

## Advertiser Terms & Conditions

These Terms and Conditions ("**Agreement**" or "**Terms**") are a legally binding and enforceable agreement between

- **ME mobile GmbH (formerly Applift GmbH)**, Karl-Liebknecht-Straße 32, 10178 Berlin, Germany, or
- **ME Media USA Inc.**, 447 Broadway, 2nd floor, New York, NY 10013, USA, or
- **ME digital Entretenimento do Brasil Ltda**, AV Bernardino de Campos 98, 12° ANDAR, Sala 16, Paraiso, São Paulo, 04004-040, Brazil or
- **Lorena Medienagentur GmbH**, Karl-Liebknecht-Straße 32, 10178 Berlin, Germany

(each "**Company**") and you ("**Advertiser**"). The Company corresponds to the service providing party ("**Service Provider**") in the applicable Insertion Order.

### 1. Definitions

1.1. "**Action**" means installs, clicks, sales, impressions, downloads, registrations, subscriptions, etc. as defined in the applicable Insertion Order.

1.2. "**Advertiser**" means a party or parties which may obtain access to the Company Assets, as defined below, in order to market Advertiser's Content and provide additional services, under the terms of this Agreement and in accordance with the applicable Insertion Order (as defined herein). In any instance where Advertiser is an agency entering this Agreement on behalf of a client, any reference to "Advertiser" shall refer jointly to Advertiser as well as the applicable underlying client.

1.3. "**Advertiser's Content**" any related promotional materials and Content provided by Advertiser or on Advertiser's behalf, to be placed, displayed and promoted, including without limitations Advertiser's marks, logos, brands and trade-names, as well as any website or information, including additional advertisement, to which such Content may link to, if applicable.

1.4. "**Advertiser's Trademarks**" including without limitations Advertiser's marks, logos, brands and trade-names.

1.5. "**Advertising Network**" is a network of registered third party affiliates and publishers ("**Media Partners**") run by the Company, utilizing related technology and software.

1.6. "**Claims**" means claims, suits, demands and actions brought or tendered for defense or indemnification.

1.7. "**Company Assets**" means software application, service, web pages or digital placements owned by Company, properly licensed to Company or otherwise made available by Company, through the Advertising Network, Media Partners or other third parties, for the purpose of placing Content.

1.8. "**Confidential Information**" means any non-public, proprietary, confidential and/or trade secret information of a Party, whether furnished before or after the Effective Date (as set forth in the applicable Insertion Order), and regardless of the manner in which it is furnished, and which given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive, including, without limitation, business procedures, technology and any related documentation, client list, developments, business partners or other information disclosed by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") either directly or indirectly in writing, orally or by drawings or inspection of parts or equipment. Confidential Information shall not, however, include any information which: (i) was known to the Receiving Party or in its possession at the time of disclosure without any confidentiality obligation; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is independently developed by the Receiving Party without reliance on or use of the Confidential Information or any part thereof and the Receiving Party can show written proof of such independent development or (iv) required to be disclosed by applicable law, regulatory authority or a valid court order, provided that the Receiving Party shall provide the Disclosing Party with reasonable prior written notice of the required disclosure in order for the Disclosing Party to obtain a protective order and the disclosure shall be limited to the extent expressly required; (v) is approved for release by prior written authorization of the Disclosing Party; or (vi) the Receiving Party can demonstrate was disclosed by the Disclosing Party to a third party without any obligations of confidentiality.

1.9. "**Content**" means data, text, information, advertisements, graphics, links to third party sited or services, web pages, signs, images, software and code, technology, files,

texts, photos, audio or video, sounds, visual works, musical works, works of authorship and components.

1.10. **"Consideration"** shall mean:

1.10.1. an amount which equals a fixed cost per thousand Impressions ("**CPM**") of Advertiser's Content, which are served and displayed to End Users under this Agreement; or

1.10.2. an amount which equals a fixed cost per clicks ("**CPC**") on Advertiser's Content by End Users under this Agreement; or

1.10.3. an amount which equals a fixed cost per Action ("**CPA**") by End Users under this Agreement;

1.10.4. an amount which equals a fixed cost per install ("**CPI**") by End Users under this Agreement;

Or any combination thereof, as detailed in the applicable Insertion Order or any other agreement between Company and Advertiser.

