

# TERMS AND CONDITIONS

## LICENSE & SERVICES AGREEMENT - 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 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 allow any third party to, and not to 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.

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

**D.1.** During the Term of this Agreement, VRTCAL shall be entitled to retain a portion of all Net Revenues actually collected by VRTCAL in connection with any and all Advertising delivered by VRTCAL through the Technology. VRTCAL shall deliver to Publisher payment according to the terms of an executed insertion order or master service agreement.

**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 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; (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.

## **TERMS AND CONDITIONS - ADVERTISERS**

These Terms and Conditions (including any attached schedules) ("Terms and Conditions") are incorporated into that certain Insertion Order by and between VRTCAL and you ("Client"). (the Insertion Order ("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. 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-sublicensable 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 Ads 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.
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. [Shouldn't he issue an invoice?]
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 insure that the Ads and any other marketing material provided by itself or by advertisers for 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 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.

# **Real-Time Bidding End User Agreement**

## **A. Definitions**

The following terminology applies to this Agreement:

"Ad" or "Advertisement" means text, graphics, rich media and other advertising materials.

"VRTCAL", "Ourselves", "We" and "Us", are interchangeable and refers to VRTCAL Markets, Inc.

"Ad-Network", "You" "Your", are interchangeable and refers to the authorized user of the RTB Service, the entity using the RTB Service and accepting this Agreement.

"Bid" or "The Bid" means the price offer for a specific Bid Request.

"Bid Request" means the availability and notification of an impression for sale through the RTB Service.

"BidURL" means the request for bid sent by VRTCAL.

"Content" means any Advertisements, materials which are intended to be displayed (graphic or audio), and all actual content which will eventually be displayed by the Ad Network within Media Seller content.

"VRTCAL Exchange" means the virtual marketplace operated by VRTCAL where Media Buyers (as defined below) may buy inventory from Media Sellers (as defined below) and Media Sellers may sell inventory to Media Buyers.

"Media Buyer" means any entity or person that buys online media inventory on the VRTCAL Exchange for the placement of Advertisements, or other entities acting on behalf of third party advertisers.

"Media Seller" means any entity or person that sells online media inventory on VRTCAL Exchange.

"RTB Service" means the technology provided by VRTCAL which enables the operation of the RTB Auction System (as more fully detailed below) throughout which an Authorized Ad Network (as defined below) can deliver Advertisements by responding to calls delivered through VRTCAL's API (as defined below).

"Notice of Win" means VRTCAL's notice to the Ad Network that its Bid has won. Notice of Win constitutes a valid acceptance notice under applicable law.

"The Pool" means the pool of Authorized Ad Networks (as defined below) that are eligible to use the RTB Service as provided under Section D herein and that received a notice approving such registration.

"WinURL" means the response (http://) that the Ad Network won the bid.

## B. Term

The term of this Agreement starts from the Effective Date, and shall continue until terminated by either Party according to this Agreement.

## C. Information, Password and Security

C.1. You will need to provide VRTCAL with your BidURL and WinURL for identification while using the RTB Service. You represent and warrant that such data is accurate and true, and you understand and acknowledge that VRTCAL relies on it while authorizing the Ad Network access to the RTB Service. Under no circumstances, shall VRTCAL have any liability, in any manner, for any errors arising from, or related to the BidURL and WinURL; or arising from or related to the Ad Network's failure to keep its user name or password safe.

C.2. Ad Network shall promptly notify VRTCAL if it has reasonable grounds to suspect that any third party may be tampering with, abusing or manipulating the RTB Service (or any of its components) or the Content. Ad Network acknowledges and agrees that VRTCAL shall, in its sole discretion, regularly review impressions, click-through or other actions with respect to Advertising.

## D. Limited License Granted; Authorized Ad Network

D.1. Following the execution of this Agreement, and subject to You meeting the following conditions and providing the information required under Section C above, we will designate you as an authorized user of the RTB Service ("**Authorized Ad Network**"), and thereby enter You into the Pool. Only Authorized Ad Networks are eligible to use the RTB Service. Authorized Ad Network must:

