

SMILEY MEDIA – PUBLISHER STANDARD TERMS & CONDITIONS

These Terms and Conditions (the “Agreement”) constitute a legal agreement between Smiley Networks, Inc., which does business as Smiley Media (“Smiley Media”), and Publisher (“Publisher”). Publisher’s use of the Smiley Media Advertising Network is subject to the terms set forth in this document. By Publisher’s continued use of the Smiley Media Advertising Network and all services provided by Smiley Media, Publisher expressly agrees to the terms found in this Agreement. This Agreement supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between Publisher and Smiley Media with respect to the Smiley Media Advertising Network. Publisher agrees that this Agreement is not intended to confer and does not confer any rights or remedies upon any person other than Publisher and Smiley Media. Smiley Media may amend this Agreement at any time, from time to time, by posting an amended Agreement on the Smiley Media website. Any changes to this Agreement will become effective immediately upon posting and may be changed without notice to Publisher. This Agreement may not be otherwise amended except in a writing signed by Publisher and Smiley Media. Smiley Media and Publisher agree to these Terms and Conditions governing Publisher’s participation in the Smiley Media Advertising Network as follows:

1. **Definitions.** “Advertiser” means the manufacturers, advertisers, service providers, and merchants that provide Offers through the Smiley Media Advertising Network. “Agreement” means these Terms and Conditions and any Insertion Orders. “Consumer” means a user of Publisher’s Site. “Confidential Information” means any and all information disclosed to a Recipient by a Discloser under this Agreement that is designated as confidential at the time of disclosure. If information is disclosed orally or in intangible form, it will be deemed confidential if summarized in writing within a reasonable time after disclosure. Confidential information includes, but is not limited to “Technical Information,” including operating characteristics, optimizations, methods of optimization, implementations, and development plans. Confidential information further includes, but is not limited to “Business Information,” including business plans, product pricing and roadmaps, and identities of websites on which Offers are published. Notwithstanding the foregoing, Confidential Information will not include any information the Recipient can substantiate: (a) is now available or becomes publicly available without breach of this Agreement; (b) is disclosed to a third party by the Discloser without a duty of confidentiality; (c) is known by the Recipient before receipt from the Discloser; (d) is independently developed by the Recipient without use of or access to the Discloser’s Confidential Information; (e) is lawfully obtained from a third party that has a right to make such disclosure; or (f) is expressly approved for release by written authorization of the Discloser. “Discloser” means a party who discloses Confidential Information under this Agreement. “Effective Date” means the date listed as such in an Insertion Order. “Entry Page” means the first Hosted Page to which Publisher will direct Consumers under this Agreement. The Entry Page will contain registration information fields for Consumers to review and update prior to entering the Offer Form Pages in the Smiley Media Advertising Network. “Hosted Page” means the Entry Page and the Offer Form Page, and all elements contained therein, developed, hosted, and maintained by Smiley Media, through which Registered Users may opt in to Offers from Advertisers. “Insertion Order” means Publisher’s written directive to Smiley Media to display Offers on Publisher’s Site through the Smiley Media Advertising Network under specified terms. “Intended Purpose” means the display of Advertisers’ Offers through the Smiley Media Advertising Network. “Live Date” means the date Publisher first directs Registered Users to Hosted Pages. “Offer” means the offers, coupons, or other promotional marketing provided by Advertiser through an Offer Form Page on the Smiley Media Advertising Network. “Offer Form Page” means the Hosted Pages on which Registered Users review, update, and confirm the Valid Registration Fields and provide additional information as required by the Offer. “Publisher” means the entity covered by this Agreement that directs Internet users to the Smiley Media Advertising Network and any affiliated entities through which Publisher directs Internet users to the Smiley Media Advertising Network. “Publisher Integration Document” means the document containing the set of technical parameters required to display a Hosted Page on Publisher’s Site. “Recipient” means a party who receives Confidential Information under this Agreement. “Registered User” means a Consumer who has provided data in all Valid Registration Fields on any of Publisher’s Sites and has reached an Offer Form Page. “Registered User Action” means a unique registration by a Registered User to participate in an Offer, provided that such registration is accepted by the Offer’s sponsoring Advertiser. “Revenue” means proceeds collected from Advertisers for Registered User Actions arising from Publisher’s delivery of Consumers. “Site” means the Internet location identified in an Insertion Order as an “Authorized URL.” “Smiley Media” means Smiley Networks, Inc., which does business as Smiley Media. “Smiley Media

Advertising Network” means the network of publishers and advertisers through which Smiley Media displays Offers to Internet users by means of interstitial ad placement. “Valid Registration Fields” means the first name, last name, phone number, street address, city, state, zip code, email address, date of birth, gender, and/or any other Consumer information required for Offers.

