

# Mobile Bandit Inc Merchant Agreement and Terms of Service

## 1. MERCHANT

Merchant hereby agrees to subscribe to the **Mobile Bandit Inc**, as described below, on the terms and conditions set forth herein.

## 2. SERVICES TO BE PROVIDED BY Mobile Bandit Inc

**Mobile Bandit Inc** agrees to provide the following Services ("**Mobile Bandit Inc**") to Merchant:

a. The ability for Merchant on a non-exclusive basis to display Deal Offers on the **Mobile Bandit Inc** Application on all Platforms on which the **Mobile Bandit Inc** Application functions in the manner and terms set forth herein for each of Merchant's store locations ("Merchant Location") designated in this Agreement or any amendment hereto. Merchant may reference one or more Merchant Locations on each display. Each display is designated as a Merchant Site.

b. Merchant shall be entitled to display unlimited deals on the Mobile Bandit Network.

c. The ability of Merchant to incorporate its own unique Logo into the Mobile Bandit Network.

d. The ability for Merchant to vary the deal content at each Mobile Bandit Network without any additional fee or charge.

The ability of Merchant to have sole control over each of its Deal Offers and the accompanying text ("Content") on Mobile Bandit Network and to change either or all of them without prior notice to **Mobile Bandit Inc**, subject to the reasonable restrictions in Paragraph 3 hereof.

e. The ability of Merchant to add or delete any Merchant Location with no notice to **Mobile Bandit Inc** however the merchant must honor that offer for an additional 24 hours immediately after removing the offer. Any Merchant Location that is displayed for any part of a year shall be billed for the entire year.

f. **Mobile Bandit Inc** will provide the Merchant with information on the number of its **Mobile Bandit Inc** Subscriber "redemptions" for each Merchant Location and track the number of times the "Redeem" button on the phone was pressed and the deal code or bar code revealed to the **Mobile Bandit Inc** Subscriber.

g. **Mobile Bandit Inc** will provide Merchant, via email, with technical guidance to assist and instruct Merchant in establishing or changing the content of any Member Site.

### 3. MERCHANT'S OBLIGATIONS

At all times during the term of this Agreement or any renewal or extension hereof Merchant shall:

- a. merchant shall be a "brick and mortar" retail establishment. Web-based businesses are not eligible.
- b. honor and fulfill each Deal Offer posted on a Member Site in accordance with the terms stated in such Deal Offer.
- c. designate one or more persons to act as a liaison with **Mobile Bandit's** personnel at all times. Such personnel must be authorized to make entries for the Merchant into **Mobile Bandit's** Application. Such liaison must be proficient in following **Mobile Bandit's** Application and procedures. The Merchant must advise **Mobile Bandit Inc** of its designated personnel in writing, including any periodic changes in its designated personnel not later than 24 hours following such designation or change of designation.
- d. cooperate and follow all directions and operating instructions received from **Mobile Bandit Inc** and abide by any rules and restrictions as laid out in this agreement.
- e. create and/or use Content on each Member Site which is family-appropriate and which does not violate any applicable rule, regulation or law. Merchant assumes the full responsibility and liability for the creation of the Content on the Merchant Site(s) and acknowledges that **Mobile Bandit Inc** does not and will not monitor or supervise such content. Notwithstanding the foregoing, Merchant acknowledges that in the event the matter is brought to **Mobile Bandit's** attention, **Mobile Bandit Inc** may remove any content posted on a Merchant Site which in its sole discretion it deems in good faith to be in violation of this agreement. **Mobile Bandit Inc** shall immediately advise Merchant of any such removal. **Mobile Bandit Inc** shall have no obligation to Merchant by reason of such removal of content. Merchant shall be entitled to immediately replace the removed content with other appropriate content.
- f. follow and agree to all restrictions placed forth in the web guidelines.
- g. ensure that All Deal Offers shall remain in effect for a minimum duration of at least 24 hours from the time of its first posting on the Merchant Site and shall clearly display reasonable terms and not advertise anything misleading to our users.
- h. shall comply with all provincial, local and national consumer or commercial laws concerning the offering and honoring of deals and discounts and all other applicable rules, regulations and laws relating to the conduct of Merchant's business in each jurisdiction where it conducts business or is subject to such rules, regulations or laws. **Mobile Bandit Inc** shall have no obligation to advise Merchant with respect to the applicability of any such rules, regulations or laws.
- i. not post any Deal Offer which discriminates against any **Mobile Bandit Inc** Subscriber on the basis of race, sex or gender preference, nationality, disability or age (unless the product by its nature is lawfully restricted to persons of a certain gender or age range) or which unlawfully restricts the persons or groups that may have the benefit of the deal offer.
- j. cause the Content of any Deal Offer to clearly state any conditions or restrictions applicable to the Deal Offer (i.e. minimum age restrictions). In the absence of any stated limitations, the **Mobile Bandit Inc** Subscriber shall have the right to assume that no restrictions apply to the Deal Offer.

