General and Licensing Terms & Conditions Adserverplugins.com

1. General provisions

1.1 These General and Licensing Terms & Conditions Adserverplugins.com ("the License") apply to all offers, quotations, contracts and deliveries of products, whether or not through licensing, by Adserverplugins.com to its Customers. Any purchasing terms or other terms of (potential) Customers or other Third Parties are not applicable and are hereby expressly rejected.

1.2 All offers and quotations of Adserverplugins.com are non-binding, unless the offer or the quotation by Adserverplugins.com expressly states otherwise. A proposal by Adserverplugins.com does not oblige to delivering the Products, or parts thereof.

1.3 The following definitions are used in this License and in Agreements:

"Third Party/Parties: Entities other than Adserverplugins.com;

"Documentation": the standard technical documentation/user documentation/manual accompanying the Product;

"Defect(s)": A situation where the Product, as used by the Customer, does not match the accompanying Documentation and specifications, as published from time to time by Adserverplugins.com;

"License Fee(s)": The (single) fee(s) for the use of the Product(s), as agreed in the Agreement between Parties;

"Delivery Date": the date on which Adserverplugins.com delivered the Product by sending it to the Customer (via e-mail or otherwise);

"Location": The location specified in the Agreement where Products can be used, within the boundaries as specified in the Agreement;

"Agreement": any individual agreement between a Customer and Adserverplugins.com, of which this License is an integral part;

"Party/Parties": Adserverplugins.com, the Client, or both parties jointly;

"Product": Software, (software) products other than custom products, any updates of a Product and its Documentation, as offered by Adserverplugins.com, for which Adserverplugins.com controls (intellectual) ownership, or Products by Third Parties for which Adserverplugins.com acts as a reseller on behalf of the owner of the (intellectual) property rights;

"Third Party Products": Software owned by third parties or made available by third parties to Adserverplugins.com and/or the Customer, provided by Adserverplugins.com to the Customer under an Agreement, subjects to the terms & conditions set by that Third Party;

"Update": New edition(s) of the Product, which may include new functions, or functional enhancements or improvements;

"Update Agreement": an Agreement under which the Customer, after payment of an annual fee to Adserverplugins.com, will receive product update, as and when Adserverplugins.com decides to publish such Updates.

2. Ranking of documents

In case of conflict between a provision in this License and a provision in an Agreement, the provision in the Agreement will prevail over the provision in this License.

3. Billing and Payment

3.1 All invoices from Adserverplugins.com must be paid within fourteen (14) days after the invoice date. All payments must be made without any deduction or settlement.

3.2 If the Customer does not pay in invoice within the agreed payment term, the Customer is in default, without any further notice by Adserverplugins.com. In such a case the Customer will have to pay to Adserverplugins.com the statutory (commercial) interest. The interest is calculated from the date the payment should have been received at the latest up to the date of receipt of the amount due.

3.3 If Adserverplugins.com feels compelled, because of late payment by the Customer, to hand of the claim for collection to a third party, the Customer owes to Adserverplugins.com an amount equal to 15% of the amount to be collected with a minimum of € 500 because of the extra costs associated with debt collection.

3.4 The Customer gives up the right to suspend or halt payment of amounts due, if the Customer does not invoke this right in writing, specifying the failure of Adserverplugins.com.

3.5 If an agreement does not contain a provision for price changes, Adserverplugins.com is entitled to raise prices in proportion to the increase in the general price level that Adserverplugins.com faced, under the condition that Adserverplugins.com informs the Customer of this at least four (4) weeks before the date the price change becomes effective.

4. Hiring third parties
Adserverplugins.com is entitled to employ third party support in order to meet its obligations under individual agreements or parts thereof, or this License.

5. Secrecy
5.1 Each Party warrants that all information from the other party of which it knows or should know that the information is confidential in nature shall remain secret, unless a legal duty to disclose that information exists. The Party receiving confidential information will only use the information for the purpose for which it has been provided. In any event, information shall be considered confidential if a party labeled it as such.