2. Use of the Smiley Media Advertising Network.

2.1 Smiley Media will provide various advertising services to Publisher according to this Agreement and any Insertion Order. Each Insertion Order contains additional terms and conditions specific to the services described in the Insertion Order. An Insertion Order will not be binding unless signed by both parties and, once so signed, will become part of this Agreement.

2.2 Smiley Media is responsible for the development, operation, and maintenance of Smiley Media’s advertising service technology, proprietary systems, and related equipment.

2.3 Except as otherwise provided in this Agreement, Smiley Media and Publisher agree that Smiley Media will have sole responsibility and authority for: (a) obtaining Advertiser participation in the Smiley Media Advertising Network and for providing and updating Offers on the Hosted Page and in the Smiley Media Advertising Network as set forth in the Insertion Order; and (b) obtaining from Advertisers all Offer information and other Advertiser-specific information for display on the Hosted Page or on the Smiley Media Advertising Network.

2.4 Offers containing objectionable content, as determined by Publisher, or content in violation of applicable law, will be excluded from appearing on the Hosted Pages within 24 hours of Publisher providing Smiley Media written notice of such content. Publisher shall otherwise accept all Offers on its Hosted Pages.

2.5 Smiley Media may provide online reporting of revenue, traffic volume, or pass-through rates to Publisher. All such reports will be deemed non-binding estimates.

2.6 Publisher shall use all commercially reasonable efforts to integrate Publisher’s Site with the Smiley Media Advertising Network by, among other things, providing all information required in the Publisher Integration Document.

2.7 Publisher shall use all commercially reasonable efforts to deliver Consumers to the Hosted Page.

2.8 Smiley Media expends considerable resources providing Site-specific design, support, and consulting services in reliance on Publisher’s representation that a commercially significant number of Consumers will be delivered to the Hosted Page beginning on the Live Date. Accordingly, Publisher agrees to deliver a commercially significant number of Consumers, as determined by Smiley Media in its sole discretion, to the Hosted Page within 30 days of the Live Date; if Publisher fails to do so, Publisher shall pay Smiley Media a \$1,000.00 integration charge as compensation for Site-specific design, support, and consulting services.

2.9 Publisher is prohibited from offering any kind of incentive, including but not limited to cash, credits, loyalty points, or any such rewards in an attempt to generate results or in securing leads for any particular Offer. Additionally, Publisher’s Site shall not promote: (a) sexually explicit materials; (b) violent, illegal or hate-related speech, ideas or conduct; or (c) discrimination based on sex, race, religion, age, sexual orientation, nationality, disability, or ethnicity. In the event that Smiley Media determines, in its sole discretion, that Publisher has breached this Section 2.9, Smiley Media may, upon notice, immediately terminate this Agreement without notice to Publisher and, because damages resulting from such breach will be difficult to quantify, Publisher agrees that Smiley Media may retain any sums then otherwise due Publisher under the operative Insertion Order as liquidated damages for such breach.

2.10 Smiley Media may provide, or third parties may provide, links to other websites or resources. Because Smiley Media has no control over such sites and resources, Publisher acknowledges and agrees that Smiley Media is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. Publisher further acknowledges and agrees that Smiley Media shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such website or resource.

3. Privacy.

3.1 Internet user privacy is of paramount importance to Smiley Media and all participants in the Smiley Media Advertising Network. Publisher therefore affirms and attests that it will adhere to fair information collection practices with respect to its performance under this Agreement.

3.2 Some of the information gathered from Valid Registration Fields and elsewhere may be personally identifiable information of Consumers. Publisher shall clearly post on its website an easy to understand privacy policy that: (a) is in compliance with all Federal Trade Commission guidelines and any other applicable laws, rules, and regulations with respect to personally identifiable information and online privacy, including all applicable laws, rules and regulations with respect to the online privacy of minors; and (b) identifies the nature and scope of the collection and use of information gathered by Publisher and offers Consumers an opportunity to opt-out from collection and use of personal data.

3.3 Publisher shall fully comply with the privacy policy posted on Publisher's Site at all times. Publisher shall notify Smiley Media at least three business days in advance of any changes to any applicable privacy policy and shall provide Smiley Media with a revised copy of the privacy policy prior to the effective date of the change.

