

## BOOYAH NETWORKS MASTER SERVICES TERMS

These Booyah Networks, Inc. Master Services Terms ("**Terms**") are entered into by, as applicable, the client signing these Terms or any Statement of Work or other document that references these Terms or that accepts these Terms electronically ("**Client**") and Booyah Networks, Inc. ("**Booyah**"). These Terms govern Booyah services provided to Client along with any Statements of Work or Insertion Orders executed between Client and Booyah. These Terms and any applicable Statements of Work or Insertion Orders are collectively referred to as the "**Agreement**". Booyah and Client agree to the following:

**1. SERVICES.** Booyah will provide Client with those services specifically set forth in mutually agreed upon Insertion Orders and Statements of Work (the "**Services**").

### **2. FEES; AND PAYMENT.**

**2.1 Fees.** In consideration of the Services, Client agrees to pay Booyah all fees, costs and expenses due as set forth in each Insertion Order or Statement of Work (the "**Fees**"). Further, Booyah will bill Client for all applicable taxes, if any, in accordance with the billing terms in effect at the time the Fees become payable.

**2.2 Payment.** Booyah will bill Fees and applicable taxes after the end of each calendar month. Payment terms and any required deposits will be specified in the Insertion Order(s) or Statement(s) of Work.

**2.3 Refunds.** If Client is dissatisfied with Booyah's performance, Client's sole and exclusive remedy is to terminate this Agreement and receive a refund of any amounts prepaid by Client for Fees (as defined in the Insertion Order(s) or Statement(s) of Work). In no event will Client be entitled to a refund of any Fees or fees paid to any third party media providers arising out of or related a failure to access Client websites because such websites were not operational.

**3. ADVERTISER MATERIALS.** Client acknowledges that in order to perform the Services, Booyah will require certain Client information or material of Client or Client's suppliers (collectively, "**Client Materials**"), as well as Client's listings and URLs (each an "**Client Listing**") with links to Client's website(s) ("**Client Website(s)**"). Accordingly, Client hereby grants to Booyah an irrevocable, non-exclusive license to use and modify the Client Materials as necessary for Booyah to perform the Services. Client shall indicate whether the Client Website(s) contain adult content or links to any website displaying adult content. Booyah reserves the right to terminate the Agreement if Booyah determines, in its sole discretion, that Client has breached any representation or warranty under this Agreement or if an Client Website might misdirect the user about the content of the Client Website. Booyah reserves the right, without notice to Client, to accept, edit, reject or remove any Client Materials for any reason, at any time, at its sole discretion.

### **4. REPRESENTATIONS AND WARRANTIES.**

**4.1 Authority Regarding Client Websites.** Client hereby represents and warrants that Client is the authorized owner or representative of the Client Website(s) to which Client Listings will link with sufficient authority to enter into this Agreement with respect to such Client Website(s).

**4.2 Submitted Information.** Client represents that, with respect to information submitted for the purpose of enrolling as an advertiser, Client will only provide information that is accurate, complete and current.

**4.3 Client Listings and Client Website Content.** Client represents and warrants that the Client Materials, all Client Listings and all content on the Client Website(s), including all portions thereof, (a) do not violate any law or regulation of any governmental agency, (b) do not infringe in any manner on any copyright, patent, trademark, trade secret or any other intellectual property rights of any third

party, (c) do not breach any rights of any person or entity, including without limitation rights of publicity or privacy, (d) are not false or misleading, (e) are not involved in hate activity or promoting violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age and (f) are not defamatory, libelous, slanderous or threatening.

**5. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY.** CLIENT EXPRESSLY AGREES THAT THE USE OF BOOYAH SERVICES ARE AT ADVERTISER'S OWN RISK. BOOYAH SERVICES ARE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. NEITHER BOOYAH NOR ANY OF ITS LICENSORS, EMPLOYEES, AGENTS, CONSULTANTS OR CONTRACTORS MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER REGARDING BOOYAH SERVICES, ANY INFORMATION, SERVICES OR PRODUCTS PROVIDED OR AVAILABLE THROUGH OR IN CONNECTION WITH BOOYAH SERVICES OR ANY RESULTS OBTAINED THROUGH THE USE THEREOF. BOOYAH HEREBY DISCLAIMS ON BEHALF OF ITSELF AND ALL OF BOOYAH' INFORMATION PROVIDERS, LICENSORS AND/OR LICENSEES ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES AS TO THE AVAILABILITY, ACCURACY OR CONTENT OF BOOYAH SERVICES AND INFORMATION, AND ANY WARRANTIES OF TITLE OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BOOYAH' LIABILITY HEREUNDER SHALL BE LIMITED IN ALL CASES TO THE AGGREGATE AMOUNT OF CLICK THROUGH FEES AND SERVICE AGENCY FEES PAID BY ANY ADVERTISER, PLUS THE RESIDUAL AMOUNT IN SUCH ADVERTISER'S ACCOUNT. IN NO EVENT WILL BOOYAH BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE BOOYAH SERVICES AND/OR THE WEBSITES TO WHICH BOOYAH SERVICES ARE LINKED. ADVERTISER AGREES THAT ADVERTISER WILL NOT HOLD BOOYAH RESPONSIBLE FOR THE SELECTION OR RETENTION OF, OR ANY ACTS, ERRORS, OR OMISSIONS BY, ANY THIRD PARTY IN CONNECTION WITH BOOYAH, THE WEBSITES TO WHICH BOOYAH SERVICES ARE LINKED AND/OR THE PARTIES WITH WHOM BOOYAH CONTRACTS TO OPERATE VARIOUS PORTIONS OF THE BOOYAH SERVICES.

