

## Active Media, INC.

**This Master Advertising Agreement** ('Agreement') constitutes a legally binding agreement by and between Active Media, LLC (hereinafter referred to as 'AMI'), and Advertiser (all capitalized terms not defined in this Agreement have the same meanings as in applicable AMI Insertion Order, which is incorporated herein by reference and made part of this Agreement). AMI and Advertiser may be referred to individually as 'Party' and collectively as 'Parties.'

**WHEREAS** AMI is in the business of placing advertisements, ad banners, hyperlinks, text content, buttons, and/or other forms of advertisement on its network of publishers', advertisers', and affiliates' websites ('AMI Network'); and

**WHEREAS** Advertiser wishes to place one or more advertisements on and within AMI's Network; and,

**WHEREAS** Advertiser wishes to engage AMI to place advertisements on AMI's Network; and,

**WHEREAS** Advertiser and AMI will agree to the terms of specific Insertion Order Agreements (IO), which, when signed by both parties, will be incorporated herein by reference,

**NOW THEREFORE**, in consideration of the foregoing and of the mutual premises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **1. Authority to Execute Agreement**

Each Party represents and warrants that it has full power and authority to enter into this Agreement; and that the execution, delivery and performance by each Party of this Agreement will not violate any law, statute or other governmental regulations. Both Parties mutually warrant that the entering of this Agreement in no way violates any other agreement that either Party may have with other entities.

### **2. Notices**

All notices to be given under this Agreement shall be either by e-mail, personal delivery, overnight mail or certified mail to the addresses of the Parties as referenced in the applicable IO. If either Party should change its address, then said party is hereby required to provide written notice of such address change to the other party as prescribed herein within ten (10) days of such address change.

### **3. Term & Termination; Effect of Termination**

(a) The term of this Agreement shall be one month from the effective date of the applicable IO between the parties, and shall automatically renew for successive one-month renewal terms, unless sooner terminated in accordance with this section.

(b) Either Party may terminate this Agreement as follows: (i) for convenience at any time by giving the other Party three (3) days written notice of termination; (ii) immediately upon written notice for any material breach of this Agreement; and (iii) immediately upon written notice, if: (a) all or a substantial portion of the assets of the other Party are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy; (b) a

proceeding is commenced by or against the other Party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days; or (c) the other Party is adjudged bankrupt.

(c) Any termination of this Agreement automatically terminates all rights and licenses granted to Advertiser under this Agreement, including all rights to use the AMI Network. Subsequent to termination, Company reserves the right to exercise whatever means it deems necessary to prevent Advertiser's unauthorized use of the AMI Network, including without limitation technological barriers such as IP mapping and direct contact with Advertiser's Internet Service Provider. Upon termination, all rights and obligations under this Agreement will terminate, except that Sections 3-7 and 12-22, together with any payment obligations (including "spill over" traffic generation) incurred prior to the effective date of termination, shall survive termination of this Agreement.

(d) **Advertiser:** The advertiser is required to provide three (3) business days' written notice to terminate or alter the terms of this contract. Advertisers will bear the costs associated with their failure to provide a three (3) business day notice before programs are paused, shut down, or altered. Should any term or language herein conflict with the Master Advertising Agreement executed between the parties, the Master Advertising Agreement supersedes and is binding.

#### **4. Confidentiality and Non-Disclosure**

Each Party agrees at all times during the term of this Agreement, and for a period of five (5) years thereafter, to hold in strictest confidence, and not to use, except for the purposed contemplated hereunder, or to disclose to any person, firm or corporation without written authorization of the disclosing party, any Confidential Information of the disclosing party. Each Party understands that "**Confidential Information**" means, without limitation, the monetary value of AMI's business with Advertiser, rates and fees, traffic volumes, the identity of AMI advertisers/publishers/clients, business models, business practices, revenue sources, software code, software designs, hardware designs, and network architecture designs disclosed to the receiving party by the disclosing party either directly or indirectly in writing, orally or by drawings or observation of parts or equipment

