

These API Terms of Use (“API Terms”) are between Mid-west Wholesale Hardware Company d.b.a. Banner Solutions and its affiliates (collectively, "Banner", “us”, “we”, or “our”) and the entity that Banner is providing services to (“Customer” or “you”) through the applicable Banner application programming interface (the “API”). These API Terms govern your access to and use of the API. Please review these API Terms carefully. By accessing and using the API, you agree to be legally bound by all of the terms, conditions, and notices contained or referenced herein. If you do not agree with these API Terms or our Privacy Policy (the “Privacy Policy”) (located at <https://www.bannersolutions.com/content/policies?tabValue=privacy-policy> and incorporated herein), you must not use the API. We may amend these API Terms from time to time due to changes in applicable law or as otherwise determined by us in our commercially reasonable discretion. Any amendment will only become effective upon notification to you (by email or by posting on our online API site), and if you do not agree to any such amendment, you should stop using the API and the applicable Banner services.

## Capacity to Contract

The API is available only to entities acting in a professional capacity (non-consumers). If you are acting on behalf of an entity, you represent and warrant that such entity has authorized you to act and enter into legally binding contracts on its behalf. Without limiting the foregoing, (i) minors in any jurisdiction, as described below, (ii) individuals and/or entities barred from using or receiving the API under applicable law, and (iii) individuals and/or entities who have been suspended from the API may not use the API.

The API is not intended for anyone under the age of 16, and Banner does not knowingly collect personal information from children under 16. In the event that Banner learns that it has collected personal information from a child under the age of 16, without parental consent, Banner will delete that information and otherwise comply with the requirements of any applicable law, including the Children’s Online Privacy Protection Act. If you believe that Banner might have any information from or about a child under the age of 16, please contact us at [ITSupport@bannersolutions.com](mailto:ITSupport@bannersolutions.com) or via telephone at [\(888\) 362-0750](tel:8883620750)

## Access to the API; Registration

You may only use the API if Banner has provided you with an API security credential key (the “API Key”). Registration is required to use the API. Banner reserves the right, in its sole discretion, to deny any request to become a registered user of the API (a "Registered User") and to suspend or terminate a Registered User’s authorization to use the API at any time and for any reason without the provision of any notice. By registering with the API, you agree to comply with these API Terms and the Privacy Policy. You represent and warrant that (i) all information provided to Banner is accurate and complete, and (ii) you will update such information so that it is kept current, accurate, and complete at all times. You acknowledge and accept that Banner may contact you using the contact information you provide during registration and that you may incur wireless charges, depending upon the method of communication, which charges are your sole responsibility.

## API Key

You (i) must keep confidential and secure your API Key and any login information for your API account, (ii) must restrict disclosure of your API Key and any login information for your API account to those employees, agents and permitted service providers who require access to your API Key for purposes of Customer’s use of the Banner services provided through the API and who are bound by confidentiality obligations to Customer no less restrictive than those contained herein, (iii) may not share your API Key with any third party, and (iv) will not access the API by any means other than with the API Key you receive from Banner. You agree to notify Banner immediately of any unauthorized use of your API Key or any other breach of security regarding the API. Your API Key is the exclusive property of Banner, and your access to and use of your API Key is in Banner’s sole discretion.

## Third-Party Services

You are not permitted to use a service provider in connection with your Banner API account unless your service provider signs an agreement with you to (i) protect any data received from Banner through the services (that is at least as protective as Banner’s applicable terms), (ii) limit their use of data received from Banner through the services solely for the purpose of providing their services to you (and not for their own purpose or any other purpose), and (iii) keep such data secure and confidential. You must ensure that any service provider complies with these API Terms and any other applicable Banner terms and policies, and you acknowledge and agree that any act or omission by a service provider amounting to a breach of these API Terms will be deemed to be a breach by you. If requested, you will provide a list of your service providers to Banner. Access to certain APIs may require a separate written agreement between Customer and Banner. Customer may not bring any legal action or claim against Banner in connection with any agreement, arrangement, negligence, action, or omission of Customer’s service provider. Banner is not responsible for any action or inaction of Customer’s service provider.

