

## **Incorporation; Entire Agreement.**

These Terms and Conditions (the “Terms and Conditions”), together with the accompanying Insertion Order (the “IO”), constitute the entire agreement (the “Agreement”) between Advertiser and KNACHO with respect to the subject matter hereof, and supersede all prior or contemporaneous proposals, agreements or communications, whether written or oral. These Terms and Conditions prevail over any of Advertiser's general terms and conditions regardless whether or when Advertiser has submitted its request for proposal, order or such terms. Provision of services to Advertiser does not constitute acceptance of any of Advertiser's terms and conditions and does not serve to modify or amend these Terms and Conditions. Any modification of these Terms and Conditions applies only to the IO into which these Terms and Conditions are incorporated.

## **Advertisement Publication.**

(a) Advertiser Materials. Advertiser shall provide to KNACHO the advertising content (“Advertisement(s)”) and all other reasonably necessary materials (including the Advertisements, collectively the “Advertiser Materials”) in accordance with KNACHO’s editorial, graphic, technical, or production criteria (the “Specifications”). KNACHO shall have no liability with respect to the Advertiser Materials or for delays or failures attributable to Advertiser’s failure to timely perform such obligations. KNACHO shall provide a final copy of an Advertisement and obtain prior written consent from Advertiser before publication (“Publication”) of the Advertisements.

(b) Approval. All Advertisements are subject to KNACHO’s approval. Subject to the Terms and Conditions of this Agreement, KNACHO may reject or cancel for any reason at any time any Advertisement without liability, even if previously acknowledged or accepted. KNACHO has no obligation to make any modifications to an Advertisement after the parties have finalized an Advertisement to be displayed on KNACHO’s digital display tops (the “Display Tops”).

(c) Under-delivery. KNACHO will monitor the delivery of the Advertisements, and will notify Advertiser either electronically or in writing as soon as possible if KNACHO believes that an under-delivery is likely. In the case of a probable or actual under-delivery, Advertiser and KNACHO revise the IO in good-faith based on any actual or anticipated under-delivery.

(d) Over-delivery. KNACHO may bonus as many ad units as KNACHO chooses unless otherwise indicated on the IO. Advertiser will not be charged by KNACHO for any additional impressions above any level guaranteed on the IO.

(e) Proof of Performance KNACHO will provide Advertiser with a performance report (“Performance Report”) within a reasonable time of delivery of all Advertisements. The Performance Report may include still images and/or video footage (collectively, the “Images”) of individuals. Advertiser shall not identify or reidentify any individuals that appear in the Images,

and Advertiser shall not share any Images with any third parties, unless Advertiser obtains KNACHO's prior written permission in each instance.

### **Cancellation and Termination.**

Unless designated on the IO as non-cancelable, Advertiser may cancel the entire IO, or any portion thereof, with 60 days' prior written notice to KNACHO.

### **Rights.**

(a) Advertiser hereby grants to KNACHO a non-exclusive right and license to display, transmit, and distribute the Advertisements and Advertiser Materials, including any underlying third-party rights included therein, on the Display Tops in connection with the Advertising Publication. KNACHO and any applicable third parties may make technical modifications (including resizing) as necessary to conform the Advertiser Materials to the Specifications. Advertiser grants to KNACHO the right to use Advertiser's name and/or logo in marketing materials to identify Advertiser as an advertiser with KNACHO.

(b) Ad Metrics. KNACHO hereby grants to Advertiser a non-exclusive, non-sublicensable, non-transferable, royalty-free, revocable right and license to use and access all data related to the performance of the Publication of Advertisements, including, without limitation, any reports, case studies, results or information created, compiled, analyzed or derived from such data (the "Ad Metrics"), solely for Advertiser's internal purposes. All goodwill associated with the Ad Metrics will inure to the benefit of KNACHO.

(c) Ownership. Notwithstanding any other provision herein to the contrary, (i) Advertiser retains all intellectual property rights in and to the Advertiser Materials and (ii) all intellectual property rights in or to the Display Tops, the software and technology related thereto, the content contained therein, (including, without limitation, the Ad Metrics), KNACHO's Confidential Information, any other written information provided by KNACHO and any customized content, including, without limitation, graphics or other media (collectively, "KNACHO IP") are and will remain the exclusive property of KNACHO or its licensors, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the KNACHO IP is used or licensed. Advertiser will not take any action that jeopardizes KNACHO's or its licensors' proprietary rights, or attempt to acquire any right, in the KNACHO IP. All rights not expressly granted to Advertiser with respect to the KNACHO IP are reserved by KNACHO and its third-party licensors.

