posted in the Network at any time, in its sole discretion, and Publisher agrees to use only the most recent version of the content that is posted on the Network.

2.6 Fraud and Deception. Although Elastic Ads has no obligation to monitor your use of the Elastic Ads Services, Elastic Ads reserves the right to and may perform audits of your use of the Elastic Ads Services. Publishers that commit fraudulent activities will not be entitled to any compensation. Additionally, Elastic Ads reserves the right to disclose details relating the fraudulent Actions, including the identity of the violating Publisher without further notice. All proceeds from accounts with fraudulent activity will have to be refunded to Advertisers. The aforesaid audit rights will not be deemed to impose any obligations upon Elastic Ads to monitor and/or audit your use of the Elastic Ads Services. Fraudulent Actions shall be defined as Actions generated or enhanced through depictive or misleading practice, method or technology including, but not limited to, the use of any spyware, adware, device, program, robot, Iframes, hidden frames, redirects, spiders, computer script or other automated, artificial or fraudulent methods designed to appear like an individual, real live person.

2.7 Use in Accordance with Applicable Law. Publisher acknowledges that all marketing activities performed pursuant to this Agreement are in compliance with all applicable international, federal, and state laws, rules and regulations including, but not limited to the CAN- SPAM Act of 2003, as amended from time to time ("CAN-SPAM"), Canada's Anti-Spam Legislation, as amended from time to time ("CASL"), the Federal Trade Commission Act, the Federal Communications Act, the Telephone Consumer Protection Act, as amended from time to time ("TCPA"), and the Children Online Privacy Protection Act, as amended from time to time ("COPPA") and the General Data Protection Regulation ("GDPR") . If Publisher is found to be in violation of any applicable law, Publisher may be immediately suspended from the Network and this Agreement may be terminated without notice to Publisher.

3. TRACKING CODE AND REPORTING

3.1 All Ads include a special transaction-tracking pixel ("**Tracking Pixel**") to measure the Actions, which shall apply unless expressly agreed otherwise. Publisher undertakes not to disable, circumvent, modify or otherwise interfere with the Tracking Pixel. In the event that the Tracking Pixel is not correctly functioning or adjusted, Publisher agrees that Elastic Ads may utilize a historical analysis of the Publisher promotion of Advertiser in order to determine an equitable amount of estimated Payouts.

3.2 Elastic Ads shall provide Publisher with access to tracking and reporting tools. Tracking details may not be available on a real-time basis for all Advertisers and there may be reporting delays regarding certain Actions or Elastic Ads Services and/or Advertisers.

4. DATA COLLECTION

4.1 Collected Data. Elastic Ads owns all Collected Data, including, but not limited to, aggregated non-personally identifiable data, gathered by or through the use of the Elastic Ads Service and/or any or all reports, results, and/or information created,

compiled, analyzed and/or derived by Elastic Ads from such data. The Publisher agrees that Elastic Ads shall be permitted to collect data for the purposes of using this information for enhancing the efficiency of the Elastic Ads Service. All Collected Data shall be deemed Elastic Ads' Confidential Information. Any use of such Collected Data by Publisher shall be only as expressly permitted in this Agreement and in strict compliance with Elastic Ads' privacy policy, which is available at https://www.elasticads.io/assets/global-privacy-policy. Publisher acknowledges that all personal information provided to Elastic Ads has been collected in compliance with the GDPR, with the relevant individual's consent, and that you have informed the individual of the purpose for which that information was collected, and that you may provide this information to us for the purposes of use in relation to the Elastic Ads Services.

4.2 End-User privacy notice. Elastic Ads requires that Publishers using the Network include a legally adequate privacy notice on the Publisher Websites or in the app metadata addressed to individuals about the collection, use and protection of personal data by third parties. Such privacy notice should include, without limitation: (a) a description of the type of personal data that is being collected and its use; (b) an explanation of how, and the purpose for which, such personal data will be used or transferred to third parties; (c) the intended recipients of that personal data, the individual's right to obtain access to that personal data, Elastic Ads' identity and how to contact Elastic Ads; (d) clear and complete information to individuals regarding the collection of their personal data, use, disclosure and retention of user or device data, including, but not limited to, information on the rights of individuals (the right to be informed, the right of access, the right to rectification, he right to erasure, the right to restrict processing, the right to data portability, the right to object to processing and the right to automated decision making and profiling), where applicable, as further described under Chapter III of the GDPR; and (e) a link to an appropriate opt-out mechanism, to the extent required.

