



WEB ADVERTISING SERVICE AGREEMENT

This Web Advertising Service Agreement (the "Agreement") is a legal agreement between you ("Publisher") and Vibrant Media, Inc. ("Vibrant"). YOU MUST READ AND AGREE TO THE TERMS OF THIS AGREEMENT BEFORE YOU CAN IMPLEMENT AND BEGIN USING THE SERVICE. BY SUBMITTING YOUR APPLICATION TO VIBRANT, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE AGREEING ON BEHALF OF ANOTHER PARTY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO DO SO.

1. Software and Service.

1.1 Service. Vibrant contracts with third parties (each an "Advertiser") to display advertisements (each an "Ad", collectively, "Ads") to the public. Vibrant provides Publisher with services and software products that display advertisements on a Publisher Site (as defined below), and permits tracking of clicks, impressions, advertisement views and page views (collectively, the "Service"). The Service allows the display of Ads to a reader of online editorial content on a Publisher Site directly while viewing the Publisher Site, overlaid on images appearing within the Publisher Sites ("Image Ads") and in response to the reader mousing over highlighted in-text links ("Commercial Text Links") that have the additional function of carrying the reader to the website of an Advertiser when clicked on. Vibrant provides HTML, Javascript or similar codes (each an "Ad Tag") to be placed in the Publisher Site in order to call and display Ads and Commercial Text Links. Vibrant also provides a login ID to a reporting interface that will enable Publisher to view an estimate of amounts due and other information Vibrant may provide ("Vibrant Publisher Dashboard").

1.2 Publisher Site Approval. Vibrant shall have no obligation to implement the Service for any Publisher websites not submitted by Publisher to Vibrant and approved by Vibrant (approved Publisher websites are "Publisher Site(s)"). Publisher will not place an Ad Tag on any website other than a Publisher Site. Vibrant reserves the right to deny or revoke participation of any website at any time in its sole discretion, whether or not previously approved by Vibrant. Publisher will promptly inform Vibrant of any material changes in the themes or content of Publisher Sites.

1.3 Logistics. Vibrant will provide the Service to the Publisher on approved Publisher Sites. Vibrant makes no guarantee that any Ads will appear on any page of the Publisher Site(s), and consequently there is no guarantee that the Agreement or the Service will generate any revenue for Publisher. Vibrant may replace or remove Ads at any time, or modify or improve the Service, including without limitation, the "look and feel" of the Service at its sole discretion. Publisher will place the Ad Tags only within the Publisher Sites in those locations on user-accessible pages containing substantial editorial content that will display the complete Ad in the size and format specified by Vibrant for each Ad Tag. Publisher grants permission to Vibrant to index and cache Publisher Sites and any portion thereof, by manual or automated means, for the purpose of directing Ads to Publisher Sites. Publisher is solely responsible for ensuring the continued operation of Publisher Sites, access to the Service, implementation of the Ad Tags and display of Ads. Publisher is entirely responsible for the security of, and for all actions taken using, its Vibrant Publisher Dashboard login ID and password.

1.4 Restrictions. Publisher will not attempt to interfere with or disrupt the Service (including by modification of the Ad Tags or any Ads, or the resyndication of any Ads) or attempt to gain access to any systems or networks that connect thereto (except as required to access and use the Service). Publisher acknowledges that the Service constitutes and contains trade secrets of Vibrant and its licensors, and, in order to protect such trade secrets and other interests that Vibrant and its licensors may have in the Service, Publisher agrees not to disassemble, decompile or reverse engineer any elements of the Service nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

1.5 Service Suspension. Vibrant has the right to audit the Publisher's implementation, use of and access to the Service. Vibrant may suspend Publisher's access to or use of the Service at any time, in its sole discretion, for any improper, unlawful or otherwise fraudulent use of the Service, or for Publisher's non-compliance with any term of this Agreement or any content guidelines that Vibrant may provide to Publisher.

1.6 Ownership. Vibrant and its licensors retain all right, title and interest in and to the Ad Tags, Service and the Ads, and all elements of each of those, including all patent rights, copyrights, trademarks, trade secrets, know-how and any other proprietary rights recognized in any country or jurisdiction in the world, including registrations, applications, renewals and extensions of such rights (collectively, "Intellectual Property Rights") therein. Publisher retains all right, title and interest in and to the Publisher Site(s), including all Intellectual Property Rights therein.

