

## **EXCHANGE PUBLISHER SERVICE AGREEMENT – EUROPEAN UNION**

**INTRODUCTION.** This Exchange Publisher Service Agreement (this “**Agreement**”) shall govern the relationship between Pepperjam <sup>SM</sup>, a Pennsylvania corporation, with offices located at 7 South Main Street, Third Floor, Wilkes-Barre PA 18701 (“**Enterprise**”), and the party requesting the Services (“**You**” or “**Publisher**”) with respect to the advertising service (the “**Service**”) offered through Enterprise’s exchange located at www.pepperjamnetwork.com (the “**Site**”). You and Enterprise may also be individually referred to herein as “**Party**” and collectively as “**Parties**.”

**TO USE OR ACCESS THE SERVICES, YOU MUST AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT BY CLICKING “I ACCEPT” WHERE INDICATED. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU HAVE NO RIGHT OR AUTHORITY TO ACCESS OR USE THE SERVICES OR EXERCISE ANY OTHER RIGHT IN CONNECTION THEREWITH.**

If You have registered for or on behalf of an entity, you are deemed to have accepted this Agreement on behalf of such entity. To the extent Publisher is a network of third parties, then Publisher shall be responsible to ensure that such third parties comply with the terms of this Agreement and the terms of the applicable Advertiser Program(s). If you do not agree to the terms of this Agreement in its entirety, You are not authorized to: (a) register as a publisher; (b) use the Service; and/or (c) use the Site, in any manner or form whatsoever. Enterprise may, in its sole discretion, refuse to register You as a Publisher and/or terminate Your participation in an Advertiser Program (as defined below) at any time for any reason. To the extent that the terms of any Advertiser Program are in conflict or inconsistent with this Agreement, this Agreement shall take precedence and control.

You agree to use the Site, the Service and any additional products and/or services offered by Enterprise only in accordance with this Agreement. Enterprise reserves the right to make changes to the Site, Service and this Agreement at any time and after notice is given, the revised version of the Agreement shall become effective after 30 days of being posted on the Site. Following such 30 day period, Your continued use of the Site and/or Service after any such modification thereof shall constitute Your consent to such modification.

**EXCHANGE.** As a service provider and online exchange, Enterprise facilitates affiliate marketing programs via its technology and network on the Internet. An affiliate marketing program (“**Advertiser Program**”) is where a Publisher or its agent operates one or more web site(s) (domain or portion of a domain within the Internet) and/or subscription e-mail list(s) to earn financial compensation (“**Publisher Fees**”) for sales and or leads (“**Transactions**”) generated from such web site and/or e-mail list through a click made by a customer (each, a “**Customer**”) on a web site or content operated by an advertiser (“**Advertiser**”). The Advertiser compensates the Publisher, in accordance with this Agreement and the specifications of the applicable Advertiser Program agreed to by the Advertiser and the Publisher under a separate agreement.

In consideration of the mutual covenants and agreements contained herein, the parties, intending to be legally bound, hereby agree as follows:

## 1. Participation in Advertiser Programs.

a. **Accessing Advertiser Programs.** Publisher may apply to Advertiser Programs for the opportunity to earn Publisher Fees by promoting Advertisers in accordance with the Advertiser Program terms and this Agreement. Once approved by the Advertiser for acceptance into its Advertiser Program, Publisher consents to and shall be bound by the terms and conditions of the Advertiser Program and Publisher may utilize links to Advertiser's web site or offers in accordance with the Advertiser Program terms and this Agreement.

b. **Advertiser Program Terms.** The terms, conditions and other details of an Advertiser Program shall be available through the Site. Transactions qualifying for a Publisher Fee are defined by the Advertiser, the Advertiser Program and the Site.

## 2. Publisher Requirements with Enterprise.

a. **Registration.** To use the Site as a Publisher, You must provide Enterprise with truthful, accurate and complete registration information. If any such information changes, You must immediately contact Enterprise to update Your registration information.

b. **Valid Information.** Publisher agrees to provide Enterprise and Advertiser with valid information about Publisher and Publisher's promotional methods, and to maintain up-to-date account information, including contact information, web sites used, ownership, and any other information requested by Enterprise or the applicable Advertiser.

Enterprise has the right to confirm and check the truth and accuracy of any registration information at any time.