- D.1.1. Be legally incorporated company or a person at least 18 years old;
  - D.1.2. Have the capacity to enter into legally binding agreements (including this Agreement);
  - D.1.3. Agree to this Agreement and sign it;
- D.2. During the term of this Agreement, as an Ad Network Authorized User, You are granted a limited, non-exclusive, non-transferable, non-sublicensable license to use the RTB in order to make the Content available to potential Media Sellers and to place Bids within VRTCAL Exchange, in accordance with the policies and procedures applicable on the VRTCAL Exchange, as such policies and procedures may be made available to Ad Network by VRTCAL from time to time. Under no circumstances, shall the Ad Network (i) permit or authorize others to provide, lease, lend, use for timesharing, service bureau or hosting purposes or otherwise use or allow others to use its user name and password or its right to bid or use the RTB, or for the benefit of third parties (other than Ad Network), (ii) reproduce or distribute VRTCAL's RTB Service, or any portion thereof; (iii) use or authorize use of VRTCAL's RTB Service for any purpose not specified in this Agreement; or (v) modify, prepare derivative works of, translate, reverse engineer, decompile, or disassemble VRTCAL's RTB Service or any portion thereof, or attempt to do any of the foregoing.
- D.3. Ad Network acknowledges and agrees that the Content made available by Ad Network will meet all the specifications set from time to time by VRTCAL. For sake of clarity, VRTCAL shall have the right to modify, at its sole discretion, the specifications for the Content.

## E. Bidding and Win-Notice

- E.1. After You enter the Pool, You will be eligible to receive Bid Requests. The decision and the accompanied risk whether to make a Bid or not, rest solely on You.
- E.2. Immediately after receiving a Bid Request, You may send VRTCAL Your Bid through VRTCAL's real-time bidding application programming interface ("**API**"), under the conditions specified in the Bid Request. The Bid **MUST** include Your Content. If Your Bid lacks any Content, VRTCAL will automatically remove it. You shall be responsible for responding to any inquiries in connection with the Content.
- E.3. The winning Bid will be chosen throughout the RTB Auction System.

**"RTB Auction System"** means the CPM-based API which provides an auction-based

platform to make impressions available to Ad Networks, in order to determine the Ad Network with the highest Bid for a specific impression.

- E.4. Buyer may compete with other Buyers. Each time a Buyer bids on an impression with the bid of the highest price, The RTB Auction System shall close with respect to such impression, and Buyer shall pay the second highest price shown in the auction plus \$0.01 CPM for that impression (“**Second Price Auction**”).
- E.5. Each time a Buyer bids on an impression, Buyer's response-time shall not exceed 200 millisecond.
- E.6. VRTCAL reserves the right to set price floors under which Buyer bids are not accepted. VRTCAL reserves the right to opt-out of a RTB auction with respect to bidder or any particular Buyer at any time. VRTCAL is not required to send any number of bid requests directly to Buyer outside of the RTB Auction System.
- E.7. If your Bid is the winning Bid, You will receive a WinURL, and an invoice for our fee as provided under Section F. You will not receive any notice if Your Bid is not the winning Bid.
- E.8. VRTCAL may reject, refuse or block any Content or Bid Request any time if it determines, among others, that they do not comply with VRTCAL quality standards or the terms of this agreement.

## F. Consideration

- F.1. VRTCAL will invoice Ad Network, on a monthly basis and no later than 30 days after the end of the month, for all Notices of Win sent to Ad Network in connection with the RTB Auction System during the prior month. The actual payment will be transferred no later than 45 days after the end of the month. If Ad Network does not raise any objections within four weeks upon receipt of the invoice, such invoice shall be deemed to be accepted. The parties shall work together in good faith to resolve any invoicing disputes prior to commencing any action hereunder.
- F.2. Notwithstanding the foregoing, any payment hereunder that is more than 90 days late, shall bear interest at a monthly variable rate equal to the London Interbank Offered Rate (LIBOR).
- F.3. All fees payable hereunder shall be payable in US Dollars, unless otherwise agreed in writing.
- F.4. Unless expressly provided hereunder, each Party will bear its costs and expenses incurred by such Party in connection with the performance of its obligations under this Agreement. In addition, each Party shall bear its own taxes under applicable

law.

- F.5. Delivered impressions will be tracked based on the Ad Impression tracking pixel. This means an auction is only considered as won once the VRTCAL tracking pixel has been delivered. Should there be any differences between VRTCAL's and the Ad Network numbers, both parties agree to use their best efforts to clarify why this difference exists and shall jointly agree on a commercial solution.

