

Click.net Publisher Network - Terms and Conditions (Publisher Agreement)

PLEASE READ VERY CAREFULLY THESE TERMS & CONDITIONS. PARTICIPATION IN THE CLICK.NET PUBLISHER NETWORK INDICATES THAT YOU ACCEPT THESE TERMS & CONDITIONS. THESE TERMS & CONDITIONS CREATE A LEGALLY BINDING AGREEMENT BETWEEN YOU AND CLICK.NET (“WE”, “OUR”, “US”). THE AGREEMENT BETWEEN YOU & CLICK.NET COMPRISES SOLELY OF THESE TERMS AND CONDITIONS AND ANYTHING EXPRESSLY INCORPORATED BY REFERENCE (COLLECTIVELY, THIS “AGREEMENT”). IF YOU DO NOT ACCEPT THIS AGREEMENT PLEASE DO NOT PARTICIPATE IN THE CLICK.NET PUBLISHER NETWORK.

We offer this service to businesses including sole proprietors but not to any person(s) who may be considered a “consumer” and/or any person(s) who may, under any jurisdiction whatsoever, be entitled to benefit from any consumer protection laws. If you accept these terms & conditions, you are enrolling in the Click.net Publisher Network as a commercial business, not as a consumer.

Defined terms referred to throughout this Agreement appear in the Definitions section at the end of this Agreement.

I. Your Responsibilities:

1. You agree to comply with the responsibilities identified in this section, as modified from time to time by us, at our sole discretion.
2. You are responsible for Your Website’s access to end users and including, without limitation, any equipment, connections, software and hosting services, each at your own expense.
3. You are responsible for the configuration of Your Website and the integration of the code or data we deliver to you, including, without limitation, the Commercial Content.
4. You agree to notify Click.net of any disputed or missing payment within fourteen (14) days of the date that payment is received or should have been received. You hereby agree that failure to notify Click.net of such dispute or missing payment waives your right to dispute the accuracy or receipt of such payment.
5. You understand that if the click validity score index or advertiser conversion rate from Commercial Content displayed on Your Website(s) falls below the Traffic Quality score as may from time to time be required to be achieved by our Third Party Providers or partners, in addition to any other rights we may have, we have the right to suspend the services under this Agreement temporarily or permanently at our sole discretion or terminate this Agreement.
6. You acknowledge that the Commercial Content we provide to you under this Agreement includes content from Third Party Providers. As part of our relationship with those Third Party Providers, we are required to make certain by this Agreement that you understand and agree as follows:
 1. You will not, under any circumstances whatsoever, provide any content we deliver to you to any third party (i.e., no sub-syndication of the Commercial Content).

2. Any of the rights listed below including exclusivity obligations may benefit our Third Party Providers. You agree that such Third Party Providers are third party beneficiaries with rights to enforce provisions of this Agreement that pertain to such Third Party Providers.
3. You will not request results by any means except the links we provide and you agree not to place the links on any website, software application or email other than the locations identified and agreed to by us during the sign-up process.
4. You will not send us Queries that exceed the Query Threshold. You hereby acknowledge and agree that if the Query or Matched Ad request you send to us exceeds the Query Threshold, we have the right to suspend services until the volume of Queries or Matched Ad request falls below the Query Threshold. If you anticipate a significant increase in your Query or Matched Ad request volume and you give us reasonable notice, we will employ commercially reasonable efforts to accommodate the increase in volume without service interruption, but shall not, under any circumstances whatsoever, be bound to accommodate Queries that exceed the Query Threshold.
5. You will not authorize, permit, enable or engage in any of the following:
 - i. Queries or clicks generated by automated or fraudulent means.
 - ii. Modification of Queries by adding, deleting or otherwise modifying the characters entered by end users.
 - iii. Queries or clicks on our results generated by misleading or incentivized means, including blind links, requiring a user to search or click in order to receive some other benefit obtain some other result or perform another function, or any inducement of any form to your end users to perform a search or click on the results.
 - iv. Pre-populated search boxes
 - v. Your employees, contractors or agents clicking on results except in the course of normal, individual use.
 - vi. The display of any content (including pop-up windows or expanding banners) that obscure a user's view of the content we provide you. This restriction includes any action that results in stripping, blocking, or filtering results we deliver by any means or in any way preventing or inhibiting the display of results in whole or in part.
 - vii. Links placed on landing pages rendered after 404 or other error messages or Queries generated by such 404 or other error messages.
 - viii. Queries from or displays of results or links within pop-over or pop-under windows.
 - ix. Queries generated through a downloadable application or the installation of any application on a user's computer or within a user's browser or replacing a user's homepage without the user's express and informed prior consent.
 - x. Links appearing in an email or Queries generated from within an email.
 - xi. Display of our links or generating Queries via a software application that is downloaded to end users' computers for the purpose of driving traffic to any website on which links to our Commercial Content or the search boxes we provide you appear.
 - xii. Any Queries from outside the United Kingdom, France, Germany, Italy, Netherlands, Spain, United States, or countries that we identify during the term of this Agreement.
7. You represent and warrant that the web sites where you display our Commercial Content will not contain any material that is obscene, pornographic, profane,