1.11. **"End User"** means human end user who interacts with the Company Assets.

1.12. **"Insertion Order"** means a document (including an online registration page or order form) executed by both parties that specifies custom pricing and additional terms.

1.13. **"Impressions"** means the display of Advertiser's Content by the Company on Company's Assets to End Users as contemplated herein.

1.14. **"Losses"** means damages, losses, costs, and liabilities, including reasonable attorney and professional fees, arising from a Claim

1.15. **"Party"** means the Company or the Advertiser.

1.16. **"Prohibited Activity"** means any illegal activity including without limitation: (a) using deceptive, fraudulent, inappropriate or false representations and/or notifications to End Users (e.g., impersonating system notifications in connection with opening, viewing or playing a particular type of content); (b) act in a fashion that may harm or dilute the Company's reputation; (c) take any action that may exploit any vulnerabilities, harm the security of End User's device, or the privacy of the End User, or materially interfere with or disrupt web navigation or browsing, disabling, modifying, interfering or intervening with End Users' control over the operating system, browser settings (including bypassing consent dialogs from web browsers or preventing the End User from viewing or modifying

his browser settings), browser functionality or webpage's display; (d) using any materials or Content that contains any virus, malware, spyware, spam-ware, worms, Trojan horses, or any other computer code, files or programs designed to interrupt, hijack, destroy, limit or adversely affect the functionality of any computer software, mobile device, hardware, network or telecommunications equipment; (e) using any misleading, deceptive or fraudulent practices whatsoever with respect to any Content (including providing unproven or misleading endorsements); (f) replacing any existing advertisement, displaying, injecting or generating advertisements on private webpages such as HTTPS pages or SSL protected page.

1.17. "**Prohibited Content**" means any Content that is: (a) false, deceptive, misleading, infringing upon any applicable law, impersonating others, fraudulent, libelous, defamatory, abusive, violent, prejudicial, obscene, sexually explicit, politically sensitive or controversial issues; (b) adult content (including pornographic material); (c) excessively profane, racist, ethnically offensive, threatening, infringing, excessively violent, discriminatory, hate-mongering or otherwise objectionable content; (d) defame, abuse, or threaten physical harm to others; (e) any type of harmful applications or components which intentionally create or exploit any security vulnerabilities in an End User's device, including without limitation: viruses, spyware, malware, Trojan horses, spam-ware, worms or any other malicious code ; (f) advocate or facilitate violence of any kind; (g) any type of harmful applications or components which intentionally pose a security risk or create or exploit any security vulnerabilities in an End User's device, including without limitation: viruses, spyware, malware, Trojan horses, spam-ware, worms, scareware or any other malicious code ; (h) any content which is targeted at or designed to appeal to persons under the age of 18 and the minimum legal age which individuals may use the Advertiser's Content and the Company Assets according to Applicable Law; (i) infringing third party rights, including Proprietary Rights, including any false association and/or repetition and/or endorsement or sponsorship that is not accurate (e.g., using the "Microsoft Certified" seal, using Windows/Chrome or any other operating system and browser logo when not relevant, mimicking a OS and browser notification, etc.); (j) any other content that would otherwise be considered as a criminal offense or could give rise to a civil liability , or considered illegal in any fashion according to applicable laws or

regulation or that is infringing upon third party right, including proprietary or privacy rights; (k) not compliant with Store Policies.

1.18. **“Proprietary Rights”** means all intellectual property rights, including, without limitation: (a) all inventions, whether patentable or not, all improvements thereto and derivatives thereof, and all patents and patent applications; (b) all registered and unregistered marks and registrations and applications for registration thereof; (c) all copyrights in copyrightable works, all other rights of authorship, including without limitation moral rights, and all applications and registrations in connection therewith; (d) all trade secrets and confidential business and technical information (including, without limitation, research and development, programming, know-how, proprietary knowledge, financial and marketing information, business plans, formulas, technology, engineering, production, operation and any enhancements or modifications relating thereto, and other designs, drawings, engineering notebooks, industrial models, software and specifications); (e) all rights in databases and data compilations, whether or not copyrightable; and (f) all copies and tangible embodiments of any or all of the foregoing (in whatever form, including electronic media).