2. Exclusivity. If Publisher uses the Service to implement Commercial Text Links or Image Ads, Publisher will not enter into any other arrangement or agreement with any third party to obtain services for the Publisher Sites that deliver article-based in-text links substantially similar to Commercial Text Links or advertisements overlaid on images substantially similar to Image Ads, or both.

3. Marketing. Without Vibrant's prior written consent, Publisher shall not release any information regarding any Ads, Advertisers, or Publisher's relationship with Vibrant or its customers, including, without limitation, in press releases or promotional or merchandising materials. Vibrant shall have the right to refer to its work for and relationship with Publisher for marketing and promotional purposes. No stand-alone press releases or general public announcements shall be made without the mutual consent of Vibrant and Publisher.

4. Payment.

4.1 Revenue Share. Vibrant will pay publisher fifty percent (50%) of Net Revenue received by Vibrant each calendar month. "Net Revenue" means the revenue actually received by Vibrant resulting from the use of the Service through Publisher Sites less: (a) any Taxes (as defined below) that Vibrant Media is required to pay or collect in relation to the Service, any payments to third parties related to the Service, and any creative services costs related to the Service; and (b) any amounts that result from a robot, spider, software, or other mechanical, artificial or fraudulent means, or actions by a person who is paid or deceptively motivated to take such action, each as reasonably determined by Vibrant.

4.2 Payment Terms. Not more than fifteen (15) days after the end of each calendar month, Vibrant will e-mail to Publisher or post in the Vibrant Publisher Dashboard a finalized revenue statement for amounts due to Publisher for that calendar month. Vibrant will pay Publisher in accordance with the revenue statement not later than forty-five (45) working days following the delivery of the revenue statement. If payments due to Publisher for any month are less than seventy-five dollars (\$75), Vibrant may, in its discretion, credit amounts due to Publisher's account and pay them in the next month in which cumulative amounts due meet or exceed that threshold. All payments will be made in U.S. Dollars.

4.3 Taxes. All payments due to Publisher are calculated and made exclusive of taxes, duties, levies, tariffs, and other governmental charges including, without limitation, VAT (collectively, "Taxes"). Publisher will be responsible for payment of all Taxes and any related interest and penalties resulting from any payments made hereunder, other than any taxes based on Vibrant's net income.

4.4 Reporting. All amounts payable to Publisher will be calculated based on Vibrant's reporting system. Publisher acknowledges and agrees that amounts due under this Agreement are based solely on Vibrant's final reported numbers and on no other source.

4.5 Withholding. Vibrant reserves the absolute right to withhold payment from Publishers that violate any of the terms and conditions set forth herein. Vibrant will determine, in its sole discretion, whether acts or omissions are deceptive, fraudulent or violate this Agreement.

5. Confidential Information.

5.1 Definition. "Confidential Information" is information disclosed by one party to the other hereunder which the recipient should be aware is confidential or proprietary given the nature of the information and the circumstances of the disclosure. Vibrant Confidential Information includes, without limitation, the Service and all software, documentation, financial information, performance information, pricing information, business plans, methods, processes, inventions, techniques, designs or other technical information relating thereto, as well as any performance tests of the Service. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault of or breach of the Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

5.2 Use and Disclosure Restrictions. Neither party will use the other party's Confidential Information except as necessary for the performance of the Agreement and will not disclose such Confidential Information to any third party. Each party will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but in no event less than the efforts that such party ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant law or regulation or the order or requirement of a court, administrative agency, or other governmental body; and (b) on a confidential basis to its legal or financial advisors or existing, future, or potential private investors in or acquirers of such party.

6. Treatment of Data.

6.1 Data Ownership. Publisher understands that Vibrant collects non-personally identifiable data in connection with the Service, including, but not limited to, non-personally identifiable information provided by users in response to an Ad. To the extent that Vibrant collects any user information and data in connection with the Service on Publisher Site(s), such user information and data shall be the sole and exclusive property of Vibrant and/or its Advertisers, who in their sole discretion, shall have the right to market and re-market information about users or data without further obligation to Publisher.

