

The following are FetchBack's Standard Terms and Conditions revised as of January 2011, which are always available on the FetchBack website (<http://www.fetchback.com/terms.html>), and are incorporated by reference into each Insertion Order (each an "Order") by and between FetchBack, Inc., a Delaware corporation with its principal place of business at 100 West University, Suite 101, Tempe, AZ 85281 ("FetchBack") and the party requesting the Services (as defined below) from FetchBack ("Advertiser"). These Standard Terms and Conditions (referred to herein as the "Agreement") shall be effective as of the date of execution of the first Order between the parties or if no Order exists, then this Agreement shall become effective when the Advertiser selects "I have read and agree to the Terms and Conditions" on the FetchBack website.

1. Insertion Orders and Advertising Obligations

- A. From time to time, the parties may enter into Orders detailing the services to be performed by FetchBack, deliverables and applicable fees and rates.
- B. FetchBack's sole obligation under this Agreement and the Order will be to use commercially reasonable efforts to deliver advertisements in the manner specified in the Order (the "Services"). The performance of such Services shall be subject to the terms and conditions of the Agreement. In the event of any conflict between this Agreement and the Order, the Order shall prevail but only with respect to the Services described therein.
- C. The Order shall specify whether the creative content used to create the advertisements (the "Creative") will be (1) provided fully by Advertiser as specified in the Order or (2) created using materials provided from both Advertiser and FetchBack.
- D. All Creative supplied to FetchBack by Advertiser shall be in accordance with FetchBack's advertising criteria or specifications, including, without limitation, technical specifications, privacy policies, user experience policies, community standards regarding obscenity or indecency, and material due dates.
- E. Advertiser shall approve all Creative prior to its use in advertisements. However, FetchBack reserves the right to reject, discontinue, or omit any Creative or any part thereof for any reason. This right will not be deemed waived by acceptance or actual use of any Creative.

2. Publication of Advertisements

- A. FetchBack will purchase advertising space from advertising networks and site owners (together, "Publishers") for the publishing of advertisements on behalf of Advertiser. The advertisements published by FetchBack include one full set of creatives in the four ad sizes: medium rectangle, leaderboard, skyscraper, and wide-skyscraper. The ad size used will vary depending on the needs of the Advertiser and the usefulness of their application to the design and include Adobe Flash, JPG, GIF, Animated GIF, and Dynamic HTML.
- B. Upon approval from Advertiser of the Creative, the final product will be delivered via hosting of the advertisements on FetchBack's FIDO server system. These advertisements have custom clickTAGS that are designed for use specifically with the FetchBack system. If Advertiser wishes to retain digital copies of these advertisements then one of the following formats will be supplied by FetchBack: **FLASH:** Advertiser will receive the mastered SWF files. **JPG / GIF:** Advertiser will receive the mastered JPG or GIF files. **HTML:** Advertiser will receive a TXT file with the source code and associated images in a ZIP file.
- C. Creative files are only available upon request. Please note that the advertisements will not link to Advertiser's website if they are removed from FetchBack's server, or if the files are e-mailed. The linking is done exclusively through FetchBack's FIDO Retargeting Server. FetchBack retains all raw files in house. These include FLA, FLV, PSD, AI, INDD, and HTML files.

3. Privacy and Use of Consumer Data

- A. Advertiser understands that FetchBack's proprietary technology utilizes a pixel (the "**Pixel**") placed on the Advertiser's website to set a cookie on the browser of visitors to the Advertiser's website (the "**Cookie**"). The Services then utilize anonymous consumer data provided by Advertiser to FetchBack via the Cookie or other similar methods (the "**Consumer Data**"). Such Consumer Data may include, among other things, the consumer's IP address, date and time of visit to Advertiser's website, Advertiser's website pages visited and merchandise viewed or placed in Advertiser's e-commerce shopping cart. No personally identifiable information of a consumer is utilized in the performance of the Services. The Consumer Data is used for a retargeting program whereby targeted advertisements for Advertiser are delivered to these consumers while the consumers are on third-party websites with whom FetchBack has purchased advertising inventory. Advertiser agrees that it shall not remove, modify or move the Pixel.
- B. Advertiser represents and warrants that during the term of the retargeting program Advertiser will comply with all applicable laws and industry best practices regarding retargeting programs and that the Advertiser's website (i) contains a privacy policy that (a) permits the operation of a retargeting consumer marketing program, including, but not limited to, the provision of anonymous consumer information to a third-party provider of such a program and (b) provides a link to the Network Advertising Initiative's consumer opt-out page located at www.networkadvertising.org/managing/opt_out.asp allowing the consumer to opt-out of such retargeting by FetchBack and (ii) provides clear and conspicuous disclosure regarding such retargeting practices.
- C. FetchBack agrees that the Consumer Data shall only be used and disclosed by FetchBack for (i) FetchBack's performance of the Services and (ii) any other business purposes of FetchBack; provided that for this subsection (ii) the Consumer Data is used and disclosed by FetchBack on an Aggregated-basis only. For purposes of this Section, "**Aggregated**" means a form in which the Consumer Data for any Advertiser is combined with data from other campaigns of other Advertisers and precludes identification, directly or indirectly, of an Advertiser. In addition, FetchBack may utilize the Consumer Data for its own internal business purposes provided that any non-Aggregated Consumer Data may not be disclosed to any third-party or used for the specific benefit of any other advertiser.