Elastic Ads also requires that – as a condition of these Terms, if personal data in the sense of the EU Regulation 2016/679 ("GDPR") is concerned publisher must comply with the GDPR requirements regarding consent; more specifically Publisher must have obtained consent* from the data subjects for processing their personal data. Elastic Ads does not accept any liability in this respect.

For the avoidance of doubt; consent means any freely given, specific, informed and unambiguous indication of the data subjects wishes, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

4.3   Separate Controllership

•   When processing "**Personal Data**", being any information relating to an End-User processed under this Agreement (as defined in the GDPR), Parties shall respect the obligations set out in this Agreement, the obligations set out in the applicable laws and regulations and the obligations as set out in the privacy notice of the respective Party.

- Parties are considered separate controllers with each Party being able to determine the purpose and means of processing the Personal Data held under its control in accordance with its privacy notice.

- With respect to the separate controllership of Parties and without the intention of entering into a joint-controllership as defined in article 26 GDPR, this provision sets out the framework for the sharing of Personal Data between the Parties and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.

- Parties agree that the shared Personal Data will only be processed as far as is necessary according to the purposes and in order to fulfil the obligations as set out in this Agreement.

- Parties guarantee that the processing of Personal Data will be based on the basis of one of the legal grounds expressed in article 6 of the GDPR.

- If Publisher or its sub-contractors takes care of the registration of the End-User, resulting in the End-User not being aware of the privacy notice of Elastic Ads, or if the End-User is not made aware of the privacy policy of Elastic Ads to any action of Publisher, Publisher will inform the End-User of the privacy notice of Elastic Ads.

Shared Personal Data

- For the duration of the Agreement and for the purposes as listed above, Parties may share the following (types of) Personal Data with each other: email-addresses and any other Personal Data that Parties agree to share in writing.

- The End-Users of the Personal Data shared between Parties are the visitors of the Websites of Publisher/Advertiser.

- Parties ensure that their privacy notices are in accordance with the GDPR and that End-Users are properly informed of the privacy notice of each Party.

Data Quality

- Each Party ensures that the shared Personal Data is accurate.

- Parties will notify each other with undue delay if they become aware of inaccuracies in shared Personal Data.

Security

Each Party shall implement appropriate technical and organisational measures, including a written information security program that complies with applicable laws and regulations, designed to:

- ensure and protect the security, integrity and confidentiality of the shared Personal Data;

- protect against any unauthorized processing, loss, use, disclosure or acquisition of or access to any Personal Data.

Data retention

- Parties shall not retain or process shared Personal Data longer than is necessary to carry out the purposes and obligations as set out in the Agreement.

- Notwithstanding the previous sentence, Parties shall retain shared Personal Data in accordance with any statutory or professional retention period applicable in their respective countries and/or industry.

No processing outside of the EER
Parties will not process shared Personal Data outside of the European Economic Area, unless such processing is compliant with applicable laws and regulations.

Data breaches

- Parties will notify each other as soon as possible of any potential or actual loss of shared Personal Data and/or any breach of the technical and/or organizational measures taken ("Data Breach", as further described in Article 32 GDPR), but, in any event, within 24 hours after identifying any potential or actual loss and/or breach.

- Parties will provide each other with reasonable assistance as required to facilitate the handling of any Data Breach.

Resolutions of disputes and claims related to Personal Data
If an End-User or a Data Protection Authority bring a dispute or claim concerning the processing of shared Personal Data against a Party or both Parties, Parties will inform each other about such disputes or claims and will cooperate with each other as far as permitted by the applicable laws and regulations.

Indemnity
Each Party indemnifies the other Party for any direct or indirect damages resulting from any breach of its obligations under the Agreement and/or applicable laws and regulations (including, but not limited to the GDPR).

5. PUBLISHER PAYMENTS

5.1 Fees. Unless specified otherwise in the Designated Service Terms or IO, Elastic Ads will pay Publisher the Fees according to the agreed payout rates under the applicable Ad program with a default payout rate equal to the applicable public payout rate listed within the Network (the "**Payout**"). Payment will be made on a net 30

automatic basis based on the legitimate Actions listed in the Network (the "Payment Metrics"). Unless Publisher disputes in writing the Payment Metrics within two days as of the end of the relevant cycle, Elastic Ads will issue an invoice and pay the Fees within 3 days of the end of the relevant cycle.

