

Customized Rich Media Ad
End-User License Agreement

This end-user license agreement ("EULA") is made by and between snap2eyes LLC (hereafter, "snap2eyes") and you, the end-user (hereafter, "Customer," "you," or "your" as the context may require). This EULA contains the terms and conditions governing the customized rich media ad delivered with this EULA (such as, the "Customized Ad"). By keeping or making any use of the Customized Ad, you express your approval of the terms and conditions hereof and are bound thereby. Should you disagree with any of the conditions and terms hereof, promptly terminate your use of the Customized Ad and destroy any copies thereof.

You and snap2eyes are sometimes referred to herein individually as, "Party" and collectively as, the "Parties."

WHEREAS, snap2eyes wishes to provide you with a license to use the Customized Ad;

WHEREAS, you wish to license the Customized Ad from snap2eyes;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS. For purposes of this EULA, the following capitalized terms shall have the following meanings:

"And" shall also mean "or" and "or" shall also mean "and" as the context permits or requires to provide the broadest meaning or inclusion of the subject.

"Claims" shall mean, individually and collectively, any claim, dispute, legal action, or controversy of any kind arising out of or relating to the Customized Ad, the SWF, any related services, or this EULA, including without limitation any rights or obligations provided for hereunder. The "Claims" shall include any claim, dispute, legal action, or controversy regardless of (i) which theory of law may underlie such claim, dispute, legal action, or controversy, (ii) whether brought in law or in equity, in contract or tort, pursuant to any statute or regulation, or otherwise (iii), whether pre-existing, present or future, and (iv) whether brought through any allegation, complaint, demand, action, proceeding, claim, dispute, governmental or non-governmental investigation, legal conflict, negotiation, suit, or otherwise.

"Claimed Damages" shall mean any claimed damages of any type (i) for any award, judgment, settlement, penalty, fine, or other legally required or negotiated payment, (ii) for any costs and expenses, including without limitation court costs, expert witness costs, reasonable attorney's fees, travel costs, and other dispute resolution costs and expenses, and (iii) for any other damages, including without limitation any direct, indirect, consequential, special, incidental, statutory, exemplary, treble, or punitive damages, or damages based on lost business profits, lost goodwill, incurred liabilities, lost data, computer failure or malfunction, tangible or intangible losses, injury to person or property, business interruption, loss of business or personal information, and every other type of damage or loss, whether foreseeable or not and whether any party has been notified about the possibility of such damage or not.

"Customer Content" shall mean any image, data, hyper-link, photo, artwork, graphics, music, video, sound recording, animation, trade dress, trademark, symbol, logo, text, or any other materials or content, including without limitation any copyrightable or copyrighted content, that you supplied to snap2eyes in order to create the Customized Ad.

“Distribute” shall mean to disseminate, post, send, submit, display, communicate, transmit, broadcast, run, play, publish, distribute, or otherwise use on, through, in, or over any Distribution Channels. “Distribution” shall mean any instance of Distributing.

“Distribution Channels” shall mean, individually and collectively, any web publisher; ad network; web site; instant messaging client program such as Yahoo Messenger, MSN Messenger, AOL Instant Messenger, or ICQ; or any virtual space, including without limitation any chat room or video game; or any other Internet space, place, or distribution channel where an online ad of any kind may be Distributed.

“Intellectual Property Rights” shall mean any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, trade dress law (individually and collectively, “IP Law”), and any and all other proprietary rights (“Other IP Law”), and any and all applications, renewals, extensions and restorations that relate to any IP Law or Other IP Law, now or hereafter in force and effect worldwide.

“Internet User” shall mean any individual capable of viewing any online ad that is Distributed.

“Proprietary Marks” shall mean, individually and collectively, the names, logos, trade names, trademarks, taglines, slogans, symbols, service marks, copyright and trademark notices, and other proprietary marks and notices of their respective owners.

“Related Entities” shall mean the officers, directors, employees, contractors, consultants, attorneys, accountants, advisors, agents, affiliates, and assigns of both snap2eyes and any snap2eyes Provider.

“RMAF” shall mean the snap2eyes proprietary technology marketed under the trademarks Rich Media Ad Factory™ and RMAF™, and shall include without limitation any related services, and any technical or other processes involved in the creation of the Customized Ad.