4. Payment and Refunds

- A. Advertiser will pay FetchBack in accordance with fee structure provided in the Order. Unless otherwise provided in the Order, Advertiser will pay FetchBack in advance via cash payment or credit card. All payments will be made in advance unless: (1) otherwise specified in the Order; or (2) credit is approved. Upon approved credit, FetchBack will invoice Advertiser for such fees on a monthly basis, in which event Advertiser will make payment within 30 days from the date of invoice. In the event Advertiser pays with a credit card, Advertiser expressly agrees that Advertiser will not charge back on such credit card account.
- B. All invoices will be based on FetchBack's measurements and tracking and not based upon those of Advertiser or any other party.
- C. FetchBack will be under no obligation to provide the Services until payment is received and may suspend performance immediately if any payment is past due or FetchBack reasonably believes that Advertiser will be unable to meet its payment obligations. All amounts not paid by Advertiser when due shall bear interest from the due date to the date of actual payment at the rate equal to the lesser of 1½% percent per month or the maximum rate permitted by law. Advertiser shall reimburse FetchBack for all expenses (including reasonable attorney's fees and disbursements) incurred in the collection of any overdue and unpaid invoices.
- D. Advertiser acknowledges and agrees that Advertiser is obligated to pay up to ten percent (10%) above the maximum spending limit, if any, included in the Order.

- E. FetchBack will credit or refund any amounts remaining on deposit if Advertiser has met all commitments under this Agreement including complete payment for all Services.
- F. In addition to the foregoing, Advertiser shall reimburse FetchBack for all preapproved out-of-pocket expenses which are incurred by FetchBack in the performance of the Services, including, but not limited to, travel and lodging expenses and any non-cancellable obligations committed to prior to the early termination or expiration of the Order.
- G. All payments required under this Agreement and the Order are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and other similar charges. When applicable, such taxes shall appear as separate items on invoices provided by FetchBack. Payment of such taxes and other charges (excluding any taxes based on FetchBack's income) shall be Advertiser's sole responsibility.
- H. The parties agree to bring any dispute with respect to the fees and other amounts charged or paid pursuant to this Agreement and any Order within two (2) months after the date of the applicable invoice or from the date the Services were performed, whichever is later.

5. Limitation of Liabilities

- A. Under no circumstances will FetchBack be liable (whether in contract, warranty, tort (including, but not limited to, negligence), product liability or other theory) to Advertiser or any other person or entity for loss of profit, business or data, cost of cover or for any indirect, incidental, consequential, special, punitive damages or exemplary damages of any kind or nature (even if such damages are foreseeable, and whether or not FetchBack had been advised of the possibility of such damages) arising from any aspect of this Agreement or any Order.
- B. Notwithstanding any other provision of this Agreement, the aggregate liability of FetchBack will be limited to the total amount paid by Advertiser to FetchBack under this Agreement during the three (3) months prior to the event giving rise to such liability.
- C. Neither FetchBack nor Advertiser, as the case may be, will be liable for delays or failures in performing any services or other obligations hereunder to the extent arising out of or resulting from the following: any act of God or other cause beyond such party's reasonable control, including, but not limited to, any act, failure to act or delay in acting by any governmental or quasi governmental entity (including changes in applicable law), Internet failure, equipment failure, power outage, fire, earthquake, flood, insurrection, riot, act of terrorism, act of war, explosion, embargo, strike (whether legal or illegal), labor or material shortage, transportation interruption of any kind, or work slow-down. Although FetchBack shall endeavor to guard against any loss to Advertiser as a result of the failure of Publishers, suppliers or other third parties to properly execute their commitments, FetchBack will not be responsible for their failure or their other acts or omissions.

6. Indemnification

- A. Advertiser will indemnify, defend and hold FetchBack harmless from and against any liability, loss, damage, and expense, including reasonable legal fees and expenses, that may be incurred by FetchBack for any third party claim to the extent arising out of or related to (a) Advertiser's breach of any of the representations and warranties, covenants, agreements or obligations under this Agreement; (b) a violation or alleged violation of any third party's rights resulting from Advertiser's use of the Services as contemplated hereunder and in accordance with FetchBack's Privacy Policy, as posted on fetchback.com; and (c) any Creative or other materials provided or approved by Advertiser.
- B. FetchBack will promptly notify Advertiser of any threat of a claim that it becomes aware of and that may give rise to a request for indemnification hereunder; provided that the failure to provide such notice will not affect the obligations of Advertiser hereunder unless Advertiser is actually prejudiced by such failure.

