

# TERMS AND CONDITIONS

## TERMS AND CONDITIONS - PUBLISHERS

This License and Services Agreement (the "Agreement") is made and entered by and between VRTCAL Markets, Inc., a company incorporated under the laws of the State of California, Santa Barbara County, having its principal place of business at: 1123 Chapala Street, Suite 200, Santa Barbara, CA 93101; ("VRTCAL"), and you ("Publisher"). (Each a "Party" and, collectively, the "Parties"). WHEREAS VRTCAL has developed certain proprietary technology, know-how and systems enabling the inclusion and optimization of advertisements. WHEREAS Subject to the terms and conditions of this Agreement, the parties wish to enter into this Agreement that will allow VRTCAL to optimize, serve and place certain advertisements ("Advertising") using the technology made available to Publisher ("Technology"), during the Term specified below. NOW THEREFORE, in consideration of the premises and the undertakings of the Parties herein contained, it is agreed as follows:

### A. Services

**A.1.** Subject to the terms and conditions of this Agreement, VRTCAL hereby agrees to provide a service to Publisher, whereby VRTCAL will deliver Advertising, using the Technology, during the Term (the "Service(s)").

**A.2.** The Service, as provided to Publisher, may include, among other things, standard advertising management services, such as ad serving, trafficking, campaign management and the compilation of relevant statistical data.

**A.3.** VRTCAL 's obligations under this Agreement shall be to (i) provide the Service enabling tags and its SDK to Publisher, (ii) serve, optimize and deliver Advertising, and (iii) provide access to VRTCAL 's' statistics and reporting in respect to the use of the Content.

### B. Non-Exclusive License Grant & Restrictions

**B.1.** Subject to the terms and conditions of this Agreement, VRTCAL hereby grants the Publisher a non-transferable, non-exclusive license to deploy and use the Technology in connection with the Content. For the absence of doubt, Publisher is permitted to make use of the Technology only for the purpose of this Agreement, and use Technology solely for the Advertising served to and placed by VRTCAL.

**B.2.** Publisher shall not and shall not permit or authorize others to: (i) decompile, disassemble, or otherwise reverse engineer (except to the extent that applicable law prohibits reverse engineering restrictions) or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Technology by any means whatsoever; (ii) provide, lease, lend, use for timesharing, service bureau or hosting purposes or otherwise use or allow others to use the

Technology to or for the benefit of third parties, except as specifically licensed hereunder; (iii) remove VRTCAL, or any identification, or proprietary or copyright restrictions from the Technology; (iv) copy, modify, incorporate into or with other Technology, or create a derivative work of any part of the Technology; (v) use similar processes and functions to develop competing products or to maintain interoperability between products, or any part thereof; or (vi) develop methods to enable unauthorized parties to use the Technology.

### **C. Publisher Responsibilities**

**C.1.** As between the Parties, Publisher shall be responsible for quality assurance (QA) test all on its own expenses (not including the Advertising QA).

**C.2.** Publisher shall use commercially reasonable efforts to provide even and consistent distribution of Advertising on Publisher's website and/or applications (the "Publisher Content").

**C.3.** Publisher shall not alter, modify or otherwise intentionally interfere with the operation of any of the Advertising or any link contained within any click-through Advertisement. Publisher shall promptly notify VRTCAL if Publisher suspects that any third party may be tampering with, abusing or manipulating the Technology or the Advertising. In the event of misuse and/or abuse of Technology or Advertising by Publisher, Publisher shall not be entitled to any revenue associated with the applicable campaign(s). Publisher acknowledges and agrees that VRTCAL shall, in its sole discretion, regularly review impressions, click-through or other actions with respect to Advertising. No revenue share will become due to Publisher for actions that VRTCAL determines, in its reasonable discretion, are fraudulent or improper. In addition, VRTCAL reserves the right to terminate this Agreement immediately, without giving Publisher an opportunity to cure, if VRTCAL reasonably determines that Publisher has in any way manipulated or used artificial means to increase impressions, click-through or other actions, or has encouraged or authorized others to do so.