## G. Content; Intellectual Property Rights

- G.1. The Ad Network shall provide VRTCAL with Content to be displayed according to the Bid Request. The Ad Network shall have sole liability for all the materials it provides, and it hereby waives any claim it has, or will have, towards VRTCAL in relation with any of its materials with respect to VRTCAL. The Ad Network shall be responsible for quality assurance (QA) testing the Content at its own expense.
- G.2. The Ad Network represents and warrants that, to the best of Ad Network's knowledge, its Content displayed with the RTB, shall: (a) comply with all applicable laws, statutes, ordinances and regulations; (b) not breach, violate or misappropriate and have not breached, violated or misappropriated any duty toward or rights of any third party, person or entity, including, without limitation, intellectual property rights, rights of publicity or privacy, or rights or duties under consumer protection, product liability, tort, or contract theories; (c) not contain materials, graphic or other, that is obscene, defamatory, libelous, offensive, slanderous, hate-related or related to nudity or pornography ; (d) not contain any malwares, viruses, malicious or offensive programs; and (e) not be false, deceptive, misleading, defamatory, libelous, or threatening.
- G.3. Except as expressly set forth herein, all rights, title and interest of either Party in its respective products, services, and intellectual property shall be retained by such party and nothing in the license to Ad Networks granted above to be considered as a waiver of either party of any of its intellectual property rights. Except as expressly set forth herein, neither Party is granted any right or interest or license of the other Party's intellectual property, know-how, trademarks, marks or trade names of the other party.
- G.4. Ad Network agrees that, as between the parties, VRTCAL owns and retains all right, title and interest in and to the RTB Service, all software, databases and other aspects and technologies in connection with the RTB Service, any enhancements, modifications or derivative works made by VRTCAL thereto, any materials made accessible to Ad Network by VRTCAL through the RTB Service or otherwise, and all

intellectual property rights in and to all of the foregoing. VRTCAL agrees that, as between the parties, Ad Network owns and retains all rights and ownership.

G.5. VRTCAL shall have the right to use all data derived from Bids received from Ad Network. Notwithstanding anything to the contrary herein, VRTCAL may use and disclose the data derived from Bids received through the VRTCAL exchange for (i) VRTCAL's reporting purposes, consisting of compilations of aggregated statistics that may be provided to VRTCAL clients, potential clients and the general public, so long as such disclosure does not include any personally-identifiable information; (ii) compliance with VRTCAL's obligations hereunder; and (iii) compliance with a court order, or other legal compliance. Ad Network shall have the right to disclose to its clients the name and logo of the mobile websites and/or mobile apps upon which the Advertisements will be displayed hereunder.

## H. Warranties and Representation

THE RTB SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED, AND TO ANY REMEDY AGAINST VRTCAL, WHETHER IN CONTRACT, TORT, DELICT, QUASI-DELICT OR OTHERWISE. VRTCAL DOES NOT WARRANT THAT THE RTB WILL BE UNINTERRUPTED, TIMELY OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES SO SOME OF THE PRECEDING EXCLUSIONS MAY NOT APPLY. VRTCAL MAKES NO WARRANTY WITH RESPECT TO THE ACCURACY, CORRECTNESS, TIMELINESS, PERFORMANCE, AVAILABILITY OR SUITABILITY OF ANY SERVICE OR INFORMATION PROVIDED BY IT, AND TAKES NO RESPONSIBILITY THEREFORE.

THE USE OF THE RTB IS PROVIDED UNDER THE STANDARDS OF RTB 2.0 OPEN CODE. (AS SET FORTH IN [http://www.iab.net/media/file/OpenRTB\\_API\\_Specification\\_VersionB.0\\_FINAL.PDF](http://www.iab.net/media/file/OpenRTB_API_Specification_VersionB.0_FINAL.PDF)). THE LICENSE PROVIDED TO AD NETWORK HEREIN IS NON-EXCLUSIVE, ROYALTY-FREE.

AD NETWORK REPRESENTS AND WARRANTS TO VRTCAL THAT: (A) AD NETWORK'S USE OF THE VRTCAL'S RTB SERVICE WILL COMPLY WITH ALL APPLICABLE LAWS (INCLUDING THAT AD NETWORK'S COLLECTION, USE AND STORAGE OF DATA IN CONNECTION WITH OR RESULTING FROM ITS USE OF VRTCAL'S RTB SERVICE SHALL COMPLY WITH ALL APPLICABLE PRIVACY LAWS AND ITS OWN POSTED PRIVACY POLICY), (B) AD NETWORK WILL NOT, DIRECTLY OR INDIRECTLY, INTRODUCE