1.19. **“Store”** means the Google Play Store or the App Store or any other online distribution platform, as applicable.

1.20. **“Store Policies”** means Google Play Content Policies (as available here: <https://developer.apple.com/app-store/review/guidelines/>), or the App Store Review Guidelines, (as available here: <https://developer.apple.com/app-store/review/guidelines/>), as applicable.

## **2. Licenses and services**

2.1. Subject to the terms and conditions of this Agreement, Advertiser hereby grants to Company during the Term, a limited, non-exclusive, non-transferable, non-sub-licensable, royalty-free, worldwide right and license to use, reproduce and distribute the Advertiser’s Content through Company Assets and solely in connection with this Agreement.

Advertiser reserves any rights not expressly granted and disclaims any implied license, including implied licenses to copyrighted materials, Advertiser’s Trademarks and patents.

2.2. Advertiser acknowledges and agrees that: (i) the Advertiser’s Content may be integrated to the Company Assets in conjunction with other content; (ii) unless otherwise

stated in an applicable Insertion Order the frequency, positioning, order and placements of the Advertiser's Content on the Company Assets shall be determined by Company or its Media Partners, as applicable, at their respective sole discretion; (iii) Company shall have no obligation to review the Advertiser's Content.

2.3. The Company may make available to Advertiser certain features to assist Advertiser with generation, selection and optimization of End Users' targeting decisions ("**Targeting**"). Advertiser hereby acknowledges that the Advertiser is solely responsible for the Advertiser Content and the Targeting.

### **3. Advertiser Content Codes, Conversion Tracking and Tracking**

3.1. Unless otherwise stated in writing by Company, each Advertiser's Content or link used by Company in connection with a specific campaign must include, in unaltered form, the special transaction computer code or tracking link provided by Company ("**Ad Codes**").

3.2. Advertiser will not knowingly modify, circumvent, impair, disable or otherwise interfere with any Ad Codes and/or other technology and/or methodology required or made available by Company to be used in connection with any and all Advertiser Content in order to track Actions.

3.3. Company's services under this Agreement do not involve investigating or resolving any claim or dispute involving Advertiser and any third party.

3.4. In case the Advertiser is working with several marketing partners, the Advertiser will ensure that all campaigns that run through Company, will be subject to the "last click wins principle". For the purpose of this sub-section, the "last click wins principle" shall mean that an Action will be attributed to the marketing partner which generated the last click of the respective End User before the Action took place.

3.5. When "server-to-server"/cookie-less/server based tracking is employed in order to track Actions, Advertiser has to ensure that all Actions are accurately tracked and timely reported to Company's system, including the correct unique ID used by Company in the tracking URL.

3.6. In case of technical problems or outages caused by either of the parties' systems which lead to a non-restorable loss of data regarding Actions, one of the following

methods should be used to determine the correct number and attribution of Actions (to be applied in the order of their listing):

3.6.1. "Manual" matching of MAC addresses, IDFAs or any other unique identifiers that can be retrieved ex-post by the Media Partner and Advertiser in order to determine attribution and number of Actions;

3.6.2. Approximation based on historical conversion rate data (click-to-action) from Company's system in the following preferential order:

3.6.2.1. If available, from the same campaign; or

3.6.2.2. From the most comparable campaign for which historical data is available in Company's system. For the purpose of this article, "comparable" means that the campaign should be closely comparable with regards to the defined Action, product and platform, Geo locations, advertising methods used and Media Partners.

#### **4. Intellectual Property**

4.1. Except as expressly granted in the Agreement, Company retains all right, title and interest in and to the Company Assets and any versions, revisions, corrections, modifications or derivatives thereof, including any Proprietary Rights therein ("**Company Property**"). All rights in and to the Company Property which are not expressly granted herein are reserved by Company. Except as expressly granted in the Agreement, Advertiser retains all right, title and Interest in and to the Advertiser's Content, Advertiser's Trademarks and related Content thereof, including any Proprietary Rights therein. All rights in the Advertiser's Content, including any of Advertiser's marks thereof, which are not expressly granted herein, are reserved by Advertiser. This Agreement does not convey any title or ownership rights to the other Party.