## API License

Subject to these API Terms, Banner grants to you a worldwide, non-exclusive, royalty-free, non transferable, non-sublicensable, revocable, limited license to use, and to make calls to, the API solely in connection with receiving the applicable Banner services and related data, and solely in the manner described in these API Terms and in any technical documentation provided by Banner (the “Documentation”). Banner may set and enforce limits on your use of the API (limiting the number of requests that you may make), in Banner’s sole discretion.

## Customer License

You grant to Banner a worldwide, non-exclusive, royalty-free, non-transferable, non-sublicensable license to use, for any purpose (including, without limitation, commercialization), any information, feedback, submissions, ideas, concepts, know-how or techniques that you submit to the API or otherwise share with Banner, subject only to the Privacy Policy.

## Compliance with Law; Prohibited Uses

You agree to comply with all applicable laws and regulations regarding your use of the API and such further limitations as may be set forth in any written or on-screen notice from Banner. As a condition of your use of the API, you warrant that you will not use the API for any purpose that is unlawful or prohibited by these API Terms. Except as expressly permitted by Banner, you agree not to (and 29702529.3 agree to ensure that your employees, agents, and service providers will not) engage in any of the following prohibited activities:

- i. Copying, distributing, or disclosing any part of the API in any medium, including, without limitation, by any automated or non-automated "scraping";
- ii. Using any automated system, including, without limitation, "robots," "spiders," "avatars," "intelligent agents," "offline readers," etc., to navigate or search the API;
- iii. Attempting to interfere with or compromise the system integrity or security or decipher any transmissions to or from the servers running the API;
- iv. Taking any action that imposes, or may impose (in Banner’s determination), an unreasonable or disproportionately large load on the API’s infrastructure;
- v. Uploading or otherwise transmitting through the API invalid data or any viruses, worms, time bombs, Trojan horses, or other harmful, destructive, deceptive, or malicious code, files, scripts, agents, or programs;
- vi. Collecting or harvesting any personally identifiable information, including, but not limited to, account names and email addresses, from the API;
- vii. Using the API for any commercial solicitation purposes;
- viii. Impersonating another person or otherwise misrepresenting your affiliation with a person or entity or identity,

- conducting fraud, or hiding or attempting to hide your identity;
- ix. Allowing any other person to use your API Key for posting or viewing comments or sending or receiving materials;
  - x. Modifying, translating, deciphering, decompiling, disassembling, reverse engineering, reconstructing, copying, or creating derivative works from the API or any of the software comprising or in any way making up a part thereof;
  - xi. Bypassing the measures we may use to prevent or restrict access to the API;
  - xii. Distributing, selling, leasing, lending, transferring, assigning, or sublicensing any rights granted by these API Terms to any third party;
  - xiii. Using or accessing the API or the applicable Banner services to monitor the availability, performance, or functionality of the API, the Banner services, or any portion thereof or for any similar benchmarking purposes;
  - xiv. Removing or destroying any copyright notices, proprietary markings, or confidentiality notices placed upon, contained within, or associated with the API;
  - xv. Engaging in any activity that interferes with, disrupts, harms, damages, or accesses in any unauthorized manner the servers, security, networks, data, applications, or other properties or services of Banner or any third party; or
  - xvi. Accessing or using the API in any way in furtherance of criminal, fraudulent, or other unlawful activity.

Banner reserves the right to disclose any information necessary to satisfy any applicable law, regulation, legal process, or governmental request, or to edit, refuse to post, or to remove any information or materials, in whole or in part.

