



B2B Media Exchange

THE B2B MEDIA EXCHANGE BPA MEMBER SERVICES AGREEMENT

This Services Agreement (the “**Agreement**”) is entered into as of the date noted above (the “**Effective Date**”) by and between BPA Worldwide (“**BPA**”) and the media publishing company listed below (“**Publisher**”) for each of the BPA member web sites listed below.

Publisher Information

Media Publishing Company:	
Web Brand:	
Publication Affiliation:	
Market Category(s):	
URL:	

Contact Information

Publisher Management Contact:		BPA Contact:	
Title:		Title:	
Phone:		Phone:	
Email:		Email:	
Website(s)			

Billing Contact:	
Address:	
City, State, Zip:	
Phone:	
Email:	

Authorized Publisher Representative who will receive all official communications:

Name: _____ Email (required) _____

Is the web site currently audited? ___YES ___NO

If yes, name of current audit organization used for Website audit: _____

Average Monthly Page Impressions: _____

Average Monthly Unsold Page Impressions: _____

Average Number of Ads per Page: _____

List IP addresses your company uses to access the internet (used to filter internal traffic):

List additional domains included in your web traffic:

The undersigned represents and acknowledges that:

1. The undersigned is authorized to act for and on behalf of the Publisher and Media Brand(s) listed above.
2. In consideration of the acceptance and processing by BPA Worldwide of this service, the Publisher agrees to be subject to and bound by the Bylaws and Rules of BPA Worldwide.
3. The undersigned agrees that the publicity provisions of Section 3 of the Rules of BPA Worldwide are applicable and binding on the Publisher and Media Brand(s) listed above on the submission of this agreement.
4. The undersigned agrees that the list of external facing IP addresses is complete and accurate.
5. The undersigned agrees to allow BPA Worldwide usage of the Media Brand data in the BPA Worldwide Audited Site Traffic Data tool.

BPA and the Publisher hereby wish to confirm their mutual understanding and agreement with respect to the following:

1) **Services.**

BPA shall refer online publishers from BPA's audited member sites ("Publishers") to the B2B Media Exchange. Publisher shall send its online ad impressions directly to the B2B Media Exchange, as agreed by Publisher, BPA and Technology Vendor ("Tech Vendor"). The parties agree that BPA shall only refer those Publishers to Tech Vendor for inclusion in the B2B Media Exchange that (1) are active BPA member sites and (2) that Tech Vendor does not have contractual relationships with and/or are not currently in Tech Vendor's publisher pipeline, as may be updated from time to time.

The parties agree that Publisher's use of the Services provided by Tech Vendor, and all payments by advertisers to Tech Vendor and by Tech Vendor to Publisher, are governed by the separate Services Agreement provided herewith and agreed to by Tech Vendor and Publisher.

BPA agrees to perform its obligations under this Agreement in a professional and workmanlike manner and to dedicate adequate technical and administrative resources necessary to facilitate the relationship outlined hereunder. BPA also represents and warrants that it has all necessary rights and authority to enter into this Agreement and to make such introductions on behalf of the Publishers which have sites in membership.

2) **Definitions.**

"Advertisement" or **"Ad"** means digital advertising creative, including text, graphics, rich media, video and other companion advertisements, and other advertising materials.

"Ad-tag" means a piece of programming code to enable the display of an Ad through the Service(s).

"Bid Request" means an ad call sent by Publisher for its available Inventory.

"Impression" means a measurement of responses from an ad delivery system to an ad request from Publisher's user's browser.

"Inventory" means digital ad space on Publisher's property, including, but not limited to, web, application-based, and video inventory on desktop, mobile, tablet or other devices.

"RTB Buyers" means the ad buyers, agencies, demand side platforms (DSPs) or other parties who buy or attempt to buy Inventory through the Service(s).

"Service(s)" means any of the programmatic buying and selling tools and services provided by *The B2B Media Exchange's* SSP, Tech Vendor. Each Service may be subject to additional terms and conditions which will be provided to Publisher.

"Specifications" means any proprietary requirements or characterizations made available by *The B2B Media Exchange's* SSP, Tech Vendor to Publisher for the applicable Service which may include, without limitation, any related documentation.

"BPA Referred Publisher" means any publisher site, company or organization who is referred to Tech Vendor that is not currently doing business with the Tech Vendor.

"Media Brand" means the website or property which is owned by a BPA referred publisher.