4.2. Neither party shall assert any Proprietary Rights in or to the other party's Content, materials or any element, derivation, adaptation, variation or name thereof. Neither party shall have the right to remove, obscure or alter any notices of Proprietary Rights or disclaimers appearing in or on any Content or materials provided by the other party.

4.3. Neither party shall: (i) contest, or assist others to contest the other Party's rights or interests in and to such Party's property and all applications, registrations or other legally recognized interests therein, or any element, derivation, adaptation, variation or name thereof; or (ii) seek to register, record, obtain or attempt to pursue any Proprietary Rights

or protections in or to the other Party's property; or (iii) remove, obscure or alter any notices of proprietary rights or disclaimers appearing in or on the other Party's property.

## **5. Restrictions on Use**

Advertiser shall not, or not allow any third party, to: (i) infiltrate, hack, copy, create derivative works of, reverse engineer, decompile, or disassemble or otherwise attempt to interfere with the proper operation of the Company Assets, or any part thereof for any purpose and shall not simulate or derive any source code or algorithms from the Company Assets; (ii) represent that it possess any proprietary interest in the Company Assets, or remove any notices or copyright information from the Company Assets; (iii) attempt to sell, resell, sublicense, modify, transfer, lease, assign, pledge, or share its rights under this Agreement; (iv) use any robot, spider, or other device to retrieve, index, scrape, data mine, or in any way gather information, Content, or other materials from the Company Assets; (v) take any action, directly or indirectly, to contest the Company's intellectual property rights or infringe them in any way; (vi) except as specifically permitted in writing by the Company, use the name, trademarks, trade-names, and logos or other proprietary rights of the Company; (vii) use the Company Assets for any Prohibited Activity or other unlawful, harassing, intrusive or abusive activities, or for any unauthorized purposes.

## **6. Term and Termination**

6.1. This Agreement shall become effective as of the Effective Date, as specified in the Insertion Order, and shall remain effective until terminated pursuant to this section and as further provided in the accompanying Insertion Order (the "**Term**").

6.2. Either Party may terminate this Agreement; upon Two (2) days prior written notice to the other Party.

Following the termination of the Agreement, any provisions of the Agreement that in order to fulfill their purpose need to survive the termination of the Agreement, shall survive.

6.3. In the event of any termination:

6.3.1. Advertiser will pay Company all the Considerations amounts due and owing as of the termination date within seven (7) days according to terms of this Agreement;

6.3.2. Neither party will be liable to the other party or any other person or entity for damages resulting from the termination of the Agreement;

6.3.3. Each Party will have no obligation to maintain any information stored in its data centers related to the other Party;

6.3.4. Without derogating from the foregoing and subject to the terms of this Agreement, upon termination, all rights, licenses and obligations of the Parties shall cease, except that all obligations that accrued prior to the Effective Date of termination and remedies for breach of this Agreement shall survive.

6.3.5. Confidential Information of either party which is in the possession of the other party shall be immediately returned. If the Confidential Information is not returned, it should be maintained confidential in accordance with article 14.

## **7. Mutual Representations and Warranties**

Each Party represents and warrants to the other Party that: (i) it has the full corporate right, power and authority to enter into the Agreement, to grant the licenses granted hereunder and to perform the acts required of it hereunder; (ii) the execution of the Agreement by it and the performance of its obligations and duties hereunder, do not and will not violate any agreement to which it is a party or by which it is otherwise bound; (iii) when executed and delivered, the Agreement will constitute the legal, valid and binding obligation of each party, enforceable against each party in accordance with its terms; (iv) it is the owner or has all legal rights and interest in its software, components, material or Content; and (v) to the best of its knowledge its software, components, material or services does not infringe or misappropriate the intellectual property or other proprietary rights of any third party when used by the other Party in accordance with the terms of this Agreement.

## **8. Company Representations and Warranties**

8.1. Company hereby represents and warrants that it has the skills and will use reasonable efforts to perform its obligations hereunder as best as commercially possible. Company does not have any obligation to monitor any Content made available through or in connection with the Advertiser's Content, for any purpose and, as a result, is not

responsible for the accuracy, completeness, appropriateness, legality or applicability of any such Content.

