

TW Networks Publisher Terms and Conditions

TW Networks, of 2 Commercial St., Sharon Commerce Center, Sharon, MA, 02067, provides you access to TW Networks.com subject to your compliance with the terms and conditions below ("Agreement"). Please read this Agreement carefully. By enrolling or participating as a Publisher, defined herein, ("Publisher") with TW Networks, you receive compensation from an Advertiser based on tracked actions by your End Users related to the Advertiser's products or services. By placing Advertiser Links on your website, you, the Publisher, agree to be bound by these terms and conditions.

1. DEFINITIONS.

The following terms shall have the meanings set forth below:

"Adware" means any software application, residing on an End User's machine, with their permission, which is used by Publisher in conjunction with a Publisher Program.

"Publisher" means a person or company that agrees to promote Advertiser Services or the Advertiser Site in accordance with Advertiser Terms and Advertiser Campaign Terms in exchange for payment.

"Publisher Event" means an individual action by an End User; such as a Lead or Sale Event, within an approved Campaign that is tracked and recorded with TW Networks for which payment has been promised to a Publisher by the Advertiser.

"Publisher Marks" means logos, trademarks, trade names, service marks or other identifying emblems, words or designs of Publisher, as the case may be, to designate and identify itself or the particular products or services it offers.

"Publisher Program" means a pay-for-performance program where a Publisher receives a commission for sending an End User to the Advertiser Site which then generates a Publisher Event.

"Publisher Site" means the Internet World Wide Web presence operated by or for Publisher, (as modified to comply with the provisions of this Agreement, and future versions, upgrades, successors and replacements thereof).

"Publisher Transaction" means any Event caused by the action of an End User which is recorded by TW Networks and written to the TW Networks Transaction Table.

"Lead Event" is a Publisher Event that allows the Advertiser to credit Publishers for completing a Lead form by the End User and for End User Data obtained when an End User completes a Lead form.

"Campaign" means a logical grouping of Advertiser Links and Events in the TW Network through which Advertisers manage their program.

"End User" means an Internet user who clicks to the Advertiser Site using an Advertiser Link.

"End User Data" means all information and data of an End User collected by TW Publisher, including, but not limited to, name, address, telephone number and email address.

"Event" is a Publisher Event.

"Event State" is a Publisher Event designated as a Valid Event, Pending Event, or Invalid Event.

"Intellectual Property" means all industrial and intellectual property rights existing from time to time including any patents, design rights, registered designs, trademarks, service marks, copyrights, moral rights, trade secrets, know-how, and all applications and registrations therefore, and all goodwill associated therewith.

"Invalid Event" is a Publisher Event that has been disapproved by Advertiser or TW Networks for payment to TW Publisher.

"Lead Event" is a Publisher Event that allows the Advertiser to credit TW Publishers for End User Data obtained when an End User performs a specified action such as filling out a form, registering for a service, or downloading a file from the Advertiser's Site.

"TW Networks Network Manager" is the web-based interface that can be accessed with one username and password which TW Publisher uses to manage its Advertiser Publisher Program(s).

"TW Networks Publisher Code" is any HTML (Hypertext Markup Language, the authoring language used to create documents on the World Wide Web.), JavaScript, or any other program code and tags provided to the TW Publisher via the TW Networks Publisher Manager or directly by TW Networks. This code is intended to be placed as provided into the HTML of approved Publisher Sites.

"TW Networks Services" means the various related content, links, products and services provided by TW Networks on or through the TW Networks Site.

"TW Networks Site" means the Internet World Wide Web presence operated by or for TW Networks, located on the Internet through the <http://www.twnetworks.com> URL (as modified to comply with the provisions of this Agreement, and future versions, upgrades, successors and replacements thereof).

"Marks" means logos, trademarks, trade names, service marks or other identifying emblems, words or designs of TW Networks or a Publisher, as the case may be, to designate and identify itself or the particular products or services its offers.

"Advertiser" means a person or company that offers a Program through TW Networks and agrees to pay Publishers for promoting Advertiser Services.

"Advertiser Campaign Terms" are the terms set forth by the Advertiser as conditions for participating in an Advertiser's Campaign. These terms are available to Publishers online through the TW Networks Publisher Manager.

"Advertiser Link(s)" means an advertisement in the form of a banner, text link, or object displayed on a Publisher Site, in an email, or a newsletter. When clicked, the Advertiser Link directs an End User to the Advertiser Site.

"Advertiser Service(s)" means the product(s) or service(s) offered by the Advertiser through the Advertiser Site.

"Advertiser Site" means the Internet World Wide Web presence operated by or for Advertiser, (as modified to comply with the provisions of this Agreement, and future versions, upgrades, successors and replacements thereof).