**C.4.** Publisher shall adhere to the NAI Code of Conduct, which can be found at [https://www.networkadvertising.org/sites/default/files/nai\\_code2018.pdf](https://www.networkadvertising.org/sites/default/files/nai_code2018.pdf), specifically:

## **II. Membership Requirements**

### **B. TRANSPARENCY AND NOTICE**

(2), (3) and (4)

### **D. Fees and Payments**

**D.1.** During the Term of this Agreement, VRTCAL shall pay the Publisher based on agreed CPM rates, as reported by the VRTCAL reporting console unless an alternate reporting method is specifically agreed in writing. VRTCAL shall deliver to Publisher payment according to the terms of an executed insertion order.

**D.2.** VRTCAL shall be responsible for all invoicing, billings and collections from Advertisers. The revenues payment will be made to the Publisher by wire transfer or ACH payment in the same currency in which VRTCAL received its revenues from the Advertisers. In the event a currency other than USD or multiple currencies are involved in the calculation of a payment (or any part thereof), VRTCAL may, at its sole

discretion, convert such payment to a single appropriate currency using foreign exchange currency rates as published by [www.oanda.com](http://www.oanda.com) (or any such website or service which replaces it and which the mobile industry recognizes as a standard) at the time the payment is calculated by VRTCAL.

**D.3.** Each Party shall bear its own expenses (including but not limited to any tax obligations) relating to the activities and payments received under this Agreement. All sums payable under this Agreement are exclusive of VAT.

**D.4.** Notwithstanding the foregoing, if the total amount payable under Section D.1 is less than two hundred USD (\$200), VRTCAL shall have the right to withhold payment until the next regularly scheduled payment date on which the amount payable to Publisher equals or exceeds two hundred USD (\$200).

**D.5.** VRTCAL shall have no obligation to pay Publisher any payment or payments earned through invalid activity; or any payments in respect of which VRTCAL has not itself received payments from relevant third party, including Advertisers.

## **E. Intellectual Property & Ownership**

**E.1.** All rights, title and interest of either party in its respective products, services, and intellectual property shall be held by such party and noting in the license granted above to be considered as a waiver of each party on any of its intellectual property rights. Except as specifically set forth in this Agreement, neither party is granted any right or interest or license to the intellectual property, know-how, trademarks, marks or trade names of the other party.

**E.2.** For avoidance of all doubts, VRTCAL represents that it is the exclusive supplier of the Technology and the exclusive owner of all right, title and interest in and to the proprietary mobile advertising technology used by VRTCAL to deliver the Advertising and related services. In addition, VRTCAL represents that it is the exclusive owner of all right, title and interest in and to all software, databases and other aspects and technologies included in the Technology, and any enhancements thereto. Publisher shall not use the Technology, except pursuant to the limited rights expressly granted and as specifically set forth in this Agreement. Publisher acknowledges that VRTCAL shall retain all proprietary rights in the Technology (including all software, source codes, modifications, updates and enhancements thereof), VRTCAL Marks, or any derivatives thereof, and any other trademarks and logos which are owned or controlled by VRTCAL and made available to Publisher under this Agreement. VRTCAL acknowledges that Publisher and its licensors shall retain all proprietary rights in the Publisher Content (including all software, source codes, modifications, updates and enhancements thereof), or any derivatives thereof, and any trademarks and logos which are owned or controlled by Publisher.

## **F. Term & Termination**

**F.1.** The parties agree that this Agreement commences on the Effective Date hereof and shall be in effect for a period of 1 year (the "Term"), unless otherwise terminated in accordance with Section F.2 below. Thereafter, this agreement shall be renewed automatically for additional periods of 1 year each (each, an "Extended Term". The term "Term" as used herein shall refer also to any Extended Term), whereby any

party may deliver to the other party a written non-renewal notice, 60 days prior to the end of the Term or any Extended Term, in which case this Agreement shall be terminated at the end of such Term or any Extended Term, as applicable.