Please note that the verification of Your registration information, specifically, name, address and tax identification number, against a third party database may be considered under certain laws to constitute a "credit check" and You hereby consent to any such verification process. Notwithstanding that, your participation in the Services as a publisher does not depend on Your credit worthiness or financial stability.

If any information is determined by Enterprise to be misleading, inaccurate or untruthful, Enterprise may restrict, deny or terminate Your account, Your access and use of the Services and the Site, and/or any benefits derived from Your participation in any Advertiser Program, including the withholding or forfeit (in whole or in part) of any Publisher Fees to Enterprise.

c. **Standards.** Publisher represents and warrants that all promotional means utilized by Publisher (a) will not contain objectionable content (including but not limited to content that is misleading, illegal, and/or promoting illegal goods, services or activities), and (b) will not mislead others. You further represent and warrant that the content of Your website and e-mails do not promote, advocate, facilitate or otherwise include any of the following: (i) hate speech or material that discriminates on the basis of race, ethnicity, gender, age, disability, religion or sexual orientation; (ii) investment, money-making opportunities or advice not permitted under law; (iii) violence or profanity; (iv) pornographic, obscene, sexually explicit or related content; (v) material that defames, abuses, is

libelous, is tortuous or threatens physical harm to others; (vi) material that displays any telephone numbers, street addresses, last names, URLs, e-mail addresses, any confidential information or any other personally identifiable information of any third person; (vii) material that impersonates any person or entity; (viii) any indication that any statements You make are endorsed by Enterprise and/or an Advertiser, without Enterprise's and/or Advertiser's express prior written consent; (ix) promotion of illegal substances or activities (e.g., illegal narcotics, how to build a bomb, counterfeiting money); (x); content which is inappropriate or harmful to children; (xi) promotion of terrorism or terrorist-related activities, sedition or similar activities; (xii) software pirating (e.g., warez, hotline); (xiii) hacking or phreaking; (xiv) any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (xv) any software, product or service that is illegal or that violates the rights of a third party including, but not limited to, spyware, adware, programs designed to send unsolicited advertisements (i.e. "spamware"), services that send unsolicited advertisements, programs designed to initiate "denial of service" attacks, mail bomb programs and programs designed to gain unauthorized access to networks on the Internet; (xvi) any software, product or service that harvests or collects the personal information of Internet users, whether or not for commercial purposes, without the express consent of such users; (xvii) any spoofing, redirecting or trafficking from other websites in an effort to gain traffic; (xviii) any content that infringes upon the intellectual property rights of any third party or any other right including, without limitation, false advertising, unfair competition, invasion of rights of publicity or privacy; (xix) illegal gambling, contests, lotteries, raffles, or sweepstakes; (xx) any material that violates CAN-SPAM or any similar or comparable laws in any other country or jurisdiction in which You operate; or (xxi) any illegal activity whatsoever (including any violations of applicable U.S. state or federal law or regulation, Canadian provincial or federal law or the laws of any other country or jurisdiction in which You operate). The Enterprise Transparency Department may review Publisher information, conduct and any suspected fraudulent, abusive or otherwise illegal content or activity. Any validated breach of this Section is grounds for immediate termination of this Agreement, forfeit of Publisher Fees, and deactivation of Publisher's account.

**d. Promotional Method Restrictions.** Publisher agrees that it shall comply with all laws and regulations and will not engage in spamming, unlawful mass emailing or any unapproved emailing or in any way fail to comply with the Privacy and Electronic Communications Regulations 2002, as amended, or any comparable laws, rules or regulations in any country from or to which Publisher is accessing the Site or the Services or participating in any Advertiser Program, that govern email marketing and advertising. Publisher agrees that its promotional activities will not infringe on the Advertiser's intellectual property rights, including but not limited to copyright and trademark rights.

Publisher shall not perform trademark bidding or direct linking on search engines including on Google, Yahoo and MSN, when the applicable Advertiser Program prohibits such activity. By "direct linking" this agreement refers to sending traffic directly from the search engine to the Advertiser website without use of an intermediary landing page.