“Site” shall mean any web site owned and operated by snap2eyes, including without limitation www.snap2eyes.com, www.tristitial.com, www.gameadvertisement.com, and www.textpandable.com, and any sub-domains of any of the foregoing.

“snap2eyes Provider” shall mean any third party that provides to snap2eyes any product or service, or any Intellectual Property Rights, including without limitation, any content, software, technology, or trademark license, and includes without limitation any partner, distributor, service provider and/or supplier of snap2eyes.

“SWF” shall mean the file in Macromedia® Flash® File Format (SWF) that underlies any Customized Ad.

“Template” shall mean any of the pre-designed, customizable templates used by the RMAF to create a customized rich media ad, including the Customized Ad. When creating the Customized Ad, the Customer selects exactly one such template.

“Template Settings” shall mean the various options and preferences that you may specify for your chosen Template when you create the Customized Ad using such Template, which options and preferences contribute to the appearance, design, performance, functionality, or interactivity of the Customized Ad. The Template Settings may include without limitation, the ad serving settings, ad unit size, color, animation or presentation sequence, speed, and style.

2. LICENSE. Subject to the revocable license granted herein, snap2eyes owns in perpetuity all right, title, and interest in and to the Customized Ad. Any rights not expressly granted under this EULA are reserved. snap2eyes hereby grants you a limited, non-transferable, non-sublicensable, worldwide, royalty-free, revocable license (the “License”) consisting of any and all

rights necessary to store, reproduce, and Distribute the Customized Ad through one or more Distribution Channels, for any lawful commercial or non-commercial purpose, for an indefinite period that will terminate when, and only when (i) your use of the Customized Ad violates the terms and conditions hereof, or (i) you or snap2eyes terminates this EULA in accordance with the terms hereof.

(a) The License shall expressly exclude any right to store, reproduce, Distribute, or otherwise use the Customized Ad (i) with respect to any Distribution Channels that Distribute any content similar in nature to Forbidden Content (as such term is defined herein) (ii) in any email attachment, or (iii) in any client-based application, now in existence or hereafter created, except in any instant messaging client programs such as Yahoo Messenger, MSN Messenger, AOL Instant Messenger, and ICQ.

(b) In no case shall the License include any rights to anything other than the Customized Ad. The term of this License shall endure until, but not after, such time as the License or your use of the Customized Ad is terminated in accordance with this EULA. The License shall at all times remain subject to: (i) the terms and conditions of this EULA, (ii) the laws and regulations of any applicable jurisdiction and (iii) the rules of any Distribution Channels where the Customized Ad is Distributed.

3. **NON-EXCLUSIVITY OF TEMPLATES.** Templates and Template Settings are offered strictly on a non-exclusive basis, such that the Template and Template Settings selected by you when you created the Customized Ad may be selected by any other Customer whenever such Customer creates any customized ad using the RMAF. By creating the Customized Ad, (i) you acquire no rights to any Template; any Template Settings; or any content, embedded file resource, or code in or underlying any Template; nor to any content or technology found on or underlying the Site or the RMAF, except as set forth herein and (ii) you expressly and unconditionally consent to the usage of the same Template and Template Settings by other Customers.

4. **GRANT OF RIGHTS BY YOU TO SNAP2EYES.** You hereby grant to snap2eyes any and all rights (such grant of rights, the "Customer Grant") in and to the Customer Content, but only to the extent that such rights may be necessary for snap2eyes to create the Customized Ad. Such Customer Grant includes without limitation the non-exclusive, world-wide, royalty-free right to modify, create derivative works based upon, adapt and otherwise use the Customer Content and any logos and trademarks provided by you, but only as needed to create the Customized Ad and only in accordance with the terms and conditions of this EULA.

You also grant to snap2eyes the perpetual, non-exclusive, world-wide, royalty-free right to use the Customized Ad for archival purposes, technical improvements and research, and to facilitate the provision of technical support ("Support").