**F.2.** The Agreement may be terminated as follows: Either Party may terminate this Agreement for convenience upon 60 days prior written notice. Either Party may terminate this Agreement hereunder for default if the other Party: (i) Materially breaches this Agreement; provided, however, no right of default shall accrue until thirty (30) days after the defaulting Party is notified in writing of the material breach and has failed to cure or give adequate assurances of performance within the thirty (30) day period after notice of material breach; and (ii) The other Party becomes the subject of a voluntary or involuntary proceeding concerning insolvency.

**F.3.** Any and all provisions or obligations contained in this Agreement which by their nature or effect are required or intended to be observed or performed after termination of this Agreement will survive the expiration or termination of this Agreement and remain binding upon and for the benefit of the parties, their successors and permitted assigns.

## **G. Warranty & Indemnification**

**G.1.** Publisher agrees that it, as between the Parties, shall be solely and exclusively responsible for the Publisher Content, and that VRTCAL has no responsibility, other than with respect to Technology, under the terms of this Agreement, to review or approve the Content. Publisher warrants that, except for content created by a user of Publisher or other third party, Publisher Content shall not and does not: (a) infringe a third party's Intellectual Property Rights, especially copyrights or trademarks, (b) contain pornographic, violent or seditious information, (c) promote illegal drugs, and (d) intentionally contain viruses or similar programs that might harm data or computer systems.

**G.2.** Indemnification by VRTCAL. VRTCAL shall indemnify, defend, and hold Publisher and its officers, directors, employees, agents, successors, and assigns harmless from and against all third-party claims, suits, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses arising from (i) any claim that the VRTCAL Services, Technology, and/or Content violates any applicable statute, regulation, or law, or infringes any Intellectual Property Rights or other legal rights of any third party; or (ii) any claim or suit that arises from the breach by VRTCAL of any portion of this Agreement, including, but not limited to, the terms and conditions contained within any exhibit, addendum, or amendment hereto.

**G.3.** Indemnification by Publisher. Publisher shall indemnify, defend, and hold VRTCAL and its officers, directors, employees, agents, successors, and assigns harmless from and against all third-party claims, suits, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses arising from (i) any claim that the use of the Publisher Content as contemplated by this Agreement violates any applicable statute, regulation, or law, or infringes any Intellectual Property Rights of any third party; (ii) any claim or suit that arises from the breach by Publisher of Section G.1 of this Agreement, including, but not limited to, the terms and conditions contained within any exhibit, addendum, or amendment hereto.

**G.4. Indemnification Procedure.** The indemnified Party will promptly notify the indemnifying Party in writing of any claim covered by the indemnification obligations set forth in Sections G.2. and G.3. above, as applicable, provided that the failure to provide such notice will not relieve the indemnifying Party of its indemnification obligations hereunder, except to the extent of any material prejudice directly resulting from such failure. The indemnifying Party will bear full responsibility for, and will have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (i) the indemnifying Party will keep the indemnified Party informed of, and consult with the indemnified Party in connection with the progress of such litigation or settlement and (ii) the indemnifying Party will not settle any such claim in a manner that does not unconditionally release the indemnified Party without the indemnified Party's written consent, not to be unreasonably withheld or delayed.

**G.5. Cap on Indemnification Exposure.** Each Party's maximum aggregate liability for its obligations under Sections G.2 through G.4 (as applicable) shall be the greater of (i) the amount paid by such Party's insurer for such liability or (ii) \$1,000,000.