5.2 Payment Method. The Publisher may select to receive payment in any of the currencies that Elastic Ads supports. The currency exchange rates shall be determined in accordance with the "Oanda FX change" continuous trading system. Elastic Ads shall determine the conversion rates based upon its operating standards according to the prevailing rates on the date of payment, or upon the basis of historical conversion rates if rates are unavailable. The Fees and debits for Charge-backs, and conversion costs, as calculated by Elastic Ads, shall be final and binding on the Publisher. Should it be required to pay transactions fees, such fees shall be covered by the Publisher and deducted by Elastic Ads Market from each applicable payment.

5.3 Calculations. Elastic Ads will be the sole arbiter in determining the number of impressions, clicks, actions, or other applicable metric, delivered, shown, produced, clicked on, or viewed unless otherwise indicated in Purchase Order. Elastic Ads will be solely responsible for determining Fees to Publishers hereunder based on its Payment Metrics, which are final and binding.

5.4 Minimum payments are as follows: (i) if using PayPal – US$500.00; (ii) if using wire transfer – US$500.00; (ii). Accrued and unpaid Payouts will not incur any interest.

6. TERM; TERMINATION

6.1 Term; Termination. The Agreement is deemed effective upon the earlier of: (i) when subsequently accepted by the signature of an authorized employee or agent of Elastic Ads; or (ii) when Publisher commences to use any of the Elastic Ads Services. The term of the Agreement shall continue until the Elastic Ads Service is fully provided. Either Party may terminate the Agreement for any reason upon two (2) business days' prior written notice. For purposes of this Section 6, notice may be sent by email to the Party's account representative specified in the IO (or to such other account representative that a Party may specify in writing from time to time), and shall be effective one (1) business day after it is sent.

6.2 Suspension by Elastic Ads. Elastic Ads may suspend this Agreement and Publisher's access to and use of the Network without notice (a) if Publisher permanently fails to provide necessary technical implementation of Ads received, downloaded and made available on its Publisher Website; or (b) repeatedly fails to take appropriate and efficient measures to ensure certain editorial quality of its Publisher Website and avoid misuse of content included in or represented by Ads; or (c) upon Elastic Ads' reasonable belief that Publisher has breached any of its representations, warranties or covenants set forth herein.

6.3 Credit Risk. Publisher acknowledges that it is aware that Elastic Ads has a risk management policy relating to the Elastic Ads Services it provides, including as a

result of loss and/or due to non-performance by counterparties of their contractual obligations or lack of credit worthiness. Elastic Ads monitors its exposure to these counterparties primarily by reviewing credit ratings, financial statements and payment history and reserves the right to introduce or take certain precautionary steps or require certain securities in order to reduce its risk.

6.4 Survival. Sections 1, 4,5,6,7,8,9,10,11,12,13 and 14 shall survive termination or expiration of this Agreement for any reason.

7. REPRESENTATIONS

7.1 Mutual. Each Party represents and warrants that it has the full right, power, legal capacity and authority to enter into, deliver and fully perform under the Agreement and that its performance hereunder will fully comply with all applicable laws, rules and regulations.

7.2 Publisher's Representations, Warranties and Covenants. Publisher further represents, warrants and covenants that (a) Publisher Websites meet the requirements according to Section 4 of this Agreement and further, (b) Publisher has read and will comply with Elastic Ads' privacy policy that can be found on the Elastic Ads Website [link to privacy policy]; (c) Publisher's use of the Network will comply with all applicable laws (including that Publisher's collection, use and storage of data in connection with or resulting from its use of the Network shall comply with all applicable privacy laws); (d) neither Publisher nor its End-User will claim own rights to the Ad; (e) Publisher will only display and distribute the Ad "as is" without illegitimately editing or modifying it and (f) Publisher will immediately and in any case remove Ads and cease to grant its End-Users access to the respective Ad in case such Ads infringe third party's Intellectual Property Rights or are unlawful or immoral for any other reason. In this case Publisher may not refuse cooperation for any reason.

Separate Agreement. Publisher further represents and warrants that each Designated Service Terms and IO constitutes a separate agreement only with the relevant entity detailed therein and in no event will Advertiser have any legal relations with any other Elastic Ads entity in connection with the services provided pursuant to the relevant IO.

