

**BAZAARVOICE MEDIA  
PUBLISHER AGREEMENT**

By signing this Publisher Agreement, service addendum, service order, or similar-type document, Publisher (“Publisher”) accepts and agrees to be bound by the terms and conditions in this Publisher Agreement (collectively the “**Publisher Agreement**”). The Publisher Agreement governs Publisher’s relationship with Bazaarvoice, Inc. (“Bazaarvoice”). Each party represents and warrants that it has read and understands all of the provisions of this Publisher Agreement. Publisher must accept this Publisher Agreement before it can receive any Service (as defined, below). If Publisher is entering into this Publisher Agreement on behalf of a company or other legal entity, it represents and warrants that it has authority to bind such entity to this Publisher Agreement, in which case the term “Publisher” refers to such entity.

**RECITALS** Bazaarvoice provides its Publishers with services related to the sale of Advertisements. Publisher owns and operates Publisher Sites and desires to become a member of the Bazaarvoice Network, and to make available Publisher Inventory such that Bazaarvoice may sell and serve Advertisements on Publisher’s sites.

**PUBLISHER TERMS & CONDITIONS**

**1. Definitions.**

“**Advertisements**” mean graphical, digital interactive and rich forms of media, including, without limitation, banners, buttons, boxes, towers, skyscrapers and any other Standard IAB Units, brand wraps, skins, podcast ads, video ads, mobile ads and any other customized online advertisements.

“**Gross Revenue**” means revenue actually collected by Bazaarvoice from Advertising on the Publisher Sites, less the sum of (i) any fees paid by Bazaarvoice to third parties with respect to such revenue, and (ii) any partner shares paid to third parties.

“**Impression**” means each instance that a single Advertisement is rendered for display on a Web page, as measured by Bazaarvoice or its third party ad server.

“**Launch Date**” means the date on which Publisher will make available the Publisher Inventory to Bazaarvoice, by placement of Bazaarvoice tags and beacons on its Publisher Sites.

“**Service**” means the Bazaarvoice advertising service through which Bazaarvoice may serve advertisements to Publisher Sites.

“**Bazaarvoice Network**” means the publisher sites which utilize Bazaarvoice’s advertising platform.

“**Standard IAB Units**” means those IAB units supported by Bazaarvoice, which at the effective date include, but not limited to, 728x90, 300x250, 160x600 and 120x600 ad units.

“**Publisher Inventory**” means the space(s) on a Web page or window or segments in a podcast, video or mobile application in which an Advertisement may be displayed, and is made available to Bazaarvoice on Publisher Sites or mobile application under this Publisher Agreement. Publisher controls the placements and volume of advertising on Publisher Sites.

“**Publisher Sites**” mean the online content, applications, Web sites and Web pages as listed on the cover page of

this Publisher Agreement. Publisher Sites include any mobile applications. Publisher Sites specifically exclude Advertisements and materials provided by Bazaarvoice, if any.

**2. Service.**

2.1. Provision of Service. Bazaarvoice shall provide the Service to Publisher during the Term in accordance with the terms of this Publisher Agreement.

2.2. General Restrictions. Publisher may use the Service only as expressly authorized by Bazaarvoice and for no other purpose.

**3. Appointment and Implementation.**

3.1. Appointment. Publisher shall work with Bazaarvoice as an exclusive third party representative for the provision of Advertisements on the Publisher Sites during the Term. Publisher may place an “advertise here” code provided by Bazaarvoice on each page on which Advertisements are displayed that will in effect direct any user inquiring about advertising on Publisher Sites to Bazaarvoice.

3.2. Implementation. Publishers shall use Bazaarvoice to traffic and manage Publisher’s ad inventory, according to Publisher’s needs and requirements. Publisher shall implement Bazaarvoice pixels for the purpose of ad targeting. The process of integrating Bazaarvoice may be found in the Publisher Service Order.

