

## **REPLACEADS ADVERTISER TERMS AND CONDITIONS AGREEMENT**

This ReplaceAds Advertiser Terms and Conditions Agreement (the "**Agreement**"), is by and between Jetcast, Inc., a Nevada corporation with its principal office at PO Box 4453, Biloxi, Mississippi 39535 for its ReplaceAds advertising network ("**ReplaceAds**"), and advertiser ("**Advertiser**") with respect to the following:

A. ReplaceAds is in the business of providing advertising and or marketing services to third parties in and around Internet radio and television broadcasts and the audio and video inventory of newspapers and magazines ("**Advertising Program**").

B. Advertiser wishes to advertise its products or services using the Advertising Program, all on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties, intending to be legally bound, agree as follows:

### **SECTION 1 MASTER AGREEMENT**

1.1 **Insertion Order ("IO").** This Agreement governs the general terms and conditions of the relationship between ReplaceAds and Advertiser with respect to the Advertising Program. During the term of this Agreement, ReplaceAds and Advertiser will mutually agree to the specific components of the Advertising Program and specify them in an IO. The IO will describe the specific components of the advertising campaign, and the responsibilities and services of each party, and the anticipated fees and costs. Once an IO is mutually accepted it becomes part of this Agreement and cannot be cancelled except as detailed in Section 8 or on an IO amending the prior IO's terms.

1.2 **Relationship of Documents.** This Agreement and each IO accepted by ReplaceAds will constitute the entire agreement between Advertiser and ReplaceAds with respect to the purchase, sale and delivery of the Advertising Program. In the event of any conflict between this Agreement and an IO, the terms of the IO shall prevail. Any terms or conditions stated by Advertiser in any other document that are different from, or in addition to, this Agreement, will be of no force and effect and are expressly rejected, and no course of dealing, usage of trade, or course of performance will be relevant to explain or modify any term expressed in this Agreement.

### **SECTION 2 RESPONSIBILITIES OF ADVERTISER**

2.1 **Target Profile for User Data.** Advertiser shall be responsible for the development of the target profile for the collection of User Data. This Agreement does not guarantee that Advertiser will make any sales of its products or services.

2.2 **Prepare Advertising Copy.** Advertiser shall prepare, and bear responsibility for all advertising copy and media used in the Advertising Programs. Advertiser is solely responsible for all representations or omissions made by Advertiser in its advertising, including,

but not limited to, any representation about product warranties, features, performance, support and service.

**2.3 Marketing Materials; Publicity.** All media releases by Advertiser or its agents relating to this Agreement shall be subject to the prior written approval of ReplaceAds.

**2.4 Customer Communication.** Advertiser will comply with all applicable laws regulating the contact with customers including regulations on mail order and email solicitations and all local, state and federal statutes regulating the billing of consumers' credit cards and/or the debiting of consumers' accounts. Advertiser will ensure that any call centers that it operates or causes to operate in connection with the Advertising Program will comply in all material respects with all applicable laws, including, without limitation, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act and all state and federal statutes regulating the initiation and/or content of telemarketing sales call including the Federal Communications Commission and the rules and regulations of any state regulatory agency having jurisdiction, including but not limited to, the Illinois Restricted Call Registry Act and similar statutes.

**2.5 Order Processing and Fulfillment.** Advertiser shall be solely responsible for its own fulfillment programs. Such fulfillment will comply with all relevant laws, rules and regulations including, but not limited to, CAN-SPAM and the Mail Order Rule.

**2.6 Compliance with Laws.** Advertiser will comply with all applicable laws relating to the Advertising Program and the handling of User Data that is derived from the Advertising Program, if any.

**2.7 Advertiser Website(s).** Advertiser shall use its best efforts to keep its website(s) generally available twenty-four (24) hours a day, seven (7) days a week, to ensure that input from users accessing the websites ("**User Actions**") may be processed on a timely basis. Advertiser must notify ReplaceAds at least three (3) business days in advance of any scheduled downtime so that ReplaceAds has adequate time to notify publishers who are actively engaged in running the advertisements applicable to the IO entered into with ReplaceAds.

### **SECTION 3 RESPONSIBILITIES OF REPLACEADS**

**3.1 Advertising Services.** ReplaceAds will develop an advertising campaign which will be designed to (i) identify prospective customers in accordance with profiles designated by advertising and (ii) secure confirmed contact and consumer information for such prospective leads either on sites hosted by Advertiser and/or ReplaceAds servers (collectively, "**User Data**").

