



PUBLISHER TERMS AND CONDITIONS

This agreement entitled PUBLISHER TERMS AND CONDITIONS (“Agreement”) is made by and between A4D, Inc. (“A4D”) and you (the “Publisher”). It is effective as of the date that Publisher clicks the “Accept” button below (“Effective Date”). Publisher and A4D may be collectively referred to as the “Parties.”

WHEREAS, A4D maintains an online exchange network (the “Service”), which is a suite of online marketing services that enables an independent marketer(s) to identify and conduct promotional campaigns that are available by third-party merchants (the “Advertisers”);

WHEREAS Publisher desires to use the Services to conduct marketing campaigns, either directly or through Publisher’s network of independent marketers (“Marketing Affiliates”); and

WHEREAS, Publisher acknowledges receipt of the Order (defined below) and expressly agrees to comply with it, and furthermore understands that engaging in acts or practices prohibited by this Agreement or the Order will result in immediate termination of this Agreement, termination of Publisher’s relationship with A4D and forfeiture of all money that A4D may owe Publisher.

NOW, THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Term**. Beginning on the Effective Date, Publisher may use the Services to promote Advertisers’ offers. This Agreement shall continue in full force and effect until either or both Parties terminate the Agreement as set forth elsewhere herein.
2. **Advertising/Marketing Copy**. Publisher shall only use advertising and marketing copy and creative materials (collectively “Advertising/Marketing Copy”) provided by Advertiser. No changes may be made to any Advertising/Marketing Copy without A4D’s and Advertiser’s prior written consent.
3. **Use of Information**. A4D shall have the immediate and exclusive right to use, exploit, and sell any information obtained in connection with traffic driven to the Service. Neither Publisher nor Marketing Affiliates have any right to or interest in such information other than the right to be paid in accordance with the terms of this Agreement.
4. **Commission(s)**. Advertisers pay commissions to Publisher in accordance with the commission schedule posted for each campaign. A4D will facilitate payment by

collecting funds from Advertisers and distributing commission payments (less the applicable transaction fee) to Publisher. Publisher has no right to receive a commission for a payable action (e.g. sale, credit card submit, or submission of contact information by a consumer) that is invalid, generated by fraud, charged back, refunded, or in excess of the maximum of the number of actions specified (in either case, referred to in this clause as “Excess Units”). A4D will nevertheless have full and exclusive rights to use, exploit and sell any information obtained from traffic generated from the delivery of such Excess Units and the delivery of all such Excess Units shall remain subject to the terms and conditions contained in Agreement.

5. **Advertising Rules.** Publisher shall comply with A4D’s Advertising Rules (the “Advertising Rules”), which is marked as Appendix A and is attached hereto and incorporated by this reference. A4D reserves the right to modify the Advertising Rules from time-to-time. It is Publisher’s responsibility to check the A4D website for any changes to the Advertising Rules. If Publisher objects to any changes to the Advertising Rules, Publisher’s sole remedy is to terminate this Agreement pursuant to section 8.0 below.
6. **Use of Marketing Affiliates.** Publisher may utilize the services of third Parties or networks (“Marketing Affiliates”) to promote Advertisers’ products and services only with the prior written consent of A4D. A4D reserves the right to withhold or rescind consent for any reason including, without limitation, concerns about the Marketing Affiliate’s marketing materials or methods. Any payable action by an unapproved Marketing Affiliate is an Excess Unit for which no compensation is due to Publisher.
 - 6.1. **Actions of Marketing Affiliates.** Publisher agrees that the acts and omissions of Publisher’s Marketing Affiliates shall be deemed Publisher’s acts. Accordingly, Publisher agrees without limitation to indemnify and hold harmless A4D for the acts and omissions of its Marketing Affiliates. Additionally, Publisher agrees to contractually obligate each Marketing Affiliate to conduct its business in strict compliance with applicable law, the terms of this Agreement, the Advertising Rules and the Order. Publisher shall monitor the activities of its Marketing Affiliates to ensure compliance.
 - 6.2. **Notice of Breach.** If Publisher becomes aware of a breach of the terms of Advertising Rules or the Order by Publisher or its Marketing Affiliate(s), Publisher will inform A4D within twenty-four (24) hours of the breach and provide A4D with detailed information of the breach and the corrective action taken to resolve the breach.
 - 6.3. **Publisher’s Duties with Marketing Affiliates.** To the extent Publisher conducts marketing campaigns through Marketing Affiliates, it shall (1) require each of its Marketing Affiliates to acknowledge and confirm

