



THE JAMES R. WHELAN AGENCY, LLC

TERMS AND CONDITIONS OF CLIENT SALES AGREEMENT

These Terms and Conditions (these “Terms”) are incorporated into the Client Sales Agreement and Purchase Order (the “Agreement”) to which they are attached, and all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

I. Advertising Programs.

Agency will provide the advertising services described in the Agreement (collectively, the “Ad Programs”). The Ad Programs are being delivered in connection with the advertising medium which includes but is not limited to websites, televisions, email lists, etc., which are described in the Agreement (each, a “Site” and together, the “Sites,” and the owner of each Site is referred to herein as a “Media Company”). The Agreement sets forth the Ad Programs being purchased, advertising fees, the date the Ad Programs start (“Service Start Date”), the duration of the advertising campaign (the “Campaign Period”), and subscribers, among other information.

Agency may at any time, upon written notice to Client, replace the features associated with any Ad Program with features of substantially similar value and function. Agency is committed to adhering to Interactive Advertising Bureau (“IAB”) Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less, Version 3.0 (the “IAB Guidelines”), including for ad sizes. If standards change during the term of the Agreement, Client grants Agency the right to switch the Ad Programs to IAB standard sizes that most closely approximate Client’s existing Advertising Materials (as defined below).

II. Advertising Content Requirements.

The file size of Client’s banner and button ads must be 30 kilobytes or less and in GIF file format (for faster download times). File size for skyscraper ads must be less than 20 kilobytes and interactive ads must be less than 15 kilobytes for initial load and subsequent loads.

Client acknowledges that certain file types (i.e. Java, Shockwave, GIF animation and other similar file types) (i) may increase download times, (ii) are not supported by some browsers, (iii) and may not be accepted by any Network Access Control, and Client assumes such risks associated with such file types.

III. Fees and Payment.

Client will pay Agency the fees specified in the Agreement under the heading “Fees” and made in U.S. Funds only. The Fees are for services to be performed by Agency during the Campaign Period specified in the Agreement, but if the term of the Agreement is extended by the parties or the parties otherwise agree to additional campaigns without amending this Agreement or entering into other agreements with respect thereto, then at any time during such extended term Agency may increase the Fees by providing at least ten (10) days’ prior written notice to Client; provided, that Client shall have the right to terminate the Agreement in such case by providing written notice thereof to Agency within three (3) days after Agency’s notification of the Fee change. All Fees are net of any taxes Client may be required to pay in its taxing jurisdiction. All Fees must be paid in advance of the period for which the corresponding Ad Programs are provided by Agency. Unpaid amounts or errors may be billed in subsequent invoices. If Client’s payment method fails or Client’s account is past due, interest will be assessed on all past due balances from the due date at the rate of 18% per annum both before and after the judgment. Further, Client agrees to pay all costs of collection including, but not limited to, court costs, fees of any collection agency, and attorney’s fees whether hourly or contingent. Client acknowledges that Agency may prepay a Media Company a portion of the Fees received by Agency for advertising services to be provided after the date of such prepayment, and in the event that (i) Agency’s agreement with such Media Company is terminated for any reason, including breach by Media Company, prior to the date such Media Company provides all contemplated services, (ii) such Media Company institutes or is named a debtor in any bankruptcy or insolvency proceeding, or (iii) such Media Company, for any other reason not described above, breaches its agreement or other obligation to provide contemplated advertising services, Agency shall take commercially reasonable efforts to obtain refunds of such prepayments, or at its sole option, will assign to Client any claims Agency may have against such Media Company relating thereto, but Agency does not hereby guarantee such Media Company’s performance in refunding unused prepayments, and Client acknowledges and agrees that Agency will have no obligation to return any such prepayments made to Media Company to Client.

IF CLIENT PROVIDES AGENCY WITH CREDIT CARD, DEBIT CARD, OR BANK ACCOUNT INFORMATION FOR PAYMENT OF FEES, CLIENT AUTHORIZES AGENCY TO USE SUCH PAYMENT INFORMATION TO AUTOMATICALLY



CHARGE CLIENT ON A RECURRING BASIS TO COLLECT ALL FEES DUE HEREUNDER. CLIENT REPRESENTS THAT IT IS AUTHORIZED TO INCUR CHARGES AGAINST THE PAYMENT CARD USED TO PURCHASE AD PROGRAMS. CLIENT MAY CHANGE THE FORM OF PAYMENT AT ANY TIME AND FROM TIME TO TIME UPON WRITTEN NOTICE TO AGENCY.