- fraudulent, libelous or defamatory, or infringing of any intellectual property rights or other rights of any third party.
8. You acknowledge that content from, and trade marks of, Third Party Providers are exclusively owned by such Third Party Providers, its licensors and/or its advertisers, and you disclaim any implied licenses, including implied licenses to trade marks and patents.
 9. You acknowledge that the services hereunder are subject to the applicable Third Party Provider's Terms. You agree to:
 1. familiarise yourself with such Third Party Provider's Terms,
 2. monitor such for any periodical updates or amendments to or of the Third Party Provider's Terms by the applicable Third Party Provider,
 3. comply with the applicable Third Party Provider's Terms, and
 4. inform Us in writing immediately if you become aware of any inconsistency between your obligations under this Agreement and those of the applicable Third Party Provider's Terms, in which event We shall make an appropriate determination in Our sole discretion, and without derogation of our rights under this Agreement, including but not limited to Our right to terminate this Agreement pursuant to Section VI. We will inform you in writing of our determination as soon as possible following you having notified Us, and in the mean time you will refrain from, and/or cease, any action or omission in breach of the applicable Third Party Provider's Terms.

II. Implementation.

1. You will implement all Commercial Content according to the mock-ups you supply to us and as approved by us.
2. You will implement the source feed indicators (tags, keys, etc.) we provide you without modification.
3. You will implement any reasonable technical requirements we request.
4. You will implement search boxes that access Commercial Content on all pages within Your Website.
5. You will not truncate titles, descriptions or URLs we deliver to you nor will you modify any aspect or change the language of the Commercial Content we deliver.
6. You will not cache previously Queried Commercial Content (cached Commercial Content generate no revenue when clicked upon by your users).
7. You will display Commercial Content in the sequence provided by us and you will not re-order any of the Commercial Content we deliver to you, without any other content between individual Commercial Content.
8. You will clearly mark the Commercial Content as "sponsored listings" or "sponsored results" or any label or heading we identify for you to implement to assure compliance with applicable law.
9. You will display the Commercial Content to your users in response to each Query with no intentional delays or interstitial content and will make reasonable efforts to assure that Commercial Content appear simultaneously with other content on the page.
10. You will display Commercial Content only on the domain you have identified to us.
11. You will disclose your traffic acquisition method to us and will confirm with any tracking policies of our Third Party Providers.
12. For each Query you will provide (i) the user agent; (ii) the full, unencrypted internet protocol address of the user, (iii) the serveURL, (iv) any anonymous user identification ascribed by you, unique cookie or URL tag, and (v) any other data that we may request

in writing that is used in connection with our Third Party Provider's ad serving and quality systems. For clarity, we will not request and you will not share any personally identifiable information with us.

13. You will ensure that you inform users that personal information may be collected, used and disclosed by, or transferred to, us or our Affiliates.

III. Exclusivity.

1. You agree to comply with any exclusivity restrictions imposed by the applicable Third Party Provider as amended from time to time, including but not limited to Oath that their Commercial Content shall be the only paid search or Matched Ad content, or content that is the same as or similar to our Commercial Content, that appears on your site, including algorithmic listing and all search functionality. Further they require that you will not display, link to or permit any third party to display or link to other paid search or Matched Ad content from your site, and you agree that any violation or threatened violation of this Section III will cause Click.net irreparable harm for which there is no adequate remedy at law. You hereby waive any requirements for a bond in connection with any claim for injunctive relief.
2. You will employ commercially reasonable efforts to send all Queries submitted on your site to us.

IV. Our Responsibility: Ad Spots.

After we receive a Query from you, we will use commercially reasonable efforts to deliver Commercial Content to Your Website and/or your RSS Feed, as applicable.