8.2. Company reserves the right, at its sole discretion and without liability, to reject or remove any Advertiser Content from the Company Assets. Advertiser acknowledges that any campaign may be terminated or suspended, whether by Company or its Media Partners, at any time and without notice to Advertiser. Advertiser hereby acknowledges that Company is acting as an intermediary between Advertisers and Media Partners and as such Company shall not be held responsible or liable for any actions or omissions performed or omitted by any third parties.

## **9. Advertiser Representations and Warranties**

9.1. Advertiser hereby represents and warrants that: (i) any and all activities or obligations it undertakes in connection with the Agreement shall be performed in compliance with all applicable laws, rules and regulations, including, without limitation, privacy laws; (ii) the Advertiser's Content is in compliance with all applicable laws, rules and regulations as well as industry best practices, including, without limitation, the Children's Online Privacy Protection Act of 1998 ("**COPPA**") and CAN-SPAM Act of 2003 ("**CAN-SPAM**"); (iii) it owns or has the valid legal right or license to use and distribute the Advertiser's Content to the extent required or contemplated hereunder, and the Advertiser's Content do not and will not, during the term of the Agreement, infringe or violate any third party's Proprietary Rights or any other right of any person or entity, including but not limited to intellectual property rights, privacy and publicity rights, and shall fully comply with any third-party licenses, permits, guidelines and authorizations required. Advertiser is solely responsible for the Advertiser Content or technology that may be reached or linked via the Advertiser's Content; (iv) Company will not be responsible for any discrepancy or misleading actions with respect to the Advertiser's Content; (v) Advertiser's Content, related services and any other materials used by it in connection with or in relation to this Agreement will not contain, use or promote any Prohibited Content or engage, encourage or utilize any Prohibited Activity, as reasonably deemed by the Company to its sole discretion. Advertiser further represents that it employs all necessary monitoring and review procedures for the purpose of complying with the aforesaid.

9.2. Advertiser further represents and warrants that: (i) it shall submit the Advertiser Content in accordance with any technical specification provided by the Company; (ii) Any information the Advertiser provides the Company (including contact information or payment information) will at all times be complete and accurate, and will be maintained up-to-date at all times; (iii) it will not promote any mobile applications which are not available for download on the applicable Store. Upon removal of such application from the Store, Advertiser shall promptly inform Company of such occurrence and immediately cease to run the campaign associated with such application; (iv) it will not use the Company Assets to Sell, re-sell, lease, rent, sublicense, distribute, display or make any other use of Service or the advertising inventory, except as expressly permitted hereunder; (v) Copy, crawl, index, cache or store any information derived from Company, except as expressly permitted hereunder, or otherwise use robots, spiders, scraping or other technology to access or use the Company Assets to obtain any information beyond what Company provides Advertiser under the Agreement.

9.3. Advertiser acknowledges and agrees that Company may collect information about End Users which includes but is not limited to personally identifiable information as well as behavioral information for Company's commercial or internal use.

9.4. Advertiser warrants and represents that when serving promotional Content to the End User in connection with the Advertiser's Content, Advertiser shall make commercially reasonable efforts to: (i) provide the End User with disable functionalities (e.g., close button, "X", etc.) that close the promotional Content and do not trigger new promotional Content; (ii) provide the End User with instructions concerning opt-out mechanisms.

9.5. The Advertiser and Advertiser's Content shall not in any manner infringe End User's privacy rights and shall not collect, transmit, disclose, copy or use End User's personal information without the End User's explicit and informed consent. If applicable, the Advertiser must provide End User with Privacy Policy which shall be available for display to any End User before any information is being collected and shall adhere to the actual usage of the End User's personal information. Such Privacy Policy must have clear and accurate description of the information that is collected, used or shared with third parties, the method and purpose of collection, and the type of recipients of any such collected

information. Sensitive information (e.g. banking details) should be collected and retained with proper encryption.

9.6 The Company has executed a Data Processing Agreement (“**DPA**”) in accordance with Article 28 of the EU General Data Protection Regulation 2016/679 (“**GDPR**”). A copy of the DPA can be found at <https://mediaelements.com/dpa.pdf>. The Advertiser hereby warrants and represents that any personal data (as defined in the GDPR) or other personally identifiable information which is shared with the Company by the Advertiser shall be governed under the provisions of the DPA. The DPA is an integral part of this Agreement and does not derogate from any of the Advertiser’s representations and warranties.