IV. Representations and Warranties.

Each party to the Agreement represents and warrants to the other that (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was organized, (b) all contact and entity information is complete, correct and current, and (c) the execution and delivery of the Agreement, and the performance of the transactions contemplated hereby, are within its organizational powers, and have been duly authorized by all necessary organizational action. Client represents and warrants to Agency that any information or materials that Client provides in connection with Ad Programs (“Advertising Materials”) will (a) be true and complete, (b) not contain any material which violates Agency’s content guidelines or which is otherwise unlawful, defamatory or obscene, or which infringes or violates any third-party rights (including any intellectual property rights or privacy or publicity rights) or which may encourage a criminal offense or otherwise give rise to civil liability, (c) be free from any viruses, Trojan horses, worms or other malware, (d) not be false, misleading, deceptive, libelous, inaccurate or otherwise inappropriate, and (e) comply with all applicable laws and regulations. Client further represents and warrants to Agency that (i) with respect to any photograph contained or made part of the Advertising Materials, Client has obtained all necessary or required releases from the photographer, the stock photo house, the models, and other parties displayed in such photographs, and (ii) with respect to any schematic drawing of a product contained or used in the Advertising Materials, Client has obtained all necessary licenses and/or releases from designers, manufacturers, drafts people, and creative design houses for such schematic drawing. In the event that Agency contracts with third-parties on Client’s behalf relating to the sending of e-mail advertisements, Client acknowledges that Agency’s sole responsibility with respect to such third parties’ compliance with CAN-SPAM shall be (1) to ensure that such third parties are contractually obligated to comply with CAN-SPAM, (2) to terminate any contract with such third party if Agency acquires actual knowledge that such third party is not complying with CAN-SPAM, and (3) to follow Client’s reasonable instructions regarding CAN-SPAM compliance. Client acknowledges and agrees that Agency is not a guarantor of any third-party’s compliance with CAN-SPAM. Client acknowledges and agrees that Client is solely responsible for the maintenance and implementation of Client’s “opt-out lists” or “suppression lists” and providing Agency and/or third parties engaged by Agency with such lists. Agency reserves the right to alter any Advertising Materials to conform to technical specifications or with IAB Guidelines, in each case, upon prior written notice to Client.

In addition, Agency reserves the right to accept or reject Advertising Materials at any time, before or after acceptance for insertion. Agency does not accept online advertising for massage, escort services, astrology, entertainment service, (900) telephone numbers, gambling, alcohol (including beer), tobacco, tea or coffee, NC-17 or X-rated movies. Agency will not knowingly accept advertising for a book, motion picture or product involved in pending litigation.

Client covenants to Agency that Client will not, and will not authorize or induce any other party, to (i) generate automated, fraudulent or otherwise invalid ad impressions, inquiries, conversions, ad clicks or other actions, (ii) use any automated means or form of scraping or data extraction to access, query or otherwise collect Agency content and reviews from the Site, except as expressly permitted by Agency, or (iii) use any Agency trademarks in any manner without Agency’s prior written consent. All rights not expressly granted to Client hereunder are reserved by Agency. Client acknowledges and agrees that Agency prohibits delivery of any Spyware, Malware or Trojans on any of the Sites. Without limiting any other provision of these Terms or the Agreement, Agency may immediately terminate the Agreement, in its sole discretion, upon discovery of any Spyware, Malware or Trojans contained, embedded or delivered on or contained in any of the Sites or Advertising Materials, with no rights to a refund or repayment of Fees. A partial definition of “Spyware” is a software based trigger or program that monitors computer usage, sends information about the computer usage to a remote computer or server displays, or causes to be displayed an advertisement in response to the computer’s usage without the knowledge or approval of the user. A partial definition of “Malware” is any software used to disrupt computer operation, gather sensitive information, or gain access to private computer systems. A partial definition of “Trojan” is a generally non-self-replicating type of malware program containing malicious code that, when executed, carries out actions determined by the nature of the Trojan, typically causing loss or theft of data, and possible system harm.