VIRUSES, SPYWARE OR OTHER MALICIOUS CODE INTO THE VRTCAL EXCHANGE, AND (C) THE ADVERTISEMENTS TRAFFICKED, DELIVERED OR OTHERWISE PLACED BY AD NETWORK, THE USE AND DISPLAY OF SUCH ADVERTISEMENTS AS CONTEMPLATED BY THIS AGREEMENT, AND THE CONTENT LINKED TO FROM SUCH ADVERTISEMENTS, WILL NOT: (I) INFRINGE, VIOLATE OR MISAPPROPRIATE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT(S); (II) BREACH ANY DUTY TOWARD, OR RIGHTS OF, ANY THIRD PARTY, INCLUDING RIGHTS OF PUBLICITY OR PRIVACY (III) BE FALSE, DECEPTIVE, MISLEADING, UNETHICAL, DEFAMATORY, LIBELOUS, OR THREATENING; (IV) CONTAIN HATE MATERIAL OR NUDITY, PORNOGRAPHY OR OFFENSIVE GRAPHICS, CONTENT OR LANGUAGE.

## I. Limitation on Liability

EXCEPT WITH RESPECT TO AD NETWORK'S INDEMNIFICATION OBLIGATIONS OR BREACH OF ANY OF ITS REPRESENTATIONS UNDER SECTION H HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR DIRECT OR INDIRECT DAMAGES, INCLUDING, AND WITHOUT LIMITATION: LOSS OF DATABASE AVAILABILITY, APPLICATION AND/OR DATABASE PERFORMANCE DEGRADATION OF ANY KIND; LOSS OF PROFIT OR LOSS OF REVENUES ARISING OUT OF YOUR USE OF OR INABILITY TO USE THE RTB SERVICE OR PRINTED INFORMATION ACCOMPANYING IT, WHETHER OR NOT THE RELEVANT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY. EXCEPT WITH RESPECT TO AD NETWORK'S INDEMNIFICATION OBLIGATIONS OR BREACH OF ANY OF ITS REPRESENTATIONS UNDER SECTION H HEREIN, IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT EXCEED THE TOTAL NET REVENUE ACTUALLY RECEIVED BY VRTCAL UNDER THIS AGREEMENT IN THE THREE (3) MONTHS PRECEDING THE APPLICABLE CLAIM.

WE PROVIDE A COMMERCIAL INFORMATION DISTRIBUTION PLATFORM. AS SUCH, WE ARE NOT LIABLE FOR THE DISTRIBUTED CONTENT, ITS QUALITY AND/OR CREDIBILITY. WE ARE NOT LIABLE FOR ANY ABUSIVE CONTENT WHICH INFRINGES, IN ANY WAY, SHAPE OR FORM ANY RIGHTS, INCLUDING, BUT NOT LIMITED TO, INTELLECTUAL PROPERTY RIGHTS.

## J. Indemnification

J.1. The Ad Network will indemnify on the first demand, and hold VRTCAL and its directors, officers, employees, agents harmless 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, suit or proceeding 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 (1) the Content and/or Advertisements relating to or provided by Ad Network, and/or Ad Network's customers or advertisers; (2) a breach of Ad Network of any provision of this Agreement; (3) failure by any of Ad Network's customers or advertisers to: (i) comply with applicable privacy laws, (ii) comply with its own privacy policy, or (iii) make adequate disclosures about its data collection practices. In the event of such a claim, VRTCAL will (i) promptly notify the Ad Network of such claim, (ii) allow Ad Network to control the defense thereof and/or all related settlement negotiations in cooperation with VRTCAL, or (iii) reasonably cooperate with Ad Network, at Ad Network's expense, in such defense and/or settlement. Notwithstanding the aforesaid, VRTCAL shall be entitled to appoint an attorney on its behalf to monitor the defense and assist the attorney appointed by Ad Network.

J.2. VRTCAL will indemnify on the first demand, and hold the Ad Network and its directors, officers, employees, agents harmless from and against any and all loss, cost, liability or expense (including, without limitation, reasonable attorneys' fees) which the Ad Network may suffer, incur or sustain resulting from or arising out of any and all claims, suit or proceeding 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 an infringement by the RTB Service of third party's intellectual property; In the event of a claim, the Ad Network will (i) promptly notify VRTCAL of such claim, (ii) allow VRTCAL to control the defense thereof and/or all related settlement negotiations in cooperation with the Ad Network, or (iii) reasonably cooperate with VRTCAL, at VRTCAL's expense, in such defense and/or settlement. Notwithstanding the aforesaid, the Ad Network shall be entitled to appoint an attorney on its behalf to monitor the defense and assist the Attorney appointed by VRTCAL.

## K. Termination

K.1. Termination for convenience. Either Party may terminate this Agreement with a 14 days written notice at any time and for any reason.