#### **5. Non-Solicitation**

(a) **Non-Solicitation.** During the term of this Agreement, and for a period of one (1) year thereafter, Advertiser will not participate in any performance based advertising relationship with any AMI affiliate, unless a previously existing business relationship between Advertiser and AMI affiliate can be demonstrated to the reasonable satisfaction of AMI. For the purpose of clarity, a "previously existing business relationship" is defined as a monetary transaction between Advertiser and the AMI affiliate occurring prior to the effective date of this Agreement). In this connection, both Parties agree and acknowledge that if Advertiser violates its obligations hereunder, AMI will be entitled to damages in the amount of thirty percent (30%) of the gross revenues resulting from sales conducted by Advertiser through the advertising or marketing efforts of AMI affiliate during the term of this Agreement, and for gross revenues in the twelve (12) months preceding the date such violation was discovered by AMI and the twelve (12) months after termination of this Agreement.

#### **6. Event of Downtime**

In the event that Advertiser's site to which traffic is going fails or goes down for more than 20 minutes or the tracking pixel is taken off said site, placed improperly or malfunctioning on any given day, (down date), without prior notice to AMI, then Advertiser shall pay AMI the greater of either the default CPA, (the average daily or average hourly conversion measurements plus 15%); or the actual CPA for such down dates.

#### **7. Delivery Measurement Standards**

Advertiser will provide AMI with unique tracking links. AMI will have access to live reporting of campaign statistics such as impressions, clicks, units, etc. via the Internet through Advertiser's Tracking Center. Additionally, Advertiser shall place pixels where it feels necessary on behalf of AMI in order to track the units generated from the campaign. Advertiser shall be responsible for the accuracy of the pixel placement and the results it yields. If Advertiser places said pixel incorrectly and the pixel fired multiple times per action, then Advertiser will be responsible for paying for each time it fires. Advertiser agrees that they will never remove the tracking pixels, change their location or alter them in anyway. AMI will also track campaign statistics through their own reporting system. Payment will be owed and calculated based on statistics from the Party that shows the greater quantity of units. In addition, Advertiser shall be responsible for filtering out ineligible leads/actions/sales, including but not limited to duplicates, scripting, automated submits of any kind, bad words, invalid phone numbers, or invalid addresses before the customer advances to the page in which the pixel is fired and will therefore be responsible for ensuring that pixels fire only on eligible units. Eligible units shall be considered billable units.

## 8. Refund Policy

No refunds will be made, and all sales are final once payment is submitted. All actions are considered valid and payable once a pixel is fired. No returns will be accepted. AMI reserves the right to retain any setup fees paid by the advertiser. However, AMI will return rolling deposits within thirty (30) days of the date of the cancellation date. LEADS: A valid "Lead" is defined as any lead delivered to Client from AMI that meets the criteria specified in this Sales Order and does not contain fraudulent information. A Lead may also be deemed invalid if it is:

- A duplicate of a lead previously delivered by AMI;
- Outside the targeted geographic territory specified in this Sales Order (subject to verification);
- A test or system-generated form;
- An invalid phone number (subject to verification);
- Marked as "Already Represented by Counsel".

The following information must be included for all "invalid" returned Actions: - transactional identification number, date/time stamp, incoming IP address and reason for rejection. All validity disputes must be received by AMI by Tuesday, 5:00 pm EST, of the week following the "Lead Week" in which the "invalid" lead was received by the client. A "Lead Week" is defined as Monday through Sunday. AMI, in its sole and absolute discretion, will determine whether a Lead was valid or invalid and whether a credit will be issued to Client. All credits will be in the form of additional Leads; no refunds will be issued. Due to the nature of the lead production business, over-delivery and under-delivery are typical. In the event that AMI Cover-delivers (i.e. Client orders and pays for 200 Leads and AMI delivers to the Client 207 Leads) then Client shall be liable for payment of all overage up to five percent (5%) of the amount ordered and pay such costs on net fifteen (15) terms. Client understands that due to the very nature of lead production, AMI cannot guaranty the effectiveness of any campaign nor any specific retention rate AMI will only guaranty the cost of the Leads on a campaign by campaign basis and AMI cannot guaranty that rates and volumes will not change over time after the expiration of the campaign specified in this Sales Order.