5. **YOUR PUBLICITY RIGHTS.** When you create a Customized Ad, you may, in accordance with the Trademark Usage Guidelines, identify snap2eyes as the source of the service or technology that enabled you to create the Customized Ad. You may enter a Customized Ad into any advertising contest if, and only if, you give snap2eyes full authorship credit for the Template on which such Customized Ad is based when providing ad authorship information to the contest organizers, and in any press release about your entry or success in such contest. Any other statement about snap2eyes or any snap2eyes Provider is authorized only with the prior written consent of snap2eyes or such snap2eyes Provider, as the case may be. You may not state or suggest that snap2eyes in any way endorses or is in any way affiliated with you or your product, service, company, ad campaign, political position, brand, or message, or anything else in the Customized Ad.

6. **YOUR RESPONSIBILITY FOR THE CREATION OF THE CUSTOMIZED AD.** snap2eyes is in no way responsible for any of the decisions you made in determining (a) the content

comprising the Customer Content, (b) on which Template the Customized Ad would be based, (c) the various Template Settings that you specified when creating the Customized Ad, and (d) the accuracy of the ad serving settings. You alone accept full responsibility for any decisions you made when creating the Customized Ad, including without limitation the chosen Customer Content, ad unit size, ad serving settings, and ad unit outline color. snap2eyes has fully performed its obligations under this EULA and has no further duties or obligations to you in connection with the Customized Ad once snap2eyes has successfully delivered the Customized Ad to you.

7. **INTELLECTUAL PROPERTY.** You acknowledge and agree that all title, Intellectual Property Rights, and any other rights in and to the Customized Ad, any computer programs or code, any content other than the Customer Content, any materials, any processes, and any other technology developed by or for snap2eyes in connection with the creation of the Customized Ad, including without limitation the RMAF and any Templates, are and shall remain owned entirely and exclusively by snap2eyes. You agree not to take any action to jeopardize, limit or interfere with snap2eyes's ownership of, and rights with respect to, the Customized Ad or the RMAF. Some computer programs, materials, processes and other technology or content used by snap2eyes in connection with the creation of the Customized Ad may be owned by snap2eyes Providers. Without limitation, you will comply with any applicable laws, as well as any Proprietary Marks contained in this EULA and the Customized Ad. You acknowledge and agree that any unauthorized copying, Distribution or use of the Customized Ad is a violation of this EULA and applicable intellectual property laws, including without limitation copyright laws and trademark laws, and is strictly prohibited. You are entitled only to the limited use of the Customized Ad, as specified by this EULA.

8. **CONTENT RESTRICTIONS.** The following restrictions apply both to the Customized Ad and any campaign page where the Customized Ad is displayed. It is expressly forbidden for the Customized Ad to contain any material or content (hereafter, individually and collectively, "Forbidden Content") that:

- a) You do not have a right to transmit under any law or any contractual or fiduciary relationship (such as inside information, proprietary information, or confidential information learned or disclosed as part of an employment relationship or under a non-disclosure agreement);
- b) Advocates illegal activity or discusses any intent to commit an illegal act;
- c) Seeks to exploit or harm minors by exposing them to inappropriate content, asking for personally identifiable details or otherwise;
- d) Is vulgar, obscene, pornographic, indecent, racist, abusive, harassing, threatening, tortious, or offensive to any particular third party or in general;
- e) Libels or otherwise defames any third party;
- f) Infringes any Intellectual Property Rights of any entity or person, including without limitation any third party copyrights or trademarks;
- g) Violates the rights, other than any Intellectual Property Rights, of any entity or person, including without limitation the right of publicity or privacy;
- h) Violates the laws of any jurisdiction where the Customized Ad will be Distributed;
- i) Contains unfair, false, or deceptive advertising or otherwise violates FTC regulations (for more about FTC regulations, visit: www.ftc.gov);
- j) Misrepresents your identity, your affiliation, or the source of the goods or services appearing in the Customized Ad;
- k) Amounts to a 'pyramid' or similar scheme;
- l) Advocates or engages in any fraudulent or other tortious activity; or
- m) Contains hyper-links to web sites that contain content that falls within any of the descriptions set forth above.

9. **SNAP2EYES IS NOT RESPONSIBLE FOR ANY FORBIDDEN CONTENT.** You acknowledge and agree that neither snap2eyes nor any snap2eyes Provider will assume any

liability for any action or inaction by snap2eyes or any snap2eyes Provider with respect to any of the Customer Content.