3.4 Certain information about Publisher may be subject to the Smiley Media Privacy Policy. For more information, see the full Privacy Policy at <http://www.smileymedia.com/pp.html>. Notwithstanding the foregoing, Smiley Media reserves the right at all times to disclose any information as Smiley Media deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in Smiley Media's sole discretion. Publisher understands and agrees that the Smiley Media Privacy Policy, including enforcement of that policy, is not intended to confer, and does not confer, any rights or remedies upon any person. Smiley Media may change its Privacy Policy from time to time, and such changes are effective upon the posting of those changes on the Smiley Media website. This posting may be done without notice to Publisher, as provided in the Privacy Policy.

4. Payment.

4.1 Smiley Media and Publisher shall pay all fees as indicated in this Agreement and any Insertion Orders. Publisher will receive payment based on revenue collected by Smiley Media for Registered User Actions; however, any charges for third-party validation of Registered User data will be deducted from Publisher's share of such revenue.

4.2 Unless otherwise agreed by the parties in writing (including by email), Smiley Media will send payments to Publisher approximately sixty days after the end of each calendar month if Publisher's earned balance is \$50 or more. If the Agreement is terminated, Smiley Media will pay Publisher's earned balance to Publisher within approximately ninety days after the end of the calendar month in which the Agreement is terminated. Smiley Media will not make payments for any earned balance less than ten dollars. Smiley Media will not make payments for leads rejected by Advertisers.

4.3 To ensure proper payment, Publisher is solely responsible for providing and maintaining accurate contact information. For U.S. taxpayers, this information includes a valid U.S. tax identification number and a completed Form W-9. For non-U.S. taxpayers, this information includes either a signed certification that the taxpayer does not engage in U.S. activities or a completed Form W-8 or other form, which may require a valid U.S. tax identification number, as specified by U.S. tax authorities.

4.4 If Smiley Media incurs bank fees due to erroneous Publisher contact information, the amount of such bank fees will be deducted from subsequent payments to Publisher. Publisher shall pay all applicable taxes or charges imposed on it by any government entity in connection with Publisher's participation in the Smiley Media Advertising Network.

4.5 If Publisher disputes any payment made by Smiley Media, Publisher shall notify Smiley Media in writing within five days of such receipt of payment; failure to do so will result in waiver by Publisher of any claim relating to such payment. Payment will be calculated based solely on records maintained by Smiley Media. Smiley Media will not accept other measurements or records for the purpose of determining amounts owed under this Agreement.

5. Term; Termination.

5.1 This Agreement will commence on the Effective Date of the first Insertion Order and terminate upon expiration of all Insertion Orders agreed pursuant hereto, unless earlier terminated as provided herein.

5.2 Unless otherwise specified in an Insertion Order, Publisher may terminate this Agreement for convenience upon not less than thirty calendar days prior written notice. Smiley Media may terminate this agreement at any time, with or without notice. Either party may at any time terminate this Agreement immediately upon written notice if any representation listed in the "Representations" section of this Agreement is inaccurate; provided, however, that Smiley Media may immediately terminate this Agreement without notice upon Publisher's breach of Section 2.9. Publisher will be deemed to terminate this Agreement if it disables or materially reduces traffic to Hosted Pages. If Publisher fails to notify Smiley Media as set forth in this Section (or the termination clause in the Insertion Order, if different), Smiley Media may retain as liquidated damages all sums otherwise due to Publisher as of the date of Publisher's termination. Upon termination of this Agreement: (a) all licenses applicable to this Agreement (including all trademark licenses) shall terminate, and (b) Smiley Media and Publisher shall remove all links applicable to this Agreement from the Site and the Hosted Page, as applicable.

6. License and Trademark Use.

6.1 Except as provided below, neither Smiley Media nor Publisher shall use the other party's trademarks or logos (and Publisher shall not use any Advertiser trademark or logo), nor any adaptation or variation thereof, in any manner whatsoever, without the other party's prior written consent in each instance. All such uses shall be in accordance with the licensor's guidelines.

6.2 Subject to the terms and conditions of this Agreement, Publisher hereby grants to Smiley Media a nonexclusive, nontransferable, worldwide, limited license, during the term of this Agreement, to reproduce and display Publisher's trademarks and logos.