## **H. Confidentiality**

**H.1.** The term "Confidential Information" shall mean any and all information provided by either Party (hereinafter, when in such capacity, referred to as the "Disclosing Party") to the other Party (hereinafter, when in such capacity, referred to as the "Recipient") hereto which is not generally available to the public, including without limitation all technical, financial, vendor, customer, employee or market information, business plans, business models, channel distribution agreements, marketing strategies, trade secrets, software, information system designs, intellectual property, or other proprietary information relating thereto; information disclosed in discussions that occur on or after the Effective Date of this agreement; and any other information designated as Confidential by the Disclosing Party orally or in writing, or, in the reasonable judgment of the Recipient, to be information that the Disclosing Party would consider confidential. The Confidential Information shall not be published or disclosed by the Recipient to any party other than Recipient's directors, officers, employees, representatives or advisors to the extent necessary to perform the Services hereunder and then only under written confidentiality obligations at least as restrictive as those in this Agreement. All Confidential Information belongs to the Disclosing Party and all documents or computer files containing same shall be returned to the Disclosing Party. Confidential Information, however, does not include information that: a) is now or subsequently becomes generally available to the public through no fault or breach on the part of the Recipient; b) the Recipient can demonstrate to have had rightfully in its possession without restriction on disclosure prior to disclosure to it by the Disclosing Party; c) is independently developed by the Recipient without the use of any Confidential Information; or d) the Recipient rightfully obtains from a third party without restriction on disclosure who has the right to transfer or disclose such Confidential Information. All Confidential Information, and any Derivatives thereof, whether created by the Recipient or the Disclosing Party, remain the property of the Disclosing Party and no license or other rights to Confidential Information are granted or implied hereby. For purposes of this Agreement, "Derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including any new material which may be protected by copyright, patent and/or trade secret. All information is provided "AS IS" and without any warranty, whether express or implied, as to its accuracy or completeness. The Recipient's obligation to

protect the Disclosing Party's Confidential Information shall survive termination of this Agreement and until such Confidential Information is no longer deemed Confidential pursuant this Agreement. Within ten (10) business days of receipt of the Disclosing Party's written request, the Recipient shall return to the Disclosing Party all documents (and copies thereof) furnished to it by the Disclosing Party and shall retain no copies or summaries thereof. The Recipient shall also destroy and retain no copies of all other Confidential Information prepared by the Recipient and such destruction shall be certified to the Disclosing Party by an authorized officer supervising such destruction. For purposes of this section the term "documents" includes all information fixed in any tangible medium of expression, in whatever form or format.

## **I. Limited Liability**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY FOR (I) ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT OR (II) ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. EACH PARTY'S TOTAL, AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT IS LIMITED TO THE NET AMOUNT PAID OR PAYABLE TO PUBLISHER BY VRTCAL IN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL NOT APPLY TO (A) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS G.2 THROUGH G.5 OR (B) A BREACH OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS.

## **J. Miscellaneous**

**J.1.** The parties are separate contractors and no employer-employee relations shall be established between the parties or between a party and the other party's employees. The relationship between the parties is that of independent contractors. Neither party is an agent for the other, nor does neither party have any authority to make any contract, whether expressly or by implication, in the name of the other party, without that party's prior written consent for express purposes connected with the performance of this Agreement. No joint venture or partnership (in the strict legal sense) is created or intended by this Agreement.

**J.2.** Each Party shall have the right to perform public relation to its business, including (a) with respect to Publisher, the Publisher Content and (b) with respect to VRTCAL, the Services and Technology and the availability of the Content. Each Party shall perform its public relations at its sole discretion. Neither Party may use the other's trademarks, marks, trade names, or any other Intellectual Property without the prior written consent of the owning Party.

**J.3.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

**J.4.** This Agreement may not be modified or amended except by a written agreement signed by the parties hereto.

**J.5.** This Agreement shall for all purposes be governed by and construed in accordance with the laws of State of California (without reference to its conflict of laws principles) and the competent courts of Santa Barbara County shall have exclusive jurisdiction over any dispute hereunder.