**3.2 Publishers.** ReplaceAds may distribute the advertising media through its proprietary ReplaceAds network of third party broadcasters and publishers ("**Publishers**") who access ReplaceAds's programs for the purpose of finding advertising content relevant to their user base and distributing such content to their users.

**3.3 Advertising Copy.** To the extent that ReplaceAds develops any advertising copy or media in connection with an Advertising Program, it will submit it to Advertiser for review

prior to its distribution. Once approved in writing by Advertiser, Advertiser shall have sole liability for use of such copy or media.

## **SECTION 4 INTELLECTUAL PROPERTY**

4.1 **Advertiser Intellectual Property.** Advertiser or its licensors shall retain all right, title and interest in all advertising copy, images, content, media, trademarks, trade names, service marks, service names, copyright works, and Internet domain names that it owns or develops during the term of this Agreement (collectively, "**Advertiser IP**"). During the term of this Agreement, Advertiser grants to ReplaceAds a non-exclusive, non-assignable, non-transferable, non-sublicensable, royalty-free license to display the Advertiser IP for the sole purpose of fulfilling its obligations under this Agreement. Advertiser reserves any rights in the Advertiser IP not expressly granted and disclaims all implied licenses.

4.2 **ReplaceAds Intellectual Property.** ReplaceAds or its licensors shall retain all right, title and interest in all of its software, programs, techniques, websites, consumer database information trademarks, trade names, service marks, copyright works, and internet domain names that it owns or develops during the term of this Agreement. ReplaceAds maintains proprietary relationships with the Publishers that participate in the ReplaceAds network and that the identity of those Publishers, and information concerning their users and advertisers is a proprietary trade secret. Advertiser agrees not to circumvent ReplaceAds's relationship with such Publishers, or otherwise solicit or induce, directly or indirectly, any Publisher that is known by Advertiser to participate in the ReplaceAds network and/or otherwise have a business relationship with ReplaceAds for purposes of obtaining advertising, marketing or promotional services similar to those offered by ReplaceAds during the term of this Agreement and for the twelve month period following termination or expiration of this Agreement. Advertiser further agrees not to reverse engineer or trace Publisher traffic as a means to directly solicit Publishers, other advertisers, or others away from or induce them to reduce the amount of business that they do with ReplaceAds. In the event of a breach of this covenant, without limiting ReplaceAds's remedies, Advertiser shall pay to ReplaceAds an amount equal to the fees that would be charged by ReplaceAds under this Agreement had the advertising program been run through ReplaceAds.

4.3 **User Data.** Each party shall be responsible for taking appropriate security measures to protect customer nonpublic personal information ("**NPI**"), as defined in the Gramm-Leach-Bliley Act of 1999, Title V, and its implementing regulations, against accidental or unlawful destruction and unauthorized access, tampering, and copying during storage in either party's computing or paper environment. Access to NPI must be restricted to only the personnel that have a business need. NPI must be stored in an encrypted format within all systems at both parties' location and any other locations where the data may reside. Transmission of such NPI between parties must be done in a secured method. Both parties agree that each will engage appropriate and industry-standard measures necessary to meet information security guidelines as required by the Gramm-Leach-Bliley Act, Title V and its implementing regulations as applicable to such party.

## **SECTION 5 FEES, PAYMENT, AND COSTS**

5.1 **Fees.** The fees for the specific Advertising Program will be as set forth in the IO.

5.2 **Taxes.** The fees do not include any applicable sales, use, value-added, excise and/or withholding taxes. All taxes and other charges imposed in connection with the running of the Advertising Program, except income taxes imposed upon ReplaceAds, will be paid directly by Advertiser. In the event ReplaceAds pays any such fees, taxes, or charges, Advertiser will promptly reimburse ReplaceAds therefore.

