

October 10, 2013

**TERMS AND CONDITIONS OF CONTRACT  
(For Mobile Marketing)**

- 1. Parties.** These Terms and Conditions are incorporated into, and are a part of, the Advertising Contract between Advertiser and AGI Publishing, Inc. dba Valley Yellow Pages (“AGI”) for Mobile Marketing services. Accordingly, as used herein, the term “this Contract” includes (i) the document titled “Advertising Contract” and (ii) these Terms and Conditions. In addition to the terms reflected in the Advertising Contract, these are the terms and conditions under which AGI licenses to Advertiser access to and use of certain on-line software and associated cellular communications short-code in implementing and managing real-time mobile marketing and short message service activities (the “System”). If Advertiser is not paying in full at the time of sale, Advertiser authorizes AGI to order a credit report. AGI reserves the right to terminate this Contract if AGI, in good faith, determines Advertiser does not meet AGI’s credit criteria.
- 2. Term.** The term of this Contract is 12 months, unless earlier terminated in accordance with this Contract. At the end of the term, AGI will cancel the keyword and disable access to the system and data unless a new contract has been entered into. AGI may change its terms or prices in future contracts.
- 3. License.** Subject to the other terms in this Contract, AGI grants Advertiser, a non-exclusive and non-transferable license to access and use the System. Nothing in this Contract is intended to be, nor shall be construed to be, a transfer, assignment and/or conveyance of any ownership rights in the System by AGI and/or its licensor. The System, and the ownership thereof by AGI or its licensor, includes any and all improvements, developments, derivative works and all other amendments, including those on the basis of suggestions, feedback, comments, ideas and other input from the Advertiser. Advertiser acknowledges that the source code to any software that is part of the System, including all programmer notes and comments contained within the software, are valuable trade secrets. Advertiser may not use the System except as expressly set forth in this Contract, and AGI reserves all rights not expressly granted to Advertiser by this Contract. This Contract is not a sale of the System or any copy thereof.
- 4. Keywords.** Some features of the System require a separate keyword. Advertiser will be permitted to add up to four (4) additional keywords in order to utilize those features that require separate keywords.
- 5. Restrictions.** Advertiser may use the System for its internal business operations only and not by, or for the benefit of, any affiliate, subsidiary, parent company or any other third party. Advertiser shall not: remove or destroy any proprietary rights marks or legends on or in the System; assign, distribute, copy, disclose, make available, display, sublicense, rent, lease, sell, post on the Internet, or otherwise transfer the System in print or through any electronic or other medium; or make copies of the System. Advertiser also shall not create an Internet “link” to the System or “frame” or “mirror” the System on any other server or Internet-based device. Advertiser agrees to abide by the Use Policy set forth at the bottom of this document. Due to

privacy restrictions, Advertiser will not be permitted to view all digits of the mobile numbers of customers who opt-in.

**6. Payment Terms.** Advertiser agrees to pay AGI or its agent all amounts due according to the payment schedule on this Contract. Except as otherwise provided in this Contract, an Advertiser's monthly payments liability to AGI arises only as time goes by and monthly payments become due. AGI incurs substantial costs and expenses in performing its obligations under this Contract, and Advertiser's failure to make timely payments subjects AGI to substantial losses. Advertiser agrees that time is of the essence in making payments, and that Advertiser will pay strictly in accordance with the payment schedule. It is also agreed that if Advertiser is late with a payment, it would be extremely difficult or impractical to fix actual damages resulting from the late payment; therefore, Advertiser agrees to pay us a late charge of \$20.00 for the cost of administering the late payment for each month Advertiser is late. In addition, interest of 1.65% per month (19.8% Annual Percentage Rate) or the highest rate allowed by law will be charged on all past due principal amounts.

**7. Method of Payment and Receipt.** Advertiser agrees that all monthly payments will be made by automatic recurring credit card or ACH, and agrees to sign any pre-authorization documentation requested by AGI to effectuate automatic monthly payments. Advertiser agrees that a receipt from the initial monthly payment, or the payment in full, may be e-mailed to Advertiser at the e-mail address provided on the Contract. If Advertiser does not receive a receipt via e-mail within 24 hours of signing this Contract, please contact AGI's Customer Service department to obtain a receipt by calling (800) 350-8887. Any ACH payments are subject to the NACHA Operating Rules and Guidelines, as amended from time to time.

