

# SERVICE AGREEMENT

The purpose of this Agreement (hereafter referred to as the "Agreement") is to set forth and define an arrangement under which 4delite (hereafter referred to as the "Company") will provide Software as a Service (hereafter referred to as the "Service") for the benefit of the the Customer.

As a service, the standard the Service Agreement with the Company is provided below. By using our the Service you are explicitly agreeing to all of the following terms and conditions:

Subject to the following terms and conditions of this Agreement, the Company will provide the Service for the Customer:

## 1. Specifications.

The Company agrees to provide the Customer with the Service according to the following Specifications (the "Specifications"):

Customers may create a set number of ad campaigns depending on the type of package they have paid for. Ad campaign creation includes the preview of ads automatically generated by 4delite and its customers, as well as the required files that are published for customers through the 4delite platform and delivered through the web-based platform. Provided 4delite customers provide the required tracking data, all ad campaigns will include performance analyses as displayed in customers' dashboard accessed at [www.4delite.com](http://www.4delite.com). Customers will be able to optimize each existing ad campaign by launching a new ad campaign through the 4delite platform. As well, customers can expect privacy of their data, if they have opt-ed out of 4delite's aggregated data analysis community program, including all data around the performance of their ad campaigns.

4delite's services are delivered through a web-based self-service platform. Additional support to use the service will be provided by customer support via email communication, F.A.Q. resources online, and instructional Wizards that can be accessed through the 4delite platform.

All customer support will be done via email.

### 1.1 Services Definitions.

"Software" shall mean the Software or Program(s) to be provided by the Company to the Customer under this Agreement.

"Services" shall mean the services to be provided by the Company to the Customer under this Agreement. A complete list of services provided may be found under the Specifications.

"Service" shall mean both the Software and the the Services provided by the Company to the Customer as described by the Specifications.

"Subscription Fee" shall mean the reoccurring fee paid to the Company as compensation for continued use of the the Service.

"Support the Services" shall mean any help, support, setup, installation, or other assistance as described by the Specifications.

"Consulting the Services" shall mean any additional services as described by the Specifications.

"Source Code" shall mean the readable forms together with make and build files.

"Delivery" shall mean the the Service as transmitted by the Company to the Customer

electronically and in accordance with security measures agreed upon by both parties as described in the Specifications.

“Company Materials” shall mean any software, code, data, graphics or other materials or resources transmitted to the Customer in order to provide any of the services under this Agreement.

“Billing Day” shall mean the day of month that the Subscription Fee is due.

## **1.2 Services Provisions.**

### **Rights and License Granted.**

Under the the Company’s Service agreement, the Customer shall not be granted any rights or license to the Software or the Services. the Customer acknowledges that through its subscription payments to the Company it is granted access to the Software and the Services. The Customer further acknowledges that at no time shall it be entitled to download, distribute, install or otherwise redistribute the Software in any form not explicitly covered by this Agreement. The Customer understands that access to the Software ends when one of the following events takes place: 1) the Customer fails to make a subscription payment; 2) the Customer violated the the Company Acceptable Use Policy (“AUP”) or 3) the Customer cancels its subscription with a 30-day written notice and the Customer’s account is paid in full.

### **Limitations to Rights and License.**

At no time will the Customer hold title to or ownership of any of the the Service, the Company Data or Source Code or any Materials provided to the Customer during the term of this Agreement.

## **1.3 Length of the Service.**

The Service is a monthly service.

## **1.4 Service Start Date.**

The Service will start the day the customer provides billing information to the Company. That day of the month becomes the Billing Day.

## **1.5 Renewal by the Customer.**

This Agreement will automatically renew each month unless canceled in writing by the Customer. Renewal prices are subject to change. Renewal of the Services by the Customer indicates agreement to any contract revisions and price changes. Renewal fees for the following Term will be automatically invoiced to the Customer’s account.

## **1.6 Service Customization.**

The Customer acknowledges that the the Service is provided “as is” and “as delivered” and cannot be construed as being able to be customized or modified in any way. The Customer assumes all responsibility to review all features included in the Service prior to signing this agreement.

## **1.7 Service Support.**

All support for the the Service shall be conducted as defined in the Specifications.

## **2. End-User Pricing and the Services Compensation.**

End-User Pricing and the Services Compensation are subject to change at the sole discretion of the Company.

## **3. Terms of Payment.**

The customer is billed for the past month of Service on the Billing Day using the Subscription Fee that is in place at that time for the Service. If the Billing Day exceeds the current month's number of days, the last day of that month is used. The Customer is free to change their Subscription Fee at any time. If the Customer fails to make payment, the Customer will pay an interest rate of 1.5% per month, or the highest rate permitted by law. The Company may also charge the Customer's credit card for amounts due following cancellation as described above. The Customer agrees that the Company may store and use the Customer's payment information (including credit card information) for processing payments.