5.3 **Payment Terms.** Unless otherwise specified in the applicable IO, payment will be made net seven (7) days after the close of each week (Monday through Sunday), unless the credit application review process by ReplaceAds or subsequent payment delinquencies require a prepayment from Advertiser at the sole discretion of ReplaceAds. In the event of termination of this Agreement, ReplaceAds is entitled to full remuneration of amounts earned and payable from Advertiser under the terms of this Agreement. Advertiser hereby waives any existing and future claims and offsets against payments due and agrees to pay all amounts due regardless of any such offset or claim. In the event that payment to ReplaceAds is late, Advertiser shall pay to ReplaceAds the lesser of the balance outstanding to ReplaceAds times a rate of 1.5% compounded monthly or the maximum amount allowed under federal and state regulations. In the event that Advertiser is delinquent in payment to ReplaceAds, and at the sole discretion of ReplaceAds, ReplaceAds may elect to immediately terminate this Agreement and any IO with Advertiser upon notice, at which point all amounts become immediately due and payable to ReplaceAds.

## **SECTION 6 INDEMNIFICATION AND LIMITATION OF LIABILITY**

6.1 Each party will assume, pay, indemnify, hold harmless and reimburse the other party, its officers, directors, shareholders, employees, agents, successors, and assignees, for any and all liabilities, damages, claims, suits, judgments, costs, and expenses (including actual attorney's fees and court costs) directly or indirectly incurred as a result of (i) breach of any of the representations, warranties or covenants of this Agreement, (ii) the negligence or intentional acts or omissions of its employees or agents.

6.2 **No Implied Warranties.** UNLESS EXPRESSLY AGREED IN THIS AGREEMENT OR ANY IO, REPLACEADS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT, OR ANY EXPRESS OR IMPLIED WARRANTY ARISING OUT OF TRADE USAGE OR OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE. IN THE EVENT OF ANY EXPRESS WARRANTY, REPLACEADS WILL HAVE NO OBLIGATION TO PROVIDE ANY WARRANTY UNTIL REPLACEADS HAS RECEIVED FULL PAYMENT FOR THE SERVICES. REPLACEADS PROVIDES NO WARRANTIES FOR THIRD PARTY PRODUCTS OR SERVICES INCLUDED WITH THE REPLACEADS SERVICES, AND

ONLY THE ORIGINAL THIRD PARTY WARRANTIES, IF ANY, WILL APPLY TO SUCH PRODUCTS OR SERVICES.

6.3 **Limitation of Liability.** IN NO EVENT WILL REPLACEADS BE LIABLE TO ADVERTISER FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL DAMAGES, ARISING OUT OF THE ADVERTISING PROGRAM OR THIS AGREEMENT, EVEN IF REPLACEADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY WILL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF WHETHER ADVERTISER'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. FURTHER, THE ENTIRE LIABILITY OF REPLACEADS, AND THE SOLE AND EXCLUSIVE REMEDY OF ADVERTISER, FOR ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER (WHETHER IN CONTRACT, TORT, OR OTHERWISE) WILL NOT EXCEED THE FEES PAID TO REPLACEADS FOR THE ADVERTISING PROGRAM WHICH IS THE SUBJECT OF SUCH CLAIM OR CAUSE OF ACTION.

## **SECTION 7 CONFIDENTIALITY**

7.1 **Confidential Information.** "Confidential Information" for purposes of this Agreement shall mean all confidential and proprietary documentation and technical and business information and intellectual property provided under this Agreement whether written or oral, in whatever form recorded, Confidential Information shall not include information that (i) the disclosing party agrees in writing is non-longer Confidential Information; (ii) is or falls into the public domain through no wrongful act of the receiving party; (iii) is previously known to the receiving party; (iv) is independently developed by or for the receiving party; (v) or lawfully received free of restriction from another source having the right to so furnish such information; or (vi) is the subject of a subpoena or other legal or administrative demand for disclosure or is disclosed in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such demand or order; provided, however, that such receiving party shall first notify the disclosing party in writing of the demand or order and permit and cooperate with the disclosing party in seeking an appropriate protective order (or an equivalent mechanism for protecting such Confidential Information in the relevant jurisdictions).

7.2 **Restrictions on Use.** Confidential Information shall remain the property of the disclosing party. The party receiving confidential information shall (i) use the Confidential Information only for the purpose of fulfilling the terms of this Agreement or in the exercise of the rights it may receive expressly under the provisions of this Agreement; (ii) keep confidential and restrict disclosure of the Confidential Information solely to employees, legal counsel or other representatives that need to know to facilitate the performance of this Agreement and not disclose the Confidential Information to any other third parties; (iii) protect the Confidential Information with at least the same degree of care as is used with its own proprietary information, but no less than a reasonable degree of care; and (iv) refrain from copying or reproducing such Confidential Information, in whole or part, except for use as expressly authorized in this Agreement.

