



## DATA ACQUISITION AND USE AGREEMENT Standard Terms and Conditions

Set forth below are the standard terms and conditions (“T&C’s”) which shall be integrated into and become part of each Data Acquisition and Use Agreement (“Agreement”) entered into between ADARA, Inc., a California corporation with its principal office located at 1070 E. Meadow Circle, Palo Alto, CA 94303 (“ADARA”), and a data provider (“Data Provider”) who will provide access to Data Provider’s or other websites (“Website(s)”), and/or provide other sources of data, to allow ADARA to apply its proprietary Platform and ADARA IP (as those terms are defined below) to collect, organize and interpret Data Provider Data (as defined below) from Visitors (as defined below) to provide Services. Specifics about the Data Provider Data to be provided to ADARA by Data Provider and any changes to the T&C’s for specific Data Providers will be set forth in one or more Services Orders (“SO(s)”) executed by ADARA and the Data Provider. By executing an SO each party agrees that they have accepted these T&C’s as they appear on the URL [ADARA.com/ADARA-data-coop-terms-us](https://ADARA.com/ADARA-data-coop-terms-us) and have agreed that these T&C’s and the executed SO form the Agreement relating to the collection and use of Data Provider Data entered into between the parties.

Standard T&C’s:

**1. Definitions.** For the purposes of the Agreement the following terms shall have the following meanings:

A. **“Agreement”** means the Data Acquisition and Use Agreement, which includes these T&C’s and the SO(s) executed between the parties.

B. **“ADARA IP”** means ADARA’s proprietary pixel/cookie technology, software development kit (“SDK”), technology, Data derivatives and aggregate Data provided by ADARA hereunder, and analytics used to obtain, evaluate and organize Data Provider Data to provide Services, algorithms that analyze and select optimal advertising or offers to be directed to Segments, all related software and information employed in the Platform, and all trademarks, logos and copyright materials owned by ADARA.

C. **“Customers”** means those customers, including, but not limited to, DMOs and other similar organizations, who are purchasers of Services from ADARA.

D. **“Data”** means the non-personally identifiable information such as, but not limited to, anonymous demographic, behavioral and transactional information, (i) obtained by ADARA from various Visitors to the Website(s) and/or Data Provider applications made available to ADARA, or any other data provided to ADARA by Data Provider, and (ii) data obtained by ADARA from various third party sources through the application of ADARA’s proprietary pixel/cookie technology, and data organized in aggregate form by ADARA.



E. **“Data Provider Data”** means the anonymous demographic and behavioral data obtained by ADARA from various Visitors to the Website(s), and/or provided to ADARA by Data Provider.

F. **“Data Provider IP”** means the Data Provider Data, and Data Provider trademarks, logos and copyright materials provided by Data Provider to ADARA for use pursuant to the Agreement.

G. **“Effective Date”** means the effective date of the Agreement as first set forth in the respective SO.

H. **“Platform”** means the online data collection, analysis and advertising platform owned and operated by ADARA.

I. **“Segments”** means those high value audience segments identified by ADARA through the Platform.

J. **“Services”** means the analytical services and media services provided by ADARA to Customers.

K. **“Service Order”** (also referred to herein as “SO”) means the SO(s) executed between the parties which set forth the specific Data Provider Data to be provided by Data Provider, the Term of the SO, and any amendments to the T&C’s applicable to the respective SO.

L. **“Term”** has the meaning set forth in Section 5 below and in the SO.

M. **“Visitors”** means individuals who visit the Website(s) or use Data Provider applications and are made available by Data Provider to ADARA for application of the Platform and ADARA IP.

N. **“Website(s)”** means the website(s) that Data Provider makes available to ADARA for the application of the Platform and ADARA IP.

**2. ADARA’s Obligations** – ADARA agrees to undertake the following obligations during the Term set forth in the respective SO. ADARA reserves the right to perform activities itself, have its affiliates perform such activities, or to use third party service providers to perform such activities to meet the obligations set forth below.

A. Subject to Data Provider’s compliance with the obligations set forth in Section 3.A. below during the Term ADARA will (i) provide Data Provider with html code to be used to pixel and cookie Visitors, when required for Data acquisition, (ii) provide Data Provider with such assistance as the parties may agree in the SO to acquire Data Provider Data, and (iii) employ the Platform and ADARA IP for the



purposes of providing Services to Customers. Data Provider Data obtained by ADARA through implementation of the Platform and ADARA IP will be maintained in a database established by ADARA.

