NOTICE: Our Terms Of Use Have Changed

Effective date: November 4, 2016.

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Sizmek Platform Terms of Use

PLEASE READ THE TERMS AND CONDITIONS OF USE (“TERMS OF USE”) CAREFULLY BEFORE USING THE Sizmek PLATFORM OR THE PLATFORM WEBSITE INCLUDING ANY SERVICES, FEATURES, CONTENT, APPLICATIONS SOFTWARE PROGRAMMING AND INTERFACES PROVIDED THROUGH THE PLATFORM (COLLECTIVELY THE "PLATFORM"). BY ACCEPTING A PLATFORM USER NAME AND PASSWORD, BY CREATING AN ACCOUNT AND/OR BY USING THE PLATFORM OR UNDERLYING SERVICES (THE “SERVICES”), YOU ARE ACCEPTING AND AGREEING TO THESE TERMS OF USE PROVIDED BY Sizmek TECHNOLOGIES INC. AND/OR ANY OF ITS SUBSIDIARIES AND AFFILIATES. IF YOU ARE NOT WILLING TO BE BOUND BY THESE TERMS, YOU SHOULD NOT ACCEPT THE USER NAME AND SHOULD NOT MAKE ANY USE OF THE PLATFORM.

1. Registration.
   In order to use the Platform you are required to be a registered user. In order to become a registered user (the “Registered User”) you represent, warrant and covenant that you provided Sizmek with accurate, truthful, and complete registration information (including, but not limited to your name, the name of the agency, advertiser or publisher you represent (your “Company”), domain name of your Company and your e-mail address. Sizmek may require you to sign additional agreements or forms in order to become a Registered User. Furthermore, Sizmek has no obligation to accept applications to become a Registered User. Upon acceptance of your application you will be assigned with a user name and password that will allow you to access the Platform (“User Name” and “Password”, respectively) and will become a Registered User. It is your obligation to keep your registration information accurate and up-to-date. Failure to do so shall constitute a breach of these Terms of Use, which may result in immediate termination of your User Name and Account (as defined below). You agree that you will not share your Password and User Name with any third party except as otherwise set forth in these Terms of Use.

2. Registration on Behalf of a Company.
   If you are registering on behalf of your Company, you represent that you are authorized to enter into, and bind the entity to, these Terms of Use and register for the Platform. You are solely responsible for ensuring that these Terms of Use are in compliance with all laws, rules and regulations applicable to you and the right to access the Platform is revoked where these Terms of Use or use of the Platform is prohibited.

   As a Registered User you may use your Sizmek account for the sole purpose of running and managing campaigns and purchasing Platform Services (the “Account”). By using an Account you represent, warrant and covenant that you provide Sizmek with accurate, truthful and complete account information, and that the Account shall only be used for legitimate advertising campaigns. If you add other users to your account, (i) such users shall only be authorized users on behalf of your company, or your respective client, and (ii) you should be solely liable to their activity in the Account, and shall ensure such activity is in compliance with these Terms of Use.

4. Accountability.
   You are solely responsible and liable for activity that occurs by using your User Name and/or
Account and shall be responsible for maintaining the confidentiality of your Password. Please also refer to your obligations in sections 7, 8 and 9 below. You will immediately notify Sizmek in writing of any change in authorization, any unauthorized use of your Account or User Name, or other account related security breach of which you are aware.

5. **Limited Rights.**
   Upon becoming a Registered User, Sizmek grants you, and you accept, a non-exclusive, non-transferable (except as expressly provided herein) and limited right to access and use the Platform for the sole purpose of using the Platform and Services. You may exercise the right granted in this Section through your own Account on a limited basis. Accordingly, except as expressly permitted by these Terms of Use, you may not, directly or indirectly or through any other person or entity, use, rent, lease, sell, transfer (by sublicense, assignment or otherwise), time share, modify, reproduce, copy, make derivative works from, distribute, publish, use to provide service bureau services, or publicly display the Platform. Moreover, you may not reverse engineer, decompile, or otherwise attempt to discover the source code for the Platform. You may use the Services and Platform only for the purposes contemplated hereunder. All rights not specifically granted hereunder are reserved to Sizmek.