7.3 **Remedies.** Each party acknowledges that use of the Confidential Information other than as permitted under this Agreement, may cause irreparable harm for which there may be no adequate remedy at law and would entitle the other party to injunctive relief as well as any other remedies available, including monetary damages.

7.4 **Survival.** The requirements of this Section survive the termination of this Agreement.

## **SECTION 8 TERM AND TERMINATION**

8.1 **Term.** This Agreement shall commence on the Effective Date and shall remain in full force and effect until terminated as set forth below.

8.2 **Termination.** Either party shall have the right to terminate this Agreement immediately upon notice to the other party if the other party shall (i) fail to observe or perform any material term, condition or covenant of this Agreement, including those terms noted above in Section 5.3 "Payment Terms", or (ii) becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver, conservator or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors. In addition, either party may terminate this Agreement at anytime upon 30 days prior written notice for any reason or no reason at all.

8.3 **Effect of Termination.** Upon termination of this Agreement each party shall return to the other any confidential or proprietary information belonging to the other party. The termination of this Agreement, whether by default or otherwise, will not terminate Advertiser's payment obligations for Advertising Programs performed under this Agreement, including without limitation payment obligations arising out of a continued use of the lead that generates income.

## **SECTION 9 INDEPENDENT CONTRACTORS**

9.1 **Relationship of the Parties.** The relationship of the parties to this Agreement is that of independent contractors. Nothing contained in this Agreement will be construed to create or imply a joint venture, partnership, employee or principal-agent relationship between the parties, their employees or their representatives.

9.2 **No Agency.** Neither party will represent that they are the agent or representative of the other. Except as specifically agreed in connection with an IO, neither party by virtue of this Agreement will have any right, power or authority to act or create an obligation, express or implied, on behalf of the other party.

9.3 **Personnel.** Each party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished.

## SECTION 10 MISCELLANEOUS

10.1 **Entire Agreement.** This Agreement, as modified by any IOs, constitutes the entire agreement among the parties and supersedes any prior oral understandings, agreements or representations by or among the parties with respect to the subject matter hereof. This Agreement may only be amended by a writing executed by the parties.

10.2 **Assignment.** Neither party may assign its rights or delegate its responsibilities hereunder without the prior written consent of the other party, which will not be unreasonably withheld, delayed or conditioned; provided however, that this Agreement may be assigned by operation of law or otherwise to any successor to a party whether by change in control of stock, merger or sale of substantially all of the assets of the party.

10.3 **Force Majeure.** Neither party hereto shall be liable to the other for any delay in, or failure of, performance of any covenant contained herein, to the extent that such delay or failure results from fires, explosions, actions of the elements, strikes or other labor disputes, restrictions or restraints imposed by law, rules or regulations of a public authority, acts of military authorities, war riots, civil disturbances, interruptions, or delays of utilities or telephone service, interruption of transportation facilities, and any other cause which is beyond the reasonable control of the party affected, and which by the exercise of reasonable diligence, said party is unable to prevent.

10.4 **Waivers.** Neither the waiver by any party hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure of any party hereto, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy or privilege hereunder shall thereafter be construed as a waiver of any such provisions, rights, remedies or privileges hereunder. Any of the terms, covenants, representations, warranties or conditions hereof may be waived only by a written instrument executed by the party waiving compliance.

10.5 **Notices.** All notices, requests, demands and other communications provided for in this Agreement shall be in writing and delivered, confirmed facsimile or email, personal delivery or delivery by overnight carrier at the addresses provided by the respective parties hereto. Notices shall be deemed given upon receipt.

10.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with California law without application of conflict of law rules.

10.7 **Venue.** Any dispute, controversy or claim arising under or in connection with this Agreement or the relationship between the parties shall be decided exclusively by and in the state or federal courts sitting in the state of California, County of Santa Barbara. The parties agree to submit to the jurisdiction of such courts.

10.8 **Attorney's Fees.** The prevailing party in any suit, action or proceeding arising out of or relating to this Agreement shall be entitled to reimbursement for legal fees and court costs from that non-prevailing party.

10.9 **Counterparts.** This Agreement may be executed in multiple counterparts and transmitted by facsimile or by electronic mail in "portable document format" ("PDF") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a party's signature. Each such counterpart and facsimile or PDF signature shall constitute an original and all of which together shall constitute one and the same original.