Disclaimer. USE OF THE SERVICES AND ANY RELIANCE BY PUBLISHER UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ELASTIC ADS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ACCURATE OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND TO THE EXTENT PERMITTED BY LAW ELASTIC ADS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

8. LIMITATIONS OF LIABILITY

8.1 No Consequential Damages. SUBJECT TO SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

8.2 Limitation of Liability IN NO EVENT SHALL ELASTIC ADS' LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (WHEN AGGREGATED WITH ELASTIC ADS' LIABILITY FOR ALL OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT) EXCEED THE TOTAL AMOUNT PAID BY ELASTIC ADS MEDIA GROUP TO PUBLISHER UNDER THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD PRIOR TO THE DATE THE LIABILITY FIRST AROSE. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER WHICH IT WILL FOREVER EXPIRE.

8.3 Allocation of Risk. The Parties agree that the limitations made in this Section 8 reflect a reasonable allocation of risk and are a material condition to entering into these Agreement.

9. INDEMNIFICATION

Publisher shall indemnify, defend and hold harmless Elastic Ads and its directors, officers, employees and agents and its and their respective successors, heirs and assigns (collectively, the "**Elastic Ads Parties**") against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) (collectively, "**Losses**") incurred by or imposed upon the Elastic Ads Parties or any one of them in connection with any third-party claim, suit, action, demand or judgment ("**Claims**") (a) alleging any fact, which, if true, would constitute a breach by Publisher of Section 7, (b) any third party allegation or claim against Elastic Ads relating to a violation of any Laws or Regulations, or (c) Publisher's use of the Network other than as permitted herein; provided, however, that in any such case Elastic Ads will (i) provide Publisher with prompt notice of any such claim (provided that the failure to provide prompt notice shall only relieve Publisher of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (ii) permit Publisher to assume and control the defense of such action upon Publisher's written notice to Elastic Ads of Publisher's intention to indemnify; and (iii) upon Publisher's written request, and at no expense to Elastic Ads or its affiliates, provide to Publisher all available information and assistance reasonably necessary for Publisher to defend such claim. Publisher will not enter into any settlement or compromise of any such claim, which settlement

or compromise would result in any liability to any Elastic Ads Party, without Elastic Ads' prior written consent, which will not unreasonably be withheld or delayed.

10. CONFIDENTIALITY

Each Party (a "**Receiving Party**") understands that the other Party (a "**Disclosing Party**") may disclose information of a confidential nature including, without limitation, product information, data, pricing, financial information, End-User information, software, specifications, research and development and proprietary algorithms or other materials that is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used ("**Confidential Information**"). The Receiving Party agrees, for itself and its agents and employees, that it will not publish, disclose or otherwise divulge or use for its own purposes any Confidential Information of the Disclosing Party furnished to it by such Disclosing Party without the prior written approval of the Disclosing Party in each instance. The Parties agree that if disclosure is made to their professional advisors, auditors or bankers this shall be done subject to each Party procuring each such recipient's agreement to keep such information confidential to the same extent as if such recipient were party to this agreement. The foregoing obligations shall not extend to any information to the extent that the Receiving Party can demonstrate that such information (i) was at the time of disclosure or, to the extent that such information thereafter becomes through no fault of the Receiving Party, a part of the public domain by publication or otherwise; (ii) was already properly and lawfully in the Receiving Party's possession at the time it was received by the Receiving Party free from any obligation of confidentiality, (iii) was or is lawfully received by the Receiving Party from a third party who was under no obligation of confidentiality to the Disclosing Party with respect thereto, or (iv) is independently developed by the Receiving Party or its independent contractors who did not have access to the Disclosing Party's Confidential Information or (vi) express written consent has been given prior to disclosure. In the event that the Receiving Party is required to disclose Confidential Information in accordance with judicial or regulatory or governmental order or requirement, or any tax authority to which that Party is subject or submits, wherever situated, whether or not the requirement for information has the force of law the Receiving Party shall promptly notify the Disclosing Party in order to allow such Party to contest the order or requirement or seek confidential treatment for such information. Upon termination or expiration of this Agreement, upon the request of a Disclosing Party, the Receiving Party agrees to return to the other all of such other Party's Confidential Information that is reduced to one or more writing, drawing, schematic, tape, disk or other form of documentation, or to certify to the Disclosing Party in writing that all such material has been destroyed, however, destruction is only permitted after Disclosing Party's prior approval.