**8. DISCLAIMER OF WARRANTIES.** ADVERTISER IS SOLELY RESPONSIBLE FOR THE SELECTION, USE AND RESULTS OBTAINED FROM THE SYSTEM. THE SYSTEM IS PROVIDED "AS AVAILABLE" EXCEPT AS SPECIFICALLY PROVIDED HEREIN AND "AS IS," WITH NO REPRESENTATIONS AND/OR WARRANTIES OF ANY KIND OR NATURE. TO THE FULLEST EXTENT PERMITTED BY LAW, AGI DISCLAIMS, AND ADVERTISER HEREBY WAIVES, ALL EXPRESS, IMPLIED AND/OR STATUTORY WARRANTIES RELATED TO THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF TITLE AND/OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AGI DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT ADVERTISER'S USE OF THE SYSTEM WILL BE UNINTERRUPTED, ERROR FREE, OR VIRUS FREE, OR THAT THE SYSTEM WILL GENERATE ANY PARTICULAR RESULTS OR OTHERWISE MEET ADVERTISER'S REQUIREMENTS.

**9. Independent Contractor Relationship.** The relationship between AGI and Advertiser is that of independent contractor. Nothing in this Contract shall be construed as creating a relationship of joint venturers, partners, employer-employee, or agent. Neither party has the authority, without the other party's prior written approval, to bind or commit the other party in any way.

**10. Indemnification.** Advertiser agrees to defend, indemnify, and hold AGI harmless from and against any and all damages, losses, claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever (including attorney's fees) incurred by AGI, directly or indirectly, as a result of Advertiser's use of the System or any breach of this Contract by Advertiser, including without limitation any breach of the Use Policy set forth at the bottom of this document. Any legal defense provided by Advertiser to AGI under this paragraph shall be performed by counsel satisfactory to AGI.

**11. Force Majeure.** No failure, delay, or omission by AGI in the performance of any of its obligations shall be construed to be a breach of this Contract or create a liability to Advertiser if such failure, delay, or omission arises from any cause or causes beyond the reasonable control of AGI, including, but not limited to, acts of God, acts or omissions of any government or agency thereof, fire, storm, flood, earthquake, accident, acts of terrorism, war, rebellion, insurrections, riots, invasions, strikes, labor disputes or lockouts, or the acts, omissions, or performance problems by AGI's licensor, vendors or suppliers.

**12. Assignment.** Advertiser shall not assign any of its rights or obligations under this Contract without AGI's prior express written consent. Any attempted assignment without such consent shall be void. Subject to the foregoing, this Contract is binding upon and shall inure to the benefit of each party's successors and permitted assigns. AGI may sell, assign or transfer its rights and obligations under this Contract (or any portion thereof) to any person or entity at any time.

**13. Early Termination.** If Advertiser elects the monthly billing option upon signing this Contract, Advertiser may terminate this Contract at any time during the term of this Contract by payment to AGI of the amount set forth in the next sentence (the "Early Termination Fee") as compensation for AGI relinquishing its rights under this Contract. The Early Termination Fee shall be equal to 50% of the total remaining payments due under this Contract and shall be immediately due and payable. Advertiser may exercise this early termination option by sending a written notice to AGI's Customer Service department at 1850 N. Gateway Blvd., Fresno, CA 93727 and paying the Early Termination Fee. Advertiser shall remain liable for any other past due amounts but will not owe any further monthly payments that would have become due in the future. In addition, AGI, at its option, may deem Advertiser to have elected an early termination of this Contract if Advertiser (1) fails to pay when due any amounts owed under this Contract, or (2) violates the Use Policy, below. In such case, Advertiser will owe the Early Termination Fee in addition to any other past due amounts, but will not owe any further monthly payments that would have become due in the future. Upon any early termination, AGI is excused from further performance of this Contract and will disable Advertiser's access to the System.

**14. Limitation of Liability.** In no event shall AGI be liable to Advertiser for any cause or action arising out of or related to this Contract or the System, regardless of the form of action or theory of recovery, for any: (1) indirect, incidental, consequential, special, punitive or exemplary damages, regardless of whether AGI or Advertiser has been made aware of their possibility; (2) lost profits, loss of business, loss of data or business interruption losses; and/or (3) direct damages in an amount in excess of the amounts paid by Advertiser under this Contract. For the purposes of this paragraph 14, "AGI" also includes its employees, officers, directors, vendors,

and agents. However, if Advertiser does not desire to limit AGI's liability as such, Advertiser may negotiate to pay additional charges upon contract signing, with AGI's President's written approval. These additional charges will be based on the type of business and other factors of risk. If Advertiser is interested in obtaining additional information about this option, Advertiser must call AGI's customer service manager at 800-350-8887. Any claims by Advertiser relating to this Contract or the System shall be brought within one (1) year after Advertiser knew, or reasonably should have known, of the existence of the claim.