6. Intellectual Property
6.1 All intellectual and industrial property rights pertaining to products, software, websites, databases, equipment or other materials such as analysis, design, documentation, reports, offers, as well as preparatory material, made available or developed on the basis of an Agreement, shall be held solely by Adserverplugins.com, its licensors or its suppliers. The Customer shall only acquire such usage rights as an Agreement, the License and the law grant expressly. Any other or more extensive right of the Client to reproduce the Products, software, websites, databases or other materials shall be excluded. Any rights that the Customer is entitled to are non-exclusive and non-transferable to third parties.
6.2 Adserverplugins.com or its suppliers are entitled to take technical measures to protect the Products. The Customer is not permitted to remove or circumvent these measures.

7. Delivery
7.1 Delivery of Products takes place after Adserverplugins.com received payment of the license fee or the fee for an update subscription. Unless otherwise agreed upon, delivery of Products is handled by sending them via e-mail by Adserverplugins.com to the Customer (see also Article 10.1 and 10.2 of this License).
7.2 The Customer must ensure that the equipment, system and operational environment have been installed and are fully operational in accordance with the documentation, specifications and instructions provided by Adserverplugins.com.
7.3 Services for installation, configuration and implementation are not covered by the Agreement, unless explicit arrangements between the Parties have been made and recorded in the Agreement.
7.4 The risk in respect to the Product passes to the Customer on the actual Delivery date.

8. Delays
8.1 All Delivery dates, whether or not recorded in an Agreement, by Adserverplugins.com, are to be construed as a commitment. If the actual Delivery date is later than the planned Delivery Date, Adserverplugins.com will send the Customer a written notice of the delay. If Adserverplugins.com is responsible for the delay, the Customer must first notify Adserverplugins.com of default, giving Adserverplugins.com reasonable time to deliver. If Adserverplugins.com then does not deliver the Product(s) within a period of ninety (90) days from the planned Delivery date, Adserverplugins.com shall be deemed to be in default and the customer is entitled to dissolve the specific agreement under which the products was to be delivered. In that case Adserverplugins.com shall refund any payments made by the Customer based upon which such products would be delivered to the Customer. Except for the above described option, the Customer has no further rights of redress. If the delay is in the delivery of third party products, Customer is not entitled to dissolve the Agreement.

9. License
9.1 A Product is delivered in object code only. The Customer is only entitled to the object code of the Products under the conditions as stipulated in the Agreement and the License. The Customer is only entitled to use the Products on the agreed Location.

9.2 The right to use the Products shall not extend to the use of the source code thereof. Unless parties agree otherwise, the source code of the Product and the associated technical documentation will never be delivered to the Customer, even if the Customer is willing to pay compensation to Adserverplugins.com.

9.3 The Customer is not entitled to reproduce and/or publish and/or copy the Products, in whole or in part, in order to make them available to third parties (either through the provision of a (sub-) license, by loan, rental, sale or otherwise), unless otherwise agreed between Parties.

9.4 The Customer is not entitled to decompile the object code of the Product, reverse engineer the software or disassemble or in any other way modify or change the product, other than explicitly agreed with Adserverplugins.com, and will not permit others to do so unless the Customer under mandatory law may decompile the Product where necessary to obtain the necessary information in order to achieve interoperability between the Product and a program produced independently of the Product, and this information could not be obtained from Adserverplugins.com or others, while giving Adserverplugins.com thirty (30) days to provide the necessary information.

9.5 When the Customer makes unauthorized use or unauthorized copies of the Product, Adserverplugins.com is entitled to dissolve the relevant Agreement with immediate effect and the Customer will be liable for any damages suffered as a result by Adserverplugins.com.

9.6 The Customer is only entitled to install and use the Products for their own data processing. The Customer is not entitled to use the Product for purposes of outsourcing services provided to other companies, unless otherwise expressly agreed in the Agreement.

9.7 The Client is authorized to make copies of the documentation supplied with a Product for internal use only, provided that the Client marks each copy with the proprietary notices of Adserverplugins.com.

9.8 Under the Agreement, the rights to use the Product will only be provided to the Customer for the period specified therein. The intellectual property of the Products will always rest with Adserverplugins.com. The Agreement shall not be construed as the transfer of the copyrights or other intellectual property rights for the Product.

9.9 With any termination of the right to use the Product, the Customer shall, stop immediately using the product and delete all copies of the product he installed or otherwise made and, at the request of Adserverplugins.com, issue a written statement to Adserverplugins.com stating that all copies of the Product have been deleted and the use of the Product has been discontinued.