compliance with the Order in writing, and shall maintain records of all such confirmations; (2) require each of its Marketing Affiliates to provide his/her/its full name, and all contact and business information required by the Order; and (iii) expressly notify each of its Marketing Affiliates in writing that engaging in acts or practices prohibited by the Order will result in immediate termination from the Publisher's network and the forfeiture of all money that may be owed to the Marketing Affiliate.

6.4. Assurances of Compliance. Publisher and Marketing Affiliate shall provide A4D with reasonable additional assurances of compliance with this Agreement, the Order and the Advertising Rules upon request. Such additional assurances may include, but are not limited to, evidence of due diligence, copies of emails and advertising materials, copies of all information pertaining to complaints received by Publisher or Marketing Affiliates, evidence of termination of dealings with Marketing Affiliates, and all such other information that A4D may reasonably require to confirm that Publisher or Marketing Affiliate is acting in strict compliance with all applicable laws, rules, and regulations, as well as the terms of the Order and this Agreement.

6.5. Right to Terminate Agreement. If A4D learns, or has good reason to believe, that Publisher or a Marketing Affiliate is not complying with the terms of this Agreement. Order or the Advertising Rules, A4D shall have the right to terminate this Agreement immediately and require Publisher to stop a specific Marketing Affiliate's campaigns.

7.0 Indemnification. Publisher shall defend, indemnify and hold A4D harmless against all claims, suits, demands, damages, liabilities, losses, penalties, interest, settlements and judgments, costs and expenses (including attorneys' fees) incurred, claimed, or sustained as a result of (a) Publisher's or Marketing Affiliate's breach of or non-compliance with this Agreement or the Order, (b) Publisher's or Marketing Affiliate's violation of any law, or an alleged violation of law, (c) any violation or alleged violation by Publisher or Marketing Affiliate of any rights of another, including breach of a person's or entity's intellectual property rights (each (a)-(c) individually is referred to hereinafter as a "Claim"). Publisher's obligations shall include the payment of A4D's actual attorney's fees. A4D shall have the right to retain legal counsel of its choosing. If Publisher becomes aware of or involved in any Claim that gives rise to a duty of indemnification, Publisher shall promptly notify A4D in writing. Publisher shall not settle any Claim without A4D's prior written consent. Publisher also shall indemnify A4D from any and all attorneys' fees and other costs incurred by A4D in responding to, defending, investigating, and/or enforcing its rights relative to a Claim (and A4D shall have the right to retain legal counsel of its choosing as set forth above). In the context of this section only, the term "A4D" shall include members, managers, officers, directors, employees, corporate affiliates, subsidiaries, agents, attorneys, and subcontractors.

8.0 **Right to Terminate.** Either party may terminate this Agreement provided the party has given the other a three (3) day written notice of termination. Sections 3.0, 7.0, 9.0, 12.0, 13.0 and 16.0 shall survive for a period of three (3) years from the date of termination.

9.0 **Notices.** All notices shall be given to the appropriate party either in writing by a nationally recognized overnight courier or by email with proof of transmission retained. If notice is to Publisher, then to the address or email that Publisher provided in Publisher's application. If to A4D, then to A4D, attn.: Legal Department, 6965 El Camino Real #105-441, Carlsbad, CA 92009; legal@a4d.com.