V. Information About and Use of the Site.

Agency disclaims all liability arising from Agency’s access to Client’s account on Client’s behalf in order to make changes or post information to the Sites (“Client Instructions”). It is Client’s responsibility to confirm that Client Instructions are executed as requested. Agency assumes no responsibility (financial or otherwise) for content, typographical errors, errors in duration of publication, or the



partial omission of copy in the online ads. In the case of an entire omission, Agency assumes no financial responsibility. Any missing advertisement will be inserted as soon as conditions permit or are commercially reasonably practicable, as Agency determines. In the case of service interruption, both Client and Agency will agree on what steps are necessary, acting reasonably, to deliver the number of impressions requested by Client. Any and all data received by Agency for Client use is available to the Agency to use as needed. Contracted data will be passed along to the Client in a reasonable and predetermined timeframe.

Client grants Agency a royalty-free, fully paid up, non-exclusive and worldwide license to use Advertising Materials in accordance with Client instructions in such manner as is necessary for Agency to satisfy its obligations under this Agreement during the Campaign Period.

VI. Term and Termination.

The Agreement is effective as of the Effective Date set forth in the Agreement and will remain in effect until the end of the Campaign Period. Unless otherwise provided on the first page of the Client Sales Agreement and Purchase Order, the Agreement is non-cancellable and non-refundable prior to the end of the Campaign Period. In the event the parties continue to perform their obligations under the Agreement but do not enter into a separate written agreement or an amendment to this Agreement extending the applicable Campaign Period, the term of the Agreement shall continue on a month-to-month basis until terminated by either party in accordance with the following sentence or as otherwise provided herein. Notwithstanding anything to the contrary, herein, either party hereto may terminate this Agreement effective upon the material breach of the Agreement or these Terms by the other party.

VII. AGENCY'S DISCLAIMER OF WARRANTIES.

CLIENT ACKNOWLEDGES AND AGREES THAT THE AD PROGRAMS ARE PROVIDED TO CLIENT ON AN "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. EXCEPT AS SET FORTH HEREIN, AGENCY MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT THE AD PROGRAMS AND EXPRESSLY DISCLAIMS THE WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY SPECIFICALLY DISCLAIMS ALL WARRANTIES AND GUARANTEES REGARDING (I) THE PERFORMANCE, QUALITY AND RESULTS OF THE AD PROGRAMS, INCLUDING AD CLICK RATES, CONVERSIONS, AND ANY USER-GENERATED CONTENT THAT APPEARS IN YOUR AD PROGRAMS, (II) THE ACCURACY OF THE INFORMATION AND METRICS THAT AGENCY PROVIDES IN CONNECTION WITH THE SITE OR AD PROGRAMS (E.G. TRAFFIC, VIEWS, VISITORS, USERS, DEMOGRAPHICS, AND BEHAVIORAL INFORMATION ABOUT VISITORS AND USERS), (III) AGENCY'S ABILITY TO TARGET AD IMPRESSIONS TO OR IN CONNECTION WITH PARTICULAR USERS, TYPES OF USERS, USER LOCATIONS, USER QUERIES, OR OTHER USER BEHAVIORS, AND (IV) THE PLACEMENT, CONTENT, PROMOTIONAL VALUE, QUALITY, TIMING, OR NUMBER OF AD IMPRESSIONS.

VIII. LIMITATIONS OF LIABILITY.

THIRD PARTIES MAY INADVERTENTLY OR FOR FRAUDULENT OR IMPROPER PURPOSES GENERATE AD IMPRESSIONS, USER VIEWS, OR AD CLICKS ("THIRD-PARTY ACTIVITY"), WHICH MAY IMPACT THE PERCEIVED EFFECTIVENESS OF AD PROGRAMS. CLIENT ACCEPTS THE RISK OF THIRD-PARTY ACTIVITY WITHOUT LIABILITY TO AGENCY. AS SUCH, THE PARTIES HERETO AGREE THAT AGENCY HAS NO LIABILITY FOR CLAIMS ARISING FROM OR IN CONNECTION WITH THIRD-PARTY ACTIVITY EXCEPT WHERE AND TO THE EXTENT PROHIBITED BY LAW.

EXCEPT AS PROVIDED PURSUANT TO APPLICABLE LAW, AGENCY'S MAXIMUM AGGREGATE LIABILITY UNDER THE AGREEMENT AND THESE TERMS IS THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO AGENCY HEREUNDER DURING THE SPECIFIED CAMPAIGN PERIOD.

NEITHER PARTY NOR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING LOSS OF PROFITS OR REVENUE, OR INTERRUPTION OF BUSINESS) ARISING FROM, RELATED TO, OR IN CONNECTION WITH THE AGREEMENT, THE AD PROGRAMS, THE SITES, OR THESE TERMS, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION VIII SHALL APPLY REGARDLESS OF WHETHER



THE LIABILITY ARISES OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY.