**6. INDEMNIFICATION.** Client hereby agrees to indemnify, defend (with counsel reasonably acceptable to Booyah) and hold harmless Booyah, its officers, directors, shareholders, affiliated entities and persons, employees, agents, representatives and attorneys from and against any and all claims, causes of actions, demands, judicial and administrative proceedings, liabilities, forfeitures, errors, damages, costs and expenses (including without limitation, reasonable attorneys' fees and attendant costs and expenses, whether or not suit is filed or proceedings instituted thereon), directly or indirectly arising in connection with any alleged breach of any representation or warranty made by Client herein or breach or default by Client of any of Client's other obligations hereunder.

### **7. RELATIONSHIP OF PARTIES.**

**7.1 Independent Contractors.** The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

**7.2 Client Website(s).** Client acknowledges and agrees that Booyah will have no control over Client's business or any Client Website(s). Client agrees and understands that Booyah is not responsible for the maintenance of any Client Website. Client further acknowledges and agrees that Booyah has no direct or indirect control over the content of the services, the manner of performance, or the time or duration of the provision of

services by Client on, at or in association with any Client Website(s).

**7.3 Booyah Property.** Client acknowledges and agrees that Client will have no financial or other interest in Booyah or any property owned by Booyah, its advertisers, agents, successors or assigns.

## **8. TERM AND TERMINATION.**

**8.1 Term.** The "Term" of this Agreement is the 1-year period starting on the Effective Date, unless terminated earlier as provided in this Agreement. This Agreement will automatically renew for additional one-year periods, unless either party gives notice that it does not intend to renew at least 90 days before the end of the then-current Term.

**8.2 By Client.** Client may terminate this Agreement at any time upon prior notice by contacting Client's designated representative or by sending a message to [legal@booyahnetworks.com](mailto:legal@booyahnetworks.com); provided, however, such termination shall not effect the term of any Insertion Order with a minimum time commitment until such minimum time has passed. IMPORTANT: CANCELLATION OR TERMINATION MAY NOT ENTITLE CLIENT TO A REFUND. PLEASE SEE SECTION 2.3 FOR MORE INFORMATION.

**8.3 By Booyah.** Booyah may, in its sole discretion and without prior notice, terminate this Agreement and stop providing Services for Client. Booyah may, in its sole discretion, suspend or terminate this Agreement if payment cannot be charged to Client's credit card or Client's check is returned, if a chargeback is posted to Client's credit card, or if Booyah believes that Client provided false or misleading information or violated the terms of this Agreement. IMPORTANT: CANCELLATION OR TERMINATION MAY NOT ENTITLE CLIENT TO A REFUND. PLEASE SEE SECTION 2.3 FOR MORE INFORMATION.

## **9. GENERAL.**

**9.1 Law.** This Agreement will be governed by the laws of the State of Colorado, without regard to its principles of conflicts of laws. Any dispute under this Agreement shall be brought in the state and Federal courts located in Denver, Colorado, and the parties hereby consent to the personal jurisdiction and venue of these courts.

**9.2 Assignment.** Client may not assign its rights or delegate its duties under this Agreement without Booyah's prior written consent. Any unauthorized assignment shall be null and void.

**9.3 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be

deemed a waiver of any other provision or of such provision on any other occasion.

**9.4 Marketing.** Client agrees that Booyah may list Client as a Client of Booyah Services and provide other non-confidential information regarding Services provided to Client on Booyah's web site and in other marketing materials.

**9.5 Headings.** The headings of the sections of this Agreement have been included only for convenience, and will not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

**9.6 Notice.** Booyah may provide general notices to Client via electronic mail to Client's e-mail address. Client may provide notice to Booyah by e-mail to [support@booyahnetworks.com](mailto:support@booyahnetworks.com).

**9.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

**9.8 Publicity.** Client hereby grants to Booyah the limited right to use Client's name and marks in marketing and publicity materials listing Client as a customer of Booyah.

**9.9 Entire Agreement.** This Agreement and Insertion Order(s) or Statement(s) of Work constitute the entire agreement between the parties with regard to the subject matter hereof. No oral or written representation that is not expressly contained in this Agreement is binding on Client or Booyah. No amendment to this Agreement or any Insertion Order(s) or Statement(s) of Work shall be binding on either party unless in writing and signed by both parties. Booyah reserves the right to discontinue offering any of the Services at any time.

Updated November 24, 2009