

## 1) PARTIES

Pursuant to this Agreement, **bits & pc's**, ("BITS & PC'S ") of 874 Tourtellot Hill Rd., North Scituate, Rhode Island 02857, and Publisher shall agree to the following terms and conditions for the receipt of advertising materials ("Creative") from advertising Customers ("Customers") for the purpose of advertising their company on BITS & PC'S' website [www.clickcounters.com](http://www.clickcounters.com) ("clickcounters.com").

## 2) USE POLICY

**a) Services:** Advertising on the clickcounters.com Network is subject to prior approval of BITS & PC'S. BITS & PC'S reserves the right to refuse service to any new or existing Publisher, in its sole discretion, with or without cause. Approval of advertising on the clickcounters.com website is limited only to the specific root URLs for which Publisher has applied for approval. BITS & PC'S reserves the right to withhold approval of advertising services on the clickcounters.com website based on Website primary language. BITS & PC'S reserves the right, in its sole discretion and without liability, to reject, omit or exclude any Publisher or advertisement for any reason at any time, with or without notice to the Publisher and regardless of whether such Publisher or advertisement was previously accepted.

**b) Representation:** Publisher represents and warrants that: (1) it is the owner or is licensed to use the entire contents and subject matter contained in the Website; (2) the Company does not violate any law or regulation governing false or deceptive advertising, sweepstakes, gambling, comparative advertising, or trade disparagement; (3) the Company's advertisement does not contain any misrepresentation, or content that is defamatory or violates any rights of privacy or publicity; (4) Publisher is generally familiar with the nature of the Internet and will comply with all laws and regulations that may apply; and (5) the Company does not and will not infringe any copyright, trademark, patent or other proprietary right. Publisher grants BITS & PC'S the right and license to link the Company's advertisement to its own website, if requested.

**c) Termination:** BITS & PC'S reserves the right to terminate any Publisher's relationship with the clickcounters.com at any time, if for cause. If without cause, termination will require 30 days notice by either BITS & PC'S or the Customer. Termination notice may be provided via email or any other public means.

**d) Content:** BITS & PC'S reserves the absolute right to refuse to affiliate with any Publisher. BITS & PC'S does not accept Companies or Websites that produce or provide adult content. BITS & PC'S does not accept Companies or Websites that engage in, promote or facilitate illegal or legally questionable activities such as pirating and hacking. BITS & PC'S does not accept Companies or Websites that are: under construction, hosted by a free service, personal home pages, or do not own the domain they are under. This Agreement is voidable by BITS & PC'S immediately if Publisher fails to disclose, conceals or misrepresents itself in any way. In addition, BITS & PC'S may in its complete discretion refuse to serve any Company or Website that it deems appropriate. To insure compliance

with this Agreement, any Publishers that change their content after approval for membership MUST notify BITS & PC'S of the changes in writing IMMEDIATELY. We prefer you notify us ahead of time of any major changes in content or design. Notices should be sent to [info@clickcounters.com](mailto:info@clickcounters.com).

**e) Defaults:** BITS & PC'S may not be able to fill 100% of advertising requests sent to its servers with paying ads. BITS & PC'S provides free Publisher-defined default redirects expressly for this reason. Publisher-defined default ads must adhere to the content guidelines outlined for all BITS & PC'S Advertisers (no adult content, etc.) Publishers found using default ads that violate the content restrictions of the Publisher [Customer Agreement](#) will be removed from the network. If Publisher chooses not to specify a default redirect, BITS & PC'S will display so-called 'house' and 'Ad Council' ads on Publisher's website when paid advertising is unavailable. BITS & PC'S may display so-called 'house' and 'Ad Council' ads on any Publisher's website when technical difficulties require it. So-called 'house' and 'Ad Council' ads are not paid advertising. Under no circumstances does BITS & PC'S guarantee to provide any percent fill of paid advertising to a website.