## **Prohibited Material**

Without limiting the foregoing, you agree not to transmit, distribute, or communicate information or other material to or through the API that: (i) is copyrighted, unless you are the copyright owner; (ii) reveals trade secrets, unless you own them; (iii) infringes on any intellectual property rights of others or on the privacy or publicity rights of others; (iv) is obscene, defamatory, threatening, harassing, abusive, hateful, slanderous, or embarrassing to any other person or entity as determined by Banner in its sole discretion; (v) is sexually-explicit; or (vi) constitutes advertisements or solicitations of business, surveys, contests, chain letters, or pyramid schemes.

## **Confidentiality**

The API, the Documentation, and all non-public information contained in the API, including, without limitation, any Customer-specific pricing or other information contained in the API, shall be deemed “Confidential Information” of Banner for purposes of these API Terms. Customer shall use the same degree of care that it uses to protect its own confidential information of like kind (but in no event using less than a reasonable standard of care) to protect the Confidential Information of Banner and shall not directly or indirectly (including through an affiliate) use any Confidential Information of Banner for any purpose except as reasonably necessary to use the API and the applicable Banner services pursuant to these API Terms. Customer shall not directly or indirectly (including through an affiliate) disclose any Confidential Information of Banner to any third party, except to those officers, directors, managers, employees, independent contractors, agents, and representatives (collectively, “Representatives”) of Customer whose knowledge or other input are necessary for the performance of Customer’s obligations or the exercise of Customer’s rights under these API Terms and who are bound by confidentiality obligations to Customer no less restrictive than those contained herein. Customer will be responsible to Banner for any disclosure or use of Banner’s Confidential Information by any of Customer’s Representatives in violation of the terms and conditions of this Confidentiality section, and any such violative disclosure or use shall be deemed to be a violation by Customer of this Confidentiality section.

Notwithstanding the foregoing, the obligations set forth in this Confidentiality section shall not apply to any information that: (i) is or becomes generally available to the public through no act or omission of Customer; (ii) is obtained by Customer in good faith from a third party that discloses such information to Customer on a non-confidential basis without violating any obligation of confidentiality or secrecy relating to the information disclosed; (iii) is independently developed by Customer without the use of or reference to any Confidential Information of Banner; (iv) is voluntarily disclosed to the public by Banner; or (v) has otherwise entered the public domain through lawful means.

Further notwithstanding the foregoing, in the event that Customer is compelled by court order, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar process under applicable law to disclose any Confidential Information of Banner, Customer shall provide Banner with prompt notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Banner's cost, in Banner's efforts to contest the disclosure. If Banner does not contest the disclosure or its efforts are unsuccessful, then Customer may disclose that portion of the Confidential Information which Customer's legal counsel advises Customer that it is obligated to disclose.

Customer will, at Banner's request, return all originals, copies, reproductions, and summaries of Banner's Confidential Information or, at Banner's option, destroy the same and certify such destruction in writing.

Customer acknowledges and agrees that a violation by Customer of its obligations under this Confidentiality section may cause immediate and irreparable harm to Banner for which monetary damages may be inadequate. Accordingly, in addition to any other remedies available at law or in equity, Banner shall be entitled to seek injunctive relief in the event of any threatened or actual violation of Customer's obligations under this Confidentiality section, without Banner having to prove actual damages and without the posting of bond or other security.

## **User Information and Privacy Policy**

Banner seeks to protect the privacy of your personal information in accordance with the terms of the Privacy Policy. Please see the Privacy Policy for more information about our collection, use, and protection of your personal information. In the event you share another party's information with Banner, you confirm that you have the proper authorization under the relevant data privacy laws to make such disclosure to Banner. Banner has implemented commercially reasonable technical and organizational measures designed to protect your personal information from accidental loss and from unauthorized access, use, alteration, or disclosure. However, Banner cannot guarantee that unauthorized third parties will never be able to circumvent those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk

## **Third-Party Links**

The API may contain links to third-party websites, advertisers, or services that are not owned or controlled by Banner. Where Banner provides such third-party links, Banner makes no representations or endorsements in connection with such sites, and their status as third-party links may not always be disclosed. Banner has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites or services. **BANNER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THESE THIRD-PARTY WEBSITES AND THEIR CONTENT. YOU EXPRESSLY RELIEVE BANNER FROM ANY AND ALL LIABILITY ARISING FROM YOUR USE OF ANY THIRD-PARTY WEBSITE OR SERVICES OR THIRD-PARTY OWNED CONTENT.** If you decide to access those third-party websites, you do so at your own risk and understand that these API Terms and the Privacy Policy do not apply to your use of such sites. Additionally, if applicable, your dealings with or participation in promotions of advertisers found on the API, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such third parties. You agree that Banner shall not be responsible for any loss or damage of any sort relating to your dealings with such third parties. We encourage you to be aware of when you leave the API and to read the terms and conditions and privacy policy of any third-party website or service that you visit.

## **Changes to API Terms**

Banner may update these API Terms from time to time. The effective date of the current version of the API Terms is noted at the top of this page, and any updated version of the API Terms will reflect the updated effective date. Banner encourages you to periodically review this page for the most current version of the API Terms. Your continued use of the API will constitute your acceptance of the updated API Terms. If you do not agree to be bound by the updated API Terms, you are instructed to cease any further use of the API.

## Modifications to API

Banner may, at any time, delete, modify, or supplement the content of the API without prior notice. Banner reserves the right, for any reason, at its sole discretion, to terminate, change, suspend, or discontinue any aspect of the API, including, but not limited to, content, features, or hours of availability. Banner may also impose limits on certain features of the API or restrict your access to all or part of the API without notice or penalty.

Banner reserves the right to require Customer to install or update any and all software to continue using the API and applicable Banner services. You must implement and use the most current version of the API and make any changes to Customer computer systems that are required as a result of such update, at your sole cost and expense. Updates may adversely affect the manner in which your application programming interface ("Customer API") or other systems access or communicate with the API

## Monitoring

Subject to any limitations under applicable law and as provided in the Privacy Policy, you agree that Banner has the right to monitor at any time and for any reason, in its sole discretion, all material and content on the API and all usage of the API (including, without limitation, to verify your compliance with these API Terms). This monitoring may include Banner accessing and using your Customer API to identify security issues that could affect Banner or the related Banner services. You will not interfere with this monitoring. Banner may use any technical means to overcome such interference. Banner may suspend access to the API by you or your Customer API without notice if Banner reasonably believes that you are in violation of these API Terms.

## Copyright and Trademarks

All copyright rights in the text, images, photographs, graphics, videos, user interface, and other content provided on the API, and the selection, coordination, organization, design, compilation, magnetic translation, digital conversion, and arrangement of such content, are owned by Banner or its third-party licensors, to the full extent provided under the United States Copyright Act and all international copyright laws. Under applicable copyright laws, you are prohibited from copying, reproducing, modifying, distributing, displaying, performing, or transmitting any of the contents of the API for any purposes. Nothing stated or implied on the API confers on you any license or right under any copyright of Banner or any third party.

The API and the information contained in reference herein are for informational purposes only. You are hereby authorized to download information from the API for the sole purpose of viewing. Any other use or reproduction, copying, redistribution, or publication by you of any such matters on the API, including any derivative works, is strictly prohibited without the express written consent of Banner. Requests for permission to reproduce any information contained on the API should be addressed to [ITSupport@bannersolutions.com](mailto:ITSupport@bannersolutions.com)

## Disclaimer

Banner does not guarantee continuous, uninterrupted, or secure access to the API, and your access to, and the operation of, the API may be interrupted by numerous factors outside of Banner's control, including, but not limited to, interruptions that may affect the receipt, processing, and acceptance of bids or aspects of an advertisement. In addition, Banner does not represent or endorse the accuracy or reliability of any of the information contained in the API. While the information contained in the API is believed to be accurate, it may include errors, inaccuracies, or omissions. You hereby acknowledge that reliance upon any of the information contained in the API shall be at your sole risk, and Banner shall not be liable for any errors, inaccuracies, or omissions contained in the API. TO THE FULLEST EXTENT PERMITTED BY LAW, THE API AND ANY APPLICABLE SERVICES PROVIDED BY OR THROUGH BANNER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND WHETHER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF

NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

## **Limitation of Liability**

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BANNER BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, COVER, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS, OR SALES, ANY LOSS OF GOODWILL OR REPUTATION, DATA BREACH, LOSS OF DATA, IDENTITY, PRIVACY OR CONFIDENTIALITY, OR THE COSTS OF SUBSTITUTE GOODS OR SERVICES, EVEN IF BANNER OR AN AUTHORIZED REPRESENTATIVE THEREOF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF BANNER TO CUSTOMER FOR ANY CLAIM RELATING TO CUSTOMER'S USE OF THE API SHALL NOT EXCEED THE LESSER OF (I) THE AGGREGATE AMOUNT PAID BY CUSTOMER TO BANNER FOR USE OF THE API DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE (IF ANY), OR (II) ONE HUNDRED DOLLARS (US \$100).

## **Governing Law and Venue**

These API Terms shall be governed by the laws of the State of Illinois without regard to choice of law or conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply. You and Banner expressly agree to submit to the exclusive jurisdiction and venue of the state or federal courts located in Cook County, Illinois, USA in all disputes arising out of or relating to the use of the API

## **Notices**

Any notice to Banner regarding your use of the API must be in writing and must be sent via email to [ITSupport@bannersolutions.com](mailto:ITSupport@bannersolutions.com) If applicable, any notice to you shall be given by email to the email address provided by you during registration, as a Registered User, or as subsequently updated by you, or via posting on the API, any of which you agree shall be sufficient notice to you. Notice shall be deemed to have been given to you twenty-four (24) hours after it has been sent or at the time the information was posted on the API. If you change your email address, you are responsible for updating your account profile.

## **Severability and Integration**

These API Terms, the Privacy Policy, and any other agreement referenced herein constitute the entire agreement between you and Banner and govern your use of this API, superseding any prior or contemporaneous agreements, correspondence, communications, and proposals (whether oral, written, or electronic) between you and Banner. If any provision of these API Terms is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to affect the intent of these API Terms, and the remainder of these API Terms shall continue in full force and effect. The failure by Banner to exercise or enforce any rights or provisions of these API Terms, or to respond to a breach by you or other parties, shall not constitute a waiver of such right or provision with respect to any subsequent breach. All provisions in these API Terms regarding representations and warranties, indemnification, disclaimers, and limitations on liability shall survive any termination of these API Terms. In the event a translation of these API Terms into any other language is required by law, the English version will prevail to the extent that there is any conflict or discrepancy in meaning between the English version and any translation thereof. If these API Terms are provided to you in a language other than English, Banner does so solely for your convenience.

## **Indemnification**

You agree to defend, indemnify, and hold harmless Banner, its affiliates, and its and their respective officers, employees, and agents from and against any and all losses, damages, claims, actions, demands, judgments, amounts paid in settlement, fines, costs, expenses (including reasonable attorneys' fees), and liabilities resulting from or arising out of any claim by a third party relating to or arising out of any information or material you submit to or transmit through the API, your use of the API, your violation of these API Terms, or your violation of any rights of a third party.

## **No Professional Advice**

Any information supplied by any employee or agent of Banner, whether by telephone, e-mail, letter, facsimile, or other form of communication, is intended solely as general guidance on the use of the API and does not constitute legal, tax, accounting, or other professional advice. Individual situations and state laws vary, and users are encouraged to obtain appropriate advice from qualified professionals in the applicable jurisdictions.

## **Miscellaneous**

You agree that no joint venture, partnership, employment, or agency relationship exists between you and Banner as a result of these API Terms or your use of the API. Nothing contained in these API Terms is in derogation of Banner's right to comply with governmental, court, and law enforcement requests or requirements relating to your use of the API or information provided to or gathered by Banner with respect to such use. A printed version of these API Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these API Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.