3) **Inventory.**

- a) Publisher will use the applicable Service(s) to send Bid Requests, and Tech Vendor may provide a bid from its RTB Buyers for such Bid Requests per the agreement between Tech Vendor and Publisher.
- b) Publisher will not revise or modify the creative or content of any Advertisement.

- c) Publisher acknowledges that BPA has no responsibility for reviewing the content of any Advertisement appearing on the Inventory.
- d) Publisher may request to block Advertisement categories in writing at any time, and may request to block an Advertisement it reasonably finds objectionable by providing Tech Vendor with written notice of the URL. Notwithstanding any of the foregoing, neither party may remove a live/presently-served Advertisement.

4) Fee.

- a) BPA, in compensation for:
 - (1) the development of audit standards to qualify inventory for the B2B Media Exchange,
 - (2) the development of procedures and records necessary to demonstrate compliance with those standards,
 - (3) the implementation of checking compliance of a publisher's web site(s) to those standards to ensure high quality inventory for advertisers,
 - (4) and the assured proper reporting thereof to its members,and by notice herein, informs its members of its flat fee charge of 10% of all advertising transactions, or such other fee as may be set from time to time by the BPA Board of Directors.
- b) For the avoidance of doubt, BPA will not receive a portion of any of Tech Vendor's revenue received from any advertising sold by Tech Vendor, with subsequent revenues delivered to related BPA Referred Publishers pursuant to Tech Vendor's agreements with any BPA Referred Publishers.
- c) BPA shall advise all parties of any change in its Board approved rates.
- d) BPA will not receive a fee if Tech Vendor is not paid by its advertiser/buyer; and shall refund any fee received in the event Tech Vendor needs to claw back a portion of the Publisher's fee for any reason

5) Use of Name in Marketing Materials.

- a) The parties agree to use commercially reasonable efforts on joint marketing related to this relationship.
- b) BPA shall have the right to use Publisher's company and media brand names or logos for use in any marketing or promotional materials regarding the B2B Media Exchange
- c) Publishers may use BPA's name and logo in keeping with its membership requirements, which do permit use.
- d) Except as expressly provided herein, BPA retains all title, right, and ownership of all intellectual property rights associated with the B2B Media Exchange.

6) Term; Termination.

This Agreement will be in force as of the Effective Date and continue in full force and effect until terminated by either party upon twenty-four (24) hours' prior written notice to the other party.

7) Effect of Termination.

Upon termination of this Agreement for any reason: (i) all licenses and other rights conferred to any Party under this Agreement will become null and void; (ii) all outstanding obligations or commitments of either Party to pay amounts due and owing to the other Party, if any, will survive; and (iii) all customers of *The B2B Media Exchange* that originated as customers of BPA, plus those customers sold by BPA subsequent to the Agreement and for which BPA has provided services, shall continue to be customers of BPA for future Private Marketplace (PMP) services.

8) Representations and Warranties; Disclaimer of Warranties.

- a) Publisher represents and warrants at all times that Publisher has all necessary rights and authority to: (i) enter into this Agreement; (ii) place the ad-tags provided by Tech Vendor on the Inventory; and (iii) permit the placement of Advertisements on the Inventory.
- b) EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. BPA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATED TO THE SERVICES, WHETHER IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. BPA RESERVES THE RIGHT TO MODIFY, SUSPEND OR DISCONTINUE ANY ASPECT OF THE SERVICES AT ANY TIME, AND WILL NOT BE LIABLE TO PUBLISHER OR ANY THIRD PARTY SHOULD IT EXERCISE SUCH RIGHT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BPA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE, AND SHALL NOT BE LIABLE FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE INTERNET, ANY TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR CONTENT OF ANY ADVERTISEMENT.

9) License.

- a) Publisher will not transfer or disclose, in whole or in part, access to the Services or any Specifications, to any third party in violation of this Agreement. BPA will not be responsible or liable for any of Publisher's decisions or actions resulting from BPA's suggestions in connection with Publisher's use of the Services. Publisher agrees to comply with all applicable laws, rules and regulations in connection with Publisher's use of the Services and any Specifications.
- b) This Agreement likewise confers no title or ownership in the B2B Media Exchange name or logo and is not a sale of any rights to such materials. BPA reserves all intellectual property rights not expressly granted to Publisher hereunder.