6.2 **Privacy Obligations.** Both parties recognize the importance of consumer privacy, and therefore warrant that in the performance of the Agreement, they will adhere to all applicable privacy law, regulation and best practice standards including but not limited to: (a) Section 5 of the FTC Act prohibiting unlawful or deceptive trade practices, codified at 15 U.S.C. § 45; and (b) the Network Advertising Initiative's (NAI) Self-Regulatory Principles. Publisher further agrees to post a privacy policy that: (i) discloses the use of, as applicable, cookies, web beacons and similar tracking technologies on Publisher's websites and online advertising campaigns; (ii) offers an easy to use "opt-out" method for the user to opt-out of data collection and targeting; (iii) complies with all applicable laws, regulations and best practice standards; and (iv) contains language materially similar to the following:

We use third-party companies to serve ads and collect non-personally identifiable information (e.g., the pages you visit, and which links you click, which ads you see and click on, and the categories of search terms you enter) when you visit our web site. These companies may use the information outlined above (which does not include your name, address, email address or telephone number) about your visits to this and other web sites in order to provide advertisements about goods and services of interest to you. These companies often use a cookie or third party web beacon to collect this information. If you would like more information about this practice and to know your choices about not having this information used by these companies, click here: [LINK TO either http://intellitxt.com/opt_out/ch_optout.asp, or http://www.networkadvertising.org/managing/opt_out.asp.]

7. **Warranties.**

7.1 **Disclaimer.** Publisher assumes sole responsibility and liability for its use of the Service, including without limitation any results obtained from such use. TO THE MAXIMUM EXTENT PERMITTED BY LAW, VIBRANT DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE OR ANY ADS INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VIBRANT EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICE OR ADS WILL MEET PUBLISHER'S REQUIREMENTS, THAT THE SERVICE OR ADS WILL BE COMPATIBLE WITH PUBLISHER SITES, THAT THE OPERATION OF THE SERVICE WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ANY ERRORS IN THE SERVICE WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM VIBRANT OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

7.2 **Publisher Warranty.** Publisher represents and warrants that: (a) Publisher Site(s) (and any content therein) do not infringe any third party Intellectual Property Rights, publicity or privacy rights of any third party, are not defamatory, vulgar, pornographic or obscene, and are in compliance with any content guidelines provided by Vibrant; (b) its use of the Service will be in compliance with all applicable laws and regulations; (c) it will not fraudulently or purposely manipulate the content of the Publisher Site(s) in such a manner that may result in the serving of less contextually relevant advertising; and (d) it will not: (i) generate fraudulent, automated or otherwise invalid actions, clicks or impressions; (ii) use robots or other automated query tools or computer generated search requests or any other search engine results optimization techniques or software unless authorized by Vibrant; or (iii) authorize a third party to do any of the foregoing.

8. **Indemnity.** Publisher agrees to indemnify, defend and hold Vibrant and its officers, directors, employees and agents harmless from and against any third party claim, liabilities, damages, losses and expenses, including, without limitation, reasonable attorneys' fees, arising out of or in connection with Publisher's use of the Service, the Publisher Site(s) and any content therein, or Publisher's violation of any terms or conditions of this Agreement, applicable laws or regulations, or any rights of another person or entity, including without limitation any Intellectual Property Rights or rights of privacy.

9. **Limitation of Liability.** EXCEPT FOR LIABILITY ARISING FROM PUBLISHER'S USE OF THE SERVICE, AD TAGS, OR ADS (INCLUDING ANY INTELLECTUAL PROPERTY RIGHTS IN EACH OF THOSE) IN VIOLATION OF THIS AGREEMENT OR PUBLISHER'S INDEMNITY OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE THEORY ON WHICH SUCH CLAIM FOR RECOVERY IS BASED. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE AGREEMENT, IN NO EVENT WILL VIBRANT'S AGGREGATE LIABILITY TO PUBLISHER AND ANY THIRD PARTY IN CONNECTION WITH THE AGREEMENT OR PUBLISHER'S ACCESS TO AND USE OF THE SERVICE EXCEED THE TOTAL AMOUNT PAID BY VIBRANT TO PUBLISHER IN THE SIX (6) MONTH PERIOD PRECEDING THE CLAIM OR ACTION.

