



Agreement Terms & Conditions

1. This Agreement governs all advertising published in Publisher's Newspaper, Website, Apps, E-mail, and any other platforms owned or operated by or on behalf of Publisher (collectively, the "Publisher Service") or through Publisher on any third party service (e.g. including but not limited to, third party ad networks, ad exchanges, Facebook, etc.) ("Third Party Service"), and any other applicable service provided by Publisher, including but not limited to website development services set forth on the cover page ("Additional Service"). The Publisher Service, the Third Party Service, and the Additional Service shall be collectively referred to herein as the "Service".
2. Orders for all advertising units on the Service are cancellable upon 30 days' written notice, but only after 90 days of a live advertising campaign.
3. In the event that (a) Advertiser uses or pays for less advertising than that specified herein or the Advertiser or Agency otherwise breaches the terms of this agreement, or (b) if at any time Publisher in its reasonable judgment determines that Advertiser is not likely to have published the total amount of advertising specified herein during the term of this Agreement, any rate discount will be retroactively nullified and Advertiser and Agency will be charged the difference between the rate charged and the rates applicable for the volume of space actually used and paid for, in accordance with Publisher's applicable rate schedules ("short-rate"). In such event, Advertiser and Agency must reimburse Publisher for the short-rate within ten days of Publisher's invoice therefor and Advertiser will thereafter pay for advertising at the open rate or at the newly-determined rate(s) (as applicable).
4. Advertiser and Agency shall pay for such advertising at the rates set forth in this contract (if specified herein) or Publisher's rate card applicable at the time of the publication of the advertising. Volume discounts are net rates. No other discounts apply.
5. Payment for advertising shall be made on or before the 30th day of the month following that in which advertising is published. All advertising production fees (if any) shall be billed and are immediately due in full within the first month of the ad campaign. Failure of Advertiser and its Agency, if there is one, to comply with this requirement shall, at the option of Publisher, be considered a breach of this agreement. If payment is made by Advertiser, allowable commissions may be deducted. If any bill is not paid by its due date, commissions shall be deemed not earned and the gross amount of the bill shall be paid in full. Publisher may, at its option, require cash with order or otherwise change the payment terms at any time.
6. This Agreement is not subject to rebates, however it may be resigned for greater or less commitment at any time. If an agreement is for less space, a rate adjustment charge will be made according to the rate earned.
7. Advertiser and Agency, if there be one, each agrees to be jointly and severally liable for the payment of all bills and charges incurred. Advertiser authorizes Publisher, at its election, to tender any bill to Agency, and such tender shall constitute notice to Advertiser of the bill and shall in no way impair the joint and several liability of Advertiser and Agency. Payment by Advertiser to Agency shall not discharge Advertiser's liability to Publisher. The rights of Publisher shall in no way be affected by any dispute or claim as between Advertiser and Agency. Advertiser confirms that it has appointed Agency, if one is specified, to be its authorized representative with respect to all matters relating to advertising placed on Advertiser's behalf with the understanding that Agency may be paid a commission.
8. Advertiser and its Agency, if there be one, represent and warrant that: (i) Advertiser's websites, mobile sites, applications, landing pages and/or similar services that are (A) associated with advertising purchased hereunder and/or (B) created by Publisher on behalf of Advertiser hereunder, shall contain all necessary consumer disclosures required by applicable federal, state and local laws, rules and regulations, including, but not limited to, an accurate privacy policy (and Advertiser shall not violate the terms of such disclosures); (ii) there is nothing in any advertisement or other material (including but not limited to software and/or product samples) provided by Advertiser or Agency, or in any material to which the advertisement or other material links or refers, that violates any personal or proprietary right of any third party (including, but not limited to, copyright, trademark, patent, service mark, misappropriation, unfair competition, trade secret, privacy/publicity rights, etc.), constitutes false advertising, is harmful, or violates any law or governmental regulation; (iii) none of the advertisements or other materials provided to Publisher for display on the Service cause the download or delivery of any software application, executable code, any virus or malicious or social engineering (e.g., phishing) code or features; and (iv) it will not conduct or undertake, or authorize any third party to conduct or undertake, any unlawful or improper actions in connection with the Service, including, but not limited to, generating automated, fraudulent or otherwise invalid clicks or impressions on the Service. As part of the consideration to induce Publisher to publish, distribute, display, perform or transmit (collectively referred to herein as "Publish" or "Published" or "Publishing") such advertisement, Advertiser and its Agency, if there be one, each agrees to jointly and severally defend, indemnify and hold harmless Publisher, its employees, and representatives against all liability, loss, damage and expense of any nature, including but not limited to attorneys' fees, arising out of (a) the Publishing of any advertisement submitted by or on behalf of the Advertiser regardless of whether Publisher participated in the creation of such advertisement, or the linkage of any advertisement to any other material, or the loss, theft, use, or misuse of any credit or debit card or other payment, financial, or personal information; (b) any violation of the CAN-SPAM Act or other laws relating to Advertiser's advertisements, including, but not limited to, commercial messages e-mailed on Advertiser's behalf by Publisher; (c) the products and/or services promoted, sold, presented and/or contained in Advertiser's advertisements; (d) a breach or alleged breach of its covenants, warranties and obligations under its advertising contract terms and conditions; and (e) any material, content, software and/or technology provided by or on behalf of Advertiser or Agency to Publisher hereunder.