10. CUSTOMER REPRESENTATIONS AND WARRANTIES. You hereby warrant and represent that:

- a) You are not contractually prohibited from entering into this Agreement;
- b) The Customer Content is fully owned by you or you have obtained all necessary authority from each third party owner of any Intellectual Property Rights in respect of any elements comprising the Customer Content and such authority includes at least (i) the right to include such Customer Content in the Customized Ad, and (ii) the right to Distribute such Customer Content in the Customized Ad through whatever Distribution Channels you choose (such distribution, the "Customer Content Distribution").
- c) You have fully paid any performing rights societies, music rights associations or other third parties that may require payment for any inclusion of third party materials in the Customer Content or for any Customer Content Distribution;
- d) You have obtained any and all necessary rights and permissions so that the Customer Content and Customer Content Distribution do not and will not infringe or invade the right of publicity or privacy held by any third party;
- e) You have not and will not grant any rights that compete with or are otherwise inconsistent with the Customer Grant;
- f) Exploitation of the Customer Grant by snap2eyes in accordance with the terms of this EULA shall not infringe the Intellectual Property Rights or other rights of any third party;
- g) The Customer Content does not include any Forbidden Content;
- h) You are fully authorized to use the credit card or other payment method that you used to pay for the Customized Ad; and
- i) If you are a creative agency or other agent that purports to act on behalf of another party, you are fully authorized to create the Customized Ad on behalf of such party.

11. INDEMNIFICATION. You shall indemnify, defend at your expense, and hold harmless, snap2eyes, the snap2eyes Providers, and all Related Entities, for any Claims that may be brought by you or any third party for any Claimed Damages in connection with, arising out of, or resulting from your breach of this EULA. This indemnification by you shall survive any termination of this EULA and there shall be no limitation of liability for such indemnification.

12. snap2eyes will provide notice to you of any Claims requiring indemnification hereunder. In the event of any Claims brought by a third party, snap2eyes reserves the right (i) to participate, at your expense, in the investigation, settlement and defense of any such Claims and (ii) at its own expense and in its sole discretion, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which case you shall fully cooperate with any requests from the attorney exclusively representing snap2eyes. If, and only if, you fully cooperate as required, you shall have no further obligation to provide indemnification to snap2eyes with regard to the expenses associated with the attorney exclusively representing snap2eyes, but your obligation to provide indemnification for all other Claimed Damages shall continue.

13. AUTOMATIC TERMINATION. Without prejudice to any other rights snap2eyes may have hereunder, the License shall terminate immediately, without notice from snap2eyes, and all rights you may have hereunder to Distribute or otherwise use the Customized Ad shall be immediately and automatically revoked, in the event that you: (i) fail to comply with any of the terms and conditions of this EULA, (ii) attempt to assign the Customized Ad to any third party.

14. TERMINATION BY YOU. You may terminate the License at any time, with or without notice to snap2eyes, by stopping all Distribution and other use of, and deleting any copies of, the Customized Ad.

15. RELATIONSHIP OF THE PARTIES. You and snap2eyes are independent contractors. Neither Party is an agent or partner of the other Party. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This EULA shall not be interpreted or construed to create any association, agency, joint venture or partnership, or to impose any liability attributable to any of the foregoing types of relationships.

16. SNAP2EYES MAKES NO WARRANTIES.

SNAP2EYES PROVIDES THE CUSTOMIZED AD "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE," AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH YOU. WITH RESPECT TO THE CUSTOMIZED AD AND TO ANY RELATED DOCUMENTATION, AS THE CASE MAY BE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SNAP2EYES PROVIDERS, SNAP2EYES, AND ANY RELATED ENTITIES, EXPRESSLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION (1) WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY, RELIABILITY, PERFORMANCE, TITLE, QUIET ENJOYMENT, SATISFACTORY QUALITY, NO ENCUMBRANCES, NO LIENS AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS, (2) WARRANTIES OR CONDITIONS ARISING THROUGH COURSE OF DEALING OR USAGE OF TRADE OR INDUSTRY STANDARD, AND (3) WARRANTIES OR CONDITIONS THAT USE OF THE CUSTOMIZED AD WILL BE ERROR-FREE, ACCURATE, ACCESSIBLE, SECURE, TIMELY, COMPLETE, OR IN ANY WAY BENEFICIAL TO THE CUSTOMER OR THAT ANY DEFECTS IN THE CUSTOMIZED AD WILL BE CORRECTED. SNAP2EYES PROVIDES THE CUSTOMIZED AD ON A COMMERCIALY REASONABLE BASIS AND DOES NOT GUARANTEE THAT CUSTOMERS WILL BE ABLE TO USE THE CUSTOMIZED AD AT TIMES, LOCATIONS, OR NETWORKS OF THEIR CHOOSING. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS CONTRACT.