K.2. Termination for cause. VRTCAL may immediately terminate this agreement if:

- (i) The Ad-Network breaches any of the provisions of this Agreement, and does not remedy such a breach within 7 days from the date it receives a notice of such a breach;

(ii) The Ad-Network defaults, goes into liquidation, enters into composition proceedings with its creditors, becomes insolvent or is unable to pay all or its major debts or the majority of its debts or fails or admits in writing its inability to pay its major debts or the majority of its debts when they become due, makes a general assignment for the benefit of its creditors or if a petition under bankruptcy or under any insolvency law is filed by or against the other Party and such petition filed by a third party is not dismissed within 60 days after it has been filed.

K.3. Any and all provisions or obligations under this Agreement which by their nature or effect are required or intended to be observed or performed after termination of this Agreement (including, and without limiting, Sections G.3, G.4, G.5, H, I, J, K, L, M and N) 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.

K.4. Upon termination of this Agreement, whether for convenience or for cause, VRTCAL, at its own discretion, will block the Ad Network access to the Pool, and its eligibility to receive Bid Request, and to put and offer Bids.

## L. Confidential Information and Privacy

L.1. Each party agrees that all business, technical and financial information, ideas, Content and other information in connection with this Agreement it obtains from the other party is the confidential property of the disclosing party (“**Confidential Information**” of the disclosing party). Except as expressly allowed herein, the receiving party will hold in confidence and not use or disclose any Confidential Information of the disclosing party except on a strict need-to-know basis. The receiving party shall be liable for any acts and/or omissions of any employee, contractor, or third party to whom it is entitled to disclose Confidential Information under this Agreement as if such acts and/or omissions were those of the receiving party. The receiving party shall not be obligated under this Section L with respect to information the receiving party can document and prove in writing: (i) is or has become readily publicly available without restriction through no fault of the receiving party or its employees or agents; (ii) is received without restriction from a third party lawfully in possession of such information; (iii) was rightfully in the possession of the receiving party without restriction prior to its disclosure by the other party; or (iv) was independently developed by employees or consultants of the receiving party without access to such Proprietary Information. Each party further acknowledges and agrees that, in the event of a breach or threatened breach of this Section L, the other party may have no adequate remedy at law, and that

therefore the other party shall be entitled to seek equitable relief including injunctive relief. The confidentiality obligations set forth herein shall continue for five (5) years following termination or expiration of this Agreement.

## M. Force Majeure

Neither party shall be liable to the other for any failure to perform any obligation under any Agreement which is due to an event beyond the control of such party including but not limited to any act of God, terrorism, war, political insurgence, insurrection, riot, civil unrest, act of civil or military authority, uprising, earthquake, flood or any other natural or man-made eventuality outside of our control, which causes the termination of an Agreement or contract entered into, nor which could have been reasonably foreseen. Any Party affected by such event shall forthwith inform the other Party of the same and shall use all reasonable endeavours to comply with all provisions of this Agreement contained herein.

## N. Governing Law; Jurisdiction

This Agreement shall be governed by the laws of California, without regard to any conflict or choice of law principles. Sole jurisdiction is granted to the competent courts within San Francisco County, California.

## O. Non-Assignment

Ad-Network may not assign its rights and obligations under this Agreement without VRTCAL's prior written consent, except in connection with the sale of all or substantially all of the voting stock or assets of Ad Network.

## P. Miscellaneous

P.1. The Parties are independent 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 other 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.

P.2. This Agreement constitutes the entire obligations and rights of the Parties with respect to the subject matter thereof, and all prior communications, letters, oral understandings, emails, and other contracts shall be void as of the Effective Date.

P.3. Any notice given by one Party to the other shall be deemed properly given when delivered to the recipient by hand, registered mail, e-mail or special courier during normal business hours to the address it provided to the other Party in respect to this Agreement.

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P.4. Each party acknowledges that the arrangements and agreements contemplated hereby are non-exclusive and nothing herein shall be deemed to restrict or limit a party's ability to engage in similar relationships, agreements or arrangements with any other party. Similarly, nothing herein shall preclude a party from developing, acquiring, marketing, promoting, offering, selling or distributing products similar to those offered by the other party, provided that neither party may utilize the Confidential Information of the other party or infringe upon the other party's Intellectual Property Rights in connection with such activities. This Agreement may be executed in counterparts, each of which will be deemed an original, and which, taken together, shall constitute one instrument. This Agreement may be amended only via a writing signed by both parties hereto.