## **10. Company’s Assets**

10.1. Subject to a two (2) business day’s prior written notice, Company reserves the right, at its sole discretion, to add additional guidelines or requirements during the term hereof in the event the industry guidelines shall be updated.

10.2. Company shall have the right, at its sole discretion, to remove the Advertiser’s Content from the Company Assets if: (i) Company receives a complaint from any third party regarding the Advertiser’s Content, or any related Content; (ii) Company reasonably believes that promoting the Advertiser’s Content will have an adverse impact on the Company Assets or Company’s reputation; (iii) the Advertiser’s Content is in violation of the Agreement; (iv) the Advertiser’s Content is in breach of any applicable law, rule or regulation, or industry best practices; or (v) the Advertiser’s Content breaches any third party’s right. Advertiser acknowledges and agrees that Company will not be liable for any damages or costs resulting from or connected to the removal of the Advertiser’s Content in any manner to Advertiser or to any other third party.

10.3. Company represents and warrants that: (a) it shall make reasonable efforts to comply with all applicable laws, rules and regulations, including but not limited to, laws governing privacy, data collection, infringement or misappropriation of any copyright, patent, trademark, trade secret or other proprietary, property or other intellectual property right; (b) Company Assets, including among others, all Content provided therein do not and will not: (i) infringe upon misappropriate or otherwise violate Proprietary Rights of any third party, or infringe upon any applicable law; (ii) contain any virus,

malware, spyware, spam-ware, worms, Trojan horses, or any other computer code, files or programs designed to interrupt, hijack, destroy, limit or adversely affect the functionality of any computer software, mobile device, hardware, network or telecommunications equipment.

## **11. Considerations**

11.1. Unless specified otherwise in the applicable Insertion Order, Company will provide a monthly invoice based on the Consideration model agreed upon between the parties. Payment will be due within seven (7) business days of the date appearing on each invoice.

11.2. Advertiser must timely pay all Considerations due to the Company, as specified in the Insertion Order, pursuant to the terms set out in the applicable Insertion Order(s) executed by the Parties.

11.3. All Considerations shall be calculated as detailed in the Insertion Order.

11.4. Advertiser shall submit to Company any disputes relating to the measurement or calculation of any Action, in writing or by email specifying the reason for such objection, including providing reasonable proof, by the 10<sup>th</sup> of the calendar month following the month in which the invoice was issued. If no such dispute has been made within the foregoing time period, the Action shall be deemed as accepted by Advertiser and billed accordingly. Any portion of a charge not disputed in good faith must be paid in full.

11.5. Advertiser will have no right to setoff, withhold or otherwise deduct any amount owed to Company hereunder (and accordingly transfer to Company when due any such amount whether in dispute or not) against any amount owed or claimed to be owed by Company to Advertiser (under any theory of liability).

11.6. The Company reserves the right to charge additional fees and interest for the delay of payments. The Company will charge 40 EURO surcharge per invoice, plus the maximum interest rate legally possible according to German Law (gem. § 288(1,2) BGB), for each delayed invoice. In the event of any failure by Advertiser to make payment, Advertiser will also be responsible for all reasonable expenses (including attorneys' fees) incurred by Company in collecting such amounts.

11.7. Advertiser is solely responsible for paying all applicable taxes, duties or charges imposed or that may be imposed by any applicable governmental agency, political

subdivision thereof or any authority therein having power to tax in connection with the Agreement.

11.8. All payments under this Agreement will be in U.S. Dollars unless agreed otherwise and inclusive of any applicable taxes, including or any other national, state, or local tax expressly VAT.

11.9. Advertiser will provide the Company with accurate and complete billing information including a valid credit or debit card or any other payment method as further detailed in the applicable Insertion Order. If payment is made via a credit or debit card, Advertiser authorizes the Company to charge all Considerations incurred to the designated card and acknowledges that periodic (monthly or annual) Considerations may be charged automatically and without separate authorization unless otherwise provided on an applicable Insertion Order.