6.3 Subject to the terms and conditions of this Agreement, Smiley Media hereby grants Publisher a nonexclusive, nontransferable, limited license, during the term of this Agreement, to reproduce and display on the Site those Smiley Media trademarks and logos specified by Smiley Media for the sole and exclusive purpose of creating a hypertext link from the Site to the Hosted Page as specified by Smiley Media.

7. Proprietary Rights.

7.1 Smiley Media will own any and all right, title, and interest in and to: (a) the Smiley Media Advertising Network; (b) all Registered User transaction data related to Registered User Actions and behavior occurring on the Hosted Pages collected by Smiley Media, including without limitation analyses, compilations, overlays, summaries, service performance evaluation, public reporting requirements, marketing activities, abstracts, or other manipulations of such data; and (c) all intellectual property rights (including without limitation copyrights and patent rights) in each of the foregoing. Notwithstanding Publisher's right to participate in the Smiley Media Advertising Network as provided in this Agreement, Publisher agrees it has no rights in or licenses to any of the foregoing.

7.2 If provided through a Registered User Action, all Valid Registration Fields data are the sole and exclusive property of Advertiser and are deemed Confidential Information under this Agreement.

8. Representations.

8.1 Each party represents to the other party that: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations as set forth in this Agreement; (b) it owns or has sufficient licenses to its and, as applicable, the Advertiser's trademarks and the Offers provided hereunder; (c) it has no other agreements or commitments that conflict with its obligations under this Agreement; (d) it will comply with all applicable laws, codes, ordinances, rules and regulations of the federal and state governments, and of any political subdivisions and regulatory authorities thereof; and (e) the use, reproduction, distribution, or transmission of the Offers will not violate any civil or criminal laws, rules, or regulations.

8.2 Publisher specifically represents that no email sent by Publisher violates any laws or regulations, including without limitation, the CAN-SPAM Act of 2003 as amended.

9. Limitations of Liability.

9.1 ALL SERVICES PROVIDED BY SMILEY MEDIA ARE PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, SMILEY MEDIA MAKES NO WARRANTIES, GUARANTEES, REPRESENTATIONS, PROMISES, STATEMENTS, ESTIMATES, CONDITIONS, OR OTHER INDUCEMENTS, EXPRESS, IMPLIED, ORAL, WRITTEN, OR OTHERWISE EXCEPT AS EXPRESSLY SET FORTH HEREIN. SMILEY MEDIA IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ACCIDENT, WAR, ACT OF GOD, EMBARGO, COMPUTER SYSTEM FAILURE, OR ANY OTHER CIRCUMSTANCE BEYOND ITS CONTROL.

9.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY PUBLISHER FROM SMILEY MEDIA OR THROUGH OR FROM THE SMILEY MEDIA ADVERTISING NETWORK SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

9.3 UNDER NO CIRCUMSTANCES SHALL SMILEY MEDIA BE LIABLE TO PUBLISHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SMILEY MEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY ASPECT OF THE ADVERTISING RELATIONSHIP PROVIDED HEREIN. IN NO EVENT SHALL SMILEY MEDIA'S TOTAL OBLIGATIONS OR LIABILITY HEREUNDER EXCEED THE LESSER OF THE AMOUNT OWED IN THE INSERTION ORDER IN QUESTION OR \$10,000.00. REGARDLESS OF ANY LAW TO THE CONTRARY, NO ACTION, SUIT OR PROCEEDING SHALL BE BROUGHT AGAINST SMILEY MEDIA MORE THAN ONE YEAR AFTER THE DATE UPON WHICH THE CLAIM AROSE.

9.4 PUBLISHER ACKNOWLEDGES THAT SMILEY MEDIA HAS AGREED TO PRICING IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THESE CONSIDERATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. PUBLISHER AGREES THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

10. Indemnification.

10.1 Publisher agrees to indemnify, defend, and hold harmless Smiley Media and its officers, directors, employees, and agents against all claims, actions, liabilities, suits, proceedings, fines, damages, costs (including without limitation settlement costs and attorneys' fees), losses, and expenses that may at any time be incurred by reason of any claims, suits, or proceedings: (a) for libel, defamation, violation of right of privacy or publicity, patent, copyright or trademark infringement, or other infringement of any third party right, fraud, false advertising, misrepresentation, product liability or violation of any law, statute, ordinance, rule, or regulation throughout the world in connection with Publisher's use of the Smiley Media Advertising Network; or (b) arising out of any material breach by

Publisher of any duty, representation or warranty under any agreement between Smiley Media and Publisher.