3.3. Advertising Placement and Formats. Publisher shall make the Publisher Inventory available to Bazaarvoice in standard advertising formats and placements as may be updated by Publisher from time to time.

3.4. Non-circumvention. Publisher may not, during the Term, attempt in any manner to deal directly or indirectly with any advertiser Bazaarvoice places on Publisher’s Site with respect to the Service and Advertisements. This specifically excludes any

## **bazaarvoice:**

advertising procured by Publisher in association with product purchase or advertising associated with purchase of manufacture's product.

3.5. **Objectionable Material.** Publisher acknowledges that Bazaarvoice is not responsible for the content of any Advertisements. Publisher may request the removal of any Advertisements that Publisher deems, in its sole discretion, are directly competitive to Publisher's core business, libelous, pornographic, obscene, defamatory or otherwise in violation of local, state or federal law (collectively, "**Objectionable Material**"). Bazaarvoice shall respond to Publisher's Removal Request and remove any such Objectionable Material as soon as commercially practical, but in no event longer than one (1) business day.

3.6. **Co-Marketing.** Publisher grants Bazaarvoice a limited, non-exclusive, non-transferable, non-sublicenseable, worldwide license to use and display: (a) Publisher's name and logo ("Trademark") for the sole purpose of disclosing Publisher as a receiver of any applicable Bazaarvoice Service, and (b) Publisher's name and logo(s), as well as screen shots from Publisher's websites, which are the subject of product schedules, in Bazaarvoice's marketing materials (including Bazaarvoice's website), in accordance with Publisher's standard trademark guidelines. Bazaarvoice agrees that it: (a) does not acquire any rights with respect to Publisher's Trademark and screen shots, and acknowledges that all associated goodwill shall inure to the benefit of Publisher; (b) may not register or attempt to register Publisher's Trademark or any confusingly similar mark anywhere in the world; and (c) may not use the Trademark in any manner that tarnishes the reputation of or otherwise unfavorable reflects upon Publisher.

3.7. **Terms of Use.** Publisher represents and warrants that the privacy policy and terms of use of the Publisher Sites shall make the necessary disclosures to users and obtain all rights and permissions necessary for Bazaarvoice to perform the Services including but not limited to: (a) the serving of Advertisements, and (b) the collection, transmission, and sharing of data as described in this Publisher Agreement (including without limitation the gathering of information from users and use of that information to target Advertisements). Publisher will provide Bazaarvoice with advance notice of any changes to privacy policy where commercially reasonable.

#### **4. Reporting, Revenue Share, and Payment.**

4.1. **Reporting.** On a monthly basis on or before the 15th of every month, Bazaarvoice shall report to Publisher the number of monthly Impressions delivered

under this Publisher Agreement on Publisher Sites in the prior calendar month and the Revenue Share.

4.2.1 **Revenue Share.** Bazaarvoice shall pay Publisher a Revenue Share of 60% of the Gross Revenue collected from Publishers Site(s), unless otherwise agreed to by the parties in Exhibit B.

4.2.2 **Payment.** Except as described below, Bazaarvoice shall pay Publisher the Revenue Share no later than thirty (30) days from Bazaarvoice's actual receipt of payment for Advertisements displayed on the Publisher Sites. Payments are based solely on Bazaarvoice's ad-serving records. Bazaarvoice has no payment obligations with respect to any Impressions which Bazaarvoice reasonably believes to be associated with a breach of this Publisher Agreement (such as generated using robots, displayed on pages with prohibited content, or the like). All payments are made in US dollars, and Publisher is responsible for payment of all taxes related to payments made under this Publisher Agreement except for taxes on Bazaarvoice's net income.

4.2.3 **Payment Roll-Over.** Notwithstanding the foregoing, if the Revenue Share for any given month is five dollars (US\$5) or less, Bazaarvoice is not responsible to Publisher for any payments for that month. Further, if the Revenue Share for any given month is between five dollars (US\$5) and one hundred dollars (US\$100), Bazaarvoice may roll such amount over to the subsequent payment period, and has no obligation to make any payment to Publisher until the accrued Revenue Share is at least one hundred dollars (US\$100) or three (3) months have elapsed, whichever comes first.