- k. not engage in any 'bait and switch' tactics by substituting one product for the one mentioned in the Deal Offer; not make any Deal Offer unless Merchant reasonably believes that it has sufficient supply of the product subject to the Deal Offer.
- l. the merchant must not advertise with any other mobile advertising provider doing a similar concept for a term of 3 years after the last day of advertising with our platform. This mobile advertising compete restriction will be decided at the discretion of Mobile Bandit and not subject to dispute by the merchant.

#### **4. TERMINATION BY Mobile Bandit**

**Mobile Bandit Inc** shall have the right to terminate this Agreement immediately for any of the following reasons:

- a. Merchant shall violate any of the terms or conditions of this Agreement or any rules and regulations enacted hereafter by **Mobile Bandit Inc** and upon notice to Merchant such violation is not be cured within forty eight (48) hours after written notice to Merchant.
- b. Merchant's failure to comply with payment terms pay when due all hereunder within ten (10) days of the due date thereof.
- c. Merchant engaging in any conduct which is deemed by **Mobile Bandit**, in its sole discretion, to adversely affect the business or reputation of **Mobile Bandit**.

#### **5. TRADEMARK AND RELATED LICENSES**

- a. Merchant hereby grants to **Mobile Bandit Inc** a limited non-exclusive, royalty free license to reproduce, display, and transmit the logos, service marks, symbols, trade names and/or trademarks owned or controlled by Merchant and/or any of its parents, affiliates or subsidiaries that are provided to **Mobile Bandit Inc** by Merchant (collectively, the Merchant Marks) for use in connection with this Agreement and for general advertising and/or promotion of Merchant as a subscriber of the **Mobile Bandit Inc** Application. **Mobile Bandit Inc** will not grant, sub-license, or otherwise authorize others to use the Merchant Marks without Merchant's prior written approval which will not be unreasonably withheld. **Mobile Bandit Inc** acknowledges that the Merchant Marks and the goodwill associated therewith are valuable properties of Merchant and that this license grants it no rights in the Merchant Marks except as specifically set forth herein. All such rights of **Mobile Bandit Inc** to use, reproduce, display, and transmit the Merchant Marks will terminate upon the termination of this Agreement by either party.
- b. **Mobile Bandit Inc** hereby grants Merchant a non-exclusive, royalty free license to use, reproduce, display, distribute and transmit the logos, service marks, symbols, trade names and/or trademarks owned or controlled by **Mobile Bandit Inc** that are authorized by **Mobile Bandit Inc** (collectively, the **Mobile Bandit Inc** Marks) solely for use in connection with this Agreement and for general advertising and/or promotion of Merchant as a subscriber of the **Mobile Bandit Inc** Application. All such rights are subject to **Mobile Bandit's** approval which shall not be unreasonably withheld.

Merchant acknowledges that the **Mobile Bandit Inc** Marks and the goodwill associated therewith are valuable properties of **Mobile Bandit Inc** and that this license grants it no rights in the **Mobile Bandit Inc** Marks except as specifically set forth herein. All such rights of Merchant to use, reproduce, display, and transmit the **Mobile Bandit Inc** Marks will terminate upon the termination of this Agreement by either party.

## 6. REPRESENTATIONS AND WARRANTIES OF MERCHANT

Merchant represents and warrants that:

- a. Merchant is a duly organized entity in good standing in each the state of its organization and has the power and authority to enter into and perform its obligations under this Agreement.
- b. all Merchant Marks are owned by or licensed to Merchant and may be lawfully used for the purposes of this Agreement as provided herein.
- c. entering into this Agreement shall not now or with the passage of time constitute a breach by Merchant of any existing contract or agreement.
- d. that no Content posted by Merchant on any Member Site shall violate or infringe upon the rights or any third party or violate any local, provincial or federal law, rule or regulation.
- e. the person executing this Agreement on behalf of Merchant has been duly authorized and empowered to execute this Agreement.