10.2 The foregoing obligation is contingent upon: (a) the indemnified party giving written notice to the indemnifying party of any such claim, action or demand within 60 days of receipt of notice of such claim, action or demand; and (b) the indemnified party fully assisting, at the indemnifying party's expense, in the defense.

10.3 The indemnified party agrees that the indemnifying party will have sole and exclusive control over the defense and settlement of any third-party claim; however, any compromise or settlement will require the prior written consent of both Publisher and Smiley Media. Consent to compromise or settlement shall not be unreasonably withheld or delayed.

11. Confidentiality.

11.1 All Confidential Information of a Discloser shall be used by a Recipient only for the Intended Purpose. Publisher and Smiley Media hereby agree that a Recipient shall: (a) refrain from disclosing the Confidential Information to any third party; (b) restrict dissemination of the Confidential Information to only those employees who must be directly involved with accomplishing the Intended Purpose or any other purpose under this Agreement; (c) use the same degree of care it would use for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of the Confidential Information of the Discloser.

11.2 Publisher agrees that all Confidential Information received is and will remain the property of the Discloser and that such information shall not be copied, transmitted, or reproduced without the express permission of the Discloser, except for such copies as may be reasonably necessary in order to accomplish the Intended Purpose or any other purpose under this Agreement. Upon written request of the Discloser, the Recipient shall immediately discontinue all use of Confidential Information of the Discloser, and shall, at the Discloser's option, either destroy or return to the Discloser all hard copies in the Recipient's possession of such Confidential Information and any derivatives thereof (including all hard copies of any translation, modification, compilation, optimization, abridgement, or other form in which the Confidential Information has been recast, transformed, or adapted), and delete all electronic copies thereof; provided, however, that the Recipient may retain one archival copy of the Confidential Information, which shall be used only in the event of a dispute concerning this Agreement. Notwithstanding the foregoing, neither party shall be required to destroy or alter any computer-based back-up files generated in the normal course of its business, provided that such files are maintained in a confidential manner.

12. Fraud.

12.1 Smiley Media exercises commercially reasonable efforts to monitor traffic to protect against fraudulent activity on the part of publishers participating in the Smiley Media Advertising Network. If Smiley Media detects fraudulent activity on the part of Publisher, Publisher's account will be suspended pending further investigation.

12.2 If Smiley Media determines, in its sole discretion, that Publisher has engaged in fraudulent activity, Smiley Media may suspend or cancel all Insertion Orders. Smiley Media reserves sole discretion in determining what constitutes fraudulent activity. If Smiley Media determines Publisher engaged in fraudulent activity, Publisher will have the burden of proving to Smiley Media that Publisher has not committed fraud.

13. Alternative Dispute Resolution.

13.1 The parties will first attempt to settle all disputes arising out of this Agreement through good-faith negotiation by executives of the Parties who have authority to finally settle such dispute. If such negotiation is not successful in resolving the dispute within ten days, the Parties agree to submit such dispute to confidential mediation in Austin, Texas in accordance with the then-current International Institute for Conflict Prevention and Resolution Public Resources Mediation Procedure (see <http://www.cpradr.org>).

13.2 If such mediation is not successful in resolving the dispute within an additional 30 days, either party may submit the dispute to binding arbitration, before one arbitrator, under the rules of the American Arbitration Association, for arbitration in Austin, Texas. Any arbitration brought hereunder, and all disputes determined therein, will be governed by the law of Texas without regard to conflict of laws principles. In any arbitration brought hereunder, the arbitrator may order the pre-hearing production or exchange of documentary evidence and may require written submissions from the parties, but may not otherwise order pre-hearing depositions or discovery. Unless the parties otherwise agree, the arbitrator will not have the power to appoint experts. The prevailing party may be entitled to recover its reasonable attorneys' fees, costs, and other expenses, as determined by the arbitrator. The arbitrator will not issue any award, grant any relief, or take any action prohibited by or inconsistent with this Agreement and may not, under any circumstances, award punitive or exemplary damages. Judgment on the award rendered by the arbitrator may be entered in any court located in Austin, Texas or having jurisdiction thereof. Notwithstanding the foregoing, either party may apply at any time to any court of competent jurisdiction for a temporary restraining order or preliminary injunction to protect that party's Confidential Information or otherwise mitigate that party's damages pending resolution of the dispute in accordance with the process set forth above.