"Advertiser Terms" are the terms set by the Advertiser as conditions for participating in their Advertiser Publisher Program. At a minimum they include this document in its entirety and any account-specific terms reflected in the Advertiser Campaign information available to TW Publisher online through the TW Networks Publisher Manager.

"Pending Event" is a Publisher Event that is being considered for approval as a Valid Event or disapproval as an Invalid Event by Advertiser or TW Networks.

"Valid Event" is a Publisher Event that has been approved by Advertiser or TW Networks for payment to TW Publisher.

All other initially capitalized terms shall have the meanings assigned to them in this Agreement.

2. LICENSES/OWNERSHIP OF TW NETWORKS SITE.

2.1 Rights Granted by TW Publisher.

(a) License; License Restrictions. Publisher grants to TW Networks a nonexclusive, nontransferable, royalty-free (without right to sublicense) license to use and display, during the Term of this Agreement, the Publisher Marks, solely for the purpose of linking to the Publisher Site. TW Networks agrees that the Publisher Marks are and will remain the sole property of Publisher and agrees not to contest the ownership of such Publisher Marks, nor misappropriate the Publisher Marks for TW Networks' own use. Publisher reserves all rights to control the use of the Publisher Marks, and TW Networks shall not change or modify the Publisher Marks in any manner without prior written authorization from Publisher.

(b) Reservation of Rights. Except as expressly granted in this Agreement, TW Networks shall have no other rights of any kind in the Publisher Marks or the Publisher Site. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppels or otherwise, a license to any of TW Publisher's Intellectual Property or proprietary technology other than the use of the Publisher Marks in accordance with the terms of this Agreement. TW Networks acknowledges that the Publisher Marks and the Publisher Site are the sole property of Publisher, and this Agreement only grants TW Networks a limited right to link to the Publisher Site under the terms and conditions of this Agreement. The Publisher Marks may not be used as a feature or design element of any other logo without prior written authorization from Publisher.

2.2 TW Networks Ownership Rights. All content, writings, graphics, tables, sounds and other materials on the TW Networks Site, the design, layout and general look and feel of the TW Networks Site, and all Intellectual Property embodied therein or pertaining thereto, (other than TW Publisher supplied materials or Publisher Marks on the TW Networks Site) shall remain the sole and exclusive property of TW Networks or its licensors. TW Networks will retain sole control and ownership over the look and feel, content, layout and design of the TW Networks Site. Nothing under this agreement shall be construed as granting to TW Publisher any license or right in or to any Intellectual Property of TW Networks.

3. RIGHTS AND OBLIGATIONS OF THE PARTIES.

3.1 TW Networks' Rights and Obligations.

(a) TW Networks shall be solely and exclusively responsible for all operation, hosting, and maintenance on the TW Networks Site.

(b) TW Networks shall provide automated, tracking; reporting; and analysis of Advertiser Links and Events on every Publisher Transaction recorded for Publisher.

(c) TW Networks shall provide monthly Commission processing and payment for TW Publisher on behalf of Advertiser.

(d) TW Networks has the right to not accept individuals, or any multi-level marketing, franchised, reseller, or third party websites, and reserves the right to not accept Publishers in certain vertical markets or Publishers it deems, in its sole discretion, harmful to TW Networks.

(e) TW Networks reserves the right, in its sole discretion and without liability, to reject, omit or exclude any Publisher Site for any reason at any time, with or without notice to the Publisher and regardless of whether such Publisher Site was previously accepted.

(f) TW Networks may change the Event State for Events to Invalid Event in the TW Publisher Account in circumstances of (i) duplicate entry or other clear error; (ii) non-bona fide Event.

3.2 Publisher's Rights and Obligations.

(a) Publisher shall be solely and exclusively responsible for all operation, hosting, and maintenance on Publisher Site(s).

(b) Except as provided herein, Publisher may not modify TW Networks Publisher Code without prior written consent from TW Networks or the affected Advertiser. Publisher may not alter, copy, modify, take, sell, reuse, or divulge any TW Networks Publisher Code, except as is necessary to partake in an Advertiser Publisher Program. Requests for changes to TW Networks Publisher Code should be sent to in accordance with section 12.7.

(c) Publisher is obligated to update Advertiser Links to earn Commissions, when notified by TW Networks that an Advertiser Link has changed.

(d) Publisher agrees and represents that all information provided for the purpose of enrolling as a Publisher will be accurate, complete and current. Publisher is responsible for keeping account information up to date using the Publisher Manager, including, but not limited to, financial information and contact name, phone number, and email.