## 9. Creative Guidelines

Advertiser agrees to grant AMI a non-exclusive, transferable license to reproduce and display Advertiser trademarks, service marks, logos, (Collectively referred to as "Trademarks"), solely for AMI performance.

**Advertiser:** acknowledges and agrees that AMI is not responsible for the conduct of its Publishers/Affiliates', the content or conduct of the websites on which the ads appear, the content or method of the ads displayed, or any claims by Advertiser, a third-party or government entity that a Publisher/Affiliate has violated any law, regulation or right of a third party, as any such claim must be made directly against Publisher/Affiliate and Advertiser specifically waives its right to pursue any action against AMI that is based on or derived from the action or inaction of a Publisher/Affiliate of AMI. Advertiser further acknowledges that AMI has no control over where and how the ads are displayed and, therefore, cannot guarantee the content of the ads being displayed has not been modified. Therefore, Advertiser indemnifies AMI from any liability for any claims, including actual attorney's fees and costs that result from the placement or display of Advertiser's campaigns and the acts of AMI's publishers.

hereunder. Such license will terminate automatically upon the date of expiration or termination of this Agreement. All creative material, information, advertising, etc. developed by Advertiser and supplied from time to time to AMI, (collectively referred to as the "Advertising"), for AMI's performance hereunder will be the sole property of Advertiser. AMI reserves the right, in its sole discretion and without liability, to reject, omit or exclude any Advertiser, campaign, creative materials, or Website for any reason at any time, with or without notice to the Advertiser and regardless of whether such Advertiser or Website was previously accepted. Advertiser agrees that no alterations or editing of any content, (including but not limited to the rules and restrictions pertaining to fields in the form), on the website shall be changed without prior written approval from an AMI Officer. If AMI creates creative, copy or any other material used for solicitation purposes, then it belongs to AMI. Advertiser shall have no rights to ownership of any such creative; nor shall they disburse, duplicate or distribute it to any affiliate, publisher, network or any other third party.

Advertiser will not attempt in any way to alter, modify, eliminate, conceal, or otherwise render inoperable or ineffective the AMI Site tags, source codes, links, pixels, modules or other data provided by or obtained from AMI that allows AMI to measure ad performance and provide its service. In addition, Advertiser acknowledges that all information, data and reports received from AMI as part of the Services are proprietary to and owned by AMI. If instructed to do so by AMI, Advertiser will immediately destroy and discontinue the use of any such reports or data, and any other material owned by AMI or the third party Advertisers.

## **10. DISCLAIMERS; LIMITATION OF LIABILITY**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AMI MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AMI SHALL NOT BE LIABLE FOR ANY AD, CAMPAIGN OR E-MAIL, INCLUDING BUT NOT LIMITED TO THE CONTENT THEREOF, ANY UNAVAILABILITY OR INOPERABILITY OF THE INTERNET, UNAVAILABILITY OR CONSEQUENCES OF ANY AD OR CAMPAIGN, THE AMI SITE, AMI NETWORK OR SERVICES, OR ANY TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION RELATED TO OR ARISING OUT OF THE SERVICES, AMI SITE, AMI NETWORK OR ANY AD OR CAMPAIGN.

THE INFORMATION AND CONTENT ON THE AMI SITE AND/OR AMI NETWORK AND VIA THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH NO WARRANTY. IN NO EVENT SHALL AMI BE LIABLE FOR ANY LOST PROFITS, LOST REVENUES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF SUCH DAMAGES ARE FORSEEABLE AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL AMI'S LIABILITY HEREUNDER EXCEED THE PAYMENTS MADE BY ADVERTISER TO AMI IN THE 6 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