9. Advertiser shall have the right to revoke its agency at any time during the period of this agreement effective upon receipt by Publisher of notice in writing; in such event, Publisher may, at its option, terminate this agreement. If Advertiser shall designate another agent Publisher may, at its option, recognize such agent upon receipt of an agreement by said agent to be bound by the terms of this agreement and to become liable for the payment of all bills due and to become due under this agreement.
10. Publisher reserves the right, at its absolute discretion and at any time, to cancel any advertising or reject any advertising copy, whether or not the same has already been acknowledged and/or previously Published, including but not limited to for reasons relating to the contents of the advertisement or any technology associated with the advertisement. In the event of such cancellation or rejection by Publisher, advertising already run shall be paid for at the rate that would apply if the entire order were Published and no short rate will apply. The rejection of copy by the Publisher shall require Advertiser and/or Agency to supply new copy acceptable to the Publisher. Advertisements that simulate or resemble, or might not be distinguishable from, editorial content must be clearly labeled "ADVERTISEMENT" or any other label as determined by Publisher at the top of the advertisement, and Publisher may, in its sole discretion, so label such material and/or otherwise distinguish the style and/or presentation of such material.
11. Publisher, at its option, may terminate this agreement for the breach of any of the terms hereof, if being specifically understood without limitation that failure on the part of either Advertiser or Agency to pay each bill on or before its due date shall constitute a breach. Should Publisher terminate this agreement, all charges incurred together with short-rate charges shall be immediately due and payable. Furthermore, in the event Advertiser or Agency breaches this Agreement, Publisher may decide to exercise its right to (a) cancel its recognition of Agency, thereby causing Agency to lose claim to commission for any future advertising placed with Publisher on behalf of Advertiser or any other client, and/or (b) refuse to publish any or all of Advertiser's advertising. The following sections herein shall survive any termination or expiration of this Agreement: 2, 3, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29.
12. Any bill tendered by Publisher shall be conclusive as to the correctness of the item or items therein set forth and shall constitute an account stated unless written objection is made thereto within ten days from the rendering thereof. In addition, unless otherwise agreed on the cover page of this agreement, all impressions and/or other measurements of ads hereunder shall be solely based on Publisher's calculations.
13. This agreement may not be assigned by Advertiser or Agency without the prior written consent of Publisher, and any assignment without such consent shall be null and void. Advertiser or Agency may not use any space for the advertisement either directly or indirectly of any business organization, enterprise, product, or service other than that for which the advertising space is provided by Publisher, nor may Advertiser or Agency authorize any others to use any advertising space.
14. Orders containing terms, rates or conditions or specifying positions, facings, editorial adjacencies or other requirements may be accepted but such terms, rates, conditions or specifications are not binding unless Publisher has specifically agreed to them in writing.
15. In the event of a suspension of publication of the Service due to strike, accident, fire, flood, computer or software/network malfunction, congestion, repair, Internet outages or any other cause or contingencies beyond the control of Publisher, it is understood and agreed that such suspension shall not invalidate this contract, but a) will give Publisher the option to cancel this agreement, or if Publisher does not do so, b) upon resumption of publication this contract shall be continued and no liability for damages shall be incurred by the Publisher by reason of such suspension.
16. Interest will accrue at a rate of one and one-half percent (1.5%) per month (or such other maximum amount as is permissible by law) on all past due balances. If it becomes necessary to place with an attorney for collection any claim for funds due under the terms of this agreement, then Advertiser and Agency agree to pay to Publisher the reasonable attorneys' fees arising from such collection.