17. LIABILITY LIMITATION; YOUR EXCLUSIVE REMEDY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY WAIVE ANY RIGHT TO BRING AGAINST SNAP2EYES, ANY SNAP2EYES PROVIDER, OR ANY RELATED ENTITIES, ANY CLAIM FOR ANY CLAIMED DAMAGES, ARISING OUT OF, BASED ON, OR RESULTING FROM THIS EULA OR YOUR USE OR MISUSE OF THE CUSTOMIZED AD.

IF YOU ARE DISSATISFIED WITH THE CUSTOMIZED AD, OR IF YOU DO NOT AGREE WITH ANY PART OF THIS EULA, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE CUSTOMIZED AD.

18. YOU ASSUME THE ENTIRE RISK OF USING THE CUSTOMIZED AD.

YOU UNDERSTAND AND AGREE THAT (I) YOU ELECT TO RECEIVE AND USE THE CUSTOMIZED AD ENTIRELY AT YOUR OWN DISCRETION AND RISK, AND (II) THAT YOU ASSUME THE ENTIRE COST OF AND RESPONSIBILITY FOR ANY CLAIMED DAMAGES WITH RESPECT TO YOUR PERSON, COMPUTER SYSTEM, DATA OR OTHER PERSON OR PROPERTY, WHICH CLAIMED DAMAGES MAY RESULT FROM YOUR USE OR MISUSE OF THE CUSTOMIZED AD OR ANY THIRD PARTY PRODUCTS OR SERVICES IN CONNECTION THEREWITH. SNAP2EYES, ANY SNAP2EYES PROVIDERS, AND ALL RELATED ENTITIES, INDIVIDUALLY AND COLLECTIVELY, IN NO CASE WARRANT THE RESULTS OBTAINED BY YOUR USE OF THE CUSTOMIZED AD.

19. APPLICABILITY OF LIMITATIONS.

ALL LIMITATIONS OF LIABILITY PROVIDED FOR HEREIN SHALL APPLY WHETHER THE CLAIMED DAMAGES ARISE FROM YOUR USE OR MISUSE OF, YOUR RELIANCE ON, OR YOUR INABILITY TO USE THE CUSTOMIZED AD.

20. MAXIMUM LIABILITY OF SNAP2EYES.

WITH RESPECT TO ANY CLAIM OR CLAIMED DAMAGES, YOU EXPRESSLY AGREE THAT THE SOLE AND ENTIRE MAXIMUM LIABILITY OF SNAP2EYES, IN ANY EVENT, FOR ANY REASON, CLAIM, CLAIMED DAMAGES, ACT, OR OMISSION, AND UNDER ANY THEORY OF LAW, SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE CUSTOMIZED AD. YOU ACKNOWLEDGE THAT SNAP2EYES RELIES ON THIS AND THE OTHER LIMITATIONS OF LIABILITY PROVIDED FOR HEREIN AND THAT YOUR AGREEMENT TO THESE LIMITATIONS IS AN ESSENTIAL BASIS FOR THE BARGAIN REPRESENTED BY THIS CONTRACT. THE LIMITATION OF CLAIMED DAMAGES UNDER THIS SECTION IS INDEPENDENT OF YOUR EXCLUSIVE REMEDY AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS APPLY WITHOUT REGARD TO WHETHER THE CLAIM OR CLAIMED DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), (4) PRODUCT LIABILITY OR STRICT LIABILITY, (5) BREACH OF PROPRIETARY RIGHTS, OR (6) ANY OTHER CAUSE OF ACTION, TO THE EXTENT SUCH LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.