Enterprise reserves the right at any time to further restrict what activities are considered valid and will entitle Publisher to Publisher Fees under this Agreement. Enterprise reserves the right to withhold, refuse or withdraw approval of any websites, email distribution lists and/or marketing channels for any reason, whatsoever, in Enterprise's sole discretion. Only Publisher's websites, e-

mail distribution lists or other marketing channels that have been reviewed and approved by Enterprise may be utilized in connection with the Site and Service.

e. **Creative and Tags.** Publisher shall not alter, modify or otherwise change the creative content, links and code used to create the advertisements, text link, banner ad or coupon (“Creative”), or any Creative-related feature, that it obtains access to in connection with any Advertiser Program in any manner whatsoever, without Enterprise’s prior express written consent.

PUBLISHER AGREES TO REVIEW THE AVAILABILITY OF CREATIVE THAT IT HAS PLACED WITHIN ITS MEDIA ON A DAILY BASIS. IT IS THE PUBLISHER’S RESPONSIBILITY TO CHANGE CREATIVE WITHIN ITS MEDIA WHEN THE CREATIVE IS NO LONGER AVAILABLE ON THE SITE. Enterprise ASSUMES NO RESPONSIBILITY TO NOTIFY PUBLISHER WHEN A SPECIFIC CREATIVE IS NO LONGER AVAILABLE ON THE SITE.

In addition, Site integration tags and tracking pixels (“**Tags**”) included in the Creative or otherwise incorporated may not be altered under any circumstances. Enterprise employs a testing system to determine whether You have removed or altered the Tags. Altering, removing or disabling Tags may jeopardize Your ability to be paid for Transactions and is grounds for immediate termination of Your Publisher account, with or without notice. You will not, nor knowingly permit any person to, activate Creatives or inflate the amount of Transactions through any deceptive or misleading practice, method or technology including, but not limited to, the use of any spyware, device, program, robot, Iframes, hidden frames, redirects, spiders, computer script or other automated, artificial or fraudulent methods designed to appear like an individual, real live person performing an Transaction.

f. **Personally Identifiable Information of Visitors.** Publisher represents and warrants that Publisher will not enable the tracking code to collect personally identifiable information of Customers or potential Customers that would allow You to personally identify such Customer or potential Customer.

g. **Privacy Policies.** You will ensure that any and all websites employed by You in connection with Your participation in any Advertiser Programs will feature an easy-to-understand privacy policy, linked, at a minimum, conspicuously from such website's home page, with a link that contains the word "Privacy", "Legal", "Terms" or similar language. Such privacy policy shall, in addition to the disclosures about Your privacy practices, identify the collection, disclosure and use of any information related to an end user that You provide or may provide to Enterprise and to any Advertiser or other websites or persons. Such privacy policy shall also provide all legally required information on your use of tracking devices, such as but without limitation to, cookies, including tracking devices enabled by Enterprise at your request on your behalf. Your website will also include, where required, information regarding the removal of cookies and other tracking devices. As between Enterprise and You, You shall be required to obtain Customers’ consent to use tracking devices, such as cookies (including tracking devices enabled by Enterprise at Your request on Your behalf) on such Customers’ servers, including where required, information regarding the option to opt-out or remove cookies/tracking devices in compliance with The Privacy and Electronic Communications (EC Directive) and related provisions of the EU Cookie Law. Upon Enterprise’s request, you shall provide and furnish to Enterprise proof of the applicable Customers’ consent to use tracking devices and cookies enabled by Enterprise. As to Your personal information,

Enterprise may use Your personal information for the purpose of facilitating Your participation in the Advertiser Programs, which may include, indexing your name and relevant information about your business in the publisher database and making such information available to Advertisers in furtherance of possible business relationships, and to contact You generally regarding Your use of the Services. You acknowledge and agree that processing of personal information pursuant to this Agreement shall be carried out in the context of activities of an establishment of Enterprise in the territory of the United States of America.

**h. ENTERPRISE REMEDIES.** IN ADDITION TO ANY REMEDIES AVAILABLE TO Enterprise OR THE APPLICABLE ADVERTISER, PUBLISHER SHALL FORFEIT ANY AND ALL PUBLISHER FEES DURING THE PERIOD IN WHICH PUBLISHER WAS IN VIOLATION OF THIS AGREEMENT.