**15. Injunctive Relief.** Advertiser acknowledges and agrees that its unauthorized use of the System, or any other breach of its obligations under this Contract, will cause damage to AGI that may not be adequately compensated through money damages. As such, Advertiser expressly consents to the entry of an order for equitable remedies, including, but not limited to, temporary, preliminary and permanent injunctions to remedy any actual or threatened unauthorized disclosure or use of the System or breach of this Contract by Advertiser. These remedies are cumulative and in addition to all other remedies available at law or in equity.

**16. Survival.** Any sections which, by their nature, survive the expiration or termination of this Contract will so survive.

**17. Compliance with laws.** Advertiser warrants that its use of the System, including, without limitation, (a) its messages sent in connection with the short code, (b) its use of the end user data, and (c) its marketing activities, will not violate any laws, MMA Guidelines (see Use Policy, below) or any legal rights of third parties whatsoever.

**18. Governing law and venue; attorneys fees.** California substantive law governs this Contract without regard to the conflict of laws provisions. This Contract will be performed in Fresno County, CA. Venue for any legal disputes will be in Fresno County, CA. Both parties waive any rights to participate in any class or representative legal action related to this Contract, and waive any rights to a jury trial. In any legal action to collect amounts owing to AGI under this Contract, the prevailing party will be entitled to reasonable attorneys' fees, court and/or arbitration costs (including the fees of the arbitrator) and costs of collections, in addition to any other relief awarded.

**19. General Provisions.** If any provision of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the extent valid and enforceable, and the other provisions of this Contract shall remain in full force and effect. AGI's failure to enforce at any time any of the provisions of this Contract shall not be construed to be a present or future waiver of such provisions. This Contract constitutes the entire understanding of the parties with respect to the System. This Contract replaces, supersedes and merges all prior written and oral communications, representations, promises or understandings.

**20. BINDING ARBITRATION.**

Advertiser and AGI agree to binding arbitration of all disputes, claims or controversies between them, except as set forth in this paragraph. For purposes of this paragraph, "AGI" also includes its employees, officers, directors and agents. For purposes of this paragraph, "Advertiser" also

includes Advertiser's employees, officers, directors, agents, partners, shareholders, members, heirs, executors and assigns. This arbitration agreement includes any dispute, claim or controversy arising out of or relating to any aspect of the relationship between Advertiser and AGI, whether based in contract, tort, statute, regulation, fraud, misrepresentation or any other legal theory, including but not limited to, any provision of this Contract or the performance or breach of this Contract, and including but not limited to, all disputes, claims or controversies that arose before this Contract or any prior agreement, or which may hereafter arise, and claims that may arise after the termination of this Contract. This arbitration agreement shall survive the termination of this Contract. Either party may initiate arbitration by sending to the other, by certified mail, a written demand for arbitration (the "Demand"). If Advertiser initiates arbitration, the Demand must be sent to Valley Yellow Pages, 1850 N. Gateway Boulevard, Fresno, California 93727, Attention: Legal Department. If AGI initiates arbitration, the Demand must be sent to Advertiser at the address listed for Advertiser in the Advertising Contract. The Demand must describe the nature and basis of the dispute, claim or controversy and set forth the relief sought. Any dispute, claim or controversy shall be resolved by binding arbitration before a single arbitrator administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules then in effect, as modified by this Contract. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by telephoning (800) 778-7879. The arbitration shall take place in Fresno, California. If the claim is for Ten Thousand Dollars (\$10,000) or less, Advertiser may choose whether the arbitration shall be conducted solely based on documents submitted to the arbitrator, through a telephonic or videoconference hearing, or by an in-person hearing. Each party shall bear its own filing, administrative and arbitrator fees and costs. The decision of the arbitrator shall be binding and conclusive on all parties, and there shall be no right of appeal therefrom, and judgment may be entered upon the decision of the arbitrator by any court of competent jurisdiction. The arbitrator must follow this Contract. Advertiser recognizes that, in agreeing to arbitration, among other differences, there is no judge or jury in arbitration, discovery is more limited than in court, and court review of an arbitration decision is limited. **Advertiser and AGI agree that any dispute, claim or controversy may be conducted only on an individual basis and not on a class, consolidated or representative basis;** neither Advertiser nor AGI shall be a member in a class, consolidated or representative proceeding; and the arbitrator is only authorized to award relief on an individual basis. AGI does not consent to class, consolidated or representative arbitration. **Advertiser may choose to pursue Advertiser's dispute, claim or controversy in court and not by arbitration if Advertiser opts out of this arbitration agreement within the "Opt-Out Deadline".** The Opt-Out Deadline is thirty (30) days from the date on which the earlier of the following occurs or has occurred: (i) the date on which Advertiser signs the Advertising Contract, or (ii) the date on which Advertiser signed any agreement with AGI containing a substantially identical arbitration agreement. Advertiser may opt out by, within the Opt-Out Deadline, by sending a written notice by certified mail to Valley Yellow Pages, 1850 N. Gateway Boulevard, Fresno, California 93727, Attention: Legal Department indicating that Advertiser wishes to opt out of arbitration. This arbitration agreement shall be specifically enforceable by the parties.

