

These “Terms of Service” govern the sale and promotion of Advertising Space on the Web Page(s) hereinafter referred as “**Property**” by the entity specified on the relevant insertion order (the “**Order**”), such entity hereinafter referred to as the “**Agency**”. These Terms shall apply to all insertion orders issued by FlameAD. The Agency agrees that the Order, the Advertising Policy (as defined below) and these Terms (together, the “**Contract**”) create a legally binding and enforceable contract on the Agency.

1. INTERPRETATION

In these Terms defined words and phrases shall have the meaning ascribed to them in the Order or as otherwise set out below:

Advertiser: means the person identified by the Agency who enters into an agreement with the Agency for the placement of Advertisements on the FlameAD’s Property;

Advertisement: means any promotional content created by or on behalf of the Advertiser for display or placement on Advertising Space;

Advertising Policy: means the FlameAD and its partners advertising policies as amended from time to time and found at their respective websites.

Agency’s Adserver: means the technology operated by the Agency as used for the planning, storing and displaying of Advertising on third party websites (such as the Property).

Confidential Information: means any non-public information disclosed by FlameAD directly or indirectly to the Agency or otherwise disclosed in connection with the Contract;

Intellectual Property: means any patent, trademark, word mark, design, graphics, copyright, know-how, source codes, object codes, software, Confidential Information or any right or property similar to any of the foregoing and in every case whether registered, unregistered or in application anywhere in the world and in written, electronic or any other form; and **Property:** means any and all web pages on the website(s) of FlameAD and its partners;

FlameAD: means FlameAD and its partners, affiliates, and principals;

FlameAD Adserver: means the technology operated by FlameAD as used for the planning, displaying and reporting of Advertising on the Property.

2. ADVERTISEMENT CREATIVE SPECS

- 2.1 The Agency must submit its creative assets (Advertisement) as per the formats and file sizes stated in the IO. Generally, the standard banners format & file sizes are a) JPEG 20Kb; b) SWF 40Kb; and c) FLA. The Rich Media creative assets shall be created & submitted through MRC certified Rich Media Platform only. Refer to complete creative specifications stated in the IO.
- 2.2 It is the Agency’s responsibility to arrange and manage re-directs with third party Adserver and provide such third party with the creative and lead time requirements. FlameAD will not compensate agency for advertisements/campaigns which are affected or delayed in any way by third party problems.
- 2.3 FlameAD must receive all Advertising material made electronically at least three (3) business days prior to the scheduled date of publication. In the event that FlameAD does not receive Advertising material prior to the applicable submission deadline, FlameAD may publish at its sole discretion any material it deems appropriate and the publication of the advertisement will be considered to have commenced as of the date on the insertion order.

3. ADVERTISEMENT DELIVERY & POSITIONING

- 3.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS IO, ALL SERVICES AND RELATED MATERIALS ARE PROVIDED TO YOU “AS IS” WITHOUT ANY REPRESENTATION OR WARRANTY. FlameAD will use commercially reasonable efforts to deliver the advertisement as specified in the IO. Notwithstanding any line item breakout in the IO, we are only obligated to deliver the aggregate number of impressions in the IO as a whole. We have no obligations to deliver “click-throughs” or “acquisitions”.
- 3.2 The Agency shall use the certified third party Adserver and shall not use any other platform or electronic media, software programme, Internet tool or anything similar to any of these. The Agency shall keep its Adserver in excellent working condition. FlameAD shall have no liability to the Agency or any third party for any fees, costs, expenses or other liabilities arising in connection with the use and maintenance of the Agency’s Adserver.
- 3.3 FlameAD uses “AdTech” for measuring delivery and positioning of impressions. In order to address and rectify any discrepancy between FlameAD’s Adserver and Agency’s Adserver, the Agency shall share the delivery reports of its Adserver on daily basis with FlameAD in writing and in a searchable form to include; a) identity of the Advertiser who placed Advertisements on the Property; b) the number of impressions ordered and delivered; and c) the start and end date of the Campaign.

4. RIGHT TO MODIFY/REJECT ADVERTISEMENT

- 4.1 FlameAD reserves the right to refuse, amend, withdraw or otherwise deal with all advertisements submitted for publication or placed by or through Agency’s Adserver, at its absolute discretion & time and without explanation.
- 4.2 All Advertisements are subject to approval by FlameAD Editorial Board. FlameAD may, at any time, redesign or modify the structure, specifications, “look and feel,” navigation or other elements of its any Property, including those on which an Advertisement is displayed.