**f) Placement:** Creative may NOT be placed on any root URL not specifically approved for membership within the Network. Banner, Leaderboard, Skyscraper, and Wide Skyscraper creative must be placed within 600 pixels of the top of the Webpage (above the page scroll/fold). BITS & PC'S pop-under windows cannot be launched from websites that launch more than a total of two pop windows, including the BITS & PC'S pop-under. Skyscrapers or wide skyscrapers and half page formats cannot be placed on the same page. No member will place ads on blank pages, on pages with no content, on top of one another, on non-approved Websites, or in such a fashion that may be deceptive to the visitor. Creative cannot be placed in email messages. In-page creative (Banners, Leaderboards, Skyscrapers, Wide Skyscrapers, Rectangles, Medium Rectangles, Half Pages) may not be placed on forums, chat rooms, and other entities that the site owner does not have complete control of. InVue, Interstitial, and Pop-under creative may be placed on forums and chat rooms. Modifications can be made to align Creative, change text color, change text size, or change text font. In addition, all Creative must be placed in such a manner that a majority of visitors will notice the Creative

**g) Fraud and Deception:** BITS & PC'S audits every Publisher's traffic on a daily basis. Publishers that produce commit fraudulent activities, including false clicks, false impressions, and incentivized clicks, will have their account permanently removed from our network and will not be compensated for fraudulent traffic. Additionally, BITS & PC'S reserves the right to register fraudulent Publishers in a global ad network fraud database, for usage by other ad networks. We have several fraud mechanisms at our disposal that will detect most forms within a few days of the initial activity. All proceeds from accounts with fraudulent activity will be refunded to Advertisers. All BITS & PC'S Creative must be served from a BITS & PC'S server or serving location. Stored images that are loaded from a different location will not count towards any statistic or payment. Publishers agree to not artificially inflate traffic counts using a

program (including scripts), device, or other means. Excessive page reloading or any other abuse of our system could result in legal action. No Publisher shall induce visitors to click on Creatives based on incentives, provided, however, that, with the prior approval of BITS & PC'S, certain language may appear above or below an advertisement served by BITS & PC'S. The following methods of generating visitor interest are unacceptable to BITS & PC'S and may be grounds for dismissal from the website: use of unsolicited email or inappropriate newsgroup postings to promote your Website; auto-spawning of browsers; automatic redirecting of users; clicking on your own banners; blind text links; misleading links; or any other method that may lead to artificially high numbers of impressions or clicks.

**h) Code:** BITS & PC'S ad codes must not be modified from original format without consent from BITS & PC'S. Publisher agrees to use the ad code provided for displaying Creative not more than ONCE per page view. Ad codes cannot be placed in email messages. BITS & PC'S ad codes cannot be used on Webpages that contain forums, discussion boards, or chat rooms. Publisher can not alter, copy, modify, take, sell, reuse, or divulge any BITS & PC'S computer code, except as is necessary to partake in the BITS & PC'S Network, provided, however, with the prior approval of BITS & PC'S, a Publisher may, in certain instances, modify the BITS & PC'S computer code for purposes of inserting certain pre-approved language above or below an advertisement served by BITS & PC'S. Requests for language approval should be sent to [info@clickcounters.com](mailto:info@clickcounters.com).

**i) Data Reporting (Stats):** BITS & PC'S is the sole owner of all website, campaign, and aggregate web user data collected by BITS & PC'S. Publisher only has access to campaign data that is collected through the use of their inventory. Customers only have access to website and web user data that is collected as part of Customer's campaign.

**j) Contact Information:** To insure timely payment, Publishers are responsible for maintaining the correct contact and payment information associated with their account. **Payment Profile information must be updated by the last day of the month to be reflected in the next payment.** This must be done online using the Publisher's account. Any and all bank/service fees associated with returned or cancelled payments due to any error in the Publisher contact or payment information are Publisher's responsibility, and will be deducted from re-payment.

### 3) PAYMENT POLICY

Payments must be made to BITS & PC'S, LLC by the first of the month in order for there to be no interruption in advertising. Checks must be payable to **bits & pc's, 874 Tourtellot Hill Rd., North Scituate, RI 02857.**

BITS & PC'S, reserves the absolute right not to service any accounts or Publishers that violate any of the terms and conditions set forth herein. BITS & PC'S will be responsible for determining, in its sole and absolute discretion, what acts and omissions violate this policy, and which acts

include activity that is deceptive or fraudulent in nature. Examples of such acts may include, without limitation, clicks without referring URLs, extraordinary high numbers of repeat clicks, and clicks from non-approved root URLs."

