Standard Terms & Conditions for Advertisers

http://www.iab.com/wp-content/uploads/2015/06/IAB_4As-tsandcs-FINAL.pdf (the "Terms")

In the event of any inconsistency between the terms of an IO and the Terms, the terms of the IO will govern and prevail. For the purposes of this IO, “Media Company” shall mean PowerInbox Inc. and “Advertiser” or “Agency” shall mean the Client as per the IO attached to this Annex. Unless otherwise defined herein, or in the IO, all capitalized terms shall have the same meaning as defined in the Terms. The parties agree to the following additional terms and conditions:

1. Section III (b) and (c) of the Terms will not apply. Agency is solely responsible for all payment obligations owed pursuant to the attached IO, regardless of whether Agency has received payment from any Advertiser or other parties. Unless otherwise agreed upon in writing between the Parties, Agency shall provide credit card details to Media Company to be charged by Media Company based on the credit limit it applies to the Agency, based on its sole discretion. To the extent Media Company approves in writing a Net30 credit line for Agency, Agency shall remit payment for invoices within thirty (30) days of the invoice date. Undisputed overdue payments will accrue interest at the lesser rate of eighteen (18%) percent per annum or the maximum rate permitted by law, calculated from the date upon which the invoice is due, compounded monthly.

2. Except as otherwise provided in the IO, the timing, positioning, display and distribution of any Ad(s) or Advertising Materials with regards to this IO shall be at the sole discretion of Media Company. Nothing herein shall obligate Media Company to accept or promote any Ad(s) or Advertising Materials.

3. Both parties shall treat the terms and conditions of this IO as confidential information, not to be shared with any third parties unless required by law, or to a competent court, government or regulatory body having the right to same, except that Confidential information may be shared with the Recipient's legal and financial advisors who need to know such information. Upon termination of this IO, or otherwise on demand by the disclosing party, the receiving party agrees that it will promptly return the Confidential Information to the disclosing party, including all copies thereof or, if requested to do so by the disclosing party, will certify the destruction of the Confidential Information. Each party's obligation to protect any Confidential Information shall survive the termination of this IO for a period of three (3) years.

4. Each party represents and warrants that: (a) it has the authority to enter into and to be bound by the IO and the Terms; (b) it is an existing legal entity and its full legal name is correctly set out above its signature to this IO, and that it will immediately notify the other party in writing of any change to its legal and/or business names; (c) the individual completing this IO has the authority to bind the respective party to this IO and the Terms; (d) all consumer data collected pursuant to the Terms and in this IO shall only be used for legal purposes; (e) it does and will comply at all times with all applicable federal, state, provincial, local laws, ordinances, regulations, codes, and if applicable FTC rules and its privacy policy; (f) it has a reasonable basis for all claims made within the Ads and/or Advertising Materials, possesses appropriate documentation to substantiate such claims and shall fulfill all commitments made in the campaign; and (g) the Ads and/or any Advertising Materials do not and will not knowingly (1) violate or encourage the violation of any third party copyright, trade-mark, trade secret or other intellectual property right, or any applicable law, rules or regulations; (2) target minors or those under the age of eighteen (18) and/or offers products or services that are illegal for minors to buy, possess or participate in; (3) contain any machine readable code including without limitation any virus, Trojan horse, worm or other self-executing malicious program(s); (4) contain any content which is defamatory, obscene, pornographic, false, misleading, deceptive, fraudulent or otherwise inappropriate; or (5) otherwise violate any applicable law, rule, or regulation or any third party privacy or intellectual property rights.

5. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET OUT IN THIS ORDER, THE PARTIES DISCLAIM ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO ANY MATTER HEREUNDER, INCLUDING WITHOUT LIMITATION, PLACEMENT OF ADVERTISING AND ANY OTHER SERVICES PROVIDED, WHETHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION ANY WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY PROMISE OF ANY LEVEL OF
SUCCESS, IN PART OR WHOLE). MEDIA COMPANY SERVICES ARE PROVIDED ON AN “AS-IS, AS-AVAILABLE” BASIS.