5. CONTRACT CANCELLATION/TERMINATION:

- 5.1 Any cancellation of part or all of a campaign booking must occur at least 10 business days before the start of the campaign and must be given with a minimum of 10 business days notice. Once a campaign has started, it cannot be cancelled. Failure to provide the requisite notice will mean that the Agency will be responsible for full payment of the original campaign booking.
- 5.2 FlameAD may terminate this agreement with immediate effect on giving written notice to the Agency.

6. TAXATION

- 6.1 The 16% Sales Tax will be charged on top of the agreed rates in compliance with Government laws.
- 6.2 The Agency must provide NTN and GST numbers of the Advertiser and its own prior to start date of the Advertisement Campaign.
- 6.3 The Agency is responsible to withheld 16% Sales Tax and Advance Tax (7%, 10% as applicable) amounts while making payment to FlameAD on all Sales Tax Invoices and is responsible for submission of these taxes to the relevant Government organization. The Agency shall provide both Sales Tax and Advance Tax Chelan(s) of withheld taxes to FlameAD as per the Government rules and laws. In case where Advertiser pays these taxes directly, the Agency is responsible for collection of such Chelan from advertiser and their provision to FlameAD.

7. TERMS OF PAYMENT

- 7.1 At the end of the Campaign or at the end of each month (in case of monthly invoices), FlameAD shall raise an invoice for the full amount specified in the Order or for the amount CORRESPONDING to DELIVERED IMPRESSIONS in the ended month.
- 7.2 The Agency shall provide at the end of month or at the end of the campaign the consolidated day-wise delivery report for corresponding billing period to FlameAD within 2 working days, otherwise FlameAD has the right to raise invoice according to delivery report of its Adserver. In such case, the Agency agrees that our measurement of delivered impressions is the sole, official and definitive measurement under this Contract.
- 7.3 In case of any valid discrepancy in FlameAD's invoice, the Agency must submit its valid claim in writing within 6 business days of issuance of invoice or receiving of invoice. Non submission of valid claims within this period by Agency will make the invoice payable and deemed correct in all respects.
- 7.4 The Agency shall acknowledge in writing upon invoice receiving within 2 business days, otherwise, the invoice shall be considered as received. In case of disagreement on "Invoice Receiving Date", the courier company's delivery document's date will be taken as "Invoice Receiving Date"
- 7.5 Whether or not the Agency has collected all sums due from the Advertiser, the Agency shall pay FlameAD the invoice amount in full within the Credit Period (Not more than 60 days) as set out in the Order and stated on the Invoice.
- 7.6 The Agency shall make payment via cross check / Demand Draft/ Pay order in favour of Flame AD. Checks in other name(s) and/or Cash payments are not allowed at all and will be considered as "Non-Payment".
- 7.7 In the event that the Agency fails to settle an invoice within the credit period, FlameAD may charge the Agency interest on any and all unpaid amounts at a rate equal to One percent (1.5%) on monthly basis.

8. CONFIDENTIALITY

- 8.1 The Agency agrees (i) to hold the Confidential Information in strict confidence and to take all precautions to protect such Confidential Information; (ii) not to divulge any Confidential Information or any information derived there from to any third person; (iii) not to make any use whatsoever at any time of such Confidential Information except as contemplated hereunder, (iv) not to copy or reverse engineer any Confidential Information, and (v) that any employee, agent or sub-contractor given access to any such Confidential Information must have a legitimate "need to know" and shall be similarly bound in writing.

9. INTELLECTUAL PROPERTY

- 9.1 The Agency agrees and acknowledges that it has no right, title or interest whatsoever nor any implied right, title or interest in the Intellectual Property belonging to FlameAD. The Agency agrees and undertakes that (i) it shall not use nor agree to use any or all of FlameAD's Intellectual Property without the prior approval of FlameAD; and (ii) it shall not do or omit to do, or authorise any third party to do or to omit to do, anything which could infringe, invalidate or be inconsistent with FlameAD's Intellectual Property rights.
- 9.2 The Agency may not use FlameAD's marketing documentation, or other documentation and/or materials belonging to FlameAD, without FlameAD's prior written approval. The Agency agrees to destroy or return, at the Agency's expense, such documentation and/or materials upon FlameAD's instruction.
- 9.3 Upon becoming aware, the Agency shall immediately notify FlameAD of any actual, threatened or suspected infringement of any Intellectual Property and any claim by any third party that the importation or sale of Advertising infringes any rights of any other person.