10. License Fees

10.1 The Customer must pay Adserverplugins.com a license fee for the usage rights for the Product as expressed in the Agreement. Upon receipt of this payment, Adserverplugins.com will deliver one (1) copy of the Product, plus all product updates during a period as defined in an Agreement, or else for one (1) year after the date of signing of the Agreement by both Parties.

10.2 The right to use the product is given on condition that the license fee is paid in full, unless otherwise agreed by Parties.

10.3 If the license fee is not paid in time, Adserverplugins.com is entitled to terminate the Agreement.

10.4 The Customer must pay license fees in accordance with the provisions of article 3 of this License. Acceptance by the Customer of the Product is not a condition for payment of licensing fees.

11. Update Agreement

11.1 If the Customer, after the period as specified in article 10.1, should wish to continue receiving subsequent updates, he must sign an Update Agreement with Adserverplugins.com. Delivery of Updates by Adserverplugins.com to the Customer occurs only after payment of the fee(s) stipulated in the Update Agreement has been received in full by Adserverplugins.com.

11.2 The Update Agreement will been entered for the term agreed between the Parties, failing which a term of one (1) year shall be understood, and shall commence on the date of signing of the Update Agreement by both Adserverplugins.com and the Customer. The Update Agreement will be automatically renewed for the duration of the initial period, under the same conditions, unless the Customer or Adserverplugins.com terminate the Update Agreement by sending a written notice at least one (1) months before the end of the term. In such a case Adserverplugins.com is not obliged to refund any paid or currently payable (license) fees.

12. Documentation
12.1 Adserverplugins.com will provide the Documentation related to the Product only on the Delivery Date, unless other arrangements have been made between the parties.

13. Warranty
13.1 All products are provided by Adserverplugins.com to the Customer AS-IS and the Customer must accept the Product in the condition it is in at the time of delivery to the Customer by Adserverplugins.com.

13.2 Adserverplugins.com will provide the Product and Documentation in accordance with the specifications laid down in writing between the parties. The Customer is responsible for installing, configuring and implementing the Product.

13.3 Adserverplugins.com does not warrant that the Products provided to the Customer are suitable for the actual and/or the intended use by Customer. Adserverplugins.com does not warrants that the Products will work without interruption, errors or defects or that all defects will always be corrected.

13.4 Adserverplugins.com endeavors to provide a workaround for Defects in Products or to remedy Defects, without charge, for the duration of three (3) months from the actual Delivery Date. The above requirement does not imply that Adserverplugins.com guarantees that the Product is free from Defects. This obligation only applies if the customer has paid all license fees due and the latest version of the Product has been installed and the Defects has reported in writing and if the Default can be reproduced by both the Customer and Adserverplugins.com. When the Customer has chosen not to install and/or use any Updates provided, the Customer is not entitled to the warranty as mentioned above.

13.5 Adserverplugins.com may, but is not obligated to, remedy Defects by providing a general Update (an improved version for all users of the Products), with the aim of fixing known and/or documented Defects in the product.

13.6 In the event a Defect in a Product can not be remedied by a work-around and that Defect constitutes a significant discrepancy from the specifications in the Documentation, and as a result the operations of the Customer are significantly affected, the Customer is entitled to terminate the Agreement. Adserverplugins.com will refund all license fees already received, provided that the Customer acts on this within three (3) months after the start date of the Agreement.

13.7 Work performed by Adserverplugins.com that is not covered by this warranty will be charged based on cost and materials. Travel and accommodation costs will always be paid for by the Customer.

13.8 The Customer agrees that the warranty expressed in this article, replaces all other conditions and warranties or non-mandatory legislation related to the quality of the product and its suitability for any purpose, and is otherwise null and void. The Customer agrees that the remedies provided in this article for any case where Adserverplugins.com does not meet its warranty obligations or in case of shortfalls and delays caused by the product to the exclusion of all others, are the only redress to which they are entitled.

13.9 If the Customer changes the product, for which changes the Customer must always obtain prior consent from Adserverplugins.com, and these changes are not implemented by or under the responsibility of Adserverplugins.com, the warranty described in this article does not apply.

14. Backups
14.1 The Customer is responsible for making backup copies of the Product and any data that is collected, created and/or stored using the Product.