V. Compensation.

1. Click.net shall pay you within sixty (60) days after the end of the calendar month in which such amounts were incurred. Payments shall be in the currency in which revenues were generated. Click.net has no obligation to make any payment in any period where the total due to you is less than United States Dollars two hundred and fifty (\$250) (or local currency equivalent). Click.net may hold such payments due to you until the amount owed to you hereunder exceeds United States Dollars two hundred and fifty (\$250) (or local currency equivalent) and then we will remit such amount upon the next scheduled payment date. We reserve the right to offset any amount owed to you by the amount of our damages if we terminate for cause or by any amounts whatsoever that you may owe to us or as otherwise set out in this Agreement.
2. "Gross Revenue" means amounts collected by us directly from our Third Party Providers or partners for validated clicks occurring on Your Website(s), less any rebates or deductions of any kind whatsoever, including but not limited to, withholding and similar taxes.
3. We will determine the quality and validity of traffic, clicks and impressions from Your Website and/or Your RSS Feed(s) and will calculate payment in our sole discretion, solely on the basis of the information we record or collect. We will not pay you for any amounts generated in violation of this Agreement.
4. You will fully be responsible and liable for payment for all taxes and government fees of any kind whatsoever that may be imposed on or arise out of your business and payments you receive from us.

5. Any violation by you of this Agreement shall result in a charge of 2% of the Gross Revenue per violation for each month in which you are non-compliant, such fee to meet the costs of Click.net monitoring and administering its policies. This charge shall be in addition to, and shall not prejudice, any other remedy available to Click.net under this Agreement or in law.
6. If you generate any revenue while you are in violation of any requirement of this Agreement, Click.net reserves the right to exclude such revenue from its calculation of any amounts owed to you.

VI. Term.

This Agreement is effective as of the Effective Date and unless terminated earlier in accordance with the provisions this Agreement, shall continue in force for the Term. Thereafter, this Agreement shall, unless terminated in accordance with its provisions, renew automatically for successive one (1) year periods. Either party may cancel this Agreement at any time without penalty twenty-four (24) hours after giving written notice of termination to the other party. Click.net may terminate this Agreement immediately upon written notice to you, in the event that you commit a material breach of this Agreement, including but not limited to the applicable Third Party Provider's Terms, or Click.net no longer has the ability, for any reason whatsoever, to provide the services under this Agreement. For the purposes of this Section VI, a material breach shall include, but shall not be limited to, if there has been a previous instance of non-compliance by you under this Agreement.

VII. Indemnification.

1. You shall, and shall continue to, defend, indemnify and hold harmless us and our Affiliates, and pay damages awarded, costs and expenses (including legal fees) pursuant to, any third party claim brought against us or our Affiliates, which alleges facts that would constitute a breach of any warranty, representation or covenant made by you under this Agreement or is related to a breach of your obligations under this Agreement including but not limited to claims that allege or arise from (a) a violation of a third party's right of privacy, or infringement of a third party's copyright, patent, trade secret, trademark or other intellectual property rights; (b) any violation of applicable laws, rules and regulations by you; (c) your gross negligence or willful misconduct, or (d) your breach of the applicable Third Party Provider's Terms. In respect of (a) and (b) above, we shall have the right, at our sole discretion, to tender the control of the defense and settlement of any such claim to you (at your expense and with your choice of counsel), and reasonably co-operate with you (at your request and expense) in defending or settling such claim, including but not limited to providing any reasonable information or materials necessary for you to perform the foregoing.
2. You will not enter into any settlement or compromise of any such claim without our prior consent, which shall not be unreasonably withheld.
3. Notwithstanding anything in this Section VII, you will reimburse us for any reasonable refund we are required to make to any of our Affiliates in settlement of costs, legal fees or disbursements and damages incurred by any of our Affiliates in connection with bona fide, non-frivolous investigations or claims against any of our Affiliates resulting from your site or your business practices (including actions or inactions), even if no formal claim has been brought against any of our Affiliates or tendered pursuant to Section VII(3).

4. You will purchase and maintain throughout the term of this Agreement insurance or indemnity protection that is co-equal with your indemnity obligations herein. This shall include, but not necessarily be limited to (1) broad form commercial general liability insurance and (2) professional liability/errors and omissions. The limit of liability for such coverage shall be no less than US\$1 million per claim/occurrence, and we shall be named as “additional insureds” under such policies. You shall provide us with copies of such insurance upon our written request for you to do so.

VIII. Publicity & Press Releases.

You may not issue any press release or other public statements regarding this Agreement without our written consent.