7. Warranties

- A. Advertiser hereby represents and warrants that: (a) Advertiser has authorized the person who has executed this Agreement for Advertiser to execute and deliver this Agreement to FetchBack on behalf of Advertiser; (b) information, if any, supplied to FetchBack by Advertiser for inclusion in the Creative will not be procured or produced inconsistently with U.S., foreign, or international law and shall not cause any advertisements to be deceptive, misleading, obscene, defamatory, illegal or unethical or be deemed to promote illegal activity; (c) Advertiser has the right and authority to conduct the marketing campaigns as described in the Order and (d) Advertiser will take reasonable measures to safeguard any account passwords and log-in information provided by FetchBack.
- B. All Creative must be provided or approved by Advertiser prior to its use, and as such FetchBack provides no warranty and shall not be responsible for any aspect of the Creative. FetchBack does not warrant that its systems will meet the Advertiser's requirements or that use of any portion of its systems will be uninterrupted or error free.
- C. NEITHER FETCHBACK NOR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATES OR SUPPLIERS MAKE ANY WARRANTIES EXPRESS, IMPLIED, STATUTORY OR IN ANY COMMUNICATION WITH ADVERTISER WITH RESPECT TO THE CREATIVE, THIRD PARTY SOFTWARE, OR ANY PRODUCT, AND FETCHBACK AND ITS PARENTS, SUBSIDIARIES, AFFILIATES AND SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

8. Confidentiality

- A. In the event that either party gains access to non-public and/or proprietary information of the other party under this Agreement, the party gaining such access will treat such information as confidential. Under this Agreement, the term "**Confidential Information**," and variations of that term, will be defined to include information related to marketing, business, technology, strategy, the terms of this Agreement, and/or the like, that is not generally known or available to the public and has been marked (if disclosed in writing or tangible form) or identified (if disclosed verbally) as confidential by the disclosing party.
- B. Each party will: (a) not disclose to any third party or cause to be disclosed any of the other party's Confidential Information unless otherwise specified; (b) refrain from using the other party's Confidential Information unless otherwise specified; and (c) preserve and protect the confidentiality of the other party's Confidential Information with the same degree of care it uses to protect its own Confidential Information, but in no event less than reasonable care.
- C. Confidential Information does not include information that is: (a) already publicly available; (b) otherwise known to the receiving party through no wrongful conduct of the receiving party or Advertiser; or (c) required to be disclosed by law or court order.
- D. FetchBack and/or Advertiser may disclose Confidential Information to such party's agents, attorneys and other representatives or any court of competent jurisdiction as reasonably required to resolve any dispute between FetchBack and Advertiser.

9. Termination and Breach

- A. This Agreement shall be incorporated into Orders between FetchBack and Advertiser and shall remain effective so long as any Order remains in effect. The term of each Order shall be set forth in each Order. Unless otherwise set forth in the Order, either party may terminate any Order for any reason upon thirty (30) days prior written notice.
- B. Either party may terminate this Agreement or the applicable Order if the other party fails to perform any of its obligations hereunder or thereunder; provided that (a) the non-breaching party sends written notice to the breaching party describing in reasonable detail the breach and stating its

intention to terminate this Agreement or the applicable Order unless such breach is cured, and (b) the breaching party does not cure the breach within thirty (30) days following its receipt of such notice.

- C. Upon termination for any reason, Advertiser will remain liable for any amount due for Services delivered by FetchBack through the date of termination and Advertiser's obligation to pay will survive termination of this Agreement. Advertiser acknowledges that the amount of time required for FetchBack to terminate a campaign (the "**Termination Period**") is directly tied to settings found in their account and the Termination Period may be as long as thirty (30) days. For the avoidance of doubt, Advertiser will be responsible for any additional fees incurred during the Termination Period.

10. Miscellaneous

- A. Advertiser must not assign, license, sublicense, or otherwise transfer any rights or obligations under this Agreement. Any such transfer will be void and without effect, and may constitute breach of this Agreement. Notwithstanding these provisions, rights and obligations under this Agreement may be transferred in the event that Advertiser is involved in a merger or an acquisition. Such transfer will only be effective if to the surviving or acquiring company.
- B. All notices, requests, demands and other communications required or permitted under this Agreement must be in writing and delivered to the other party to the address provided in the Order.
- C. Unless otherwise specified, this Agreement may only be modified, or any rights under it waived, by a written document executed by FetchBack and Advertiser.
- D. This Agreement and each Order will be interpreted, construed and enforced in all respects in accordance with laws of the State of Arizona, without giving effect to conflicts of laws and without regard to the state or country of incorporation or operations of Advertiser, or activity of either party in accordance with this Agreement. Advertiser hereby irrevocably consents to the exclusive jurisdiction of the courts of the State of Arizona and the federal courts situated in Maricopa County in the State of Arizona in connection with any dispute arising under this Agreement or any Order.
- E. In the event that any provision of this Agreement or any Order is held by a court of law or other government agency to be void, voidable, or unenforceable, such provision shall be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.
- F. In addition to the Advertisers payment obligations upon a termination, as described in Section 9(D), the Confidentiality, Warranties, Limitation of Liabilities, and Indemnification provisions will survive any termination or expiration of this Agreement.
- G. This Agreement, in conjunction with each Order, sets forth the entire agreement between Advertiser and FetchBack and supersedes any and all prior and contemporaneous agreements (whether written or oral) of FetchBack and Advertiser with respect to the subject matter set forth herein.