4.2.4 **Payment Disputes.** Any dispute regarding a payment from Bazaarvoice hereunder must be submitted to Bazaarvoice in writing within one year of posting date of such payment or it such dispute is waived. If Bazaarvoice pays Publisher by check, Publisher must collect such payment within one hundred and eighty days of the date of the check; otherwise such check is null and void.

#### **5. Term**

This Publisher Agreement is effective as of the Publisher Agreement Effective Date and shall remain in effect as long as Bazaarvoice is providing Services, unless otherwise terminated in accordance with the provisions of this Publisher Agreement.

#### **6. Renewal; Termination.**

6.1. **Renewal.** After the initial term, this Publisher Agreement will automatically renew for successive twelve (12) month renewal terms.

## **bazaarvoice:**

6.2. Effect of Termination. Upon termination or expiration of this Publisher Agreement, Publisher agrees (a) to remove any and all Bazaarvoice ad tags and beacons from all Publisher Sites as soon as commercially practicable, but in no event later than five (5) business days from such termination or expiration, and (b) if the termination is for Publisher's breach, Publisher forfeits any Revenue Share that may be due to Publisher after date of such breach. Publisher hereby acknowledges that Bazaarvoice may incur server costs or other fees for any such ad tags and beacons not removed from Publisher Sites, and Publisher agrees that it shall be responsible to pay Bazaarvoice any fees incurred by Bazaarvoice as a result of Publisher's failure to remove said tags.

### **7. Limited License.**

7.1. Limited License. Subject to the terms and conditions of this Publisher Agreement and during the Term and where mutually agreeable exceptions are made, Bazaarvoice grants to Publisher a non-transferable, non-sub-licensable, non-exclusive license (a) to place any ad tags and beacons provided by Bazaarvoice on the Publisher Sites solely for the purpose of making ad calls to the Service, and (b) to display the Advertisements delivered by Bazaarvoice on the Publisher Sites.

7.2. Restrictions. Publisher may not authorize, enable or engage in any of the following:

- (a) the use, display, syndication, sublicensing or delivery of the Advertisements anywhere other than on Publisher Sites;
- (b) the use, display, syndication, sublicensing or delivery of the Advertisements in pop-over or pop-under windows;
- (c) any act which may interrupt ad calls;
- (d) the display of a new Advertisement without the user navigating to a new web page;
- (e) the display of Advertisements on any error pages;
- (f) the redirection of any user from a Web page after clicking on any Advertisement (including any interstitial pages);
- (g) modification or alteration (including without limitation resizing or cropping) of Advertisements;
- (h) placement of any other item on a page (including a pop-up or dynamic page element) that may obscure an Advertisement or prevent or inhibit its display;
- (i) the generation of fraudulent Impressions or fraudulent clicks on any Advertisement (whether through manual clicks, the use of robots, the use of optimization software, or other tools); or
- (j) the artificial inflation of click-throughs or impressions (including without limitation offering incentives for the purpose of increasing page views or clicks).

### **8. Ownership.**

8.1. Service and Advertisements. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Bazaarvoice and its advertisers have and will retain all rights, title and interest in and to the Advertisements and the Service and all copies, modifications and derivative works thereof. Publisher acknowledges that it is obtaining only a limited license right to display the Advertisements and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to Publisher under this Publisher Agreement or otherwise. The Bazaarvoice name, the Bazaarvoice logo and the product names associated with the Service are service marks or trademarks of Bazaarvoice or third parties, and no right or license is granted to use them unless expressly set forth in this Publisher Agreement.