IX. Confidentiality.

You will not under any circumstances disclose or use our, or our Third Party Providers' Confidential Information. "Confidential Information" means any information disclosed or made available to you by us, directly or indirectly, whether in writing, orally or visually, other than information that: (a) is or becomes publicly known and generally available other than through your action or inaction or breach of your obligations under this Agreement (b) was already in your possession (as documented by written records) without confidentiality restrictions before you received it from us (c) is required to be disclosed by law, or court order. Confidential Information includes but is not limited to all information contained within our reporting systems, the Ad Code, this Agreement, click-through rates and other performance metrics and any other technical or programming information we disclose or make available to you.

X. Limitation of Liability.

EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO BREACH OF THE EXCLUSIVITY, CONFIDENTIALITY, INDEMNIFICATION, A PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING OUT OF ITS NEGLIGENCE, ANY PARTY'S LIABILITY FOR FRAUD OR THE TORT OF DECEIT, YOUR LIABILITY FOR A BREACH OF THE APPLICABLE THIRD PARTY PROVIDER'S TERMS, OR PUBLICITY & PRESS RELEASE PROVISIONS, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOST DATA, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT, TORT, PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE, AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WHATSOEVER WILL CLICK.NET'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED FIFTY PERCENT (50%) OF THE NET AMOUNT PAID OR PAYABLE TO THE PUBLISHER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE UPON WHICH THE CAUSE OF ACTION FIRST AROSE.

XI. Disclaimer of Warranties.

WE ARE NOT RESPONSIBLE FOR ANY CONTENT TO BE PROVIDED HEREUNDER OR FOR ANY SITES THAT CAN BE LINKED TO OR FROM THE COMMERCIAL CONTENT. WE MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND/OR NONINFRINGEMENT.

XII. Authority.

You warrant that you have full power and authority to execute and be fully bound by the terms of this Agreement and you will continue to be for the length of the Term and after the Term, in respect of those clauses that are to survive termination.

XIII. Force Majeure.

Neither party shall be liable in damages or have the right to cancel or terminate this Agreement for any delay or default in performance if such delay or default is caused by unforeseen conditions beyond the reasonable control of the delaying or defaulting party, including acts of God, restrictions by a government authority, wars, revolutions, strikes (other than any strike by the delaying or defaulting party's employees), acts of terrorism, fires, floods, thunderbolts, earthquakes, embargoes, or degradation of telephone or other communications services or servers, including but not limited to, degradation of all or part of an Internet backbone.

XIV. Miscellaneous Terms and Conditions.

1. These Terms apply only to Click.net's provision of Commercial Content to you pursuant to this Agreement. Any other products or services that may be provided to you by Click.net or any of its Affiliates, will be governed by the different terms of service applicable to such specific products or services, including any existing contract between you and Click.net.
2. Click.net reserves the right to refuse to provide services to any party, for any reason whatsoever, or no reason, in our sole discretion and without compensation being payable to you.
3. This Agreement will be governed by the laws of England and Wales, excluding its conflicts of laws principles. Any dispute or claim between you and us or you and any of our Affiliates will be adjudicated in the courts of England and Wales. Any claim against us arising from the Agreement shall be adjudicated on an individual basis, and shall not be consolidated in any proceeding with any claim or controversy of any other party.
4. You agree to file any claim or cause of action against us within one (1) year of the date that the claim or cause of action first arises.
5. This Agreement and all documents incorporated by reference herein, including but not limited to the Third Party Providers' Terms, constitute the entire agreement between us with regard to the subject matter covered herein. Any other terms and agreements (whether verbal, written or both) are superseded.
6. A party can only waive rights under this Agreement by executing a written waiver signed by a duly authorized representative. No other action or inaction will constitute a waiver.

7. The following sections will survive termination of this Agreement: I-4, I-6, III, V, VII-XII, and XIV.
8. The parties are independent contractors. This Agreement does not form any joint venture, partnership, agency or employment relationship.
9. If any part of this Agreement is found to be illegal or unenforceable, this will not affect the legality or enforceability of the remainder of this Agreement.
10. You will not assign, resell, or delegate this Agreement or any of your rights or duties under this Agreement, and you agree that any such assignment, resale or delegation without our prior written consent is a material breach of this Agreement resulting in our right to immediately terminate this Agreement without notice. For the purposes of this paragraph 10, any change in beneficial and/or legal control, or the sale or transfer or Your Website and/or Your RSS Feed(s) will constitute an assignment. Any attempted assignment, resale or delegation will be void.
11. We reserve the right to assign this Agreement or delegate our responsibilities without your consent. Upon assignment, we will have no further obligation or liability under this Agreement.
12. We require the freedom to make strategic and business decisions about our service (and all related and successor programs). For this reason, we reserve the right and in our sole discretion to change Click.net's service and any or all aspects of our products, services or marketplaces, at any time with or without notice. Your continued use of our service constitutes your acceptance of the then applicable terms and conditions. Changes and updates to our terms and conditions and/or policies will be effective immediately after they are posted at: <http://www.click.net/legal/>. It is your responsibility to monitor the foregoing URL for updates. Nothing in this Agreement will constrain how we or our Affiliates operate our respective businesses.