## 7. INDEMNIFICATION

**Mobile Bandit Inc** agrees to defend and hold harmless Merchant, its subsidiaries, affiliates, parents, employees, officers, directors, shareholders, agents, attorneys, assignees, licensees or any other person or entity acting for any of the aforementioned or on their behalf (the Merchant Parties), at its own expense, from and against any damages, liabilities and losses, including reasonable attorney's fees and court costs arising out of or resulting from any claim or action against the Merchant Parties or any of them, based on a claim that **Mobile Bandit Inc** has violated or infringed on any right of any third party, or breached any warranty set forth in this Agreement. **Mobile Bandit Inc** shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise.

However, **Mobile Bandit Inc** shall not settle or compromise any matter in anyway that acknowledges or imposes on any of the Merchant Parties any liability or damage without the prior written approval of such party. Merchant shall provide **Mobile Bandit Inc** with prompt written notification of any such claim or action and copies of all materials and papers served upon it and shall reasonably cooperate with **Mobile Bandit Inc** at **Mobile Bandit Inc's** expense, in the defense of any such action. This indemnity shall not apply to any claims made by third parties relating to any content provided by Merchant or the failure of Merchant to provide any goods or services. This indemnity shall survive the expiration or termination of this agreement.

Merchant agrees to defend and hold harmless **Mobile Bandit Inc** and the Platform provider and their respective subsidiaries, affiliates, parents, employees, officers, directors, shareholders, agents, attorneys, assignees, licensees or any other person or entity acting for any of the aforementioned or on their behalf (the **Mobile Bandit Inc** Parties), at its own expense, from and against any damages, liabilities and losses, including reasonable attorney's fees and court costs arising out of or resulting from any claim or action asserted against **Mobile Bandit Inc**. Parties or any of them, based on a claim that Merchant has violated or infringed on any right of any third party or breached any warranty set forth in this Agreement. Merchant shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise. However, Merchant shall not settle or compromise any matter in way that acknowledges or imposes on any of the **Mobile Bandit Inc** Parties any liability or damage without such party's prior written approval. **Mobile Bandit Inc** shall provide Merchant with prompt written notification of any such claim or action and copies of all materials and papers served upon it or the Platform owner or licensee and shall reasonably cooperate with Merchant at Merchant's expense, in the defense of any such action. This indemnity shall not apply to any claims made by third parties relating to any content provided by **Mobile Bandit Inc** or the Platform provider. This indemnity shall survive the expiration or termination of this agreement.

## **8. LIMITATION OF LIABILITY**

EXCEPT AS EXPRESSLY SET FORTH UNDER THE INDEMNIFICATION AND CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUE OR PROFITS, IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT EVEN IF THE LIABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS DUE TO THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF THE LIABLE PARTY.

Because of the extreme difficulty of fixing actual damages for any failure or breach by **Mobile Bandit Inc** Merchant agrees that **Mobile Bandit's** entire liability, and Merchants exclusive remedy for any breach, other than an interruption in service or blackout, or breach of confidentiality, shall be limited to the amount of one month's charges from **Mobile Bandit Inc** to Merchant.

Any claim of damage based on such interruption shall be limited to Merchant's actual out of pocket losses (not expenses) resulting from such interruption but in no event shall such damages or **Mobile Bandit's** liability therefor exceed the amounts billed and actually paid by the Merchant with respect to the affected Merchant Site(s) for the billing interval in which the interruption occurs.

## **9. FORCE MAJEURE**

**Mobile Bandit Inc** shall not be deemed to be in breach of this Agreement if any inability to provide the **Mobile Bandit Inc** under this Agreement is due to events beyond its control including, but not limited to, acts of God or nature, war, civil commotion, labor disputes, equipment failures, strikes, fire, flood, or other casualty, government regulation or restrictions, weather conditions, breaches or failures to perform by third parties and mechanical, power or communications failures. If, after the date of this Agreement, any law, regulation, or ordinance, whether federal, state, or local becomes

effective which substantially alters **Mobile Bandit**'s ability to perform the **Mobile Bandit Inc** hereunder, **Mobile Bandit Inc** shall have the right to terminate this Agreement on 30 days written notice.