21. ADDITIONAL LIABILITY LIMITATION REGARDING THE CUSTOMIZED AD.

WITHOUT LIMITING THE GENERAL NATURE OF SECTIONS 16 THROUGH 20 HEREOF, SNAP2EYES, ANY SNAP2EYES PROVIDERS, AND ANY RELATED ENTITIES, INDIVIDUALLY AND COLLECTIVELY, SHALL IN NO CASE BE RESPONSIBLE OR LIABLE FOR (1) ANY FORBIDDEN CONTENT, (2) ANY THIRD PARTY CONDUCT, TRANSMISSIONS OR DATA, (3) ANY THIRD PARTY VIRUSES OR OTHER DISABLING FEATURES THAT AFFECT YOUR ACCESS TO OR USE OF THE THE CUSTOMIZED AD, OR THAT AFFECT THE CONTENT OF THE CUSTOMIZED AD, (4) ANY INCOMPATIBILITY BETWEEN THE CUSTOMIZED AD AND ANY DISTRIBUTION CHANNELS OR OTHER WEB SITES, PRODUCTS, SERVICES, SOFTWARE AND HARDWARE, (5) ANY CLAIMED DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF ANY PRODUCTS OR SERVICES AVAILABLE FROM THIRD PARTIES (A) LINKED TO THE SITE OR (B) OFFERING TO DISTRIBUTE THE CUSTOMIZED AD.

22. LIMITATIONS HEREIN ARE SUBJECT TO APPLICABLE LAWS.

ALL OF THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS EULA APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND ARE NOT INTENDED TO DEPRIVE YOU OF ANY MANDATORY PROTECTIONS PROVIDED TO YOU UNDER APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW RESTRICTIONS ON IMPLIED WARRANTIES. ANY LIMITATIONS OF WARRANTY CONTAINED HEREIN THAT ARE INVALIDATED BY LOCAL LAW SHALL BE SEVERED ONLY TO THE EXTENT NECESSARY TO COMPLY WITH APPLICABLE LAW AND SHALL NOT AFFECT ANY OTHER LIMITATIONS OF WARRANTY WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.

23. ALL CLAIMS MUST BE FILED WITHIN ONE YEAR.

ANY CLAIM RELATED TO THE CUSTOMIZED AD OR THIS EULA MUST BE BROUGHT WITHIN ONE YEAR. THE ONE-YEAR PERIOD BEGINS ON THE DATE WHEN THE CLAIM FIRST COULD BE FILED. IF IT IS NOT FILED WITHIN SUCH TIME, THEN THAT CLAIM IS PERMANENTLY BARRED. THIS APPLIES TO YOU AND YOUR SUCCESSORS AND ASSIGNS, AND TO SNAP2EYES AND ANY SUCCESSORS AND ASSIGNS OF SNAP2EYES.

24. **DISPUTE RESOLUTION.** Any Claims will be subject to the laws of the State of New York, without reference to conflict of laws principles. With respect to any Claims, you hereby irrevocably and unconditionally (i) consent to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States of America, located in New York County of New York state, for any litigation arising out of or relating to the Customized Ad, and agree not to commence any litigation relating thereto except in such courts, (ii) waive any objection to the laying of venue of any such litigation in such courts and (iii) agree not to plead or claim in any such courts that such litigation brought therein has been brought in an inconvenient forum.

Any Claims shall be resolved individually, without resort to any form of class action. You agree to waive any right you may have to commence or participate in any class action against snap2eyes related to any Claims or Claimed Damages and, where applicable, you also agree to opt out of any class proceedings against snap2eyes. If you have any Claims you must give written notice to snap2eyes in accordance with the notice provisions herein. If snap2eyes has any Claims it will give notice to you in accordance with the notice provisions herein.

The Parties hereby waive any right to trial by jury with respect to any Claims and any Claimed Damages.

Any and all judgments and awards with respect to any Claims or Claimed Damages shall include attorneys' fees or other expenses related to any legal action taken hereunder if, and only if, indemnification is required pursuant to the section entitled "INDEMNIFICATION."

25. **INTERPRETING THE CONTRACT.** You hereby agree that each provision of this EULA shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in this EULA shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provisions shall be construed by the court or appropriate judicial body by limiting and reducing it or them, so as to (a) be enforceable to the maximum extent compatible with the applicable law then in effect and (b) match the intent of such unenforceable part or parts as closely as possible within such applicable law. The section headings used in this EULA are for convenience only and have no legal or contractual effect. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any subsequent breach of such term or of any breach of any other term hereof.

