



# **Terms and Conditions**

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These terms and conditions (the "Agreement"), govern your participation as a member (the "Affiliate") of the ExpertMobi Affiliate Network (the "Program"). The Affiliate covenants and agrees to be bound by this Agreement, and the schedules attached, as amended by the Program from time to time.

## Definitions

- "Client" means a client of the Program.
- "Offer" means a promotional offer published by the Program on the Program Site, in an electronic mail or both, setting out an advertising offer on behalf of a Client and containing such additional terms and conditions as the Client and the Program, in their discretion, consider necessary from time to time.
- "Program Site" means the website for the Program operated by ExpertMobi and situated at <http://expertmobi.com>
- "Sub-Affiliate" means an independent third party contracted by the Affiliate.

## Program Guidelines

- Expertmobi will permit the Affiliate to participate in the Program, subject to compliance with the terms and conditions in this Agreement and in any policies established by the Program, from time to time, and incorporated by reference in this Agreement.
- The Affiliate will be issued a unique username and password to access the Program Site, neither of which may be used by any person other than the Affiliate.
- If the Affiliate is an individual and not a trading entity, in order to enroll and participate as an Affiliate, he/she must be over eighteen (18) years of age and/or over the age of majority if residing and/or conducting business in states, provinces or countries where the age of majority is greater than eighteen (18) years of age.
- The Affiliate may engage Sub-Affiliates to distribute Offers in accordance with the Program, provided that:  
the Affiliate has written approval from a the Program Representative to contract Sub-Affiliates; a verifiable name, address and telephone number for each Sub-Affiliate is delivered to the Program immediately upon request;  
the proposed Sub-Affiliate agrees, in form satisfactory to the Program, to abide by paragraph 2.8, 3.3, Sections 5.4, 6, 7, 8, 9, 10 and 11 of this Agreement and the the Program Policies (collectively, the "Sub-Affiliate Provisions"), as amended from time to time; and  
at no time will the Affiliate engage a Sub-Affiliate who, in the opinion of the Program is likely to bring the reputation or standing of the Program into disrepute or is otherwise unsuitable.
- Any breach by a Sub-Affiliate of the Sub-Affiliate Provisions will be deemed to be a breach of this Agreement by the Affiliate.
- It is expressly agreed that the parties intend by this Agreement to establish a relationship between the Program and the Affiliate, but that it is not the intention of either party to undertake a joint venture or to make the Affiliate in any sense an agent, employee, or partner of the Program. The parties expressly agree that they are independent contractors, and that this Agreement does not in any way create a partnership as contemplated by the Partnership Act, R.S.B.C. 1996, c.348, nor have the parties granted to each other any right or authority to assume or create any obligation of responsibility, express or implied, on behalf of or in the name of the other, or to bind the other in any manner whatsoever.
- It is further agreed that the Affiliate has no authority to create or assume in the Program's name or on its behalf any obligation, express or implied, or to act or purport to act as its agent or representative for any purpose whatsoever and the Affiliate shall not hold itself out as having any such authority.
- The Program may, in its sole discretion, confirm or otherwise verify or check, the truth and accuracy of any registration information provided by Affiliate. If at any time the Program, in its sole judgment and discretion, determines the Affiliate's registration information to be misleading, inaccurate or untruthful, the Program may restrict, deny or terminate Affiliate's account, Affiliate's access and use of, and/or any benefits derived from Affiliate's participation in the Program; the Program may also withhold payment of any commissions and/or other fees that may be or become due or payable to Affiliate.

- Affiliate will be solely responsible for the development, operation, and maintenance of the Affiliate website and for all materials that appear on the Affiliate website. Such responsibilities include, but are not limited to, the technical operation of the Affiliate website and all related equipment; creating and posting product reviews, descriptions, and references on the Affiliate website and linking those descriptions to the Program Site; the accuracy and propriety of materials posted on the Affiliate website; and ensuring that materials posted on the Affiliate website do not violate or infringe upon the rights of any third party and are not libelous or otherwise illegal. The Program disclaims all liability and responsibility for such matters.
- Other than as provided in this Section 2, Affiliate may not sublease, rent, lease, sell, resell, outsource or service any Offer, and any attempt to do so shall be null and void.

## Offer

- Offers will be posted to the Program Site.
- The Program grants the Affiliate a limited, non-exclusive, non-transferable right to download Offers from the Program Site and to publish the same on the Affiliate's websites and in electronic mail correspondence sent by the Affiliate, all of which must be done in accordance with this Agreement, the Program Policies, as amended from time to time, and the additional terms and conditions affixed to each of the said Offers.
- The Affiliate agrees not to modify, alter, misrepresent or embellish the Offer or any part of the Offer including without limitation any text or images provided by or on behalf of the Program or the Client in any way, directly or indirectly, without the express prior written consent of the Program.