XV. Compliance with Export Control and Anti-Corruption Laws

1. You agree to use best endeavours to comply with the export laws and regulations of the United States and trade controls of other applicable countries, including without limitation the Export Administration Regulations of the US Department of Commerce, Bureau of Industry and Security and the embargo and trade sanction programs administered by the US Department of Treasury, Office of Foreign Assets Control. Unless authorised under a US government license, you agree that you will use best endeavours not to transfer any items, software, technology or other deliverables that we or our Third Party Providers provide to you under this Agreement to: (a) countries, nationals, and government subject to US embargo, (b) entities identified on US Government export exclusion lists, including but not limited to the Denied Persons, Entity, and Specially Designated Nationals List, or (c) nuclear, missile, or chemical biological weaponry end users. In cases of conflict or inconsistency among applicable export and import laws and regulations, US law shall govern.
2. In performance of your obligations under this Agreement, you will comply with all applicable commercial and public anti-bribery laws, including, but not limited to, the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010, which prohibit corrupt offer of anything of value, either directly or indirectly to anyone, including government officials, to obtain or keep business or to secure any other improper commercial advantage. Furthermore, you will not make any facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform.

XVI. Definitions.

1. **Advertiser:** means a third party advertiser that has its registered office or principle place of business located in the Territory.
2. **Ad Code:** the JavaScript code (or any other form of specified code) placed in an Ad Page that initiates a request for Commercial Content when a user transfers to an Ad Page.
3. **Ad Page:** Your RSS Feed(s) and the pages within Your Website, as applicable, in each case, on which Commercial Content appears.
4. **Affiliates:** our partners, Third Party Providers, and our affiliated companies, from time to time. For the avoidance of doubt you do not constitute an "Affiliate" for the purposes of this Agreement.
5. **Commercial Content:** the content of Advertisers that is served from a Third Party Provider's paid marketplace databases in response to a Query generated from the Ad Code.
6. **Effective Date:** the date on which you click to accept these terms & conditions.
7. **Matched Ad:** the content of Advertisers served from paid marketplace databases in the Territories in response to a Query generated from the Ad Code.
8. **Policy or Policies:** the policies posted at <http://www.click.net/legal/>
9. **Query:** a request for Commercial Content initiated by the Ad Code on an Ad Page.
10. **Query Threshold:** one hundred and thirty percent (130%) of the average number of Queries or page views generated in the trailing seven (7) day period.
11. **RSS:** an XML format most commonly used for syndicating content such as news and other reverse-chronologically ordered web sites like blogs, which, for purposes of this Agreement, shall include any other similar text-based formats used for syndicating content.
12. **Term:** the period of one (1) year or until the date of expiry of the publisher network agreement between Click.net and its Third Party Provider, whichever is earlier, unless terminated earlier in accordance with the terms and conditions of this Agreement.
13. **Territories:** the applicable territories covered by this Agreement.
14. **Third Party Providers:** other networks, and third party providers that we have business relations with, for the purposes of providing the services under this Agreement, including without limitation Oath, Google, Ebay Commerce Network Link (ECM), and Connexity.
15. **Third Party Providers' Terms:** the policies and terms and conditions of the respective and applicable Third Party Providers, as published on their respective websites, and as may be amended or updated by the applicable Third Party Provider from time to time.
16. **Traffic Quality (or TQ):** the scale used by our partners to measure traffic quality, as amended by our partners from time to time, to be applied in a manner that is consistent among all publishers.
17. **Your RSS Feed(s):** the RSS feeds that you own that include the Ad Code.
18. **Your Website:** the web site(s) or other internet based media distribution platform, including without limitation RSS Feeds, email, instant messaging, or any other technology now existing or developed in the future, that you own that contain web pages that include the Ad Code.