### 3. Enterprise's Services.

**a. Access to Site and Service.** Advertiser Program data compiled by Enterprise including, but not limited to, numbers and calculations regarding Transactions and associated Publisher Fees ("**Program Data**"), will be calculated by Enterprise through the use of Enterprise proprietary tracking technology and shall be final and binding on You. Any questions regarding the Program Data must be submitted in writing within fourteen (14) days of initial appearance in the tracking system; otherwise the Program Data will be deemed to be accurate and accepted by You. Publisher understands and agrees that on occasion the Service and/or the Site may be inaccessible, unavailable or inoperable. Enterprise will attempt to provide the Service on a continuous basis, but is under no obligation to provide the Service or maintain the availability of the Site on a continuous or uninterrupted basis. Enterprise's failure to deliver the Service because of technical difficulties does not represent a failure to meet the obligations of this Agreement.

**b. Tracking Publisher Fees.** Enterprise shall track actual Publisher Fees that should be credited to Publisher's account. Enterprise may, from time to time in its sole discretion, apply an estimated amount of Publisher Fees if there is a verified error in Advertiser's tracking code.

**c. Access to Tracking and Reporting Tools.** Enterprise shall provide Publisher with access to tracking and reporting tools via the Site, and to other various support services that may be updated from time to time on the Site.

**d. Support.** Support for Publisher's program is available by contacting Enterprise and reaching the appropriate person or support services.

**e. Payment of Publisher Fees.** Subject to other provisions in this Agreement, Enterprise will credit Publisher's account with a Publisher Fee for each qualifying Transaction in accordance with the Advertiser's payout rate and Advertiser Program terms. On or around the 1st and 15th day of each calendar month, Enterprise will credit to Publisher any positive balance in Publisher's account for Transactions reported for the applicable period. Enterprise shall have no obligation to make payment of any Publisher Fees for which payment has not cleared to Enterprise of all monies due to Enterprise, including for all Publisher Fees owed by such Advertiser to all of Advertiser's Publishers. If Enterprise receives partial payment Enterprise may apply such partial payment first against the

fees due to Enterprise from such Advertiser and Publisher agrees that it shall pursue any and all legal remedies only against the applicable Advertiser that has not made funds available to pay sums due and owing to Publisher for Publisher Fees earned in connection with a particular Advertiser Program, subject to the terms and conditions of the applicable Advertiser Program.

All Publisher Fees will be paid in US Dollars (\$US). Notwithstanding anything contained herein to the contrary, no Publisher Fees will be issued for any amounts due to Publisher that total less than twenty-five dollars (\$25.00) ("**Payment Threshold**"). Upon termination of this Agreement, all Publisher Fees due to Publisher that were actually collected from the applicable Advertiser, even amounts below the Payment Threshold, will be paid during the next billing cycle.

Every Publisher must have a unique, valid taxpayer identification number, valid Social Security Number, or other applicable unique government identification. Publisher shall be responsible for all applicable taxes. You acknowledge and agree that you retain full responsibility for: (a) fulfilling your obligations with respect to VAT; (b) paying the VAT on the commissions collected and paid to you by Enterprise; (c) immediately reviewing all invoices and requesting copies of any reports or invoices not received from Enterprise; and (d) advising Enterprise of any changes to Your tax identification information.

An Advertiser may request that Enterprise, or Enterprise may on its own initiative, debit from the Publisher Fees an amount equal to a Publisher Fee previously credited to Publisher's account where: (a) a return or cancellation has been made with respect to the applicable product and/or service; (b) there is an instance of a duplicate, fraudulent or incomplete entry or other similar error with respect to a Customer order; (c) there are Transactions that do not comply fully with the terms of this Agreement or the applicable Advertiser Program; (d) there is non-receipt of payment from, or refund of payment to, the Customer that entered into the subject Transaction; (e) there is any failure on the part of the Publisher to comply with this Agreement and or applicable Advertiser Program terms; or (f) any other amounts paid in error or due Advertiser from Publisher (collectively referred to as a "**Reversal**"). Unless otherwise set forth in the applicable Advertiser Program, Reversals requested by an Advertiser in accordance with this Section for Customer refunds and chargebacks may be applied up to sixty (60) days after the end of the month in which the applicable Publisher Fee was earned ("**Reversal Period**"). For the avoidance of doubt, there is no time restriction on any other Reversals. Advertiser may request that the payment of a Publisher Fee be postponed for one (1) payment cycle where: (i) Advertiser is verifying a lead (for Advertiser Programs in which lead generation is a component of the Transaction); (ii) Advertiser has a product return policy that allows the underlying purchaser to return the product during the Reversal Period; or (iii) the applicable Advertiser Program provides for such a postponement. The number or amount of Transactions, credits for payments and debits for Reversals, as calculated by Enterprise, shall be final and binding on Publisher.