There are no refunds.

## **4. Proprietary Information.**

Proprietary information exchanged hereunder shall be treated as such by the Customer. This information shall include, but is not limited to, the provisions of this Agreement, product and services information, materials, software, code, pricing, or any other materials transmitted to the Customer under this Agreement. the Customer agrees not to (a) decompose, disassemble, decode, or otherwise reverse engineer any Company program, code, or technology installed or delivered to the Customer or any portion thereof; (b) transmit or allow to be transmitted any such materials to any third party except as necessary for the fulfillment of this Agreement; (c) sublicense or allow use of any materials or use of any provided services to any third party without written permission from the Company; (d) use any Materials or the Services in any way not intended or expressly provided for by this Agreement.

## **5. Customer Content.**

The customer warrants that they have obtained any and all necessary clearances, releases, approvals, and consents from third parties (including with respect to any third party's copyright, patent, trademark, trade secret or other proprietary rights, rights of publicity or privacy, and moral rights) and made any and all required payments to third parties (including unions and guilds) in connection with all Customer Content, as necessary for the Company to exercise the licenses granted under this Agreement.

The Company will not be required to make any payments to the Customer or any third party with respect to Customer Content, including payments to music publishers, mechanical rights agents, performance rights societies, persons who contributed to or appear in Customer Content, Customer licensors, unions, or guilds.

No Customer Content contains any virus, worm or other malicious code, Trojan-horse routine, trap door, time bomb, or any other code or instruction that is or is intended to be used to access, modify, delete, damage, or disable the functionality of the Company, any publisher's, or any user's computer systems or data. No Customer Content will include any material that is fraudulent, deceptive, threatening, abusive, harassing, defamatory, obscene, profane, racially or ethnically objectionable, or in violation of applicable law.

## **6. Warranties.**

The Company makes no warranties or representations of any kind, whether expressed or implied, for the the Service it is providing. The Company also disclaims any warranty of merchantability or fitness for any particular purpose and will not be responsible for any damages that may be suffered by the Customer, including loss of data resulting from delays, non-deliveries or service interruptions by any cause or due to errors or omissions of the Customer. Use of any information obtained by way of the Company is at the Customer's own risk, and the Company specifically denies any responsibility for the accuracy or quality of information obtained through its Services. Connection speed represents the speed of an end-to-end connection. The Company does not represent guarantees of speed or availability of end-to-end connections. The Company expressly limits its damages to the Customer for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. the Company specifically denies any responsibilities for any damages, direct or indirect, arising as a consequence of such unavailability.

### **6.1 No Duty to the Customer's Users Not Directly Contracted with the Company.**

The Company shall have no obligation to support, train or troubleshoot issues for any third-party user due to problems arising out of the use of the the Service provided to the Customer by the Company. Third parties shall include, but are not limited to: vendors, contractors, the Customer's customers, the Customer's clients or any third party not directly contracted with the Company for the Service and the Service Support.

## **7. Trademarks.**

The Customer warrants that the Customer has the right to use any applicable trademarks or copyrighted materials that the Customer integrates or uses in connection with this the Service.

## **8. Transfer of Agreement.**

The Customer may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the Company. In the event that the Customer contemplates whole or partial sale of the Customer's business, ownership change, or change in jurisdiction, the Customer shall notify the Company by mail, facsimile, or email no less than sixty (60) days prior to the effective date of the event.

## **9. Termination.**

The Company may terminate this Agreement at its sole discretion upon the occurrence of one or more of the following events: 1) failure to comply with any provisions of the Agreement upon receipt of written notice from the Company of said failure, 2) appointment of receiver or the filing of any application by the Customer seeking relief from creditors, or 3) upon mutual agreement in writing by the Company and the Customer.

## **10. Disputes.**

If legal proceedings are commenced to resolve a dispute arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs, legal fees, and expert witness fees as well as any costs or legal fees in connection with any appeals.

## **11. Indemnification.**

The Customer shall indemnify and hold the Company harmless from and against any and all claims, judgments, awards, costs, expenses, damages, and liabilities (including reasonable attorney fees) of whatsoever kind and nature that may be asserted, granted, or imposed against the Company directly or indirectly arising from or in connection with the Customer's marketing or Support the Services of the product or the Services or the unauthorized representation of the product and the Services or any breach of this Agreement by the Customer.

## **12. General.**

If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement and any disputes arising hereunder shall be governed by the laws of California State. A failure by any party to exercise or any delay in exercising a right or power conferred upon it in this Agreement shall not operate as a waiver of any such right or power.

The parties represent and warrant that, on the date first written above, they are authorized to enter into this Agreement in its entirety and duly bind their respective principals by their use of the the Service provided by the Company.