10.0 **No Assignment.** This Agreement can not be assigned by Publisher to another party without the prior written consent of A4D. A4D may assign any or all of its duties to another party without Publisher's consent.

11. **Distribution of Commissions.**

11.1. **Timeliness of Payment.** A4D shall distribute Publisher's commission payment (the "Commission Distribution") after A4D receives funds from the Advertiser. A4D may elect to pay the Commission Distribution prior to receiving funds from the Advertiser. However, any election to pay a Commission Distribution prior to receipt of funds from the Advertiser shall not obligate A4D to continue to make Commission Distribution's prior to its receipt of funds from the Advertiser. Publisher is not entitled to payment for a Payable Action that is an Excess Unit.

11.2. **Records.** Publisher shall maintain accurate records relating to this Agreement and the business methods and materials Publisher and Marketing Affiliates use to conduct each marketing campaign. Publisher agrees that A4D, or any designee of A4D, shall have the right, at A4D's sole cost and expense, to audit and copy these records and any source documents used in their preparation during normal business hours upon written notice at least five (5) business days before the commencement of the audit. If the audit reveals an overpayment of more than two percent (2%), notwithstanding the foregoing, Publisher shall immediately compensate A4D for said overpayment and reimburse A4D for all of its costs and expenses related to the audit.

11.3. Publisher agrees to use tracking code(s) (also known as "pixels") as requested by A4D for network tracking and reporting purposes.

12. **Limitations.**

1. **No Warranties.** A4D MAKES NO EXPRESS OR IMPLIED WARRANTY, TO THE EXTENT PERMISSIBLE BY LAW, OTHER THAN THE WARRANTIES EXPRESSED IN THIS AGREEMENT, IF ANY, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
2. **Damages Disclaimer.** In no event shall A4D or its members, managers, officers, directors, employees, contractors, attorneys, licensors, or licensees be liable to Publisher or a Marketing Affiliate for any indirect or direct damages, loss of profits, or other incidental, consequential, or special damages, even if advised of the possibility of such damages. In no event will A4D's total liability under the terms of this Agreement from all causes of action of any kind including, without limitation, contract, tort (including negligence), strict liability, breach of warranty, misrepresentation, or otherwise, exceed the amount paid by A4D to Publisher under this Agreement during the three (3) months prior to A4D's receipt of written notice from Publisher of a claim of liability.

13. **Confidential Information.**

- 13.1. **Confidential Information Defined.** The Parties acknowledge that in the course of fulfilling their obligations under this agreement, Publisher may have access to certain confidential information of A4D ("Confidential Information"), which may include but is not limited to: all documents, marketing materials, data files, information, and other materials made available to Publisher in connection with Agreement, including without limitation: names, email addresses and other personal information pertaining to leads; A4D's sales, cost, pricing, and financial information; the names and contact information for potential and actual A4D customers; the identity and contact information of A4D's employees, contractors, other publishers, and other marketing affiliates; the methods used by A4D to acquire consumers; A4D's business plans; marketing strategies, methods, and materials; computer programs and source code; and all related information (collectively "Confidential Information") shall be deemed to have been furnished to Publisher in confidence and shall remain the exclusive property of A4D during and after the term of Agreement. Publisher shall keep in strict confidence all Confidential Information. Publisher shall not at any time use Confidential Information for its own benefit, or disclose or permit any of its employees, agents, or representatives to disclose Confidential Information without A4D's prior written consent. Publisher further represents and warrants that it shall not use the Confidential Information to compete with A4D, solicit A4D's customers or circumvent this Agreement.

13.2. Non-Confidential Information. Confidential Information does not include: 1) Information already known to Publisher before disclosure; 2) Information already known to the public, other than as a result of breach of Agreement; 3) Information properly received from a third party; 4) Information subsequently independently developed; and Information required to be disclosed by law; and 5) All such other information that is the exclusive property of Publisher and which, if disclosed, could cause harm to Publisher.