### **Payment Terms and Conditions.**

(a) The initial invoice, which will contain the service fee, will be sent by KNACHO prior to running the ad. The remaining balance will be sent upon completion of the first month's delivery, or within thirty (30) days of completion of the IO, whichever is earlier. Invoices will be sent to the Client's billing address as set forth on the IO. All invoices (other than corrections of previously

provided invoices) pursuant to the IO will be sent within ninety (90) days of delivery of all Advertisements. KNACHO will invoice Advertiser for the services provided on a calendar-month basis with the net cost based on actual delivery, flat-fee, or based on prorated distribution of delivery over the term of the IO, as specified on the applicable IO.

(b) Except for any taxes due in connection with KNACHO's income derived from this Agreement, Advertiser shall be solely responsible for any and all taxes that may become due in connection with this Agreement.

(c) Advertiser, including its agency, are jointly and severally obligated to pay all amounts due by the invoice date, and they shall remain liable therefor until KNACHO receives payment in full. Payment by Advertiser to its agency does not constitute payment to KNACHO.

(d) KNACHO may assess interest at the rate of 1.5% per month (or at the highest rate permitted by law, if less) on the principle amount of any overdue balance. Advertiser shall be responsible for all reasonable expenses (including attorneys' fees) incurred by KNACHO in the collection of any such overdue payments.

### **Confidentiality.**

(a) As used herein, "Confidential Information" means all confidential and proprietary information of a party (the "Disclosing Party") disclosed to the other party (the "Receiving Party") that (i) if disclosed orally is designated as confidential at the time of disclosure, (ii) if disclosed in writing is marked as "Confidential" and/or "Proprietary", or (iii) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, this Agreement (including, without limitation, the pricing and other terms reflected in the IO), the Advertising Publication, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (1) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party known to the Receiving Party; (2) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any confidentiality obligation; (3) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; (4) is received from a third party without breach of any confidentiality obligation known to the Receiving Party; or (5) any information contained in Ad Metrics.

(b) The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written consent, and shall use the same degree of care to protect the Confidential Information as it uses to protect its own information of a confidential and proprietary nature, but in no event less than a reasonable degree of care. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees and contractors who need to know such information for purposes of performing the Receiving Party's obligations under this Agreement if the Receiving Party certifies that such employees and contractors have agreed,

either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those in this Agreement.

(c) If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's request and cost, if the Disclosing Party wishes to contest the disclosure.

(d) If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality obligations hereunder, the Disclosing Party shall have the right, in addition to any other remedy available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedy is inadequate.

#### **Disclaimer of Warranties.**

EXCEPT AS EXPRESSLY SET FORTH HEREIN, KNACHO PROVIDES ALL AD PLACEMENTS "AS IS" AND "AS AVAILABLE" AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. KNACHO DOES NOT GUARANTEE CONTINUOUS OR UNINTERRUPTED AD PLACEMENT, ANY NUMBER OF LEADS, OR ANY OTHER MEASURE OF PERFORMANCE OR SUCCESS. Nothing in this Agreement shall be construed to permit Advertiser to independently engage in any third-party ad serving or tracking, or otherwise gather data from or in connection with, the Display Tops and Publication of any Advertisement. KNACHO's acceptance of an Advertisement for Publication does not constitute an endorsement of the product or service that is the subject of the Advertisement or offered or provided by Advertiser.

#### **Indemnification.**

(a) Advertiser shall indemnify, defend, and hold harmless KNACHO and its licensors, and each of their respective employees, officers, directors, and affiliates, from and against any and all claims, actions, suits, judgments, penalties, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred by any of them arising out of a claim by a third party alleged to have resulted from (i) any Advertisements or Advertiser Materials and any content submitted by Advertiser to KNACHO pursuant to this Agreement (including any claim that any Advertisements or Advertiser Material infringes any trademark, copyright, or right of privacy); (ii) Advertiser's breach or violation of this Agreement, (iii) Advertiser's provision or offering of any services or products to any third party resulting directly or indirectly from the Publication of an Advertisement (iv) Advertiser's failure to comply with applicable laws; or (v) Advertiser's gross negligence, willful or intentional misconduct, or fraud.

(b) KNACHO shall indemnify, defend, and hold harmless Advertiser from and against any and all claims, actions, suits, judgments, penalties, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) incurred by Advertiser arising out of a claim by a third party alleged to have resulted from (i) KNACHO's failure to comply with applicable law, or (ii) KNACHO's gross negligence, willful or intentional misconduct, or fraud.