You acknowledge that, with respect to any Advertiser Program, Your entitlement to any compensation reported with respect to any tracked activity (if such activity is reported) stems solely from the terms of your agreement with the relevant Advertiser and that such Advertiser is solely responsible for its payment. Enterprise is not liable or responsible for payment or collection. Enterprise, as a limited commercial agent, is authorized to invoice and collect, in Your name and on Your behalf, the compensation due to You pursuant to this Agreement or Advertiser Program terms

that you have entered into with any Advertisers. Enterprise will pay to You any such sums collected in Your name. In order to enable Enterprise to collect sums on Your behalf from Advertisers, You must provide Enterprise with all financial and tax information (VAT number, company registration number, etc.).

f. **Fraud.** Enterprise monitors traffic, Transactions, Publisher Fees and other Advertiser Program-related activities for potential fraud. If Enterprise suspects that Your account has been used in a fraudulent manner, Your account may be deactivated effective immediately and with no notice to You pending further investigation. Enterprise reserves sole judgment in determining fraud and You agree to be bound by any and all such determinations. It is the obligation of Publisher to prove to Enterprise that it has NOT engaged in fraud. If you are unable to provide Enterprise with satisfactory evidence that You have not engaged in fraud within seven (7) days of Your Publisher Fees being placed in "Pending or Delayed Status," then Enterprise may terminate Your account and cancel payment on the applicable Publisher Fees, at its sole discretion and without any further obligations to You. For the avoidance of doubt, if You add Transactions, or inflate Transactions, through the use of fraudulent means of traffic generation, as determined solely by Enterprise, You will forfeit all of the Publisher Fees related to that Advertiser Program, and Your account may be terminated effective immediately.

g. **Use of Site and Services.** You may not use the Site or the Service in connection with aggregating, soliciting or recruiting Advertisers, other publishers, other sites or other persons to form or join a marketing, advertising or similar network.

#### 4. Proprietary Rights.

a. **Linking to Advertisers.** For each Advertiser Program that Publisher has applied to and been accepted to, the Advertiser is granting to Publisher the right to link to the Advertiser's web site or web offers in accordance with the Advertiser Program terms and this Agreement.

b. **Enterprise's Use of Publisher's Information.** Publisher authorizes Enterprise to utilize Publisher's otherwise protected information subject to the provisions of Section 5 below related to confidentiality of Publisher's identification and marketing data.

c. **License Grant to Publisher.** Subject to this Agreement and the terms of the applicable Advertiser Program, Enterprise grants to Publisher a revocable, non-transferable, royalty free, license to use the Site and the applicable tracking code. Publisher may not remove or alter any copyright, service marks or trademark notices. Enterprise reserves any and all rights not explicitly granted in the Agreement.

#### 5. Confidentiality.

Each Party will take commercially reasonable actions designed to protect the Confidential Information of the other Party from misappropriation and unauthorized use or disclosure, and at a minimum, will take precautions at least as great as those taken to protect its own confidential information of a similar nature. The receiving Party may disclose Confidential Information of the disclosing Party to the extent necessary to comply with applicable Law. Upon request of the other

Party, or in any event upon any termination or expiration of this Agreement, each Party will return to the other or destroy all materials, in any medium, which contain, embody, reflect or reference all or any part of any Confidential Information of the other Party. This Agreement shall be the Confidential Information of Enterprise.

Either Party will be entitled to seek preliminary and/or permanent injunctive relief from any violation or threatened violation of this Section 5 without the necessity of proving actual damages or posting any bond or other security.

**“Confidential Information”** means all confidential and/or proprietary information and documents furnished or disclosed by or on behalf of a Party or its affiliates, no matter when or how furnished or disclosed. Confidential Information includes, without limitation, (a) all nonpublic information relating to a Party’s or its affiliates’ technology, business plans, agreements, promotional and marketing activities, finances and other business affairs, and (b) all third party information that a Party or its affiliates is obligated to keep confidential. Confidential Information may be contained in tangible materials, such as drawings, data, specifications, reports and computer programs, or may be in the nature of unwritten knowledge. Confidential Information does not include any information that (w) has become publicly available without breach of this Agreement, (x) can be shown by documentation to have been known to the receiving Party at the time of its receipt from the disclosing Party or its affiliates, (y) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or (z) can be shown by documentation to have been independently developed by the receiving Party without reference to any Confidential Information.