UNLESS OTHERWISE STATED ON THE IO, AMI DOES NOT WARRANT OR GUARANTEE CONVERSION RATES, PAY-UP RATES, RESPONSE RATES, THE ABILITY TO CONVERT THE RESPONSES INTO SALES, THE ACTIVITIES OF ITS PUBLISHERS OR ANY BENEFIT ADVERTISER MAY RECEIVE BY ADVERTISING WITH AMI OR ITS PUBLISHERS. AMI DOES NOT WARRANT OR GUARANTEE THE PROFILE OR DEMOGRAPHICS OF A USER. AMI DOES NOT GUARANTEE TO MATCH COLORS, TEXT, PHOTO IMAGE OR SCREEN DESIGN. ALL ORDERS ARE CONTINGENT UPON AMI'S ABILITY TO PROCURE NECESSARY ON-LINE ACCESS AND UPON DELAYS CAUSED BY ACCIDENTS, WAR, ACT OF GOD, EMBARGOES, OR ANY OTHER CIRCUMSTANCES BEYOND AMI'S CONTROL. AMI WILL MAKE COMMERCIALLY REASONABLE EFFORTS TO MEET SCHEDULED DELIVERY AND ONLINE DATES, BUT MAKES NO GUARANTEE AND ACCEPTS NO LIABILITY FOR ITS FAILURE TO MEET SAID DATES.

## **11. Advertiser Warranties and Representations**

*User Complaints, Required Actions.* Should Advertiser receive complaints from users or customers, Advertiser shall immediately notify AMI and provide full details of the basis of the complaints and, if applicable, copies of all related documentation. In the event that the user or customer complaint relates to an email-based advertisement or

to invalid click-through, then Advertiser shall provide such email-based advertisement to AMI along with its full email header information; and, in the case of invalid click-through, Advertiser shall provide full scripting and scrub documentation evidencing all invalid click-through. Upon receipt of the foregoing documentation, AMI agrees to contact the appropriate publisher to request the removal of the user from a publisher's email-based publications. AMI shall also request, and provide to Advertiser if available, information from the publisher relating to such User. Advertiser agrees that the foregoing Section shall be Advertiser's sole remedy with regard to User or Customer complaints.

Advertiser is solely responsible for any liability arising out of or relating to any advertisement provided by Advertiser hereunder and any material to which users can link through such advertisement ("Linked Content"). Advertiser represents and warrants that no part of the advertisements or Linked Content will: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or right of publicity or privacy; (b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing export control, false advertising, Children's Online Privacy Protection Act, the Can-Spam Act, the Federal Trade Commission Act and the Digital Millennium Copyright Act or unfair competition; (c) be defamatory or libelous; (d) be pornographic or obscene; or (e) contain viruses, Trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines.

Advertiser represents and warrants that the product or service that is being promoted through any Campaign hereunder is not the subject of any ongoing investigation by any local, state or federal regulatory or quasi-regulatory authorities and that the advertised goods and services offers legitimate goods and services that comply with all law, statutes or other governmental or administrative rules or regulations and that all product and service is fulfilled and customers are provided with satisfactory customer service.

Advertiser further represents and warrants that: (a) it will legally collect and use email addresses for a suppression list in accordance with the law where applicable; (b) it shall maintain its website and/or servers in working condition at or above industry standards; (c) it has full right and power to enter into and perform this Agreement without the consent of any third party; and (d) will not make any modification whatsoever to any of the Program Materials or website without obtaining prior written approval from an Officer of the Publisher.

## **12. Governing Law; Jurisdiction**

This Agreement shall be interpreted and enforced as though executed in Minnesota and shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of law principles.

**(a) Requirement of Arbitration.** Each Party agrees that any dispute, of any nature whatsoever, between AMI and Advertiser arising out of or relating to this Agreement, shall be decided by neutral, binding arbitration before a representative of JAMS in Minnesota (unless the Parties mutually agree to a different arbitrator) who shall render an award in accordance with JAMS streamlined rules and procedures and the substantive laws of Minnesota. A final judgment or award by the arbitrator may then be duly entered and recorded by the prevailing party in the appropriate court as final judgment. The arbitrator shall award costs (including, without limitation, the JAMS' fee and reasonable attorney's fees) to the prevailing party.

**(b) Remedies in Aid of Arbitration; Equitable Relief.** This agreement to arbitrate will not preclude the Parties from seeking provisional remedies in aid of arbitration, including without limitation orders to stay a court action, compel arbitration or confirm an arbitral award, from a court of competent jurisdiction. Furthermore, this agreement to arbitrate will not preclude the Parties from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary. The proper venue for any action permitted under this subsection regarding "equitable relief" will be the federal and state courts located in Las Vegas, NV; the parties hereby waive any objection to the venue and personal jurisdiction of such courts.