## Payments

- The Program will pay to the Affiliate a commission (the "Commission"), calculated in accordance with the payment terms outlined in each Offer posted by the Program on the Program Site. The Program applies monthly NET 45, NET 30, NET 15, NET 7 or weekly payment plans at its sole discretion depending on the volume and quality of traffic the Affiliate sends, unless mutually agreed otherwise. Notwithstanding of the selected payment method (e.g. paypal, webmoney etc.) the Affiliate shall provide the Program with their actual bank details.
- Commissions will be paid to the Affiliate only following receipt by the Program of payment from the Client in respect of such Offer published in the Program online reporting system. The Program may, in its sole discretion and from time to time, elect to advance to the Affiliate part or all of the Commissions prior to receipt of payment from the Client, but in no event will the Program be obligated to do so.
- The Affiliate acknowledges and agrees that payment of Commissions may be delayed where the Affiliate has not provided the Program with current particulars in accordance with paragraph 6.2(m) of this Agreement and that in no case will the Program be liable to the Affiliate for any loss, costs or expenses directly or indirectly incurred by the Affiliate as the result of such delay.
- Minimum amount that can be paid to the Affiliate in a given billing period must exceed US \$100.00 (One Hundred US Dollars). Payment in the amount less than US\$500.00 is possible in case of termination of the Agreement mutually agreed by the parties or its cancelation that is not related to any breach of contractual provisions or applicable laws by the Affiliate.
- Commissions due and payable by the Program to an Affiliate will not accrue interest.
- Payments to an Affiliate in accordance with this Section will be based upon the records kept by the Program and reported in the Program's online reporting system and audited by the Clients, from time to time.

## Fraud

- If the Program determines, in its sole discretion, that the Affiliate or Sub-Affiliate has engaged in any activity that the Program considers to be fraudulent or which might bring the reputation or standing of the Program into disrepute either with the general public or with the Clients or potential Clients of the Program, or otherwise that the Affiliate or Sub-Affiliate has engaged in activities which might be considered fraudulent, the Program may but will not be obligated to (a) suspend or terminate the Affiliate's membership in the Program, without notice and (b) release to any third party, information relating to the identity and location of the Affiliate if required to do so in order to enforce these terms and conditions.
- In the event of a suspension or termination in accordance with paragraph 5.1 above, any Commission due and payable to the Affiliate in accordance with Section 4 at the time of suspension or termination will be deemed to be forfeited.
- For the purposes of this Agreement, fraudulent activity includes but is in no way limited to: activity by the Affiliate or anyone for whom in law the Affiliate is responsible which is directly or indirectly intended to inflate the Commissions payable to the Affiliate; the generation of leads other than by a mechanism approved by the Program; activity by the Affiliate or anyone for whom in law the Affiliate is responsible which is not in accordance with the Program; any spam activity and activity which is determined by the Client, in its discretion, to be fraudulent.
- The Program may at any time audit Affiliate for compliance purposes. Affiliate agrees to provide the Program with any reasonable information necessary to conduct an investigation into Affiliate's compliance with law and this Agreement.

## Covenants, Representations and Warranties

- The Affiliate represents and warrants that:
  - it has the authority and capacity to enter into and to be bound by this Agreement;
  - to the best of its knowledge, there are no existing, pending or threatened claims or actions pending against the Affiliate;
  - none of the Affiliate's websites contain false or deceptive advertising or any machine readable code including without limitation any virus, Trojan horse, work or other self-executing program;
  - it owns or has the legal right to use and distribute all content, copyrighted material, products, and services displayed on or through its website or websites and in its electronic mail; and
  - it is not now a party to any agreement or business relationship which may conflict with this Agreement.
- The Affiliate covenants and agrees that:
  - it will, at all times, comply with all laws applicable in the jurisdiction where the Affiliate is situated and also where the Affiliate directly or indirectly conducts its business or markets an Offer;
  - it will not enter into any agreement or business relationship or otherwise incur any obligation which might, in the opinion of the Program, conflict with this Agreement;
  - it will, at all times, comply with the terms of this Agreement, and the Program Policies, as updated, amended and replaced by the Program, from time to time, in its sole discretion;
  - it will not, without the express written consent of the Program, use or permit any person for who it is in law responsible to use any third-party trade-names or trade-marks;
  - it will not publish on any website or send in any electronic mail a universal resource locator or other link to any content or otherwise engage in or condone any practice, which, in the opinion of the Program is deceitful, defamatory, libelous, abusive, violent, prejudicial, obscene, pornographic, likely to bring the reputation or standing of the Program into disrepute, or which otherwise would be illegal;
  - it will at all times comply with the terms and conditions of any agreement or policy established by an Offer in which the Affiliate elects to participate;
  - it will at all times comply with the provisions of the CAN-SPAM Act of 2003, as amended or replaced, from time to time;
  - it will not post any content relating to the Offer to any Usenet newsgroup, chat room, bulletin board or 'blog' (save and excepting a chat room, bulletin board or blog which is operated or primarily owned by the Affiliate) without the express written consent of the Program;

