

# Ad Journal LLC License Agreement

BY USING THE SERVICE, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE 'AGREEMENT') GOVERNING YOUR USE OF THE SERVICE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS 'YOU' OR 'YOUR' SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST CEASE USE OF ALL THE SERVICE APPLICATIONS IMMEDIATELY.

## Welcome

As part of the Service, Ad Journal LLC will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on The Service incorporated by reference herein, including but not limited to Ad Journal LLC's privacy and security policy. For reference, a Definitions section is included at the end of this Agreement.

### 1. Privacy & Security

Ad Journal LLC's privacy and security policy may be viewed at <http://www.AdJournal.com/privacypolicy.aspx>. Ad Journal LLC reserves the right to modify its privacy and security policy in its reasonable discretion from time to time. Note that because the Service is a hosted, online application, Ad Journal LLC occasionally may need to notify all users of the Service of important announcements regarding the operation of the Service.

### 2. License Grant & Restrictions

Ad Journal LLC grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Ad Journal LLC and its licensors.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create 'frame' or 'mirror' any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

### 3. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Ad Journal LLC immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Ad Journal LLC immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Ad Journal LLC user or provide false identity information to gain access to or use the Service.

### 4. Account Information and Data

Ad Journal LLC does not own any data, information or material that you submit to the Service in the course of using the Service ('Customer Data'). You, not Ad Journal LLC, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Ad Journal LLC shall not be responsible or liable for the deletion, correction, destruction, damage, or loss of any Customer Data. Ad Journal LLC has and maintains appropriate disaster recovery procedures to protect Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Ad Journal LLC will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Ad Journal LLC reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Ad Journal LLC shall have no obligation to maintain or forward any Customer Data.

## **5. Intellectual Property Ownership**

Ad Journal LLC alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and all Ad Journal LLC Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Ad Journal LLC Technology or the Intellectual Property Rights owned by Ad Journal LLC. The Ad Journal LLC name, the Ad Journal LLC logo, and the product names associated with the Service are trademarks of Ad Journal LLC or third parties, and no right or license is granted to use them.

## **6. Third Party Interactions**

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between you and the applicable third-party. Ad Journal LLC and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Ad Journal LLC does not endorse any sites on the Internet that are linked through the Service. Ad Journal LLC provides these links to you only as a matter of convenience, and in no event shall Ad Journal LLC or its licensors be responsible for any content, products, or other materials on or available from such sites. Ad Journal LLC provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

## **7. Charges and Payment of Fees**

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments may be made annually, monthly, or quarterly, consistent with the Initial Term, or as otherwise mutually agreed upon. You are responsible for paying for all application licenses for the entire term, whether or not the applications are used. You must provide Ad Journal LLC with payment as agreed as a condition to signing up for the Service. An authorized representative may add additional applications by executing an additional written Order Form or using the Online Order Center. Ad Journal LLC reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail.

## **8. Billing and Renewal**

Ad Journal LLC charges and collects in advance for use of the Service. Ad Journal LLC will automatically renew and issue an invoice to you (a) every month for monthly licenses, (b) every quarter for quarterly licenses, (c) each year on the subsequent anniversary for annual licenses, or (d) as otherwise mutually agreed upon. Fees for other services will be charged on an as-quoted basis, at standard hourly rates or as mutually agreed upon. Ad Journal LLC's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Ad Journal LLC's income.

You agree to provide Ad Journal LLC with complete and accurate billing and contact information. This information includes your legal organization name, street address, e-mail address, and name and telephone number of an authorized billing contact. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Ad Journal LLC reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless Ad Journal LLC in its discretion determines otherwise all entities will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes.