NEITHER PARTY SHALL BE LIABLE FOR NON-PERFORMANCE OR DELAY IN PERFORMANCE DUE TO CAUSES BEYOND ITS REASONABLE CONTROL, PROVIDED THAT SUCH PARTY USES COMMERCIALY REASONABLE EFFORTS TO MITIGATE THE EFFECT OF SUCH NON-PERFORMANCE OR DELAY AND TO RESUME FULL PERFORMANCE HEREUNDER AS SOON AS PRACTICABLE.

IX. Indemnification.

Client will indemnify, defend, and hold Agency and its officers, directors, agents, and employees harmless from and against any and all claims, actions, losses, damages, liabilities, costs and expenses (including but not limited to attorneys' fees and court costs) (collectively, "Third Party Claims") arising out of or in connection with (i) the Sites, (ii) the Advertising Materials, Client instructions, or Client's use of Ad Programs, or (iii) any breach of the representations, warranties or covenants provided by Client under the Agreement and these Terms. Agency will notify Client promptly of any Third Party Claim for which it seeks indemnification.

X. Confidentiality.

Each party (the "receiving party") agrees not to disclose to any third party or use for any purpose, other than the purpose of these Terms or the Agreement, any non-public business, technical, or other information relating to or provided by the other party (the "disclosing party") hereunder, including the terms of the Agreement and these Terms and the disclosing party's trade secrets, marketing plans, business plans, product plans, pricing, financial information, software, and intellectual property (collectively, "Confidential Information"). Notwithstanding the foregoing, the receiving party shall not be prohibited from disclosing Confidential Information pursuant to (a) applicable law or (b) the prior written consent of the disclosing party; provided, that in the event disclosure is required by law, the receiving party will give prompt notice to the disclosing party of such required disclosure before such disclosure is made so that the disclosing party may, at its discretion, seek a protective order or other appropriate remedy or may waive compliance with the confidentiality provisions of these Terms. If such protective order or other remedy is not obtained, or if the disclosing party waives compliance with the provisions hereof, then only that portion of the Confidential Information that is required to be disclosed (as advised by a written opinion of counsel) may be disclosed. Upon expiration or termination of these Terms, the receiving party will return or destroy any of the disclosing party's Confidential Information and all copies thereof.

XI. Choice of Law; Jurisdiction; Venue; Waiver of Jury Trial; and Attorneys' Fees.

Any claim, controversy or dispute arising out of or relating to the Agreement will be exclusively governed by Florida law, without regard to conflict of law provisions or giving effect to any principles that may provide for the application of the laws of another jurisdiction.

THE PARTIES AGREE TO SUBMIT AND CONSENT TO THE PERSONAL AND EXCLUSIVE JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE STATE AND FEDERAL COURTS LOCATED WITHIN PALM BEACH COUNTY, FLORIDA.

If any party fails to perform its obligations pursuant to the Agreement or these Terms, or if it is necessary for a party to enforce or bring an action or raise as a defense any of the provisions of the Agreement or these Terms, then the prevailing party shall be entitled to recover from the non-prevailing party, reasonable attorneys' fees and costs (whether taxable or not) and including attorneys' fees and costs incurred through trial, appellate proceedings, bankruptcy proceedings, post-judgment proceedings, and attorneys' fees incurred in establishing the amount of fees incurred at each of those levels.

THE PARTIES, INCLUDING ANY ASSIGNEE, SUCCESSOR, HEIR, OR PERSONAL REPRESENTATIVE OF EITHER PARTY, KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT THEY MAY OTHERWISE HAVE TO A JURY TRIAL FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION RELATED TO, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE AGREEMENT OR THESE TERMS, INCLUDING ANY COUNTERCLAIMS. ALL CLAIMS SHALL BE TRIED BEFORE THE COURT AND NOT A JURY.

XII. Miscellaneous.



If a subsequent purchase order or agreement for advertising services is executed between the parties hereto, then the older of such purchase orders or agreements shall terminate on the service start date in order to prevent having two (2) or more agreements/purchase orders effective at the same time, unless otherwise agreed upon by the parties.