it will be responsible for the development, operation and maintenance of its website or websites and electronic mail, including without limitation the technical operation thereof, the creation, publication and accuracy of any content published on any such website or websites or in any electronic mail;

it will not attempt in any way to alter, modify, eliminate, conceal or otherwise render inoperable or ineffective any tags, source codes, links, pixels, modules or other data provided by or obtained from the Program;

it will not "frame" or "mirror" any part of any pages hosted by the Client unless expressly permitted by the Program and the Client;

it will not alter any website or electronic mail content provided by the Program; and

it will, at all times and from time to time provide the Program with written confirmation of a valid address, telephone number, electronic mail address and such other identifying or financial information as the Program may reasonably require.

## Indemnification

The Affiliate covenants and agrees to indemnify and save harmless the Program, its parent company and their respective shareholders, directors, officers, and employees (collectively, the "Indemnified Group") from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred, arising out of any breach of this Agreement by the Affiliate or any Sub-Affiliate or the exercise by the Affiliate of any right under this Agreement or any act or omission of the Affiliate, a Sub-Affiliate or anyone for whom the Affiliate is in law responsible, including without limitation any damages, losses, consequential or otherwise, arising in any manner (including those arising from or incidental to any liability or other lawsuit, claim, demand or other action brought) as a consequence of any act or omission of the Affiliate or any person for whom the Affiliate is in law responsible, whether or not the Indemnified Group or any of them are named as a party defendant in any such proceedings and whether or not the Indemnified Group or any of them are alleged to be negligent or otherwise responsible for any damage or injury to persons or property. The obligation of the Affiliate to defend and indemnify as set out in this paragraph will survive termination of this Agreement for any reason and will not be otherwise limited by any other term or condition of this or any Agreement. The Program may, at its election in its sole discretion, assume the exclusive defense and control of any matter otherwise subject to indemnification by Affiliate. the Program may participate in the defense of all claims as to which it does not assume defense and control, and Affiliate shall not settle any such claim without the Program's prior written consent.

## Confidentiality

- The Program or its directors, may, from time to time, disclose to the Affiliate certain information relating to the Program's business or to the Program's customers, affiliates, subsidiaries, Affiliates, agents, or employees; business and marketing plans, strategies and methods which may not be standard industry practice or which are not generally known in the industry; or studies, charts, plans, tales or compilations of business and industrial information acquired or prepared by or on behalf of the Program (all collectively referred to as the "Confidential Information"). The Affiliate acknowledges that Confidential Information will be provided at the sole discretion of the Program, and nothing in this Agreement obligates the Program, its directors, agents or employees to disclose or grant to the Affiliate access to any Confidential Information.
- Unless expressly authorized in writing by the Program, the Affiliate covenants and agrees: to use the Confidential Information only for the purposes expressly contemplated in this Agreement; and that no Confidential Information will be disclosed to any third party, affiliate, subsidiary, Sub-Affiliate, agent, or employee of the Affiliate without the prior written consent of the Program, which may be unreasonably and arbitrarily withheld.
- The Affiliate acknowledges that the Program remains the sole and exclusive owner of all right, title and interest in and to the Confidential Information. The Affiliate agrees that the Confidential Information will not be copied or otherwise reproduced without the express prior written consent of the Program.

- Upon termination of this Agreement, or otherwise on demand by the Program, the Affiliate agrees that it will promptly deliver to the Program all notes, data, tapes, reference items, sketches, drawings, memoranda, records, diskettes, electronic communications in any form and any other materials in any way relating to any of the Confidential Information in the possession of the Affiliate or any affiliate, subsidiary, Sub-Affiliate, agent, or employee of the Affiliate.
- The Affiliate acknowledges and agrees that:  
the provisions of this Section and the Affiliate's agreement with the same are of the essence and constitute a material inducement to the Program to enter into this Agreement;  
the provisions of this Section shall be construed independently of any other provision of this Agreement, and the existence of any claim or cause of action the Affiliate may have against the Program, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Program of the provisions of this Section;  
that any breach of this Section would cause irreparable harm to the Program for which damages might not be an adequate remedy, and the Affiliate therefore agrees that in the event of any such breach the Program will be entitled to seek, in addition to any other right accruing to the Program under this Agreement or otherwise in law or equity, injunctive relief against the Affiliate without the necessity of proving actual damages; and  
notwithstanding any other provision of this Agreement, this Section shall survive the termination of this Agreement, however caused.
- The Affiliate agrees to indemnify and save harmless the Program against any and all loss, costs or expenses, inclusive of court costs and legal fees on a solicitor and own client basis, which the Program may incur as the direct or indirect result of any unauthorized disclosure of the Confidential Information by the Affiliate or any person for whom the Affiliate is responsible, in law.