6. Subject to the limitations expressed in this IO, each party covenants and agrees to indemnify and save the other and any officer, director, employee, parent company, subsidiary or affiliated company harmless from and against any and all claims, actions, proceedings, suits, losses, costs, expenses, or damages (collectively, a “Claim”) suffered or incurred by or arising from any breach by the indemnifying party of any of its representations, warranties, covenants and obligations under the Terms or in this IO. Each party’s obligation to indemnify the other is subject to: (i) the indemnified party giving prompt written notice to the indemnifying party in the event that it becomes aware of a Claim or the possibility of a Claim; (ii) the indemnified party giving full cooperation with the indemnifying party, at the indemnifying party’s expense, in responding to, defending or settling any such Claim; (iii) the indemnifying party keeping the indemnified party fully informed of the actions and positions taken by the claimant and taken or proposed to be taken by the indemnifying party, including the decision to defend or not defend the claim or complaint; (iv) the indemnified party giving the indemnifying party sole control of the defense of the Claim and that all costs and expenses incurred by the indemnifying party in investigating, resisting, litigating and settling the Claim, including the payment of any award of damages and/or costs to any third party, will be paid by indemnifying party provided that no settlement shall be entered into by the indemnifying party that imposes any legal or financial obligation on the indemnified party without the indemnified party’s prior written consent; and (v) the indemnified party not admitting any liability or entering into any settlement regarding the Claim on behalf of the indemnifying party. Notwithstanding the foregoing, the parties further agree that the indemnified party may elect to participate as a party, at its own cost and expense, in any litigation involving the Claim to the extent that the court may permit.

7. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS OR THE BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO CIRCUMSTANCE SHALL EITHER PARTY LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, ACTUAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS (INCLUDING WITHOUT LIMITATION CLAIMS FOR LOSS OF GOODWILL, USE OF OR RELIANCE ON THE SERVICES PROVIDED HEREUNDER, INTERRUPTION OF BUSINESS OR IMPAIRMENT OF OTHER ASSETS) ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. THIS LIMITATION OF LIABILITY DOES NOT APPLY WITH RESPECT TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EITHER PARTY.

8. It is expressly agreed that the parties intend by the IO and the Terms to establish a business relationship between Agency/Advertiser and Media Company, but that it is not the intention of either party to undertake a joint venture or to make a party in any sense an agent, employee, or partner of the other party. The parties expressly agree that they are independent contractors, and that this IO or any other agreement signed by Media Company and the Agency/Advertiser does not in any way, despite the fact that the word “partner” may be used in such agreements, create a partnership as contemplated at common law or in accordance with any applicable statute, nor have the parties granted to each other any right or authority to assume or create any obligation of responsibility, express or implied, on behalf of or in the name of the other, or to bind the other in any manner whatsoever.

9. Any changes to this IO must be agreed to in writing between the parties in order to be binding. The failure of a party to enforce at any time any of the provisions of the Terms or this IO, or the failure to require at any time performance by one or both of the parties of any of the provisions of the Terms or IO, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every such provision thereafter.

10. If any provision of the Terms or this IO is held by a court of competent jurisdiction to be excessive in scope or otherwise invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, so that it is enforceable to the maximum extent possible, and the validity and enforceability of the remaining provisions herein will not in any way be affected or impaired thereby. If such a provision is not capable of being adjusted, it will be deemed to be severed herefrom and the validity and enforceability of the remaining provisions of the Terms or IO will not in any way be affected of impaired thereby.
11. Miscellaneous: This IO and the Terms, and all claims related to it, or the performance by both parties under it, shall be interpreted, construed, and will be governed exclusively by the laws of the State of New York, without regard to its choice of law principles. The parties shall endeavor to settle any dispute arising out of or in connection with the Terms or this IO, or in respect of any legal relationship associated with or derived from the Terms or this IO, by direct negotiation between their managing directors or similar senior executives. In the event that such direct negotiation does not result in a resolution of the dispute, the parties irrevocably submit to the exclusive jurisdiction of the state and federal courts of New York County, NY with respect to any and all legal action and proceedings. This IO may be executed in any number of counterparts, each of which when delivered shall be deemed to be an original and all of which together shall constitute one and the same document. A digital, electronic or facsimile copy shall be deemed to be an original copy of this IO. This IO (together with the Terms incorporated herein) is the complete and exclusive statement of the mutual understanding of the parties and supersedes all previous agreements or communications relating to the subject matter hereof.