

# TERMS OF SERVICE

## ADVERTISERS

These Terms and Conditions ("Terms and Conditions") are incorporated into that certain Insertion Order (the "IO") by and between VRTCAL and you ("Client"). The IO 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) and VRTCAL Markets, Inc. having its principal offices at 351 Paseo Nuevo, 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 Inventory (the "Ad Space").
2. During the Term of this Agreement (as defined 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 Inventory 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 for 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, (d) incite hate or be racially/religiously offensive; and (e) contain viruses or similar

programs that might harm data or computer systems.

**3.** VRTCAL shall be responsible to perform the embedment of the Ads creatives into the Ad Space.

### **C. Consideration**

**1.** The prices for advertisement spots for the Ads shall be as set forth in the IO.

**2.** On the 3rd day of each month VRTCAL shall render and send an invoice to the Client for the units of Ad 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 thirty (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**

Unless expressly agreed in writing, all reporting of impressions and/or clicks and/or conversions will be based on VRTCAL's API statistics. VRTCAL will provide Advertiser with an API login to view performance of its campaigns and provide a report at the end of each month and such report shall be 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 forty-eight (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 insure that the Ads and any other marketing material provided by itself or by advertisers for compliance with Section B 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 e-mail 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 e-mail 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 ten (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. Non-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.** 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.