## 6. Notices.

Except as provided elsewhere herein, Publisher must send all notices relating to this Agreement in writing via overnight mail or fax: (a) to Pepperjam <sup>SM</sup>, 7 South Main Street, Third Floor, Wilkes-Barre PA 18701 with a copy to Pepperjam <sup>SM</sup>, Attn: Legal Department, 7 South Main Street, Third Floor, Wilkes-Barre PA 18701. All notices from Enterprise shall be sent to the address submitted by You when You sign up for the Service.

## 7. Term.

The Agreement shall commence upon Enterprise’s acceptance of Your publisher application and remain in effect until terminated as set forth herein.

## 8. Termination.

Either party may terminate this agreement at any time. In addition, Enterprise reserves the right, in its sole and absolute discretion, to terminate an Advertiser Program, suspend Your participation in an Advertiser Program and/or remove any Creatives at any time for any reason. Enterprise also reserves the right to terminate Your access to the Site at any time. Termination notice may be provided via e-mail and will be effective immediately. Upon termination, Publisher agrees to immediately remove from its Publisher website(s) any and all Creatives, Enterprise code or other intellectual property made available to Publisher in connection with its performance under the Agreement. The representations, warranties and those obligations that by their terms and context



show the Parties intended them to survive the termination of this Agreement for any reason, including provisions governing confidentiality, ownership, indemnification and liability, shall survive the expiration or earlier termination of this Agreement.

## 9. Representations and Warranties.

The Parties hereby acknowledge and agree that Publisher is solely responsible for the method in which the Creatives are disseminated. You represent and warrant that You will not engage in any activities that violate any Advertiser Program's terms and conditions.

Moreover, You represent and warrant that: (a) Your Publisher website and/or Publisher e-mails are represented by a legitimate second-level domain name (e.g. yoursite.com is acceptable; however, a shared server, e.g., sharedsite.com/yoursite, is not acceptable); (b) Your Publisher website is not offered as a part of a community-based website personal entry or personal page; (c) Your Publisher website and Publisher e-mails do not incentivize users to click on Creatives, including by awarding users cash, points, prizes, and/or contest or sweepstake entries or any other incentives ("Incentives"); (d) Your Publisher Website is not hosted by a free service and is fully functional at all times and at all levels (no "under construction" Publisher Websites or any sections thereof are permissible); (e) You will place or use the Creatives only with the intention of delivering valid Transactions as determined by, and for the benefit of, the applicable Advertiser; (f) You will not violate guidelines of any search engines being utilized; (g) You will not allow the Creatives to be placed on any non-Publisher website without the prior express written consent of Enterprise and the applicable Advertiser; (h) You will not use any Creatives or any other Advertiser Program terms and/or content in connection with aggregating, soliciting or recruiting other Publishers, Advertisers, other websites or other persons to form or join an affiliate marketing, advertising or similar network for the purpose of engaging in business of the type conducted by Enterprise; (i) You will not redirect traffic to a website other than the website specifically listed by the applicable Advertiser; (j) Your performance under this Agreement shall not in any way violate or infringe upon any third party rights, including rights regarding ownership, trade secrets, trademarks, copyright or patents; (k) You shall protect, promote and preserve the goodwill associated with the Advertiser trade name and any Customer relationships in connection with its performance hereunder; (l) in performing Your obligations and exercising Your rights under this Agreement, You shall comply with all applicable laws (and all changes in laws) relating to or affecting this Agreement or the work to be performed hereunder, and (m) You shall obtain and maintain all permits, licenses, and consents required in connection therewith.

## 10. Limitation of Liabilities.

ENTERPRISE WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), PRODUCT LIABILITY OR OTHER THEORY), TO YOU OR ANY OTHER PERSON OR ENTITY FOR COST OF COVER, LOST PROFITS, LOSS OF BUSINESS, DATA OR REPUTATION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT.