10. WARRANTIES AND INDEMNITIES

- 10.1 The Agency hereby warrants and represents that it has the right, power and authority and has taken all action necessary to execute and deliver and to exercise its rights and perform its obligations under this Contract.
- 10.2 The Agency accepts full legal responsibility in respect of any Advertisement placed by it on the Property. The Agency will indemnify and keep indemnified FlameAD, and defend or settle, and pay all costs, fines, expenses (including reasonable attorneys' fees) and damages incurred by FlameAD and arising out of (i) any third party claim, suit or proceeding brought against FlameAD alleging any Advertisement on the Property infringed any third party Intellectual Property right or any privacy or publicity law and/or (ii) the use of any Advertisement on the Property.
- 10.3 As an agency to Advertiser, the Agency shall (in placing, promoting or broadcasting Advertisements) manage, administer and supervise the Advertisements.
- 10.4 FlameAD does not guarantee an uninterrupted availability of its partners/affiliates websites on the Internet.

11. LIMITATION OF LIABILITY

- 11.1 Under no circumstances, including without limitation as a result of any breach of this Contract or any representation, statement or tortuous act or omission (including negligence), shall FlameAD be liable to the Agency: (i) for any loss of profits or any indirect, incidental, consequential, special or exemplary damages (even if the Agency has been advised of the possibility of such damages), such as, but not limited to, loss of revenue, profits or business, costs of delay, costs of lost or damaged data or documentation; or (ii) for the Agency’s liabilities to third parties arising from any source.
- 11.2 Nothing in this Contract shall exclude or in any way limit either party’s liability for fraud, death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law.

12. COMPLIANCE WITH LAWS AND REGULATIONS

- 12.1 The Agency shall, at its sole cost and expense, ensure compliance with all applicable international, national, state, regional and local statutes, laws, rules and regulations relating to marketing and advertising including, but not limited to, any rights of privacy, publicity, data protection and intellectual property in all the jurisdictions in which the Agency operates and shall ensure that any and all Advertisements or other content of any nature whatsoever displayed by the Agency on the Property shall comply with the above. The Agency shall be responsible for obtaining any licences, registrations, permits or approvals necessary or advisable for the promotion and sale of Advertisements on the Property. The agency warrants that the advertisement does not now and will not include any material that is unlawful, harmful, fraudulent, threatening, defamatory, obscene, racially, ethnically or otherwise objectionable or encourages conduct that would violate any law(s) stated above.
- 12.2 The Agency shall comply with all applicable COPPA rules and regulations promulgated there-under and shall only run Advertisements that are COPPA-compliant. If an Advertisement is found to be in violation of any rule or regulation made under COPPA, then the Agency shall upon notice of the violation immediately rectify or cure the violation. If the Agency fails or is unable to rectify or cure such violation, FlameAD may remove any or all of the Advertisements from the Property or impose other restrictions or limitations as FlameAD in its sole discretion may determine.

13. FORCE MAJEURE

- 13.1 Neither party shall be responsible for any failure to perform its obligations under this Contract to the extent that its performance is interrupted or prevented by a cause beyond its reasonable control. Obligations hereunder, however, shall in no event be excused but shall be suspended only until the cessation of any cause of such failure. The party facing an event of force majeure shall (i) notify the other party immediately of its occurrence and (ii) use reasonable efforts to remedy that situation as well as to minimize its effects.

14. GENERAL PRINCIPLES

- 14.1 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.2 **Severance:** If any provision of this Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.3 **Assignment:** The Agency may not (i) assign the Contract or any right, interest or benefit under the Contract or (ii) sub-contract or delegate any or all of its obligations under the Contract to any third party or agent without the prior written consent of FlameAD.
- 14.4 **Entire Agreement:** This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract. The parties agree that neither of them have been induced to enter into this Contract in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Contract as a warranty. No variation of the Contract or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties. Nothing in the Contract shall constitute or imply any partnership, joint venture, agency or other relationship between the parties, other than the contractual relationship set out in the Contract.
- 14.5 **Governing law and jurisdiction:** This Contract shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees that the courts of New York state of USA and shall have exclusive jurisdiction to settle any proceedings which may arise out of or in connection with the Contract.

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