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

## **9. Non-Payment and Suspension**

In addition to any other rights granted to Ad Journal LLC herein, Ad Journal LLC reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for services during any period of suspension. If you or Ad Journal LLC initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Ad Journal LLC may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Ad Journal LLC reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Ad Journal LLC has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

## **10. Agreement Term**

This refers to the term stated on the Ad Journal LLC service contract/account setup form. In the event this Agreement is terminated (other than by reason of your breach), Ad Journal LLC will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Ad Journal LLC has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

## **11. Termination for Cause**

Any breach of your payment obligations or unauthorized use of the Ad Journal LLC Technology or Service will be deemed a material breach of this Agreement. Ad Journal LLC, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, Ad Journal LLC may terminate a free account at any time in its sole discretion. You agree and acknowledge that Ad Journal LLC has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to

failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

## **12. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Ad Journal LLC represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Ad Journal LLC help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

## **13. Indemnification**

Subject to Section 14, Ad Journal LLC shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party.

## **14. Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **15. Internet Delays**

AD JOURNAL LLC'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. AD JOURNAL LLC IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **16. Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

## **17. Local Laws and Export Control**

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the

European Union. The user of this site ('User') acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, 'Embargoed Countries'), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, 'Designated Nationals'). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

Ad Journal LLC and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

## **18. Notice**

Ad Journal LLC may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Ad Journal LLC's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Ad Journal LLC's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Ad Journal LLC (such notice shall be deemed given when received by Ad Journal LLC) at any time by any of the following: e-mail to [Sales@AdJournal.com](mailto:Sales@AdJournal.com); letter sent by confirmed facsimile to Ad Journal LLC at the following fax number: (201) 584-0436; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Ad Journal LLC at the following address: Ad Journal LLC, 1304 Hastings St., Teaneck, NJ 07666.

## **19. Modification to Terms**

Ad Journal LLC reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon e-mailing of an updated version of this Agreement on the Service to the e-mail address on record in Ad Journal LLC's account information. Continued use of the Service after any such changes shall constitute your consent to such changes.

## **20. Assignment**

This Agreement may not be assigned by you without the prior written approval of Ad Journal LLC but may be assigned without your consent by Ad Journal LLC to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

## **21. General**

This Agreement shall be governed by New Jersey law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or

causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Teaneck, New Jersey. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, Estimate or Contract, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Ad Journal LLC as a result of this agreement or use of the Service. The failure of Ad Journal LLC to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Ad Journal LLC in writing. This Agreement, together with any applicable Order Form, Estimate or Contract, comprises the entire agreement between you and Ad Journal LLC and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## 22. Definitions

As used in this Agreement and in any Order Forms, Estimates or Contracts now or hereafter associated herewith: 'Agreement' means these online terms of use, any Order Forms, whether written or submitted online via the Online Order Center, and any materials available on Ad Journal LLC websites specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Ad Journal LLC from time to time in its sole discretion; 'Content' means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; 'Customer Data' means any data, information or material provided or submitted by you to the Service in the course of using the Service; 'Effective Date' means the date this Agreement is accepted by first using the Service; 'Initial Term' means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is quarterly, the Initial Term is the first quarter); 'Intellectual Property Rights' means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; 'Administrator(s)' means those Users who are authorized to purchase applications using the Online Order Center or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service;; 'Order Form(s)', "Estimates" and "Contracts" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such form, the terms of this Agreement shall prevail); 'Online Order Center' means Ad Journal LLC's online application that allows Administrators, among other things, add additional Users to the Service; 'Ad Journal LLC', a New Jersey Limited Liability Company, having its principal place of business at 1304 Hastings St., Teaneck, NJ 07666; 'Ad Journal LLC Technology' means all of Ad Journal LLC's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Ad Journal LLC in providing the Service; 'Service(s)' means the specific applications of Ad Journal LLC's services identified during the ordering process, developed, operated, and maintained by Ad Journal LLC, accessible via <http://www.AdJournal.com> or another designated web site or IP address, or ancillary services rendered to you by Ad Journal LLC, to which you are being granted access under this Agreement, including the Ad Journal LLC Technology and the Content; 'User(s)' means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by Ad Journal LLC at your request).