13.3. Representations of Publisher. Publisher, on its own behalf and on behalf of its Marketing Affiliates hereby represents and warrants that it shall not, for any reason or under any circumstance at any time, directly or indirectly use, convert, apply, appropriate, employ, alter, transform, assign, put into operation or otherwise use any of the Confidential Information, in whole or in part, for any purposes whatsoever, other than as expressly permitted herein. Publisher acknowledges any such action taken by it or its Marketing Affiliates is in contravention to this Agreement and is strictly prohibited.

13.4. Injunctive Relief. A breach of this section will cause A4D irreparable harm and shall entitle A4D to immediate injunctive relief without the necessity of posting bond, in addition to an award of damages. But for Publisher's willingness to agree to this section 13.0, A4D would not have entered into this Agreement with Publisher.

14. **Publisher warrants and represents that:**

14.1. Compliance with Laws. Publisher and its Marketing Affiliate(s) shall conduct all communications, advertising, marketing, sales, and transmissions in strict compliance with all applicable laws, rules, and regulations, including but not limited to all laws, rules, and regulations governing: 1) the transmission of unsolicited commercial electronic mail messages or "spam" (this includes without limitation the Can-Spam Act of 2003); 2) email and Internet-based marketing (this includes without limitation the Telemarketing Sales Rules of the United States Federal Trade Commission); 3) marketing to minors; and 4) the Fair Credit Reporting Act; and

14.2. Non-Infringement. That Publisher's use and Marketing Affiliate's use of the Advertising/Marketing Copy do not infringe the intellectual property rights of any third party or violate any applicable law.

14.3. Order. Publisher acknowledges receipt of the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief As To Defendants Coleadium, Inc. And Jason Akatiff ("Order"), which was signed by the

Honorable Edmond E. Chang and entered by the Court on September 4, 2012 in the matter of FTC v. Coleadium, Inc., et al., Case No. 12-cv-6964 (United States District Court for the Northern District of Illinois), a copy of which is available:

"<http://www.ftc.gov/os/caselist/1023239/120912coleadiumstip.pdf>" target="_blank">here. Publisher warrants and represents that Publisher shall comply with the Order.

15. **Termination.**

15.1. Three (3) Day Notice to Terminate without Cause. Either party may terminate this Agreement for any reason by providing no less than three (3) days written notice to the other party.

15.2. Termination for Cause. A4D may terminate this Agreement immediately if it learns of, or has reason to believe that, Publisher or its Marketing Affiliate(s) has breached any material provision or warranty in this Agreement or is in violation of the Order. After termination of this Agreement: 1) A4D shall incur no further liability or obligation to Publisher; 2) A4D may share all information about Publisher and its Marketing Affiliate(s) with any law enforcement agency, government agency, or individual or entity claiming to have been harmed by such breach; and 3) Publisher shall forfeit all unpaid Commission Distributions.

16. **Miscellaneous Provisions.**

16.1. Ability to Contract. Each party represents and warrants that execution and performance of this Agreement shall not violate any agreement to which such party bound, any applicable governmental law or regulation to which it is subject, or any intellectual property or other third party right.

16.2. No Continuing Waiver. The failure of either party to insist upon or enforce performance by the other party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather the same will be and remain in full force and effect.

16.3. Force Majeure. Neither party shall be held responsible for any delay or failure in performance of this Agreement caused by fire, hurricane, tornado, earthquake, tidal wave, meteor strikes, civil war, Internet brown-outs or black-outs, computer hacking, or acts of terrorists ("Force Majeure") if the

effects of such Force Majeure could not have been avoided through the application of reasonable foresight or diligent effort.