**J.6.** Neither Party may assign this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other Party and any attempted assignment or transfer without such prior written consent will be null and void; provided, however, that either Party may assign its rights or delegate its duties under this Agreement, in whole or in part, without the other's consent, in connection with a merger, reorganization or sale of all, or substantially all, of the assignor's assets, provided that the successor entity shall have sufficient resources to fully perform this Agreement and shall assume the obligation to fully perform this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their permitted representatives, successors, and assigns.

**J.7.** VRTCAL's use of data for the purposes of advertising shall follow the Privacy Policy - Advertising provided on the vrtcal.com website.

**J.8.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be assigned by the Client without the prior written approval of VRTCAL. The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of California, and both parties consent to jurisdiction to be Santa Barbara county.

## **TERMS AND CONDITIONS - ADVERTISERS**

These Terms and Conditions (including any attached schedules) ("Terms and Conditions") are incorporated into that certain Insertion Order (the "IO") or Master Service Agreement (the "MSA") by and between VRTCAL and you ("Client"). The IO or MSA and the Terms and Conditions in the aggregate, shall be referred to herein as the "Agreement". This Agreement is made and by and between the Client (as set forth in the IO or MSA) and VRTCAL Markets, Inc. a having its principal offices at 1123 Chapala Street, Suite 200, Santa Barbara, CA 93101 ("VRTCAL"), (collectively, the "Parties").

### **A. Object of the Agreement**

- 1.** The objective of this Agreement is to grant a license to Client to publish advertisements in ad space embedded within VRTCAL's Mobile Applications (the "Ad Space").
- 2.** During the Term of this Agreement (as define hereafter), and subject to the terms and conditions, of this Agreement, VRTCAL hereby grants to Client a fee-bearing non-exclusive, non-transferable, non sub-licensable limited license to publish advertisements within the Ad Space.
- 3.** Client shall not, and shall not allow any third party to (i) use VRTCAL's mobile application for any other purposes except as permitted herein; and (ii) sub-license, sell, distribute and/or otherwise transfer, directly or indirectly, the Ad Space to any third party without VRTCAL's prior written consent.

## **B. Responsibilities and Obligations**

1. Client shall be responsible of the advertisement embedded within the Ad Space under this agreement (the "Ads")
2. The choice, type and duration of the Ads shall be in Client's discretion, provided that such ads shall not and do not: (a) infringe third party's rights, especially copyrights or trademarks, (b) contain pornographic, violent or seditious information or information that is unsuitable for children, (c) promote legal or illegal drugs that are not publicly attainable, and (d) contain viruses or similar programs that might harm data or computer systems.
3. VRTCAL shall be responsible to: (i) perform the embedment of the Ad's creative into the Ad Space; (ii) integrate the content with the Ads of the Client's in its co-operation with cellular operators and portals.

## **C. Consideration**

1. The prices for advertisements spots for the Ads shall be as set forth in the IO or MSA.
2. On the 3rd day of each month VRTCAL shall render and send an invoice to the Client for the units of Ads spots that have been acquired by Client during the previous month multiplied by the rates set forth in the IO. All amounts shall be due and payable 30 days after the end of the previous month based on previous month's activity as reported to the Client by VRTCAL.
3. All amounts hereunder are exclusive of VAT.

## **D. Reconciliation**

All reporting of impressions and/or clicks and/or conversions will be based on VRTCAL's statistics. VRTCAL will provide Advertiser with a login to view performance of its campaigns and provide a report at the end of each month such report shall be the final and binding and will be used for invoicing/billing the client.

## **E. Term and Termination**

1. The Agreement shall become effective on the date the IO was signed by both parties.
2. During the Term the Parties may issue several IO's from time to time with specific engagement terms under the framework of this Agreement. Each Party may pause or terminate a specific IO by giving the other Party a 48 hours prior written notice.
3. Without derogating from the above, either Party may terminate this Agreement hereunder for default if the other Party: (i) materially breaches this Agreement; (ii) becomes the subject of a voluntary or



involuntary proceeding concerning insolvency, receivership, liquidation, or composition for the benefit of creditors, if such proceeding is not eliminated within sixty (60) days of proceeding commencement

4. Upon termination or expiration of this Agreement for any reason whatsoever, Client shall immediately: (i) cease all marketing of Ad Space; (ii) discontinue all representation or statements from which it might be inferred that any relationship exists between Client and VRTCAL; (iii) return all VRTCAL's confidential information and related materials and copies thereof to VRTCAL; and (iv) perform all other acts which may be necessary or useful to render effective the termination of the interest of Client in the license and any goodwill associated therewith.