14. Choice of Law; Attorneys' Fees.

14.1 This Agreement is governed by the laws of the State of Texas, except that the conflict-of-law provisions of the State of Texas will not apply.

14.2 The exclusive forum for any action related to this Agreement will be in the state courts in Austin, Texas and, to the extent that federal courts have exclusive jurisdiction, in the U.S. District Court for the Western District of Texas – Austin Division.

14.3 The parties consent to such venue and jurisdiction and agree to waive the personal service of any process upon them by agreeing that service may be effectuated by overnight mail (using a commercially recognized service) or by U.S. Mail with delivery receipt to the last address provided by each party hereto.

14.4 A party that substantially prevails in an action brought under this Agreement is entitled to recover from the other party its reasonable attorneys' fees and costs.

15. Non-circumvention.

15.1 During the term of any Insertion Order in effect and for a period of 180 days thereafter, Publisher shall not solicit promotional offer business from Advertisers whose goods and/or services are represented in the offers presented through Hosted Page(s); provided the prohibition in this Section 15.1 shall not prevent Publisher from maintaining a contractual relationship existing as of the Effective Date of such Insertion Order.

15.2 If Publisher initiates a performance-based advertising relationship with an Advertiser and Smiley Media later determines that such Advertiser was an Advertiser within the Smiley Media Advertising Network at the time Publisher initiated the relationship, Publisher shall immediately terminate its relationship with Advertiser.

15.3 If Publisher fails to comply with any requirements set forth in this Section, the parties agree that the resulting damages will be difficult to quantify, and Smiley Media will be entitled to liquidated damages equal to fifty percent of the gross revenue generated by Publisher in violation of this Section in addition to any other remedies Smiley Media may have at law or in equity.

16. General.

16.1 Smiley Media and Publisher acknowledge and agree that their relationship is that of independent contractors. Neither Publisher nor Smiley Media shall in any way represent itself as a partner, joint venturer, agent, employee, or general representative of the other party

16.2 Any notices relating to this Agreement shall be given in writing (including email) and will be deemed effective for all purposes upon the first to occur of

actual delivery evidenced by signed receipt, receipt of email into the mailbox of the then-serving CEO or General Counsel of a party, delivery by generally recognized overnight courier service with return receipt requested, or by facsimile transmission (with the original subsequently delivered by other means permitted by this Agreement) at the addresses set forth in the Insertion Order

16.3 Sections 1, 3, 6, 7, 9, 11, 13, 14, 15 and 16 will survive expiration or termination of this Agreement.

16.4 This Agreement (and any documents incorporated herein by reference) constitutes the entire agreement between the parties hereto and contains all of the agreements between said parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, either oral or in writing, between the parties with respect to the subject matter hereof.

16.5 This Agreement will not be changed, modified, or amended except by a writing executed by both parties or by posting of revisions of the Agreement at

<http://www.smileymedia.com/services/adv/doc/SmileyMediaPublisher-terms.pdf>. Publisher is responsible for checking for modifications to this agreement at

<http://www.smileymedia.com/services/adv/doc/SmileyMediaPublisher-terms.pdf> on a regular basis. Publisher's use of the Smiley Media Advertising Network after the posting of modifications to this agreement constitutes assent to any modification provided by Smiley Media. If Publisher does not agree to the changes proposed by Smiley Media, or to any of the terms in this Agreement, Publisher's only remedy is to terminate this Agreement and any Insertion Orders pursuant to Section 5.

16.6 This Agreement may not be assigned by a party without the prior written consent of the other party; however, the parties may assign this Agreement without consent in connection with a merger, reorganization, or sale of all or substantially all of a party's assets or voting securities.

16.7 This Agreement may be executed in counterparts and all such executed documents (including facsimiles) when taken together have the same force and effect as a single document.

16.8 This Agreement is binding upon and inures to the benefit of Publisher and Smiley Media and their successors and permitted assigns.

16.9 If any section, provision, term, or clause of this Agreement is found to be invalid or unenforceable, such section, provision, term, or clause shall be modified or severed from this Agreement to the extent necessary to make such provision enforceable and consistent with the remainder of this Agreement.

16.10 The failure of either party to insist upon strict performance of any of the provisions contained in this Agreement will not constitute a waiver of its rights as set forth in this Agreement, at law or in equity, or a waiver of any other provisions or subsequent default by the other party in the performance of or compliance with any of the terms and conditions set forth in this Agreement.