15. Safeguard
15.1 Adserverplugins.com will indemnify Customer against claims brought by third parties under the allegation that a Product infringes intellectual property rights or other rights of a third party, and will, where appropriate, act on behalf of the Customer without requesting compensation. If a third party contacts the Customer about a potential infringement by Adserverplugins.com on the (intellectual) property rights of third parties, the Customer shall forthwith notify Adserverplugins.com. If a Product pursuant to an Agreement is made the subject of a claim arising from alleged infringement of the rights of a third party, or could be made the subject of such a claim according to Adserverplugins.com, Adserverplugins.com may at its own discretion and on its own behalf:

i)   Acquire the right to continue using the Product on behalf of the Customer, or

ii)   Alter the Product, so that it no longer infringes on the rights of Third Party;

iii)   Replace the Product by software that is functionally equivalent or better.

If none of these would provide, in the opinion of Adserverplugins.com, a reasonable solution, Adserverplugins.com may terminate all licenses and sublicenses for such Product, in which case all license fees related to such products that have been paid will be refunded, minus a reasonable amount for the use which the Customer has made of Products in the prior period.

15.2 Notwithstanding the right that the Customer has to terminate an agreement as described in article 13, or to claim damages as described in article 17, the right of recourse of the Customer is limited to what is stipulated in this article, and if the Product, according to claims, would violate any intellectual property right, Adserverplugins.com has no other obligations than the obligations expressed in this article. Adserverplugins.com can not be held liable for:

i)   infringement if it is not caused by intent or gross negligence of Adserverplugins.com but rather is the result of adjustments in or to the product made by a third party or by the Customer *or*

ii)   use of the Product, related to or in conjunction with equipment not made available by Adserverplugins.com or otherwise use that deviates from the permitted use under the Agreement or from the instructions provide by Adserverplugins.com regarding the use of the Product.

16. Third Party Products

16.1 If and to the extent that Adserverplugins.com makes third party software available to the Customer, this will be, provided that Adserverplugins.com informs the customer in writing, under the conditions of that Third Party software in disregard of the provisions in this License. The Customer shall accept the aforementioned third party's conditions. Those terms and conditions are available for Customer's inspection at Adserverplugins.com and Adserverplugins.com will provide a free copy of these conditions to the Customer at his request. If and insofar as the aforementioned third party's conditions are for whatever reason deemed not to apply or be declared inapplicable in the relationship between the Customer and Adserverplugins.com, the provisions of this License will remain in full effect.

17. Limitation of Liability

17.1 Notwithstanding the provisions of Dutch mandatory law, Adserverplugins.com accepts no liability for any indirect, special, incidental, or consequential damages that - allegedly - were caused by a product that is supplied pursuant to or in connection with the Agreement, including damages resulting from lost profits, loss of goodwill, abandonment, failure or malfunction of computer, loss or modification of data and also including costs reasonably incurred for the prevention or restriction of such damage, or to determine the cause of such damage or to remedy the damage, and all other commercial damages or losses, even if Adserverplugins.com was made aware (of the possibility) that any damage can or will occur. In no event shall the total liability of Adserverplugins.com under an agreement or termination of the agreement, exceed the value of the Agreement through execution of which the harmful event has occurred.

17.2 The parties are obliged to establish claims within a period of twelve (12) months after the damage has occurred or could be detected; after the expiry of this period Parties lose the right to establish a claim for compensation.

17.3 If Adserverplugins.com attributably fails to fulfill any of its obligations under an Agreement, the Customer can claim Adserverplugins.com is in default, unless compliance with this requirement is permanently impossible, in which case Adserverplugins.com will be in default immediately. The notice shall be in writing whereby Adserverplugins.com will be given reasonable time to meet its obligations. If the Customer fails to meet a payment date, Adserverplugin.com does not have to notify the Customer that they are in default; the Customer is legally in default if payment has not been made within the specified period as described in the relevant Agreement or otherwise within fourteen (14) days after the invoice date.

18. Dissolution and Termination

18.1 If either Party does not meet any of its obligations under the Agreement, include this License, the other Party will send them a written notice of default and can terminate the agreement out of court if the defaulting Party still fails to meet their obligations within a reasonable time as agreed after consultation between Parties. The default in the payment of a substantial, already invoiced

amount or payment of a number of smaller, already invoiced amounts that together constitute a substantial amount will be considered a breach of an obligation in defined this article.