## **13. No Waiver**

The failure of any Party to enforce, at any time, the provisions of this Agreement, or to insist upon the strict performance of any covenant or condition of this Agreement, or to exercise any option which is hereby provided, shall in no way be construed to be a waiver of such provision; nor in any way affect the validity of this Agreement or any part thereof, or the right of such Party thereafter to enforce each and every provision of this Agreement.

#### **14. Indemnification**

Advertiser agrees to defend, indemnify and hold harmless AMI and its officers, directors, employees, agents, publishers, partners, affiliates, representatives, sublicensees, successors, assigns, and contractors (collectively, the “**Company Parties**”) from and against any and all claims, actions, demands, causes of action and other proceedings (collectively, “**Claims**”), including but not limited to legal costs and fees, arising out of or relating to: (a) Advertiser’s breach of this Agreement, including without limitation any representation or warranty contained in this Agreement; (b) any allegation that Advertiser has infringed upon the trademark, trade name, service mark, copyright, license, intellectual property or other proprietary right of any third-party; and (c) any allegation of a violation of any applicable laws and regulations arising out of or related to any advertisement or campaign, including without limitation the CAN-SPAM Act, all FTC regulations and applicable credit card merchant guidelines. The Company Parties will have the right, but not the obligation, to participate through counsel of their choice in any defense by Advertiser of any Claim as to which Advertiser is required to defend, indemnify or hold harmless the Company Parties. Advertiser may not settle any Claim to which Advertiser is required to defend, indemnify or hold harmless the Company Parties without the prior written consent of the concerned Company Parties.

#### **15. Assignment**

Neither party may assign any of its rights or responsibilities under this Agreement without the other party’s prior written consent, which shall not be unreasonably withheld. Notwithstanding the forgoing, either party may assign this Agreement in connection with a merger, acquisition, or a sale of all or substantially all of its assets related to this Agreement.

#### **16. Construction**

Each party acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all the risks (both known and unknown) associated with the transactions contemplated hereunder. Further, all provisions are inserted conditionally on their being valid in law. In the event that any provision of the Agreement conflicts with the law under which the Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties to the Agreement: (i) such provision will be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and (ii) the remaining terms, provisions, covenants, and restrictions of the Agreement will remain in full force and effect.

#### **17. Relationship of the Parties**

The Parties to the Agreement are independent contractors. Neither party is an agent, representative, partner or employee of the other party. Neither party will have any right, power, or authority to enter into any agreement on behalf of, or incur any obligation or liability of, or to otherwise bind the other party. The Agreement will not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either party.

#### **18. Invalidity**

In the event that any of the provisions included herein or the application thereof shall be held by a court of law to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

#### **19. Headings and References**

Headings of Sections are for the convenience of reference only. Words indicated in quotes and capitalized signify an abbreviation or defined term for indicated words or terms, including those definitions contained in the opening paragraph. The content in any applicable IO is incorporated by this reference as though fully stated in this Agreement.

#### **20. Entire Agreement; Amendments**

The IO, or this Agreement, embodies our entire agreement and supersedes all prior oral and written agreements. This Agreement may be executed in any number of parts and facsimile copies, each of which shall be deemed the original and all of which together shall be deemed one and the same instrument. This Agreement may only be modified by a written amendment signed by an authorized executive of AMI or by the unilateral amendment of this Agreement by AMI and by email notice by AMI to Advertiser of such amended version. Advertiser’s continued use of the AMI Network after Advertiser has been notified of the amended version of this Agreement constitutes Advertiser’s acceptance of the amended version of this Agreement.

Any terms and conditions on Advertiser’s website (“Advertiser’s Terms”) shall be null, void, and non-binding on AMI despite any actions indicating consent to or acceptance of Advertiser’s terms and conditions, including, but not limited to, AMI clicking on a button on Advertiser’s website suggesting AMI’s acceptance of Advertiser’s terms and conditions.

By submitting payment, you agree to the terms and conditions of this agreement and supersede any prior agreement.