(e) In addition to and without limiting Publisher obligations under this Agreement, is obligated to abide by any Advertiser Terms and Advertiser Campaign Terms applicable to any Campaign in which Publisher participates. If any conflict arises amongst this Agreement and the Advertiser Terms and/or Advertiser Campaign Terms, this Agreement shall prevail. If any conflict arises between the Advertiser Terms and the Advertiser Campaign Terms, the Advertiser Terms shall prevail.

(f) Publisher is obligated to comply with the CAN SPAM Act of 2003 (Public Law 108-187 or any successor legislation) and any other laws or regulations that govern email marketing and communications when promoting any Advertiser / Publisher Program.

4. EXCLUSIVITY.

4.1 The Publisher is not barred by this agreement from participating in any other Publisher Program offered by a TW Networks competitor or from participating in any in-house Advertiser Publisher Program.

5. PAYMENTS.

5.1 Commissions. Publisher will receive commission ("Commission") for all Valid Events.

5.2 Payment Terms.

(a) All payments are based on Publisher Events, designated as a Valid Event, Invalid Event, or Pending Event, which are accounted and audited by TW Networks. The Event State shall be considered binding on TW Publisher.

(b) Publisher will be paid earned Commissions typically within twenty (20) business days after the end of a calendar month. All accounts will be settled in U.S. dollars (\$US). No checks will be issued for any amounts less than \$25. Any amounts less than \$25 will carry over to the next month.

(c) Every Publisher account based in the United States must have a unique Employer Identification Number (EIN) or Social Security Number, as applicable, associated with the account. If Publisher is based in the United States, payments exceeding six hundred dollars (\$600.00) per calendar year will be made to Publisher only after they provide proper tax identification information.

(d) Any bank service fees incurred by TW Networks due to an error in TW Publisher account information are Publisher's responsibility and will be deducted from Commissions due to Publisher.

(e) TW Networks is hereby released by Publisher for any claim for payment of a Commission until such time as TW Networks has received payment from the relevant Advertiser. Publisher recourse for any earned Commissions not paid to Publisher shall be to make a claim against the relevant Advertiser(s), and TW Networks disclaims any and all liability for such payment.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 By TW Networks. TW Networks represents, warrants and covenants that (i) it has sufficient rights to grant TW Publisher the rights and licenses set forth herein; (ii) to the best of its knowledge, the TW Networks Services and the TW Networks Site do not and will not violate any applicable law or regulation; (iii) the execution, delivery and performance of this Agreement by it does not conflict with any agreement to which it is a party or by which it may be bound; (iv) it has full legal authority to enter into this Agreement and to carry out the provisions hereof; (v) to the best of its knowledge, the TW Networks Services and the TW Networks Site do not infringe in any manner any copyright, patent, trademark, trade secret or other Intellectual Property right of any third party; (vi) to the best of its knowledge, the TW Networks Services and the TW Networks Site do not breach any duty toward or rights of any person or entity including, without limitation, rights of publicity or privacy, or has not otherwise resulted in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity; (vii) the TW Networks Services and the TW Networks Site

are not false or misleading; (viii) the TW Networks Services and the TW Networks Site do not produce, provide or are in any manner related to pornographic products or services (which TW Networks shall have complete discretion to define); and (ix) the TW Networks Services and the TW Networks Site are neither defamatory, libelous, militant, hateful, slanderous or threatening.

6.2 By TW Publisher. Publisher represents, warrants and covenants that (i) it has sufficient rights to grant TW Networks the rights and licenses set forth herein; (ii) to the best of its knowledge, the Publisher and the Publisher Site do not and will not violate any applicable law or regulation; (iii) the execution, delivery and performance of this Agreement by it does not conflict with any agreement to which it is a party or by which it may be bound; (iv) it has full legal authority to enter into this Agreement and to carry out the provisions hereof; (v) to the best of its knowledge, the Publisher and the Publisher Site do not infringe in any manner any copyright, patent, trademark, trade secret or other Intellectual Property right of any third party; (vi) to the best of its knowledge, the Publisher and the Publisher Site do not breach any duty toward or rights of any person or entity including, without limitation, rights of publicity or privacy, or has not otherwise resulted in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity; (vii) the Publisher and the Publisher Site are not false or misleading; (viii) the Publisher and the Publisher Site do not produce, provide or are in any manner related to pornographic products or services (which TW Networks shall have complete discretion to define), or their subsidiaries or foundations funded by such companies whose function is to improve acceptance of such products by the public; (ix) the Publisher and the Publisher Site are neither defamatory, libelous, militant, hateful, slanderous or threatening (which TW Networks shall have complete discretion to define); and (x) that Publisher will not engage in pop-up or pop-under advertising using any means involving third party properties and/or services (software) without prior permission from TW Networks, which TW Networks may withhold at its sole discretion.