#### 4) LIABILITY POLICY

**a) Indemnification:** Publisher is solely responsible for any legal liability arising out of or relating to (i) the content and other material set forth on the Publisher Websites and/or (ii) any content or material to which users can link through the Publisher Websites (other than through an advertisement supplied by BITS & PC'S). Publisher hereby agrees to indemnify, defend and hold harmless BITS & PC'S and its officers, directors, agents, affiliates and employees from and against all claims, actions, liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) that may at any time be incurred by any of them by reason of any claims, suits or proceedings (a) for libel, defamation, violation of right of privacy or publicity, copyright infringement, trademark infringement or other infringement of any third party right, fraud, false advertising, misrepresentation, product liability or violation of any law, statute, ordinance, rule or regulation throughout the world in connection with the Publisher Websites (except for advertisements supplied by BITS & PC'S); (b) arising out of any material breach by Publisher of any duty, representation or warranty under any agreement with BITS & PC'S; or (c) relating to a contaminated file, virus, worm, or Trojan horse originating from the Publisher Websites (other than through an advertisement supplied by BITS & PC'S).

**b) Damages:** In no event shall either party be liable for special, indirect, incidental, or consequential damages, including, but not limited to, loss of data, loss of use, or loss of profits arising thereunder or from the provision of services.

**c) Warranty Disclaimer:** BITS & PC'S and its Customers do not make and hereby expressly disclaim all warranties, express or implied, with respect to any matter whatsoever, including, without limitation, the performance of any software programs incidental to services rendered by BITS & PC'S, services provided thereunder, or any output or results thereof. BITS & PC'S and its Customers specifically disclaim any implied warranty of merchantability or fitness for a particular purpose.

**d) Limitation of Liability:** Neither BITS & PC'S nor its Customers will be subject to any liability whatsoever for (a) any failure to provide reference or access to all or any part of the Website due to systems failures or other technological failures of BITS & PC'S or of the Internet; (b) delays in delivery and/or non-delivery of Creative, including, without limitation, difficulties with a Customer or Creative, difficulties with a third-party server, or electronic malfunction; and (c) errors in content or omissions in any Creative.

#### 5) GENERAL

**a) Applicability:** In This Agreement, including all attachments, which are incorporated herein by reference, constitutes the entire agreement

between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. Applicable sections shall survive expiration or early termination of this Agreement. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the parties and neither BITS & PC'S nor Publisher shall hold itself out as the agent of the other, except for that specified in this Agreement. Neither party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement shall be effective only if in writing and signed by the parties. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement. In addition to terms that are negotiated and documented separately from this Agreement, terms that are automatically generated through the interactive use of the BITS & PC'S website Publisher interface are explicitly bound by this Agreement.

**b) Public Release:** Publisher shall not release any information regarding Campaigns, Creatives, or Publishers relationship with BITS & PC'S or its customers, including, without limitation, in press releases or promotional or merchandising materials, without the prior written consent of BITS & PC'S. BITS & PC'S shall have the right to reference and refer to its work for, and relationship with, Publisher for marketing and promotional purposes. No press releases or general public announcements shall be made without the mutual consent of BITS & PC'S and Publisher.

**c) Remedy:** If any Publisher violates or refuses to partake in their responsibilities, or commits fraudulent activity against us, BITS & PC'S reserves the right to withhold payment and take appropriate legal action to cover its damages.

**d) Modifications:** BITS & PC'S reserves the right to change any conditions of this contract at any time. Members are responsible for complying with any changes to the BITS & PC'S Publisher Agreement within 10 business days from the date of change. BITS & PC'S will post any changes to this Agreement in the Publisher area of the BITS & PC'S Website..

**e) Privacy:** Publisher shall support BITS & PC'S's commitment to protect the privacy of the online community; such commitment is set forth in BITS & PC'S's [Privacy Statement](#), which is hereby incorporated into this Agreement.

**f) Assignment:** Customer may not assign this Agreement, in whole or in part, without written consent from BITS & PC'S. Any attempt to assign

this Agreement without such consent will be null and void.

**g) Governing Law:** This Agreement will be governed by and construed in accordance with the laws of the State of California.

**i) Ability to Enter into Agreement:** By executing this Agreement, Publisher warrants that Publisher (or Authorized Representative of Publisher) is at least 18 years of age, and that there is no legal reason that Publisher cannot enter into a binding contract