## Non-Competition

During the term of this Agreement and for a period of six (6) months thereafter, the Affiliate will not seek, in any way, to undermine the goodwill of the Program, and in particular, the Affiliate will not, directly or indirectly: (1) solicit or entice or attempt to solicit or entice, work away from the Program; (2) solicit or entice or attempt to solicit or entice any of the employees of the Program to enter into employment service with the Affiliate or a competitor of the Program; or (3) directly or indirectly enter into any agreement or contract, written or otherwise, with any Client or otherwise provide services to any third party for the ultimate benefit of a Client which might, in the opinion of the Program, compete with any services provided by the Program to that Client.

## Disclaimer and Limitation of Liability

- The Program disclaims all warranties, conditions, representations, indemnities and guarantees with respect to any matter, whether express or implied (including without limitation any warranty of profitability, satisfactory quality, merchantability, fitness for any particular purpose, title and non-infringement).
- Notwithstanding any other provision of this Agreement, the Program additionally disclaims all obligations and liabilities on the part of the Program and those for whom it is in law responsible for any damages, including, but not limited to, indirect, special, and consequential damages, attorneys' and experts' fees, and court costs (even if the Program has been advised of the possibility of such damages, fees or costs), arising out of or in connection with this Agreement.
- In no circumstance will the Program be liable to the Affiliate for any consequential, indirect, special, punitive or incidental damages or lost profits of the Affiliate or the Affiliate's successors or assigns (including without limitation claims for loss of goodwill, use of or reliance on the services provided hereunder, stoppage of other work or impairment of other assets) arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise. Without limiting the foregoing, the Program will not be liable for any failure or delay resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown, actions or inaction of Affiliate or third parties, Affiliate's equipment or software and/or any third party equipment or any other condition affecting production or delivery in any manner beyond the control of the Program.

## Non-Competition

During the term of this Agreement and for a period of eighteen (18) months thereafter, regardless of the reason for termination, Affiliate agrees that it will not knowingly, directly or indirectly, solicit, engage, contract, license, or work with any client whose offer it or any of its Sub-Affiliates marketed hereunder without the prior written approval by an authorized party at the Program. Affiliate agrees and understands that the Program has incurred significant expense forming the Program's affiliate network and in providing services for the benefit of its Clients, and Affiliate agrees and understands that in the event of a breach by Affiliate of this section, Affiliate SHALL pay the Program as liquidated damages an amount equal to the Program's profits for the preceding EIGHTEEN (18) months generated by the campaigns for such Client. The liquidated damage remedies provided herein in this section shall not preclude the Program from seeking injunctive relief.

## Termination

- The Program may terminate this Agreement, at any time, on six (6) hours' Notice to the Affiliate. The Affiliate may terminate this Agreement, at any time, on forty-eight (48) hours' Notice to the Program.
- Notwithstanding termination of this Agreement for any reason, the Affiliate covenants and agrees that it will continue to be bound by the terms and conditions set out in Sections 5, 7, 8, 10, 11 and 13.1 of this Agreement.
- The initial term would be eighteen (18) months and would automatically renew for another twelve (12) month period, unless terminated by either party after the initial term.

## General

- The Program may assign this Agreement without the Affiliate's prior consent. The Affiliate may not assign this Agreement without the express written consent of the Program.
- The Program reserves the right to change, amend or altered this Agreement at any time, for any reason, or for no reason at all, at its sole discretion. The most recent version of this Agreement will be posted here. Although the Program may provide notice of material changes to this Agreement to the Affiliate but it is the Affiliate's sole responsibility to keep themselves informed of any such changes or amendments.
- Any notice or other communication ("Notice") permitted or required by this Agreement will be in writing and given by personal delivery or transmitted by facsimile or electronic mail to the receiving party at the address provided to the Program by Affiliate in its the Program Program account. Any such Notice will be deemed to have been received on the date on which it was transmitted by facsimile or electronic mail or delivered.
- No term or condition of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is in writing and signed by both parties.
- In the event that any term, covenant or condition of this Agreement is declared indefinite, invalid, illegal or unenforceable by a court having jurisdiction then this Agreement with respect to the remaining terms, covenants or conditions will continue in force.
- This Agreement will inure to the benefit of and be binding upon the respective successors, heirs and assigns of both the Program and the Affiliate.
- This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this agreement, supersedes any previous or contemporaneous representations, negotiations, understandings, and agreements, oral or written.