These Terms, together with the Agreement, embody the entire and exclusive agreement between the parties respecting the subject matter of herein, and supersede any and all prior related oral, emailed or written representations and agreements between the parties made, delivered or executed in conjunction with this Agreement or prior to the date hereof. No statements or promises by either party have been relied upon in entering into these Terms, together with the Agreement, except as expressly set forth herein.

Anyone agreeing to the Terms and the Agreement on behalf of a party hereto represents and warrants that it has full legal power and authority to enter into these Terms on behalf of such party, to bind such party to its obligations hereunder, and, in the case of Client, to authorize the Fee payments set forth in the Agreement.

Notices under these Terms must be in writing and sent via facsimile, registered or certified mail, commercial courier or electronic mail, and the notice will be deemed received when such notice received if sent by facsimile or electronic mail, or two (2) days after the date sent by registered or certified mail or commercial courier.

Any conflict among the Agreement (including these Terms) and, to the extent applicable, the IAB Guidelines will be resolved (1) first, in favor of the Agreement, and (2) second, the IAB Guidelines. The Agreement (including these Terms) may not be amended or modified except as agreed upon in writing following the date of this Agreement by each of the parties hereto. No provision in the Agreement or these Terms may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced. Neither party hereto may assign any rights or obligations under the Agreement or these Terms without the non-assigning party's prior consent, except (i) in connection with a merger, consolidation, reorganization, or sale of all or substantially all of the assigning party's assets, or (ii) to a party controlling, controlled by, or under common control with the assigning party. If any provision of the Agreement (including these Terms) is held to be invalid or unenforceable, the parties will substitute for the affected provision a valid or enforceable provision that approximates the intent and economic effect of the affected provision. Sections III, IV, V, VII, VIII, IX, X, XI and XII of these Terms will survive any termination of the Agreement.

Each party shall be and act as an independent contractor and nothing herein shall be construed to create a partnership, joint venture or any type of agency relationship between Client and Agency.

Ad Specifications and Guidelines

All Creative

- Must be received at least 72 business hours prior to launch
- Must adhere to all technical specifications
- Must not include Prohibited Content
- Must contain a single brand or offering; multiple brands may not rotate unless pre-approved by the publisher
- Must have a visible border of a contrasting color to the majority background when the background is partially black or white

All Landing Pages

- Must open in a new tab or window
- Must not include Prohibited Content
- Match the language, brand, and offer of the creative

Prohibited Content

- Content reflecting or promoting a violation of any applicable law, regulation, or court order
- Content that is violent or defamatory
- Content reflecting or promoting physical harm or intent to incite violence or prejudicial action on individual or group
- Pornography, nudity, obscenity, and other "adult" content
- Content containing fake computer errors or warnings
- Files that execute or download without intentional user interaction



Sensitive Content

Creative or landing pages containing the following are subject to individual publisher approval:

- Affiliate offers
- Alcoholic beverages and references
- “Anti” candidate
- Blood/gore
- Dating
- Downloads and toolbars
- Firearms and weapons
- Free giveaways
- Gambling
- “Get rich quick” or misleading claims
- Health Claims
- Online games
- Politics
- Quizzes and surveys
- Religion
- Ringtones/mobile downloads
- Sexual health
- Suggestive
- Tobacco and smoking products
- Weight loss

Display Specs

File Size

40KB or less for standard ad sizes

Image dimensions

- Leaderboard: 728x90
- Inline rectangle: 300x250
- Wide skyscraper: 160x600

Accepted Formats

- JPEG, PNG, GIF
- Animated GIF must be pre-approved by individual publisher
- Flash/JavaScript/iFrame: Animated must be < = 15 seconds and 20 fps or slower
Must include properly coded clickTAG
- Must include directions for inserting internal click tracking and cache-busting

Expansion

- Acceptance varies by site
- No auto-expansion or page takeovers unless pre-approved by individual publisher

Audio

- Must be user-initiated
- Must contain a click-to-start and click-to-stop feature with a minimum font size of 10 points that is visible at all times

In Banner Videos

- Maximum video length is 30 seconds
- Auto-play is allowed but must adhere to audio specs above

Video Pre-Roll Specs

File Size

2.0 MB or smaller

Image dimensions

- Aspect Ratio (Pre-roll) – 4:3 or 16:9 aspect ratios
- 15 or 30 seconds in duration; 15 seconds recommended

Accepted Formats

- VAST 2.0, FLV, MP4
- Recommended codecs for video asset submission:
MPEG2, WMV, H.264/AAC