11. <u>PROPRIETARY RIGHTS</u>

Subject to express permission from Elastic Ads, nothing in this Agreement gives the Publisher a right to use any of Elastic Ads' trade names, trademarks, service marks, logos, domain names, and other distinctive brand features. If the Publisher has been given express permission to use any of these brand features in a separate written agreement with Elastic Ads, the use of such features shall be in accordance with that agreement and any applicable provisions. Subject to express authorization in writing by Elastic Ads, the Publisher agrees it will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos. Publisher agrees Elastic Ads shall be permitted at no charge to disclose to Advertisers the fact that such Advertisers' Advertisements have been, are being or will be displayed on the Publisher Web Sites. This disclosure may comprise the inclusion of the Publisher's URL in Elastic Ads' site lists and the inclusion of the Publisher's logo in Elastic Ads marketing materials.

12. <u>GENERAL TERMS</u>

12.1 Governing Law and Dispute Resolution. If any dispute arises in connection out of the existence, validity, construction, performance and termination of this Agreement which cannot be amicably resolved, such dispute shall be solely and finally settled as follows:

- Disputes with Publishers shall be governed by and be construed according to the laws of the Netherlands, without reference to conflict of laws principles shall be exclusively resolved in the competent court of Amsterdam The Netherlands. To the extent permitted by law, all legal proceedings shall be conducted in English.

12.2 Assignment. Neither Party may assign or transfer any rights or delegate any duties under the Agreement without the other Party's prior written consent, except that Elastic Ads may assign or transfer the Agreement in connection with a sale or transfer of all or substantially all of Elastic Ads' assets, shares or business by sale, merger, consolidation or similar transaction. Any purported assignment of transfer in violation of this Section shall be void. Subject to the foregoing restrictions, the Agreement will bind and benefit the Parties and their successors and permitted assigns.

12.3 Waiver. No failure or delay on the part of either Party in exercising any right or remedy under the Agreement will operate as a waiver, nor will any single or partial exercise of any such right or remedy preclude any exercise of any other right or remedy.

12.4 Amendments and Revisions. Elastic Ads reserves the right to change, modify or amend this Agreement, in whole or in part, by posting a revised Agreement. Publisher's continued use of the applicable Elastic Ads Service after the effective date of the aforementioned change shall constitute acceptance of the revised Agreement.

12.5 Independent Contractor. Each Party is an independent contractor with respect to the other Party hereunder. The Agreement shall not be construed to: (i) create any employment, partnership, joint venture, franchise, or agency relationship between the Parties; or (ii) authorize any third party to enter into any commitment or agreement binding on the other Party.

12.6 Force Majeure. No Party shall be liable under the Agreement for (or deemed in breach of the Agreement by reason of) any failure, delay or interruption in performing any term or condition of the Agreement (except obligations to pay money) due to cause(s) entirely beyond the control of such Party; subject however to the condition that such Party gives the other Party written notice thereof promptly and, in any event, within thirty (30) days following discovery thereof and takes immediate action to cure such cause. In the event of any such cause, the time for performance shall be extended for a period equal to the duration of such cause.

12.7 Enforceability. If any portion of the Agreement is determined to be or becomes unenforceable or illegal, then such portion shall be reformed or eliminated to the minimum extent necessary for the Agreement to be enforceable and legal, and the Agreement shall remain in effect in accordance with its provisions as modified by such reformation or elimination.

12.8 Amendments and Revisions.

12.9 Order of Precedence. In case of any express inconsistency between the rights and obligations of Publisher in these Terms and the IO and/or the Designated Service Terms, the order of precedence shall be as follows: (i) the IO; (ii) the Designated Service Terms; (iii) these Terms, provided that under no circumstances shall Company's liability or obligations exceed those which are expressly set out in this Agreement.

12.10 Notices. Unless stated otherwise herein, all notices, requests, consents, and other communications under this Agreement will be in writing, and will be delivered by hand or sent by reputable overnight courier service or electronic facsimile transmission (with a copy sent by first class mail, postage prepaid) or mailed by first class certified or registered mail, return receipt requested, postage prepaid, if to Elastic Ads or to Publisher, at the address indicated in the associated IO, or such other addresses as each Party specifies to the other Party in writing by notice given in accordance with this Section. Notices provided in accordance with this Section will be deemed delivered: (a) immediately if personally delivered or sent by electronic transmission accompanied by a successful delivery notice; or (b) if sent by overnight courier service, 24 hours after deposit with such courier service; or (c) if sent by certified or registered mail, return receipt requested, 48 hours after deposit in the mail.

These Terms of Use were last updated on September 10, 2019.