- 16.4. No Joint Venture. Nothing contained herein shall in any way be construed to interpret this Agreement as creating a partnership, joint venture, employment or franchise relationship between the Parties hereto. It is expressly agreed that the Parties are acting hereunder as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other. In this regard, neither party shall hold itself out contrary to the terms of this provision, and neither party shall become liable for the representation, act or omission of the other contrary to the provisions hereof.
- 16.5.. Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree to submit to the exclusive jurisdiction of the federal or state courts of the State of California located in San Diego County (North County Judicial District for State courts) for all disputes that arise under or relate to this Agreement.
- 16.6.. Currency. All monetary amounts specified in this Agreement are in United States dollars.
- 16.7.. Entire Agreement. This Agreement is the complete agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. The terms and conditions of this Agreement will prevail over any contrary or inconsistent terms in any other writing. This Agreement may only be modified by a written document executed by both Parties. This Agreement was prepared jointly by both Parties and their attorneys. The terms of the Agreement are not to be strictly construed against either party.
- 16.8.. Attorney Fees and Costs. If a lawsuit or other action is commenced against either party to this Agreement by the other to construe or enforce any provision of Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and court costs, as determined by the court, in addition to all such other available damages.

APPENDIX A: ADVERTISING RULES

1.0 Prior Approval Required: All text and creative used by Publisher and Marketing Affiliate in its advertising must be provided by the Advertiser. If Publisher or its Marketing Affiliates wish to generate or use their own content or creative, they must notify A4D of the intent to do so and must obtain A4D's express written consent and approval in advance.

2.0 Trademarks: Publisher and Marketing Affiliate will not use any trademark, trade name, logo, or other proprietary material of A4D except with the permission of A4D and subject to any conditions that A4D may impose on such use. Publisher and Marketing Affiliate agree to not misrepresent A4D or its products and services.

3.0 Compliance Regarding Communications: Publisher and Marketing Affiliate will conduct all communications, advertising, marketing, broadcasts, and transmissions in strict compliance with all applicable laws, rules, and regulations, including but not limited to all laws, rules, and regulations governing: 1) the transmission of unsolicited commercial electronic mail messages or spam (this includes, without limitation, the Can-Spam Act of 2003 as amended); 2) email and Internet-based marketing (this includes, without limitation, the Telemarketing Sales Rules, and the various rules and regulations of the Federal Trade Commission); 3) marketing to minors, being persons under 18 years old; and 4) the Fair Credit Reporting Act.

4.0 No Incentivized Lead Generation: Publisher and Marketing Affiliate shall not use incentivized lead generation methods or techniques.

5.0 When using email as a promotional method:

5.1. Accuracy of Headers. Emails must have accurate email header information (including source, destination, and routing information) and accurate subject lines;

5.2. Email Requirements/Opt Out. Emails must include an identification that the message is an advertisement or solicitation; a functioning return email address or other Internet-based mechanism that a recipient may use to "opt-out" of receiving future messages; and a valid physical postal address of A4D.

5.3. Email Addresses. Publisher and Marketing Affiliate must not send email messages to an email address that has opted out. Publisher and Marketing Affiliate must not sell, lease, exchange or otherwise transfer or release any such email address except as required by law;

5.4. Monitor Email. Publisher and Marketing Affiliate must enable A4D to monitor email messages to ensure compliance with all applicable laws;

5.5. Email Restrictions.

- Publisher and Marketing Affiliate must not send email messages to email addresses that have been improperly obtained, including addresses harvested from the internet without consent and randomly generated addresses;
- Publisher and Marketing Affiliate must not send email messages from accounts obtained using scripts or other automated means of registering for multiple email accounts;
- Publisher and Marketing Affiliate must not use email accounts or domain names that were created using information that falsifies the identity of the registrant; and
- Publisher and Marketing Affiliate must not relay email messages through a computer or network without written permission.

6.0 Endorsements: All advertising using endorsements must strictly comply with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising (16 CFR, Part 255, as amended).

7.0 Use of Third-Party Intellectual Property: Publisher and Marketing Affiliate shall not use any content that infringes upon the rights of third party, including copyright, trademark, privacy, publicity or other personal or proprietary right.