10) **Confidentiality.**

The parties acknowledge that the terms of this Agreement will be treated as Confidential Information (as defined below). The parties further acknowledge that, in the course of performing their respective duties under this Agreement, each party may obtain from the other party data or information of a confidential or proprietary nature, including know-how and trade secrets, relating to the business, the affairs, the development projects, or current or future products or services of such party ("**Confidential Information**"). Data or information will be considered Confidential Information if a party, orally or in writing, has advised the other party of its confidential or proprietary nature, or, due to its character and nature, a reasonable person under like circumstances would understand it as confidential. Neither party will: (i) publish, disclose or otherwise divulge any of the other party's Confidential Information to any person, except its officers, employees or agents with a need to know who are under a contractual or professional duty to maintain the confidentiality of such information consistent with the obligations imposed hereunder; or (ii) permit its officers, employees or agents to divulge any of the other party's Confidential Information without the express prior written consent of the other party. The receiving party will protect the disclosing party's Confidential Information with the same degree of care that the receiving party uses to protect its own information of a similar nature, but in no event less than a degree of reasonable care. Neither party will use the other party's Confidential Information except in the course of performing its duties under this Agreement. The foregoing obligations will not apply to any Confidential Information that (i) is already known to the receiving party; (ii) is or becomes publicly known through no wrongful act of the receiving party; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iv) is received from a source other than the disclosing party, which source is not known by receiving party to be in breach of an obligation of confidentiality owed to disclosing party; or (v) is required or reasonably necessary to be disclosed to comply with applicable laws, statutes, regulations, orders, and other governmental rules. If a party is required to disclose the Confidential Information of the other party in order to comply with such laws, statutes, regulations, orders or other governmental rules, the disclosing party must give prompt written notice of such requirement (if permissible) before such disclosure, and provide reasonable assistance to the non-disclosing party in obtaining an order protecting the Confidential Information from public disclosure. The obligations of confidentiality described in this Section 10 will expire two (2) years after the expiration or termination of this Agreement.

11) **Privacy; Data Usage.**

- a) Publisher will comply, and will contractually require that any of its media suppliers comply, with all applicable privacy laws and regulations. Publisher further agrees to conspicuously post, or to contractually require its media suppliers to post, a privacy policy that complies with all applicable laws, rules and regulations, and that discloses Publisher's (or the applicable media supplier's) practices with respect to data collection, use and disclosure (each, a "**Privacy Policy**"), including but not limited to: (i) the types of data being collected for targeting purposes; (ii) the circumstances under which such data will be disclosed to or used by third parties, and the purposes therefore; and (iii) the use of one or more third parties for ad serving activities. The Privacy Policy must: (a) be linked from each Inventory page on which an Advertisement is displayed in connection with this Agreement; and (b) direct end-users to an industry-wide mechanism for opting-out from receiving targeted advertising, such as the DAA opt-out page at <http://aboutads.info/choices> or the Network Advertising Initiative ("NAI") opt-out page at http://www.networkadvertising.org/managing/opt_out.asp or such successor pages.
- b) To the extent that any data is collected from an end-user, Publisher represents and warrants that all disclosures have been made and all necessary consents and waivers have been or will be obtained from such end-user.
- c) Except with BPA's express written consent, and in compliance with law, Publisher will not, and will not assist or permit any third party to, use the Services to select or target Ads (i) based on knowledge or inference that the end-user is under thirteen (13) years of age; (ii) based on an end-user's past visits to any website that is directed at children; or (iii) based on information or data deemed "sensitive" by any applicable law or regulation.
- d) Publisher will promptly notify BPA if any cookie-based or other similar ad serving technologies used by Tech Vendor on the Inventory are being used to collect data on any child-directed site or the portion of any general audience site that is child-directed so as to enable compliance with terms of the Children's Online Privacy Protection Act ("**COPPA**").

12) Limitation of Liability.

- A) TO THE FULLEST EXTENT PERMITTED BY LAW, REGARDLESS OF THE THEORY OR TYPE OF CLAIM, AND EXCEPT WITH RESPECT TO INVALID TRAFFIC BY A PARTY TO THIS AGREEMENT, NO PARTY SHALL BE LIABLE TO THE OTHERS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY IS AWARE OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE), ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, LOST BUSINESS OR COST OF REPLACEMENT SERVICES.
- B) EXCEPT WITH RESPECT TO INVALID TRAFFIC BY A PARTY TO THIS AGREEMENT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR A BREACH OF A PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL ANY PARTY'S AGGREGATE LIABILITY FOR ALL CLAIMS HEREUNDER EXCEED THE PAYMENTS MADE BY TECH VENDOR TO PUBLISHER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13) Indemnification.