## USE POLICY

The use of AGI's Mobile Marketing Services is governed by the Mobile Marketing Association's U.S. Consumer Best Practice Guidelines (the "MMA Guidelines") and enforced on

behalf of the Wireless Carriers by the Common Short Codes Association (CSCA) in the US and the Canadian Wireless Telecommunications Association (CWTA) in Canada. These documents can be obtained directly from the Mobile Marketing Association web site <http://mmaglobal.com>. Included in these MMA Guidelines are that Advertiser must adhere to the following conditions:

- Advertiser must ask for and obtain consent by obtaining an explicit opt-in from the consumer for all mobile marketing messaging programs and campaigns. This can be accomplished via a short message service (SMS) opt-in, website registration or written consent.
- Advertiser agrees that each text message the Advertiser sends from the System is based on the express consent of the mobile phone owner and that AGI is not responsible for the wireless carrier's standard text charges that may occur on the recipient's mobile phone upon receiving the text message.
- Advertiser must honor consumer requests to discontinue participation (sometimes referred to as "opt-outs").
- Advertiser agrees that it may not use the System in any manner that could damage, disable, overburden, or impair the System (or the network(s) connected to the System) or interfere with any other party's use and enjoyment of the System.
- Advertiser agrees that it may not use the System in any illegal manner.
- Advertiser agrees that it may not attempt to gain unauthorized access to the System, other accounts, computer systems, or networks connected to any of the System, through hacking, password mining, or any other means.
- Advertiser agrees that it may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the System.

This is just a summary of some of the applicable requirements, which are subject to change. Advertiser is responsible for reviewing all of the requirements and ensuring that its use of the System complies with all applicable laws and requirements.

AGI reserves the right, in its sole discretion, to review materials sent through the System and to edit, refuse to send, or to remove any information or materials, in whole or in part. AGI reserves the right, in its sole discretion, to terminate Advertiser's access to the System at any time, without notice, for any reason whatsoever. Materials sent or received through the System may be subject to limitations on usage, reproduction, and/or dissemination. Advertiser agrees that it is responsible for adhering to such limitations.

AGI reserves the right at all times to disclose any information as AGI deems necessary to satisfy any applicable law, regulation, legal process, or governmental request.

Print and Web Advertising Conditions: The following disclaimers are required in any Print and Web advertising:

- Product or Service description (i.e. Offers, Alerts, Loyalty Rewards etc.)
- “Msg & Data rates may apply” or “message and data rates may apply”
- Opt-out Command: “text STOP to Opt-out” or “Reply STOP to cancel”
- A link for reference to the Terms and Conditions and Privacy Policy: For example, “for complete details, visit <http://myyp.com/sms>”
- Frequency of Messages: For example, “4/Msgs Month” or “You will receive up to 4 messages per month” (required for Web advertising only)

Violations of any of the requirements, or of the MMA Guidelines, including intellectual property infringement and breaches in security, may be investigated and, where appropriate, service will be terminated or legal action instituted. AGI will cooperate with law enforcement authorities in bringing legal proceedings against Advertisers who violate this Policy.

This Use Policy may be updated and amended from time to time as needed to reflected changes in the applicable industry guidelines or law. Advertiser may be required to consent to an updated or amended Use Policy in order to continue to access and use the System.