B. ADARA will be responsible for maintaining appropriate security practices to ensure that all Data Provider Data obtained by ADARA from Visitors, or received directly from Data Provider, is kept in a secure environment, will be used only in accordance with the applicable privacy policy of Data Provider, and in the case of advertising Services will provide opt-out procedures in compliance with National Advertising Initiative (“NAI”) requirements. No Data Provider Data will be disclosed to any Customer except in aggregate form unless agreed upon by the Data Provider and then only for the purposes of providing Services to Customer, or if Services are provided to a third party such Data Provider Data will only be use in aggregate form and the name of the supplier of such data will not be revealed.

C. Any Services that Data Provider may wish to purchase from ADARA will be provided pursuant to an SO prepared by ADARA and executed by both parties. Any advertising campaigns using Segments developed through the Platform that Data Provider desires to run will be implemented through the Platform using advertising placements purchased by Data Provider from ADARA. However, nothing set forth herein shall prevent ADARA from using either the Platform, or any other platform of ADARA’s choosing, to provide any Services, media or analytics, under any SO entered into between the Parties.

### **3. Data Provider’s Obligations.**

A. Data Provider agrees to (i) grant ADARA reasonable access to the Website(s) and any Data Provider applications for employment of the Platform and ADARA IP to obtain Data Provider Data, (ii) supply such Data Provider Data to ADARA as Data Provider elects to provide for the application of the Platform and related ADARA IP, and (iii) cooperate with ADARA, for the purpose of employing the Platform and ADARA IP to provide Services hereunder. Data Provider specifically grants ADARA the right to load Data Provider Data into the Platform database and to analyze and organize said Data Provider Data for the purposes specified herein.

B. Data Provider warrants and represents that it owns the Data Provider Data and has the right to grant ADARA the license provided for herein.



#### 4. Limited License and Intellectual Property Ownership Rights.

A. As between Data Provider and ADARA, Data Provider shall own all Data Provider Data. Data Provider hereby grants to ADARA a limited non-transferable license to use the Data Provider Data and Data Provider IP as may be necessary to carry out ADARA's obligations and as otherwise provided for under this Agreement. All rights, titles and interests in and to the Data Provider IP, shall remain the property of Data Provider and ADARA shall have no interest therein except the right to use same as provided for herein.

B. Data Provider acknowledges that ADARA owns the Platform, all ADARA IP and all Data that is not Data Provider Data, and Data Provider has no right, title or interest therein.

C. Data Provider agrees to allow ADARA to use the Data Provider IP in ADARA's marketing and promotion of its Services. ADARA shall have the right to use the Data Provider Data in combination with data provided by other in aggregate form to provide Services to Customers.

#### 5. Term and Termination.

A. The relevant Term applicable to the collection and application of Data Provider Data will be set forth in relevant SO. Unless otherwise set forth in the SO either party may terminate the SO any time by providing sixty (60) days prior written notice to the other party. The T&C's shall remain in effect as long as an SO remains in effect between ADARA and the Data Provider.

B. Termination for Breach. In the case of a material breach of this Agreement by either party the non-breaching party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the breaching party and said termination shall be effective at the end of said thirty (30) day period unless the breach is cured to the reasonable satisfaction of the non-breaching party. Exercise by either party of its right to terminate under any provision of this Agreement will not affect or impair its right to enforce its other rights or remedies under this Agreement. All obligations of each party that have accrued before termination or that are of a continuing nature, including without limitation any confidentiality and indemnity provisions, shall survive the termination or expiration of this Agreement.

**6. Confidentiality Information.** In connection with this Agreement, each party may disclose, or may learn of or have access to, certain confidential proprietary information owned by the other party ("Confidential Information"). Confidential Information means (i) any data or information (specifically including, but not limited to, the Data and Data Provider Data), the Platform and related user codes, passwords or other security measures, or (ii) other information treated by a party as confidential, oral or written, that



relates to the party, or any of its business activities, technology, developments, inventions, processes, trade secrets, know how, source code, algorithms, plans, financial information, forecasts, and projections. Notwithstanding the foregoing, Confidential Information is deemed not to include information that: (i) is publicly available or in the public domain at the time of disclosure; (ii) is or becomes publicly available or enters the public domain through no fault of the receiving party; (iii) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the receiving party's possession free of any confidentiality obligations with respect thereto; or (v) is approved for release or disclosure by the disclosing party without restriction.

**Obligations.** Except as expressly permitted in this Agreement, each party shall maintain the Confidential Information of the other party in strict confidence and shall not disclose, publish or copy any part of such Confidential Information. Each party shall use the Confidential Information of the other party solely for the purpose of this Agreement. Each party shall take all necessary precautions in handling the Confidential Information of the other party and limit disclosures on a strict need-to-know basis. However, a party may disclose Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that such party gives reasonable prior notice to the other party to allow said party to contest such order or requirement. Upon the termination or expiration of this Agreement, each party shall return to the other party, or certify the destruction of, all Confidential Information of the other party, provided that, neither party shall be obligated to purge archived data if the obligations of this Section 4 continue to be strictly observed.