8.2. User Data. As between Bazaarvoice and Publisher, each own any information they derive about or from users. For the avoidance of doubt, to the extent that Bazaarvoice collects any information in the delivery of Advertisements hereunder (such as via ad tags provided to Publisher hereunder), such data is owned by Bazaarvoice. Publisher grants Bazaarvoice a perpetual, non-exclusive, worldwide, royalty-free, fully paid license to use and disclose all data owned by Publisher and collected under this Publisher Agreement, to (a) improve, enhance and implement Bazaarvoice's Services; and (b) target advertising on the Publisher Site and Bazaarvoice Network.

### **9. Warranties.**

9.1. Publisher Representations and Warranties. Publisher represents and warrants that (a) it is the owner of the Publisher Sites and has the right to permit Bazaarvoice to serve Advertisements on the Publisher Sites, and that Publisher has not and will not enter into any agreement inconsistent or in conflict with the terms of this Publisher Agreement; (b) the Publisher Sites and any material displayed do not breach and have not breached any duty toward or rights of any person or entity including, without limitation, rights of intellectual property, publicity or privacy, or rights or duties under consumer protection, product liability, tort, or contract theories; and (c) any material displayed on Publisher Sites do not contain any material which is defamatory, pornographic, obscene, promote illegal activity, or contain hate speech.

9.2. Bazaarvoice Representations and Warranties. Bazaarvoice represents and warrants that (a) it is the owner of the Services and has the right to perform under this Publisher Agreement and provide the

## **bazaarvoice:**

Services as described herein, (b) any material Bazaarvoice provides does not contain any material which is illegal, defamatory, pornographic, obscene, promote illegal activity, or contain hate speech.

9.3. **WARRANT DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, BAZAARVOICE DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, OR GUARANTIES (EXPRESS, IMPLIED, ORAL OR OTHERWISE) AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE. BAZAARVOICE MAKES NO REPRESENTATIONS OR WARRANTIES THAT (A) THE USE OF THE SERVICE WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE (WHETHER AS A RESULT OF TECHNICAL FAILURE, ACTS OR OMISSIONS OF THIRD PARTIES, OR OTHER CAUSES) OR WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET PUBLISHER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY INFORMATION PRESENTED BY THE SERVICE WILL BE ACCURATE, COMPLETE OR RELIABLE, (D) THE QUALITY OF ANY INFORMATION USED OR OBTAINED BY PUBLISHER OR ITS USERS THROUGH THE SERVICE WILL MEET PUBLISHER'S OR ITS USERS' REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. BAZAARVOICE DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR ASSURANCE REGARDING USER-GENERATED CONTENT. THE SERVICE IS PROVIDED "AS IS", AND BAZAARVOICE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

### **10. Indemnification.**

10.1. **Mutual Indemnification.** Each party, at its own expense, will indemnify, defend and hold harmless the other party, and its employees, officers, directors, representatives and agents and the respective successors and assigns of each of the foregoing, from and against any loss, liability, judgment, penalty, damage or expense (including reasonable expenses of investigation and reasonable attorneys' fees and costs) incurred or suffered by any indemnitee resulting from, arising out of, or in connection with any third-party claim, suit, action, or other proceeding brought against any indemnitee based on, arising from or relating to the indemnitor's gross negligence or intentional misconduct.

10.2. **Indemnification Procedure.** The indemnification obligations of Section 10.1 are conditioned upon: (a) notice by the indemnitee to the

indemnitor of any claim, action or demand for which indemnity is claimed within five (5) days of the indemnitee receiving notice of such claim (provided, however, that failure of the Indemnitee to notify the Indemnitor within the time provided in this subsection (a) does not exempt the Indemnitor of its indemnification obligation, except to the extent that such failure has materially prejudiced the indemnitor's ability to defend the claim); (b) complete control of the defense and settlement by the indemnitor, provided that no settlement may be made without the consent of the indemnitee, such consent not to be unreasonably withheld or delayed; and (c) reasonable cooperation by the indemnitee in the defense as the indemnitor may request. The indemnitee has the right to participate in the defense against the indemnified claims with counsel of its choice and at its own expense but may not confess judgment, admit liability or take any other actions prejudicial to the defense. Further, the indemnitee may not settle an indemnified claim unless the indemnitor has declined to defend.