17. If during the period of this agreement Publisher revises its advertising rates, Advertiser and Agency agree to be bound by such rates provided Publisher gives at least thirty (30) days notice of such increase. However, in such event Advertiser may elect not to place any further advertisements after the effective date of the increase, and if no space is used after the effective date of the increase, no short rate will be charged on space used prior to such increase.
18. Publisher does not guarantee any given level of circulation or readership. In addition, Publisher makes no guarantee or representation as to the quantity and quality of visits, impressions, circulation, or other usage of the Service or of the advertisement, or as to the use of any particular tracking or information-gathering devices, unless Publisher expressly agrees otherwise in writing. In addition, all impressions and/or other measurements of advertisements for the Service shall be based solely on Publisher's calculations for the Service. Unless otherwise agreed to in writing by Publisher, Publisher will bill for the advertising on Publisher's Websites based on such Websites' own ad delivery numbers ("DFP numbers"), and if applicable, Publisher has the right to bill for advertising in Publisher's Apps based on its DFP numbers. In the event Publisher and Advertiser agree in writing that certain ads will be billed based on ad delivery numbers other than the applicable Service's own DFP numbers (i.e., third party numbers), Publisher will bill for such ads based on such third party numbers as long as the delivery discrepancy from third party numbers and DFP numbers is less than ten percent (10%). In the event that a difference of ten percent (10%) or more arises, both Publisher and Advertiser/Agency agree to use reasonable efforts to reconcile the difference and come to a mutually agreed upon solution. If an agreement cannot be reached or if Advertiser fails to provide its third party ad delivery numbers within ten (10) business days after the end of each month of its ad campaign, Publisher reserves the right to bill Agency/Advertiser at a delivery rate of ninety percent (90%) of DFP numbers. To the extent Publisher fails to provide Advertiser/Agency with any guaranteed impressions on the Service (if expressly agreed to by Publisher in writing), Publisher will provide as a sole remedy a makegood, by extending the order beyond the contracted advertising flight period until the remainder of the guaranteed impressions are delivered. For the purpose of clarification, Advertiser's Agencies that request a special billing schedule or an upfront bill will not receive refunds/adjustments in the case of under delivery of guaranteed impressions (if applicable).
19. Publisher's sole liability (and Advertiser's and Agent's sole remedy) for errors and/or omissions by Publisher in published advertisements shall be to provide Advertiser a credit for the actual space of the error or omission (in no event shall such credit exceed the total amount paid to Publisher for the applicable advertisement), and Publisher shall have no liability unless the error or omission is brought to Publisher's attention no later than 5 working days after the advertisement is first Published. However, if a copy of the advertisement was provided to or reviewed by Advertiser, Publisher shall have no liability. IN NO EVENT SHALL PUBLISHER BE LIABLE TO ADVERTISER, AGENCY OR ANY OTHER PARTIES FOR ANY ADVERTISING CREATIVE OR PRINTING COSTS, ADMINISTRATIVE COSTS, CONSEQUENTIAL DAMAGES AND/OR ANY FURTHER DAMAGES OF ANY KIND ARISING FROM THIS AGREEMENT OR ANY BREACH THEREOF, INCLUDING BUT NOT LIMITED TO INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR LOST PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF INFORMATION AND THE LIKE.
20. Failure by Publisher to enforce any provision of this agreement shall not be considered a waiver of such provision. Unless inconsistent with the express terms of this agreement, all orders are subject to the terms of Publisher's applicable rate card. Advertiser and Agency acknowledge receipt of a copy of said rate card.
21. Advertiser and Agency recognize that the copyright in any advertisements created by Publisher is owned by Publisher. Unless otherwise mutually agreed upon by the parties in writing, Publisher shall also own all rights, title and interest in all websites, landing pages and/or other products created by Publisher for Advertiser/Agency hereunder. Advertiser and/or Agency shall not use any advertisements, landing pages, websites or other products created by Publisher hereunder for any other purpose, including but not limited to, in any other publication, website and/or on any other platform without Publisher's prior written approval in each instance. As to all other advertisements, Advertiser and Agency agree that Publisher has the non-exclusive right, for the full term of copyright, by itself or through third parties, to republish, retransmit, re-perform, redistribute or otherwise re-use any advertisements submitted hereunder in any form in which the advertisements may be Published or used (in any media now in existence or hereafter developed) in whole or in any part, whether or not combined with material of others. The Advertiser/Agency acknowledges and agrees that any material submitted by Advertiser/Agency may be included in an electronic database of published pages from the Publisher Service and are acceptable as proof of publication for the purpose of payment of invoices.