6. **Ownership.**
   Except as expressly provided herein, Sizmek shall have the sole and exclusive ownership of all right, title and interest in and to the Platform, any enhancements thereto, any documentary or other materials regarding the use thereof and related thereto, and any data provided to you by Sizmek in whatever form or media. As between Sizmek and you, Sizmek or its licensors shall remain the sole and exclusive owner of all right, title and interest in and to the Platform and related documentation including, without limitation, any patents, patent applications, trademarks (whether registered or not), trade names and copyright in all territories.

7. **Privacy Matters.**
   You shall not use any information obtained from the Platform in order to harass, abuse, or harm another person.
   Sizmek respects users’ privacy and is committed to establishing responsible business and data management practices and standards. Use of the Sizmek services is also governed by our Privacy Policy, which is incorporated into these Terms of Use by this reference. You are expected to review and agree to the Privacy Policy prior to accepting these Terms of Use. The Privacy Policy is available for review at [http://www.sizmek.com/en/privacy-policy/](http://www.sizmek.com/en/privacy-policy/). You must maintain and implement a privacy policy that meets or exceeds the material provisions of Sizmek’s privacy policy.

You may use the Sizmek Platform to collect information, including personally identifiable information that is submitted voluntarily by individuals through their interactions with an advertisement served by Sizmek on your behalf. You must handle and disclose such personally identifiable information in accordance with the provisions of your privacy policy and the Sizmek privacy policy, as well as any applicable law, and use such information solely for the purposes identified within the advertisement to provide the provider of the information with requested goods, services, or information. For the avoidance of doubt, Sizmek shall not use such information or merge it with any Sizmek information.

8. **Third Party Tracking.**
   You should not append any third party tags to the Sizmek tags, nor should you allow any third party tracking or tagging (collectively: “Third Party Tags”) through the Sizmek Platform unless you comply with the following:
   1. a. All vendors requesting to implement Third Party Tags (“Third Party Vendors”) must be in full compliance with our Privacy Policy and, where applicable, with the Self-Regulatory Program for Online Behavioral Advertising. Such compliance includes presenting users with notice and choice to opt-out of such Third Party Tags;
   2. b. You will provide us and any advertiser you represent, where applicable, with notice of any Third Party Tags you wish to implement in the Platform;
3. c. Sizmek reserves the right to validate any Third Party Tag or Third Party Vendor for compliance with law and policy and for authenticity and is under no obligation to allow Third Party Tagging;

4. d. Sizmek may create Third Party Safe Lists, which shall contain Third Party Vendors who are certified to append Third Party Tags in our Platform, and reserves the right to block Third Party Vendors who are not validated for compliance.

5. e. Without derogating from the above, you shall be solely responsible for any Third Party Tag implemented through the Platform by using your User Name or on your behalf, including any damage cost or claim resulting from appending such Third Party Tag.

9. **Additional Responsibilities.**

   By accepting these Terms of Use you undertake, warrant and agree as follows:

   1. a. You are solely responsible for all aspects of any advertisements or additional materials created, delivered, or managed through your Account or User Name (“Advertisements”). You will conduct, and assure your advertiser clients will conduct, all of their marketing, business, and other activities related to the Advertisements and use of the Platform in compliance with all local, state, and federal laws, rules and regulations applicable to its business, including but not limited to those of the Federal Trade Commission and state Unfair and Deceptive Trade Practices Acts and the laws of any other state or federal regulatory agency that has jurisdiction over Company’s business activities.