7. DISCLAIMERS; LIMITATION OF LIABILITY.

7.1 Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTIONS 3 AND 6, TW PUBLISHER'S OBLIGATION TO MEET SERVICE LEVEL MINIMUMS, AND TW NETWORKS' OBLIGATION TO MEET A SERVICE LEVEL GUARANTEE, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE PUBLISHER SITE(S) OR THE TW NETWORKS SERVICE INCLUDING, BUT NOT LIMITED TO, A WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF ADVERTISERABILITY.

7.2 Limitation of Liability. EXCEPT AS PROVIDED IN SECTION 9, IN NO EVENT SHALL EITHER PARTY, OR ITS RESPECTIVE PUBLISHERS,

SUBSIDIARIES, PARENT COMPANIES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, POTENTIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, LOST PROFITS OR LOST REVENUES) EVEN IF A PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. FORCE MAJEURE.

8.1 A party shall not be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force," as used in this Agreement, shall mean an unanticipated event which is not reasonably within the control of the affected party and which by exercise of reasonable due diligence, such affected party could not reasonably have been expected to avoid, overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Such causes may include, without limitation, the following: flood, earthquake, tornado, storm, fire, terrorist attack, explosion, public emergency, civil disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep the necessary authorizations or approvals from any governmental agency or authority; however, no party shall be relieved of its obligations hereunder, if its failure of performance is due to removable or remediable causes which such party fails to remove or remedy using commercially reasonable efforts within a reasonable time period. Either party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt notice of such fact to the other, followed by written confirmation of that notice, and shall exercise due diligence to remove such inability with all reasonable dispatch.

9. INDEMNIFICATION.

9.1 By Publisher. Publisher agrees to indemnify, defend and hold harmless TW Networks and its officers, directors, employees, agents, successors and assigns from and against any and all losses, liabilities, damages, penalties and claims and all related costs and expenses (including reasonable attorneys' fees) related to claims made by third parties against TW Networks: (i) alleging that Publisher Marks or other Intellectual Property infringe the patents, copyrights, trademarks or service marks or other Intellectual Property rights of such third parties; (ii) arising out of or relating to Publisher Site(s) or the Publisher Marks; or (iii) due to a breach by Publisher of its warranties, representations, obligations or covenants or otherwise breaches this Agreement.

9.2 By TW Networks. TW Networks agrees to indemnify, defend and hold

harmless Publisher and its officers, directors, employees, agents, successors and assigns from and against any and all losses, liabilities, damages, penalties and claims and all related costs and expenses (including reasonable attorneys' fees) related to claims made by third parties against Publisher: (i) alleging that TW Networks' Marks or other Intellectual Property infringe the patents, copyrights, trademarks or service marks or other Intellectual Property rights of such third parties; or (iii) due to a breach by TW Networks of its warranties, representations, obligations or covenants or otherwise breaches this Agreement.

9.3 Procedures. The Indemnified Party shall (i) promptly notify the Indemnifying Party in accordance with section 12.7 of such suit, claim, or proceeding; (ii) give the Indemnifying Party reasonable information, assistance and cooperation required to defend such suit, claim, or proceeding; and (iii) allow the Indemnifying Party to control the defense of any such action and all negotiations for its settlement or compromise. The Indemnified Party may be represented in the defense of any such claim, at the Indemnified Party's expense, by counsel of the Indemnified Party's selection. The Indemnifying Party shall have no liability for settlements or costs incurred without its consent. The Indemnifying Party shall not enter into any settlement that imposes liability or restrictions on the Indemnified Party without the Indemnified Party's prior written consent, such consent not to be unreasonably withheld or delayed.

10. OWNERSHIP OF USER DATA; CONFIDENTIALITY.

10.1 Confidentiality. TW Networks and Publisher agree that any and all information identified by the other as "Confidential" and/or "Proprietary", or which, under all of the circumstances, ought reasonably to be treated as Confidential and/or Proprietary, will not be directly or indirectly disclosed to any third person without the express consent of the other party for a period of three (3) years following termination of this Agreement and that neither party will make use of Confidential Information except under the terms of this Agreement. These confidentiality obligations shall not apply to any information which: (i) is or subsequently becomes available to the general public other than through a breach by the receiving party; (ii) is already known to the receiving party before disclosure by the disclosing party; (iii) is developed through the independent efforts of the receiving party; (iv) the receiving party rightfully receives from a third party without restriction as to confidentiality or use; or (v) is requested pursuant to a subpoena; provided, that the party responding to such subpoena gives the other party reasonable notice and opportunity to intervene to quash such subpoena.