22. This agreement will be construed in accordance with the laws of the State of Michigan. Any action based on or alleging a breach of this agreement must be commenced in a state or federal court in or near Grand Rapids, Michigan; and the parties hereby consent to the exclusive jurisdiction of such courts in connection with this Agreement.
23. Advertiser and Agency understand that advertisements and/or other commercial messages sent on its behalf by Publisher via electronic mail may be governed by federal, state and local laws, rules and regulations, including without limitation the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 and any acts related thereto, and including the interpretation thereof by the FTC or other governmental authorities (collectively, the "CAN-SPAM Act") and state "Do Not E-mail" registries. Advertiser and Agency agree to comply with all such applicable laws, rules and regulations. Without limiting the generality of the foregoing, Advertiser and Agency shall fulfill all obligations of a "Sender" as defined in the CAN-SPAM Act, and comply with Publisher's policies intended to comply therewith.
24. All data collected by Publisher, Advertiser and/or any third party in connection with this agreement shall be exclusively owned by Publisher, and not used or disclosed by Advertiser/Agency without Publisher's prior written approval in each instance.
25. The titles and logos of the Publisher's Services are registered trademarks and/or trademarks protected under common laws. Neither the titles nor the logos may be used without the express written permission of Publisher.
26. This agreement may be executed by Advertiser/Agency by manual, facsimile or scanned PDF signatures (or by clicking "accept" or similar terminology online), and in any number of counterparts, each of which will be deemed an original and all which together will constitute one and the same instrument.
27. PUBLISHER DISCLAIMS ALL WARRANTIES AND/OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES FOR NON-INFRINGEMENT, ACCURACY, AVAILABILITY, UPTIME, MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE HEREUNDER IN CONNECTION WITH THE DISPLAY, PERFORMANCE AND TRANSMISSION OF ADVERTISEMENTS IN THE SERVICE, AND IN CONNECTION WITH THE CREATION OF WEBSITES, LANDING PAGES, APPS AND SIMILAR PRODUCTS OR PLATFORMS FOR ADVERTISER/AGENCY HEREUNDER. Advertiser and Agency acknowledge that third parties other than Publisher may generate automated, fraudulent or otherwise invalid/improper impressions, conversions, inquiries, clicks or other actions on Advertiser's advertisements displayed on the Service. As between Advertiser and Publisher, Advertiser accepts the risk of any such improper actions. Advertiser's exclusive remedy for such suspected improper actions is for Advertiser to request a refund relating to its impacted advertisements in the form of advertising credits on the applicable Service within thirty (30) days from the end of the calendar month in which such advertisement is initially displayed on the applicable Service. Any advertising credit refunds in connection with the Advertiser's aforementioned requests are within the sole discretion of Publisher.
28. To the extent Advertiser and/or Agency collects or obtains data from the Publisher Service, whether collected or received via an advertising unit, widget, pixel tag, cookie, clear gif, HTML, web beacon, script or other data collection process, including without limitation "clickstream" or "traffic pattern" data, or data that otherwise relates to usage of the applicable Publisher Service, user behavior and/or analytics, Advertiser and/or Agency is subject to the then-current version of Publisher's Third Party Data Collection Policy, which is incorporated herein by reference (a copy of which is located at the following URL: http://www.advancedigital.com/third_party_data and/or available upon request). In addition, to the extent Advertiser and/or Agency provides any such data, or any names, postal addresses, email addresses, telephone numbers or other personally identifiable data to Publisher for any purpose, Advertiser and/or Agency represents and warrants that it has all rights, consents and permission necessary to transfer such data, and for Publisher to use such data, for the purposes contemplated by the parties.
29. The foregoing terms shall govern the relationship between Publisher and Advertiser and Agency. Publisher has not made any representations to Advertiser or Agency that are not contained herein. Unless expressly agreed to in writing signed by someone authorized at or above the Director level of Publisher, no other terms and conditions in insertion orders, contracts, click-through terms and conditions, copy instruction, letters, or otherwise will be binding on Publisher. All advertising agreements and similar terms must be signed by someone authorized at or above the Director level of Publisher. Publisher will not be bound to any advertising agreements or similar terms unless someone at or above the Director level has signed such agreements/terms.
30. All advertising placed on a Third Party Service shall be subject to such Third Party Service's Advertising Terms and Conditions, Terms of Use, and Privacy Policy.