5. Except as otherwise expressly provided herein, upon the expiration or termination of this Agreement pursuant to the terms and conditions of this Agreement, each party shall not be liable to the other, because of such termination, for and to the fullest extent permitted by law waives, any statutorily prescribed or other compensation, reimbursement or damages on account of the loss of goodwill, clientele, leases inventory, prospective profits, investments or anticipated sales, expenditures or commitments of any kind.

#### **F. Liability; Indemnification**

Client shall ensure that the Ads are marked as such if necessary under any applicable law. Client will also be liable and ensure that the Ads and any other marketing material provided by itself or by advertisers are in compliance with Section B (1) above, advertising codes and applicable law. Client will indemnify on the first demand, and hold harmless VRTCAL from and against any and all loss cost, liability or expense (including, without limitation, reasonable attorneys' fees) which VRTCAL may suffer, incur or sustain resulting from or arising out of any and all claims brought by a third party to the extent such claims arise out of claims or alleged claims of any third party resulting from or in connection with the advertisements, and/or Client's customers.

#### **G. Changes to IO**

Client may request to change the terms of the campaign by an email request to its assigned account manager in VRTCAL. VRTCAL reserves the right to reject a change request in its sole discretion.

Changes may be accepted by email without the need of a signed IO: increase/decrease of budget, extending the duration of the campaign (end date), changing the unit price (CPM/CPC/CPA), changing the targeting requirement of a campaign (Device, OS, carrier, country), pausing a certain ad creative and/or the campaign at its entire. Any other changes shall require an amended IO signed by both party.

Changes will be made within a 48 hours notice.

#### **H. Modifications**

VRTCAL reserves the right to change any conditions of this Agreement at any time. Client shall be

responsible for complying with any changes to the Terms and Conditions within 10 business days from the date of change. VRTCAL will post any changes to this Agreement in the Advertiser area of VRTCAL's website.

**I. Solicitation of Publishers** – During the Term of this Agreement including any renewal term, and for three (3) months thereafter, the Client shall not publish advertisements directly or through third party within the content of any publisher or content provider in which content the Ads were embedded through the services provided by VRTCAL under this Agreement. In the event the Client publishes its advertisement through such publisher, the Client shall pay VRTCAL what VRTCAL would have otherwise earned if Client had not violated this provision. The above clause will prevail during the Term of this Agreement, any renewal Terms, and for three (3) months hereafter.

## **J. General**

- 1.** All rights, title and interest of either party in its respective products, services, and intellectual property shall be held by such party and noting in this Agreement shall be considered as a waiver of each party on any of its intellectual property rights. Except as specifically set forth in this Agreement, neither party is granted any right or interest or license to the intellectual property, know-how, trademarks, marks or trade names of the other party.
- 2.** The relationship between the parties is that of independent contractors. Neither party is an agent for the other, nor does neither party have any authority to make any contract, whether expressly or by implication, in the name of the other party, without that party's prior written consent for express purposes connected with the performance of this Agreement. No joint venture or partnership (in the strict legal sense) is created or intended by this Agreement.
- 3.** This Agreement may not be modified or amended except by a written agreement signed by all Parties hereto.
- 4.** VRTCAL's use of data for the purposes of advertising shall follow the Privacy Policy - Advertising provided on the vrtcal.com website.
- 5.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be assigned by the Client without the prior written approval of VRTCAL. The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of California, and both parties consent to jurisdiction to be Santa Barbara county.