ENTERPRISE'S AGGREGATE LIABILITY ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT WILL IN NO EVENT EXCEED FIFTY PERCENT (50%) OF THE TOTAL FEES PAID

OR ACCRUED BY YOU TO ENTERPRISE DURING THE THREE (3) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

THE SITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND ALL WARRANTIES, EXPRESS AND IMPLIED, ARE DISCLAIMED (INCLUDING, WITHOUT LIMITATION, THE DISCLAIMER OF ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY AND/OR FITNESS FOR A PARTICULAR PURPOSE). THE SITE AND THE SERVICE MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS. ENTERPRISE HAS NO LIABILITY, WHATSOEVER, TO PUBLISHER OR ANY THIRD PARTY, FOR PUBLISHER'S USE OF, OR INABILITY TO USE, THE SITE OR THE SERVICE AND ENTERPRISE DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, THAT PUBLISHER'S USE OF SAME WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY OF THE ADVERTISER PROGRAMS WILL BE AVAILABLE TO PUBLISHER. ENTERPRISE SHALL NOT BE RESPONSIBLE FOR THE FAILURE OR OTHER ACTS OR OMISSIONS OF ANY ADVERTISER.

## 11. Indemnification.

a. Publisher shall indemnify, defend, subject to Section 11(b), and hold harmless, Enterprise and its respective parents, subsidiaries and affiliates, and each of their respective directors, officers, employees, agents, successors and assigns against any third-party claim, suit, action, judgment, allegations, or lawsuits ("**Claims**"), for any damages, fines, penalties, deficiencies, losses, liabilities, obligations, costs and expenses (including without limitation reasonable attorneys' fees, costs related to in-house counsel time, court costs and witness fees) (collectively "**Losses**") or any threatened Losses arising from or in connection with Publisher's breach of this Agreement or intentional acts or omissions or for Claims of product liability.

b. Should any Claim give rise to Publisher's duty of indemnification under this Agreement, Enterprise shall notify Publisher, and Enterprise shall have the right to assume control of the defense of any such Claim; provided that Publisher shall reimburse Enterprise for all costs of the defense. If Enterprise assumes the defense, Publisher shall participate in (at Publisher's own expense), but not control, the defense of such Claim. Participation in the defense shall not waive or reduce Publisher's obligations to indemnify or hold Enterprise harmless. If Publisher is permitted to control the defense, Enterprise may participate in the defense. In no event shall Publisher settle any Claim without the express written consent of Enterprise.

## 12. Severability, Waiver, Remedies Cumulative.

Any provisions of the Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. A Party's waiver of any term or condition of this Agreement shall not be deemed a continuing waiver. The rights set forth in this Agreement are cumulative and in addition to those otherwise provided by law and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **13. Assignment.**

Neither Party shall assign or transfer this Agreement, in whole or in part, without the prior written consent of the other Party, and any such assignment without consent shall be void, provided that either Party may, upon prior written notice to the other party, assign or transfer this Agreement, in its entirety only, to an affiliate capable of performing its obligations hereunder or to an entity acquiring all or substantially all of the operating assets of the assigning Party.

### **14. Jurisdiction and Venue.**

The Agreement shall be construed, governed and enforced under and in accordance with the laws of England and Wales. Any and all disputes or controversies whether of law or fact of any nature whatsoever arising from or with respect to this Agreement shall be decided in the courts of London, England.

### **15. Force Majeure.**

Enterprise shall not be liable to Publisher by reason of failure or delay in the performance of its obligations hereunder on account of telecommunications, Internet or network failure or interruption, results of computer hacking, Acts of God, fires, storms, war, governmental action, labor conditions, earthquakes, natural disasters or any other cause which is beyond the reasonable control of Enterprise.

### **16. Relationship.**

In making and performing this Agreement, the Parties are acting and shall act as independent contractors, and neither party is, nor will be deemed to be, an agent, legal representative, joint venturer or partner of the other party for any purpose.

Enterprise acts pursuant to this Agreement with You and pursuant to separate agreements with Advertisers as a limited commercial agent to both You and to such Advertisers being the principal contracting parties in connection with the Advertiser Programs that You join.

### **17. Entire Agreement; Headings; Third Party Beneficiaries.**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous, negotiations, representations, agreements or understandings with respect thereto, whether written or oral. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement. There are no third party beneficiaries to this Agreement. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.

### **18. Survival.**

Notwithstanding any legal presumption to the contrary, any provisions that by their terms are intended to survive termination, shall survive termination or expiration of this Agreement.