   2. b. You agree not to use the Platform or Services in connection with, or to promote campaigns or ads containing: (i) content that is an invasion of privacy, degrading, defamatory, libelous, unlawful, profane, obscene, pornographic, hate material, or discriminatory; (ii) content that promotes any illegal activity including without limitation the promotion of gambling where prohibited, illegal substances, software piracy, or hacking; (iii) content that infringes on the personal rights, trademark, service mark, trade dress, trade name, logo, publicity right, copyright, patent rights, or any other intellectual property right of any third party; (iv) content, links or codes that promote or reference software piracy and/or activities generally understood as Internet abuse including but not limited to the sending of unsolicited bulk e-mail and the distribution or use of spyware, malware, worms, Trojan horses, time bombs, cancelbots, corrupted files, or similar software; or (v) content that you know to be false or misleading.

   3. c. You agree to indemnify, defend, and hold harmless Sizmek, its affiliates, and their respective officers, directors, and employees from and against any and all losses, costs, damages or liabilities, including legal fees, costs, and expenses, arising out of or related to your breach of the obligations set forth in Sections 7, 8 and this Section 9, and any other representation, warranty or material obligation of Company as provided in these Terms of Use.

10. **DISCLAIMER.**

    THE PLATFORM, OTHER CONTENT PROVIDED THROUGH THE PLATFORM, AND ALL TECHNOLOGY, SOFTWARE, MATERIALS, DATA, OR IMAGES PROVIDED OR USED BY OR ON BEHALF OF Sizmek OR ITS LICENSORS IN CONNECTION WITH THE PLATFORM (COLLECTIVELY THE “PLATFORM OFFERINGS”) ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, Sizmek MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE PLATFORM OFFERINGS. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW (IN WHICH CASE THE PARTICULAR REQUIRED WARRANTY SHALL BE LIMITED TO THIRTY (30) DAYS OR THE MINIMUM REQUIRED PERIOD UNDER LAW, WHICHEVER IS LESS), Sizmek DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE PLATFORM OFFERINGS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING, PERFORMANCE, OR TRADE USAGE. Sizmek WILL NOT BE HELD RESPONSIBLE FOR (A) ANY ERRORS, INACCURACIES, OR SERVICE INTERRUPTIONS, INCLUDING POWER OUTAGES OR
SYSTEM FAILURES; OR (B) ANY UNAUTHORIZED ACCESS TO, USE OF, OR ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE, OR LOSS OF, COMPANY’S ADVERTISEMENT OR ANY DATA, IMAGES, TEXT, OR OTHER INFORMATION OR CONTENT. Sizmek MAY DISCONTINUE ANY ASPECT OF THE PLATFORM OR ANY PLATFORM OFFERING, OR MAY CHANGE THE NATURE, FEATURES, FUNCTIONS, SCOPE, OR OPERATION OF THE PLATFORM OR ANY PLATFORM OFFERING, AT ANY TIME. Sizmek ALSO DOES NOT WARRANT IN ANY WAY THAT THE PLATFORM OR THE PLATFORM OFFERINGS WILL BE PROVIDED IN AN UNINTERRUPTED MANNER OR THAT THE RELATED CONTENT WILL BE ERROR-FREE OR FREE OF HARMFUL COMPONENTS. IN ADDITION, Sizmek DOES NOT WARRANT THAT THE PLATFORM WILL MEET YOUR REQUIREMENTS AND EXPECTATIONS OR THAT YOU WILL ACHIEVE ANY PARTICULAR RESULT FROM USING THE PLATFORM.

11. **Limitation of Liability.**
TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL Sizmek BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF GOODWILL OR ANY OTHER INTANGIBLE BENEFIT, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT Sizmek HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL Sizmek’S LIABILITY EXCEED THE TOTAL AMOUNT PAID TO Sizmek BY YOU FOR SERVICES DURING THE PRECEDING SIX (6) MONTHS. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

12. **Governing Law, Venue.**
These Terms of Use shall be governed by and interpreted in accordance with the laws of the State of Delaware, without regard to any conflicts of law provisions therein. Any dispute arising out of or in connection with this Agreement is hereby submitted to the sole and exclusive jurisdiction of the competent court of the State of Delaware.

13. **Severability.**
Should any term of these Terms of Use be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.

14. **Additional Terms and Conditions.**
Some Services offered through the Platform may be subject to additional terms and conditions specified by Sizmek from time to time.