10.2 Privacy of Consumer Financial Information. Notwithstanding anything in this Agreement to the contrary, if it is necessary for Publisher to disclose any End User Data to TW Networks for any reason, TW Networks agrees that at no time shall TW Networks use or disclose any such End User Data that TW Networks

may obtain in connection with this Agreement, except as required by law; provided that nothing herein shall require Publisher to disclose End User Data to TW Networks.

11. TERM OF AGREEMENT AND TERMINATION.

If Publisher is dissatisfied with TW Networks, any Advertiser Publisher Program, or with any of the terms and conditions contained herein, Publisher's sole and exclusive remedy is to terminate Publisher account. Publisher may cancel their account with TW Networks at any time by sending notice in accordance with section 12.7.

11.1 Term. The term of this Agreement shall begin on the date the Publisher applies for an account and shall continue until terminated by any of the actions enumerated in section 11.2.

11.2 Termination. This Agreement will terminate in the event of any of the following:

(a) Immediately after a material breach, provided that the non-breaching party gives the other notice in accordance with section 12.7 of a material breach by the other of this Agreement and a request for a cure, unless the breach is cured that day.

(b) Immediately once notice of termination by either party is received by the other party in accordance with section 12.8.

11.3 Effect of Termination.

(a) Upon termination of this Agreement, all licenses granted to Publisher and TW Networks hereunder shall automatically terminate.

11.4 Survival. Sections 5 (to the extent the payment obligations accrue prior to termination), 7, 9, 10, 11.3 and 12 shall survive any expiration or termination of this Agreement.

11.5 Suspension. TW Networks reserves the right, at its sole discretion to suspend the Publisher if it suspects a material breach of section 3.2. If TW Networks takes action to suspend, TW Networks may do so immediately, but TW Networks is not relieved of its obligation to notify the Publisher per section 11.2(a).

12. GENERAL

12.1 Choice of Law. The Parties agree that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Massachusetts, without regard to conflict of laws provisions thereof. Furthermore, the parties agree that any dispute (including litigation) that arises between the parties shall have its venue in the state or federal courts of Massachusetts.

12.2 Assignment. Publisher may not assign all or any portion of this Agreement without the prior written consent of TW Networks, which consent may be withheld at TW Networks' sole discretion.

12.3 Relationship of the Parties. No partnership, joint venture, employment, agency, franchise, or other form of agreement or relationship is implied or intended by this Agreement. The parties shall be independent contractors for all purposes in connection with this Agreement.

12.4 Entire Agreement. The parties agree that this Agreement constitutes the entire agreement between the parties as of the date hereof with respect to the subject matter hereof and supersedes all prior and contemporaneous communications, whether oral or written. The parties agree that this Agreement may be modified or amended from time to time hereafter by TW Networks as it deems necessary and Publisher agrees (in consideration for TW Networks agreeing to continue doing business with Publisher) to be bound by such amendments, however, no such modification or amendment shall act to increase any financial obligation which Publisher may otherwise have to TW Networks pursuant to this Agreement.

12.5 Press Releases. Neither party shall issue any press release or announcement relating to the relationship contemplated by this Agreement without the prior written consent of the other party.

12.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

12.7 Notices. All notices, requests, consents, and other communications under this Agreement from Publisher shall be in writing and shall be deemed delivered (i) two business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery. If from TW Networks to Publisher, immediately upon email to the primary contact email address is deemed an acceptable means of notification. In each case to the intended recipient as set forth below:

If to Publisher by email to the primary contact email address listed in the account summary,

If to TW Networks, at 2 Commercial St., Sharon, MA 02067, Attention: Richard Whitmyre, or via email using the form available at <http://www.twnetworks.com/contact> or at such other address or addresses as may have been furnished in writing by TW Networks to the other Party in the manner set forth in this section.

12.8 Section Headings. Section headings are for descriptive purposes only and shall not be used to interpret the meaning of this Agreement.

12.9 Attorneys' Fees. If either party fails to pay any amounts due under this Agreement or otherwise breaches this Agreement and the non-breaching party retains an attorney to collect such amounts or remedy such breach, then the breaching party shall be obligated to pay any amounts due herein including said non-breaching reasonable attorneys' fees incurred in collecting such amounts and court costs.

12.10 Non-Waiver. No delay or omission of either party in exercising any right accruing upon any default of the other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by either of the parties of a breach or a default under any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver thereof. A waiver by either of the parties of a breach or a default under any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach or default of any other term or condition of this Agreement.