## **12. Disclaimer of warranties**

12.1. To the maximum extent permitted by law, without derogating of any of the terms of this Agreement, the Company Assets are provided on an "as is" and "as available" basis, without warranties or conditions of any kind, either express or implied, including, without limitation, any warranties or conditions of title, performance, non-infringement of third party rights, merchantability or fitness for a particular purpose. In addition, Company does not represent or warrant that: (i) the Company Assets or any part therein will be error free or that any errors will be corrected or (ii) that the operation of the Company Assets or any part therein will be uninterrupted.

12.2. Each Party further expressly disclaims that the Advertiser's Content and/or Company Assets will be error-free or without interruption or that any errors in the Advertiser's Content and/or Company Assets be corrected, or that any information contained therein will be accurate or complete, without derogating of any of the terms of this Agreement.

12.3. Without derogating of any of the terms of this Agreement, to the extent the Advertiser's Content and/or Company Assets incorporates any third party materials or software that belongs to one or more third parties, then the materials or software are provided "AS IS" and subject to the terms and restrictions of the applicable third party.

Each Party makes no warranty whatsoever regarding the third-party materials or software, without derogating of any of the terms of this Agreement.

### **13. Limitation of Liability**

13.1. To the extent permitted by law, in no event shall either Party be liable to the other Party for lost profits or business opportunities, loss of use, loss or inaccuracy of data, cost of procurement of substitute goods or services, software, systems or services, or for special, incidental, indirect, punitive or consequential damages, however caused, and under any theory of liability, whether for breach of contract, tort (products liability, strict liability and negligence), or otherwise, arising from or related with the Agreement, whether or not the Party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy stated herein.

13.2. Without derogating from any of the foregoing, in no event will the Company's aggregate liability for any Claim arising out of or related to the Agreement, to the fullest extent possible under applicable law, exceed the monthly average of Consideration made under this Agreement with respect to three (3) months preceding any Claim under which such liability shall arise. Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or other damages, so the above limitations and exclusions may not apply.

13.3. No action arising under or relating to this Agreement, regardless of its form, may be brought by either Party more than three (3) months after the cause of action has accrued and in any event no later than three (3) months after the expiration and/or termination of this Agreement. The foregoing limitations shall apply notwithstanding any failure of essential purpose of any limited remedy and are fundamental elements of the bargain between the parties.

13.4. Company remains responsible for product liability, and according to Sect. 44 a TKG (German Telecommunications Act).

### **14. Indemnification**

14.1. Except as otherwise set forth in this Agreement, each Party ("Indemnifying Party") shall indemnify, defend, and hold harmless the other Party and its shareholders, directors, officers, employees and agents ("Indemnified Party"), from and against all Claims, and for all Losses that result or arise from Claims, commenced or prosecuted by any third

party against the Indemnified Party, which in whole or in part, arise from or is related to a Claim of a third party for a breach of the Indemnifying Party's representations under this Agreement, reduced to a final adverse, non-appealable judgment made by a court of competent jurisdiction and actually borne by the Indemnified Party.

14.2. The Indemnified Party will: (i) promptly notify the Indemnifying Party of any Claim; (ii) provide the Indemnifying Party, at the cost of the Indemnifying Party, reasonable information and assistance in defending the Claim; and (iii) give the Indemnifying Party control over the defense and settlement of the Claim; provided, however, that any settlement will be subject to the Indemnified Party's prior written approval, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Indemnified Party will not be required to allow Indemnifying Party to assume the control of the defense of a Claim, in which case the Indemnified Party will assume the control at Indemnifying Party's costs, to the extent that the Indemnified Party determines that: (1) such Claim relates directly to the Company Assets (if the Advertiser is the Indemnifying Party), or to the Advertising Content (if the Company is the Indemnifying Party); or (2) the relief sought against the Indemnified Party is not monetary damages; in addition, the Indemnified Party may join in the defense of any Claim at its own expense.

## **15. Confidentiality**

During the Term of this Agreement and thereafter, each Party agrees that it will not disclose or use the Confidential Information of the disclosing party without the disclosing Party's prior written consent. Each Party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own Confidential Information, during the Term and for a period of five (5) years thereafter to prevent the disclosure of the other Party's Confidential Information other than to its employees, subsidiaries or other agents who must have access to such Confidential Information for such Party to perform its obligations or exercise its rights hereunder, who will each agree to comply with this section. The Confidentiality obligations herein shall survive any termination or expiration of this Agreement.