10. **Term, Termination and Renewal.**

10.1 **Term.** Unless earlier terminated as set forth herein, this Agreement is: (a) effective from the date that Vibrant first accepts Publisher's application and approves the first Publisher Site ("Start Date") through the first anniversary of the Start Date, and (b) after such time, this Agreement will automatically renew for successive twelve (12) month terms unless either party notifies the other party that such party will not renew the Agreement not fewer than thirty (30) days before the end of the then-current term.

10.2 For Convenience. Either party may terminate this Agreement at any time upon thirty (30) days notice to the other party.

10.3 For Breach. Either party may terminate this Agreement effective immediately, if the other party is in material breach of any obligation, representation or warranty hereunder and fails to cure such material breach within ten (10) days after receiving notice from the non-breaching party. Without limiting the foregoing, in the event that Publisher removes any Commercial Text Link Ad Tags from Publisher Sites or otherwise blocks the operation of the Commercial Text Link portion of the Service without giving Vibrant appropriate notice of termination, such action shall be deemed a material breach of this Agreement. Vibrant may withhold any and all payments due to Publisher under this Agreement for the two (2) months prior to such material breach and require Publisher to refund to Vibrant any payments already paid to Publisher by Vibrant for such two (2) month period.

10.4 For Financial Reasons. Either party may terminate immediately upon written notice at any time if: (a) the other party becomes insolvent; (b) the other party discontinues its business; or (c) the other party is dissolved or liquidated.

10.5 Effect. Upon expiration or termination of the Agreement: (a) all rights of Publisher under the Agreement will terminate and Publisher shall remove all Ad Tags from the Publisher Sites and (b) Vibrant's obligations relating to the Service will terminate. All outstanding and undisputed payment obligations and Sections 1.4, 1.6, 3, 4, 5, 6.1 and 7 through 11 will survive expiration or termination of the Agreement.

11. General.

11.1 Governing Law. The Agreement will be governed by the laws of the State of California, without regard to its conflict of law provisions. Any disputes relating to the Agreement will be adjudicated in the state or federal courts located in the Northern District of California. The parties consent to exclusive personal jurisdiction and venue therein.

11.2 Notices. All notices required or permitted under this Agreement will be in writing and delivered by: (a) confirmed facsimile transmission or email with a delivery receipt, in both cases deemed given upon delivery of confirmation; (b) certified mail, deemed given five (5) days after mailing; or (c) by courier or overnight delivery services, deemed given upon receipt. All communications will be sent to a party's then-current address, email address, or facsimile number, as provided in writing to the other party.

11.3 Force Majeure. Neither party will be liable by reason of any failure or delay in the performance of its obligations under the Agreement on account of events beyond the reasonable control of such party for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

11.4 Relationship of Parties. Nothing in the Agreement will be construed to create a partnership, joint venture or agency relationship between the parties nor to give either party the power to bind the other or to incur obligations on the other's behalf. The Agreement is intended for the sole and exclusive benefit of the parties, and is not intended to benefit any third party.

11.5 Assignment. Publisher may not assign the Agreement, in whole or in part, by operation of law or otherwise without Vibrant's prior written consent, and any such purported assignment shall be void.

11.6 Remedies. Publisher acknowledges that its breach of any confidentiality or proprietary rights provision of the Agreement may cause Vibrant irreparable damage, which monetary damages would be inadequate to remedy. Consequently, Vibrant may seek injunctive or other equitable relief to enforce this Agreement and prevent any and all acts in violation of those provisions. The exercise by either party of any remedy under the Agreement will be without prejudice to its other remedies under the Agreement or otherwise.

11.7 Entire Agreement. The Agreement constitutes the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings concerning its subject matter. The waiver by either party of any default or breach of the Agreement will not constitute a waiver of any other or subsequent default or breach. If any provision of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain in full force.

11.8 Changes. Vibrant may make changes to this Agreement from time to time. When these changes are made, Vibrant will notify you of such changes and make the new version of the Agreement available at <http://www.vibrantmedia.com/webpublishers/agreement.pdf>. Publisher understands and agrees that if Publisher uses or enjoys the benefits of the Service at any time seven (7) or more days after the date on which Vibrant has made the new terms available to Publisher, such use or enjoyment of the benefits shall be deemed acceptance of the updated Agreement. If Publisher does not agree to such new terms, it must remove the Ad Tags from all Publisher Sites and terminate this Agreement by written notice to Vibrant.