11. **Survival.** Sections 8 (Ownership), 9 (Publisher's Warranties), and 10 (Indemnification) shall survive any termination or expiration of this Publisher Agreement.

12. **Internet Delays.** THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. BAZAARVOICE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

### **13. Limitation of Remedies and Damages.**

13.1. **Limitations of Liability.** THE LIMITATIONS OF LIABILITY IN SECTIONS 14.2 and 14.3 WILL APPLY IRRESPECTIVE OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ALSO APPLY REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH DAMAGES ARE SOUGHT. IN NO EVENT WILL THE LIMITATIONS APPLY TO THE AMOUNTS DUE FOR SERVICES UNDER THIS PUBLISHER AGREEMENT. BOTH PARTIES SHALL USE REASONABLE EFFORTS TO MITIGATE THE DAMAGES FOR WHICH THE OTHER PARTY IS RESPONSIBLE. HOWEVER, IN NO EVENT WILL THE LIMITATIONS APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

13.2. **No Special Damages.** EXCEPT FOR CLAIMS ARISING OUT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY IS LIABLE TO THE OTHER PARTY FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT

## **bazaarvoice:**

LIMITATION LOST PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION ("SPECIAL DAMAGES"), OF ANY PARTY, INCLUDING THIRD PARTIES, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE FOREGOING.

13.3. Liability Cap. EXCEPT FOR CLAIMS ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, IN NO EVENT WILL THE TOTAL COLLECTIVE LIABILITY OF EITHER PARTY UNDER THIS PUBLISHER AGREEMENT EXCEED THE AGGREGATE FEES PAID OR OWED BY BAZAARVOICE TO PUBLISHER UNDER THIS PUBLISHER AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. .

14. **Confidential Information.** Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any code, documentation or technical information provided by Bazaarvoice (or its agents), performance information relating to the Service, payment amounts, and the terms of this Publisher Agreement is Confidential Information of Bazaarvoice without any marking or further designation. Except as expressly authorized herein, the Receiving Party shall hold in confidence and may not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation does not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

## 15. **General.**

15.1. Assignment. This Publisher Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Publisher Agreement (or any part thereof) without the advance written consent of the other party, except that either party may assign this Publisher Agreement as a whole in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempted transfer or assignment of this Publisher Agreement except as expressly authorized under this Section 15.1 is null and void.

15.2. Severability. If any provision of this Publisher Agreement, or the application thereof, is for any reason and to any extent determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, a valid provision that most closely matches the intent of the original will be substituted and the remaining provisions of this Publisher Agreement will be interpreted so as best to reasonably affect its original intent.

15.3. Governing Law; Jurisdiction and Venue. This Publisher Agreement shall be governed by the laws of the State of Texas (excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction). Further, the parties agree that any claim or cause of action under or relating to this Publisher Agreement shall be brought in the state or federal courts located in Austin, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. If Publisher is located outside the United States, the parties acknowledge that this Publisher Agreement shall be interpreted without regard to the United Nations Convention on the International Sale of Goods.

15.4. Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set forth above and shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service.

15.5. Amendments; Waivers. No supplement, modification, or amendment of this Publisher Agreement is binding, unless in writing and executed by a duly authorized representative of each party to this Publisher Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Publisher Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other

**bazaarvoice:**

business form employed by Publisher will supersede the terms and conditions of this Publisher Agreement, and any such document relating to this Publisher Agreement shall be for administrative purposes only and shall have no legal effect.

15.6. Entire Agreement. This Publisher Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Publisher Agreement.

15.7. Independent Contractors. The parties to this Publisher Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby

between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

15.8. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Publisher Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.