12.2 Either Party may terminate an agreement in writing to the other Party if the other party enters a condition of reaching an agreement with his creditors, seizes operations, is involved in a proceeding for receivership or bankruptcy, either voluntarily or involuntarily, or if his company is liquidated.

19. Effects of Termination
19.1 All provisions regarding payment, confidentiality, non-acquisition of staff, limitation of liability, intellectual property, protection in case of infringement of intellectual property rights, surrender, transfer, (re) void and invalidity, shall survive the termination of one or several agreement (s) . Upon termination of an agreement under which a license for use of a product was provided, the Customer shall, by the date of termination, stop all use, as may be further defined in the Agreement.

20. Renunciation
20.1 Waiver of rights arising under any provision of this License or the Agreement will not be considered a waiver of rights resulting from other provisions in the License or the Agreement, nor shall waiver of rights because of failure with regard to any provision of this License or an Agreement be construed as a permanent waiver of rights because of failure on same License or Agreement.

21. Transfer
21.1 The Customer is not entitled to transfer the respective rights or obligations, arising directly or indirectly out of Agreements without prior approval by Adserverplugins.com.

21.2 Adserverplugins.com is entitled to transfer the Agreements to a third party (natural or legal person) without the consent of the Customer, including the purchaser of all or a substantial part of all assets of Adserverplugins.com.

Adserverplugins.com is also entitled to transfer the right to payment under an agreement to a Third Party. In case of transfer, the rights and obligations arising under this Agreement shall bind and benefit the successor or transferee.

22. Changes
22.1 Unless otherwise specified, the Agreement may not be amended, or modified, and rights and obligations may not be waived, if this is not done by means of a written document signed by an authorized representative of both parties.

23. Entire Agreement
23.1 The Agreement, its annexes, and their associated License constitutes the entire agreement between the Parties and supersedes all prior understandings and agreements thereto in respect of the Products, whether written or oral or otherwise have been established or ever discussed between the parties.

24. Relationship between Client and Adserverplugins.com
24.1 In no event shall Adserverplugins.com be deemed an employee, agent or partner of the Customer or considered as entered into a joint venture with the Customer. Nothing in this Agreement shall be construed or interpreted by Adserverplugins.com and/or the customer as resulting in a relationship between employer and employee, or that such an exclusive arrangement between them could have been established.

25. Announcements
25.1 All notices under an agreement will be sent in writing to the other party. If a notice is sent by e-mail, it shall be deemed to have arrived when the transmitter receives an (automatic) confirmation receipt about the e-mail message. If sending takes place via courier, the notice will be deemed received upon signature by the recipient of a written receipt. If the notice is sent by regular mail, this shall be deemed to have been received seven (7) days after the date on the postmark.

26. Force Majeure
26.1 The obligation to comply with the Agreement by either Party will be extended with a reasonable period if performance by such Party is prevented by force majeure. The parties agree that the following conditions are regarded as force majeure: strike, staff illness, late or delayed delivery by third parties, and/or solvency and/or liquidity problems or insolvency of third parties.
26.2 In the event of force majeure, either Party must inform the other Party immediately in writing that force majeure exists and provide the other Party with all the relevant background information.

27. Invalid provisions
27.1 If one or more of the provisions in the License or Agreement is void or voidable, or that its performance can not be enforced, the remaining provisions will remain in full force.

28. Law and disputes
28.1 All legal relationships and agreements between the Customer and Adserverplugins.com will be governed by Dutch law. Applicability of the Vienna Sales Convention 1980 is excluded.
28.2 All disputes that occur as a result of an Agreement and/or the License, or the formation thereof, will, unless the law expressly dictates otherwise, be subject to the judgment of the competent judge in Groningen in The Netherlands.

Important note:
This English translation of the original Dutch document "Algemene Leverings- en Licentievoorwaarden Adserverplugins.com" is for information purposes only and is provided as a service to readers. This English translation was made with the greatest possible care and attention. In the event of a discrepancy or difference of interpretation between the original Dutch text and this English translation, the provisions of the Dutch version will prevail. Please contact Adserverplugins.com to obtain the original version in Dutch