26. **ASSIGNMENT.** snap2eyes may assign this EULA, in whole or in part, at any time with or without notice to you. You may not assign this EULA, or any part of it, to any other party. Any attempt by you to do so is void ab initio.

27. **YOUR NOTICES TO SNAP2EYES.** You may send notices to snap2eyes by email or regular postal mail. Your notices to snap2eyes by email should be sent to legal(at)snap2eyes(dot)com, and by regular postal mail to the address indicated on the Site at the time of such notice. As of June 2006, the address for legal notices by regular mail is:

Attn: General Counsel
snap2eyes LLC
c/o Gil Lahav
200 Christopher Columbus Dr. #B9
Jersey City, NJ 07302

28. **SNAP2EYES NOTICES TO YOU; CONSENT REGARDING ELECTRONIC NOTICES.** snap2eyes, as an online business, transacts with its users electronically. WHEN YOU CREATE AND REQUEST A CUSTOMIZED AD, YOU CONSENT TO RECEIVE ELECTRONICALLY FROM SNAP2EYES THE CUSTOMIZED AD AND ANY RELATED NOTICES OR DOCUMENTATION (INDIVIDUALLY AND COLLECTIVELY, "NOTICES") AS MAY BE

REQUIRED. You agree to receive and snap2eyes agrees to provide you with electronic Notices at the e-mail address that you provided to snap2eyes when building the Customized Ad, and the delivery of any Notice to such email shall be effective when sent by snap2eyes. If your email address changes during the term of the License, you must provide snap2eyes with the correct, updated email address that you check on a daily basis ("Current Email"). As long as you continue to make any use of any the Customized Ad, you must ensure that snap2eyes has your Current Email. If you do not consent to promptly update snap2eyes with your Current Email so that snap2eyes may send you any Notices electronically, your License automatically terminates and you must discontinue your use of the Customized Ad.

29. TRADEMARK NOTICES. snap2eyes, RMAF, Rich Media Ad Factory, Tristitial, Gamevertisement, and the names of any other snap2eyes templates, products, or services are all trademarks of snap2eyes LLC or snap2eyes Providers. Yahoo Messenger, MSN Messenger, AOL Instant Messenger, ICQ, Macromedia and Macromedia Flash are registered trademarks of their respective owners.

30. COMPLETE AGREEMENT. This EULA constitutes the entire understanding between the Parties regarding the SWF, the Customized Ad, and any related services, and supersedes all prior or contemporaneous understandings, agreements, communications, negotiations, or statements. No amendment to this EULA shall be binding unless first approved in a writing signed by the General Counsel of snap2eyes. In no case does any trade practice or industry standard, or the course of conduct between you and snap2eyes, modify any provision of this EULA.

31. SURVIVAL. Notwithstanding any termination of this EULA for any reason, the sections of the EULA with the following headings shall survive such termination: NON-EXCLUSIVITY OF TEMPLATES; GRANT OF RIGHTS BY YOU TO SNAP2EYES; YOUR PUBLICITY RIGHTS; YOUR RESPONSIBILITY FOR THE CREATION OF THE CUSTOMIZED AD; INTELLECTUAL PROPERTY; PROPRIETARY MARKS; CONTENT RESTRICTIONS; SNAP2EYES IS NOT RESPONSIBLE FOR ANY FORBIDDEN CONTENT; CUSTOMER REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; RELATIONSHIP OF THE PARTIES; SNAP2EYES MAKES NO WARRANTIES; LIABILITY LIMITATION; YOUR EXCLUSIVE REMEDY; YOU ASSUME THE ENTIRE RISK OF USING THE CUSTOMIZED AD; APPLICABILITY OF LIMITATIONS; MAXIMUM LIABILITY OF SNAP2EYES; ADDITIONAL LIABILITY LIMITATION REGARDING THE CUSTOMIZED AD; LIMITATIONS HEREIN ARE SUBJECT TO APPLICABLE LAWS; ALL CLAIMS MUST BE FILED WITHIN ONE YEAR; DISPUTE RESOLUTION; INTERPRETING THE CONTRACT; ASSIGNMENT; YOUR NOTICES TO SNAP2EYES; SNAP2EYES NOTICES TO YOU; CONSENT REGARDING ELECTRONIC NOTICES; TRADEMARK NOTICES; COMPLETE AGREEMENT; AND SURVIVAL.