(c) An indemnified party shall (i) provide the indemnifying party with prompt written notice of any claim, (ii) grant control of the defense, investigation and settlement thereof, and (iii) provide all reasonable assistance therewith. The indemnified party may participate in the investigation, trial, defense, and settlement of such claim and any appeal arising therefrom, through its attorneys or otherwise, at its own cost and expense. Notwithstanding the foregoing, no settlement of a claim that involves a remedy other than the payment of money by the indemnifying party shall be entered into without the consent of the indemnified party, which consent will not be unreasonably withheld or delayed, unless the settlement includes an unconditional general release of the indemnified party.

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

EXCEPT FOR THIRD PARTY CLAIMS WITHIN THE SCOPE OF ADVERTISER'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING FROM THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, BUSINESS, PROFITS, OR GOODWILL. THE FOREGOING SHALL APPLY REGARDLESS OF THE LEGAL THEORIES AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE NET AMOUNT PAID OR PAYABLE TO KNACHO BY PARTNER PURSUANT TO THIS AGREEMENT.

#### **Feedback.**

Advertiser is under no obligation to provide any suggestion, idea, enhancement request, feedback, recommendation, or other information about any services offered or provided by KNACHO ("Feedback"). Advertiser hereby assigns to KNACHO all right, title, and interest (including, without limitation, intellectual property rights) in and to any Feedback that Advertiser provides to KNACHO and any modifications or derivative works thereof; provided, however, that the foregoing shall not apply to Advertiser Materials or any modifications or derivative works thereof, as provided in Section 2.c. If such assignment cannot be effectuated, Advertiser hereby grants to KNACHO a royalty-free, worldwide, perpetual license to use or incorporate any Feedback into any service offered or provided by KNACHO.

## **Miscellaneous.**

(a) No Agency. The relationship between the parties is that of independent contractors and no employment, agency, partnership, or joint venture is created hereunder.

(b) Governing Law; Jurisdiction. This Agreement all disputes arising out of or related to this Agreement or the Advertising Publication shall be governed by the laws of the State of California, without regard to its conflict of law provisions. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in Bakersfield, CA, and each party consents to the jurisdiction thereof.

(c) Notices. All notices in connection with this Agreement must be in writing, and will be deemed given upon receipt by the party to whom the notice is directed. Notices shall be addressed to (i) Advertiser using the electronic or mailing address set forth in the applicable IO to the attention of General Counsel, and (ii) KNACHO using the following electronic or mailing address:

Ansilazo LLC.  
Attention: Knacho Finance Department  
1401 21st St, Suite R  
Sacramento, California 95811  
support@knacho.com

(d) Assignment. Advertiser may not assign its rights or obligations under this Agreement without the prior written consent of KNACHO. Any purported assignment in violation of the foregoing will be void. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(e) Third Party Beneficiaries. This Agreement is entered into solely between, and made for the sole benefit of, KNACHO and Advertiser, and, subject to the indemnification obligations and the limitations of liability herein, this Agreement will not be deemed to create any obligations, remedies, or liabilities of a party to any third party (including, without limitation, any Customer). No third party shall have the right to make any claim or assert any right under this Agreement, and no third party shall be deemed a beneficiary of this Agreement.

(f) Force Majeure. Neither party shall be considered in breach of this Agreement by reason of any failure or delay in its performance hereunder if such failure is due to causes beyond its reasonable control, including, without limitation, acts of the other party, failure of facilities, act of God, delays in transportation, inability beyond its reasonable control to obtain necessary labor or materials, or events such as fires, floods, earthquakes, storms, war, act of public enemy, civil commotions, and the like or by any law, rule, regulation, order, or other action by any public authority, whether existing or in effect prior to or after the date of this Agreement.

(g) Headings. The section headings contained in this Agreement are for convenience only and shall not be considered in its interpretation.

(h) Amendments; Waiver. No amendment to, or waiver of, any provision of this Agreement will be effective unless in writing and signed by both parties. The failure of either party to enforce its rights under this Agreement at any time for any period of time will not be construed as a waiver of such rights.

(i) Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that the remaining provisions shall otherwise remain in full force and effect and enforceable.

(j) Counterparts. This Agreement may be executed in separate counterparts, each of which will be an original, but all of which will together constitute one instrument. This Agreement may be signed by the parties exchanging electronically signed signature pages via facsimile transmission or any other method that indicates an intention to be bound by these terms.