## **16. Non-Circumvention**

16.1. Advertiser recognizes that Company has proprietary relationships with Media Partners. Advertiser agrees not to circumvent Company's relationship with such Media

Partners, or to otherwise solicit, purchase, contract for or obtain services similar to the services performed by Company hereunder from any Media Partners that is known, or should reasonably be known, by Advertiser to have such a relationship with Company, during the term of the Agreement and for six (6) months following termination or expiration of the Agreement. Notwithstanding the foregoing, to the extent that Advertiser can show that any such Media Partners already provided such services to Advertiser prior to the date of the first Insertion Order executed by the parties, then Advertiser shall not be prohibited from continuing such relationship.

16.2. Advertiser agrees that monetary damages for a breach, or threatened breach, of this section will not be adequate by themselves and that Company shall be entitled to liquidated damages from Advertiser in the amount equal to one hundred percent (100%) of the fees paid by Advertiser to the subject Media Partner, as applicable, for the prior twelve (12) month period. If fees have not yet been paid for a period of twelve (12) months, the amount due will be calculated based on the actual period of time during which fees were paid by Advertiser to the subject Media Partner, annualized to a twelve (12) month period. (For example, if fees were paid for a period of three (3) months, the liquidated damages would be calculated by multiplying the fees paid during that period by four (4) in order to annualize the amount due.) Advertiser has the right to prove that no or only substantial lower damages occurred and Company has the right to prove that higher damages occurred.

#### **17. Independent Contractors**

The Parties hereto are independent contractors and nothing herein constitutes or creates an employer-employee, agency, joint venture or representative relationship between the Parties, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any express or implied power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.

#### **18. Force Majeure**

Other than with respect to payment obligations arising hereunder, neither party will be liable, or be considered to be in breach of this Agreement, on account of such party's delay or failure to perform as required under the terms of this Agreement as a result of

any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence (a "Force Majeure Event"). If any such Force Majeure Event occurs including, without limitation, acts of God, fires, explosions, telecommunications, Internet or Advertising Network failure, results of vandalism or computer hacking, storm or other natural occurrences, national emergencies, acts of terrorism, insurrections, riots, wars, strikes or other labor difficulties, or any act or omission of any other person or entity, the affected party will give the other party notice and will use commercially reasonable efforts to minimize the impact of any such event.

#### **19. Changes to the Agreement**

Company may make changes to the Agreement from time to time, at its sole discretion. The most current version will be posted on Company's website at <https://mediaelements.com/advertiser-terms-conditions>.

By continuing to access or use of the Company's services, as described in this Agreement after the changes become effective, the Advertiser agrees to be bound by the revised Agreement.

#### **20. Assignment**

Each Party may not assign any of its rights or obligations hereunder without the prior written consent of the other Party and assignments in violation of the foregoing shall be void.

#### **21. Severability**

If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of this Agreement shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

#### **22. Governing Law**

This Agreement and any matters related hereto shall be governed by and construed in accordance with laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for International Sale of Goods and German International Private Law are excluded. The courts of Berlin, Germany shall have exclusive

jurisdiction, to the exclusion of any other court; however, Company is entitled to file a claim at the domicile of Advertiser as well.

### **23. Entire Agreement**

This Agreement and applicable Insertion Order constitute the entire agreement between the Company and Advertiser with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Without derogating from the generality of the foregoing, in the event that the terms of this Agreement are in conflict to the terms of any other agreement, provision, quote, order, acknowledgment, or other communications between the parties, the terms provided herein shall prevail over such conflicting terms (even if the conflicting terms are incorporated in a written instrument signed by the parties herein after the execution of this Agreement unless the Parties specifically referred in such instrument to the name and date of this Agreement and to the amendment of its terms and conditions).

### **24. Miscellaneous**

The captions and headings in this Agreement have been inserted for convenience only and shall not be deemed to limit or otherwise affect any of the provisions of this Agreement.

### **25. No waiver**

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the other Party. No waiver or consent by either Party to deviate from the provisions of this Agreement shall operate as a waiver of any subsequent right.