**7. Force Majeure.** Neither party shall be liable for delays or failure in performance under this Agreement caused by acts of God, war, acts of terrorism, strike, labor dispute, work stoppage, fire, act of government, or any other cause, whether similar or dissimilar, beyond the control of that party.

**8. Dispute Resolution.** Any dispute or controversy between the parties arising out of or relating to this Agreement (each, a "Dispute") shall be resolved by good faith negotiations between the respective managers responsible for the relationship set forth in this Agreement. If such negotiations fail to produce a resolution to the Dispute within 20 business days after the date written notice of such Dispute was provided by one party to the other party, the Dispute shall be escalated to the representatives of the Data Provider and ADARA set forth in the SO. If negotiations by such senior executives fail to produce a resolution to the Dispute within 20 business days after the date the Dispute was escalated, either party shall have the right to bring legal action (if legal action is available), or request arbitration, in the jurisdiction provided for in Section 14 below.



**9. Relationship of the Parties.** Nothing in this Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a partnership, joint venture, or formal business entity of any kind or create a fiduciary or similar relationship among the parties; and the rights and obligations of the parties shall be limited to those expressly set forth in this Agreement. Each party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither party nor its agents or employees is the representative of the other party for any purpose and neither party has the power or authority as agent, employee, or any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

**10. Non-Assignment.** Neither party may assign this Agreement or any of its rights or obligations under this Agreement to any third party without the written consent of the other party, except that a party may assign its rights and obligation hereunder in the case of a sale of all or substantially all of its assets to another party who is not a competitor of the non-assigning party. Either party shall have the right to assign this Agreement to any wholly owned subsidiaries or affiliates (including its parent company, if any). Any violation of this provision will be cause for immediate termination of this Agreement or, at the option of the non-assigning party the non-assigning party may declare the assignment of any of the rights or obligations under this Agreement null and void as of the date of the purported assignment. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party to this Agreement.

**11. Indemnification.**

A. Except as otherwise provided in this Agreement, each party (the “Indemnitor”) will indemnify, defend and hold harmless the other party, and its respective employees, representatives, agents, parent company and affiliates (the “Indemnitees”), from and against any and all liabilities, damages, fines, judgments, or expenses and losses of any kind (including reasonable attorney’s fees and costs) incurred by Indemnitees, in connection with any demands, claims, actions, suits, administrative or judicial proceedings, or investigations of any kind brought by any third party (including, without limitation, any claim of trademark, patent or copyright infringement, defamation, libel, slander, breach of confidentiality, privacy violation, false or deceptive advertising or sales practices), arising out of (i) Indemnitor’s performance or failure in performance of any of its obligations under this Agreement, or (ii) any infringement of a third party’s copyright, patent, trademark, service mark, trade secret, or other intellectual property rights when Indemnitee uses materials provided by Indemnitor pursuant to and in accordance with the terms of this Agreement; all except to the extent caused by the negligence or willful misconduct of Indemnitee.



B. Survival: The indemnification, defense and hold harmless obligations pursuant to this Section 11 are of a continuing nature and shall survive the termination of this Agreement.

**12. Limitation of Liability.** EXCEPT FOR (I) ANY LIABILITY ARISING OUT OF THE INDEMNITY OBLIGATIONS AS SET FORTH IN PARAGRAPH 11 A.(ii) ABOVE, OR (II) ANY LIABILITY TO THE OTHER PARTY FOR DAMAGES ARISING OUT OF THE INTENTIONAL OR WILLFUL MISCONDUCT OF A PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE OR LOST PROFITS, ARISING FROM ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY RELEASES AND WAIVES ANY CLAIMS AGAINST THE OTHER PARTY REGARDING SUCH DAMAGES.

**13. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

**14. Governing Law and Jurisdiction.** This Agreement and any dispute arising under or in connection with this Agreement, including any action in tort, shall be governed by and construed in accordance with the laws of the State of California without regard to any conflicts of laws or principles which may direct the application of the laws of any other jurisdiction. Any such legal action shall be brought in a court of competent jurisdiction in San Francisco, CA. If arbitration is agreed to between the parties it shall be brought in San Francisco, CA under the rules of the American Arbitration Association.

**15. Entire Agreement.** The T&C's and the respective SO(s) executed between ADARA and the Data Provider constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements, written and oral, with respect thereto. No change, amendment, or modification of any provision of this Agreement shall be effective unless reduced to writing and signed by an authorized representative of each party. In the case of a dispute between an SO and these T&Cs the SO shall control.