## **10. DISCLAIMER OF WARRANTIES**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT **Mobile Bandit Inc** DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LAWS OF DIFFERENT JURISDICTIONS VARY WITH RESPECT TO THE ENFORCEABILITY OF WARRANTY DISCLAIMERS. THIS LIMITATION IS SUBJECT TO SUCH LIMITATIONS WHERE THEY APPLY.

## **11. NON-EXCLUSIVITY**

Merchant has been informed and understands that **Mobile Bandit Inc** is now and shall hereafter be offering the **Mobile Bandit Inc** to other companies and/or parties that conduct business of the same type and which are or may be competitive with the business of Merchant and Merchant agrees that providing the **Mobile Bandit Inc** to such other companies shall not be a violation of this Agreement.

## **12. RELATIONSHIP OF THE PARTIES**

This Agreement is not intended to nor shall it be construed to make the parties joint venturers, partners, employees, agents or other representatives of the other.

## **13. WAIVER OR MODIFICATION**

No waiver, modification or amendment of this Agreement shall be valid unless same is in writing and executed by both parties. Nor shall any waiver of any provision or breach of any provision of this Agreement shall be deemed, or shall constitute a waiver of any other provision, whether similar or not, or of a subsequent breach of the same provision nor shall it constitute a continuing waiver.

## **14. ASSIGNMENT**

Neither party shall have the right to assign this Agreement without the prior written consent of the other party. Any purported assignment without such written consent shall be null and void and of no force or effect.

## **15. CONFIDENTIALITY**

Each party agrees and shall cause its employees to agree to hold all Confidential Information in trust and confidence and, except as may be authorized by the other party in writing, shall not use such Confidential Information for any purpose other than as expressly set forth in this Agreement or disclose any Confidential Information to any person, company or entity, except to the extent necessary to comply with the law or the valid order of a court of competent jurisdiction, in which event the disclosing party shall so notify the non-disclosing party as promptly as practicable (and, if possible, prior to making any disclosure) and shall seek confidential treatment of such information. As used herein, "Confidential Information" shall mean any information relating to or disclosed

during the term of this Agreement which is or should be reasonably understood to be confidential or proprietary to either party, including but not limited to data and information concerning the parties' customers and/or consumer lists, the material terms of this Agreement, technical processes, source code, product designs, sales, cost and other unpublished financial information, product and business plans, projections and marketing data; without limitation, any information designated as "Confidential" shall be deemed Confidential Information. Confidential Information shall not include, and neither party will be liable for disclosure of, any information received by the receiving party under this Agreement if the information;

- (a) is generally available to or known to the public through no wrongful act of the receiving party;
- (b) was previously known by the receiving party through no wrongful act of the receiving party;
- (c) was independently developed by the receiving party; or
- (d) was disclosed to the receiving party by a third party under no obligation of confidentiality to the other party.

## **16. INVALIDITY**

If any provision of this Agreement is found by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable said provision shall be considered void to the extent of such invalidity, without invalidating or rendering unenforceable any of the remaining provisions of this Agreement.

## **17. BINDING EFFECT**

This Agreement and its terms and conditions shall be binding on the parties hereto and on their successors and assigns. **Venue and Jurisdiction** Any action brought to enforce this Agreement or the rights of any of the parties hereto shall be commenced and maintained in the Province of British Columbia, Vancouver. Merchant agrees that the aforesaid jurisdiction shall be the venue for any such action and hereby waives any right it may have to later object to such venue. This Agreement shall be interpreted and enforced under and pursuant to the laws of the Province of British Columbia. (You may have a problem with this with some Merchants) In the event of any such action the prevailing party shall be entitled to recover reasonable attorneys fees and court costs.

**ENTIRE AGREEMENT**, This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior agreements, representations and understandings of the parties. Mobile Bandit may change these terms anytime. Each time a merchant uses our site he/she is subject to any changes we have made to our terms. It is the merchants' responsibility to check the terms each time in order to be aware of any and all changes.