- a) Publisher shall indemnify, defend and hold harmless BPA, its affiliates, partners, agents, officers, directors and employees, from and against any loss, cost, expense, claim, injury or damage (including, without limitation, reasonable attorneys' fees and expenses) whether incurred due to third party claims or otherwise (collectively, "Losses"), arising out of or caused by (i) Publisher's breach of any of its representations, warranties, or provisions contained in this Agreement; or (ii) any damages or claims, including lost advertising revenue, resulting from any Invalid Traffic.
- b) The indemnified party must: (i) promptly notify the indemnifying party in writing of any claim, provided that any delay in providing notice shall not relieve the indemnifying party of its indemnity obligations, except to the extent that it has been prejudiced by such failure; (ii) reasonably cooperate with the indemnifying party in the defense of the matter; and (iii) give the indemnifying party primary control of the defense and all negotiations related to settlement of any claim(s), provided that no settlement admitting liability on the part of the indemnified party may be made without the express written consent of the indemnified party. The indemnified party may, at its own expense, join in the defense with counsel of its choice.

14) Third Party Beneficiaries.

Except as expressly set forth herein, BPA does not assume, and expressly disclaims, any and all liability arising from Publisher's use of the Services, including, but not limited to, liability arising from the Ads. To facilitate direct dispute resolution between applicable parties using the Services, each RTB Buyer that purchases Inventory from Publisher is an intended third party beneficiary of the rights and obligations hereunder. Publisher agrees not to assert a defense based on lack of privity against any RTB Buyer seeking to enforce this Section 14. Except as explicitly set forth in this Section 14, there are no third party beneficiaries to this Agreement.

15) Advice of Counsel.

EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL AND HAS READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF ITS DRAFTING OR PREPARATION.

16) Miscellaneous.

- a) This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without reference to its conflict of laws principles. Jurisdiction and venue for all disputes hereunder will be exclusively in New York, New York, and the parties hereby expressly agree to such jurisdiction and venue.
- b) Neither party may issue a press release or make any public announcement regarding the existence or subject matter of this Agreement without the other party's prior express written consent.
- c) Neither party hereto may assign this Agreement, in whole or in part, without the prior written consent of the other party, and any such attempted assignment shall be void; except that no such consent shall be required where such assignment is to an affiliate or subsidiary of such party, or is in connection with a merger, acquisition, or the sale of at least a majority of the assets or capital stock of such party. The assigning party will provide the non-assigning party with reasonable notice of such assignment or transfer. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and permitted assigns of the parties hereto.
- d) Sections 8, 10, 11, 12, 13, 14, and 15 shall survive termination or expiration of this Agreement.
- e) All notices under this Agreement will be in writing and will be delivered by personal service, confirmed e-mail, express courier, or certified mail, return receipt requested. For BPA Worldwide, notices shall be sent to BPA Worldwide at its

email address: info@bpaww.com or at its address of 100 Beard Sawmill Road, 6th floor, Shelton, CT 06484. For Publisher, notice shall be sent to the addresses set forth in the IO. Either party may designate a different address by written notice to the other party in accordance with this Section. Notice will be effective on receipt.

- f) No failure of either party to enforce any of its rights under this Agreement will act as a waiver of such rights. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provision(s) shall be excluded from this Agreement, and the balance of the Agreement shall be enforceable in accordance with its terms.
- g) BPA shall not be liable for any delay or failure to perform any of its obligations set forth in this Agreement due to causes beyond its reasonable control.
- h) BPA and Publisher shall each act as independent contractors. Nothing in this Agreement shall be deemed to create or be construed as creating a joint venture or partnership between the parties.
- i) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, understandings or communications on that subject, including any agreements for use of the Services executed prior to the Effective Date. This Agreement may not be modified without the express written consent of both parties.
- j) This Agreement may be executed in counterparts, including electronic copies, each of which shall be deemed an original and which taken together will constitute one instrument.

IN WITNESS WHEREOF, authorized representatives of each of the parties hereto have executed this Agreement as of the Effective Date.

Publisher: _____

BPA Worldwide:

By: _____
(signature)

By: _____
(signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

For internal use:

Audit Region

Marketing Representative

BPA Member Number
