



5973 Avenida Encinas, Suite 101
Carlsbad, CA 92008

LOCAL MERCHANT OFFERS AGREEMENT

This Local Merchant Offers Agreement (the “**Agreement**”) is entered into and made effective as of _____, 201_ (the “**Effective Date**”), by and between Verve Wireless, Inc., a Delaware corporation (“**Verve**”) and _____, a _____ corporation having its principal place of business at _____ (“**Customer**”) (each of Verve and Customer, a “**Party**” and collectively, the “**Parties**”). The Parties hereby agree as follows:

1. DEFINITIONS.

1.1 “Ad” means a text or display advertisement distributed by Verve via the Services in the Verve Network for Customer.

1.2 “Applicable Law” means all applicable federal, state and local laws, statutes, ordinances, rules and regulations of any applicable jurisdiction, including but not limited to the Federal Trade Commission Act, CAN-SPAM Act of 2003 and/or any applicable rules or regulations of the Federal Trade Commission and/or relating to online privacy.

1.3 “Campaign Data” means data and information relating to Ad delivery, performance or metrics, including without limitation, click-through rates and conversions or other reporting data collected by Verve through the Services, except for Aggregate Data derived therefrom.

1.4 “Confidential Information” means all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

1.5 “Customer Content” means any text, images, data or other content provided by Customer for incorporation into Ads (including, where applicable, previously-created Ads).

1.6 “Impression” means a single instance of an Ad being displayed to an end-user through the Verve Network.

1.7 “Verve Content” means any text, images, design elements, data or other information or content provided by Verve for use in or as part of Ads and any other marketing or promotional materials or content provided by Verve in connection with this Agreement.

1.8 “Verve Dashboard” means a Verve hosted user interface for the display or delivery of Campaign Data.

1.9 “Verve Network” means Verve’s network of mobile publishers, properties, exchanges and ad networks which offer display advertising inventory and other advertising inventory to Verve, whether directly or indirectly.

1.10 “Verve Network Data” means data associated with the Verve Network (other than “Campaign Data”) including the mobile websites, apps and content of the publishers and partners in the Verve Network and the end users thereof.

1.11 “Verve Technology” means (a) any of Verve’s technology, software, embeddable runtime components, processes, tools, and business methods used to provide the Services; and (b) any concepts, ideas, models, procedures, know-how, techniques, templates, software, utilities, designs, works of authorship, inventions, methodologies and technical information that Verve develops, creates or acquires to provide the Services.

1.12 “Services” will mean, collectively, the services offered by Verve, online and otherwise, to provide an offer/advertisement distribution service/platform which, among other things, enables the automatic targeting, distribution and optimization of Ads in the Verve Network, as set forth in more detail on Exhibit A (Services Description).

2. SERVICES.

2.1 Access to the Services. Verve hereby grants Customer access to the Services under the terms and conditions of this Agreement.

2.2 Ads. Customer will deliver Customer Content (including any Ads) to Verve that Customer wishes Verve to include in an Ad to be distributed through the Services, using the method(s)/processes described in Exhibit A.

(a) Customer is solely responsible for the substantive content (e.g., text, language), graphical imagery, user data captured, graphical features and behaviors, and technical format of any Customer Content and Verve maintains absolute discretion to review, accept, or reject any Customer Content in accordance with Verve’s acceptable content and privacy policies. Verve further reserves the right to place enhanced notice and choice icons in any Ad as necessary to comply with any industry self-regulatory guidelines. If Customer requests that Verve instead obtain any Customer Content on Customer’s behalf, Verve performs this service solely as a courtesy and Customer shall remain fully responsible for all Customer Content.

(b) Subject to the foregoing, Verve agrees: (i) to include such Customer Content in all Ads, including any and all disclosures requested and provided by Customer (including privacy disclosures); and (ii) that all Ads created by Verve will comply in all material respects with applicable templates and formats approved by Customer.

2.3 Verve Inventory. While Verve focuses on aggregating premium mobile advertising inventory for the Verve Network, the Parties acknowledge Verve cannot monitor all mobile websites, apps and content and that Verve makes no representations with respect to such websites, apps or content within its third party network. If Customer reasonably determines that the placement of any Ad by Verve harms the goodwill or reputation of Customer or disparages or brings Customer into disrepute, then Verve shall use commercially reasonable efforts to remove such Ad promptly following receipt of Customer’s written notice thereof to Verve.

2.4 Reports. As part of the Services, Verve shall deliver standard reports to Customer through the Verve Dashboard.

2.5 Privacy and Data Security. Verve uses commercially reasonable means designed to protect the security and privacy of all Campaign Data that is appropriate to the nature of the content collected. Customer agrees to take reasonable steps to protect all data provided to Customer by Verve that are appropriate to the nature of the content provided.

3. FEES.

3.1 Pricing and Payment. In consideration for Verve providing the Services, Customer agrees to pay all applicable fees and other charges as provided for in **Exhibit B** attached hereto. All payments must be in U.S. dollars. If Customer fails to pay any amounts when due, Verve reserves the right to suspend the Services and stop serving Ads until Customer pays all amounts payable.

3.2 Invoices. Verve will invoice the amount owed by Customer each month, calculated based on the number of Ads served in the Verve Network, and Customer shall pay each invoice within thirty (30) days of receipt.

3.3 Discrepancy. Invoices will be based on Verve report of actual Ads delivered. In the event of a good faith dispute by Customer of an invoice, Verve will work with Customer to identify and resolve the cause of the discrepancy and Customer shall pay any undisputed amount of the related invoice as per the terms in

Section 3.2. Upon resolution of any discrepancy, Customer shall pay the remaining, agreed upon, balance of such disputed invoice.

3.4 Taxes. All amounts payable hereunder shall exclude all applicable sales, use and other applicable taxes. Customer will be responsible for payment of all such applicable taxes (other than taxes based on Verve's income), if any.

4. PROPRIETARY RIGHTS.

4.1 License to Content. Subject to the terms and conditions of this Agreement, Verve grants Customer, during the Term, a non-transferable, non-exclusive license to reproduce, distribute, transmit, publicly display and publicly perform and otherwise use Verve Content for the purpose of exercising its rights under this Agreement. Subject to the terms and conditions of this Agreement, Customer grants Verve, during the term, a non-transferable, non-exclusive license to reproduce, distribute, transmit, publicly display and publicly perform and otherwise use Customer Content for the purpose of exercising its rights and performing its obligations hereunder.

4.2 Access to Verve Dashboard. Subject to the terms and conditions of this Agreement, if Verve makes the Verve Dashboard available to Customer as contemplated under the terms of this Agreement, during the term, Verve will provide Customer access to the Verve Dashboard for the purpose of exercising its rights and performing its obligations hereunder.

4.3 Verve Technology. Subject to the rights granted in this Agreement, Verve and/or its licensors (if any) retain all right, title and interest in and to the Services, the Verve Technology and the Verve Dashboard, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing. Customer will have no rights to the Services, the Verve Technology or the Verve Dashboard for any purposes beyond the scope of the rights granted in this Agreement.

4.4 Campaign Data. As between the Parties and subject to the restrictions set forth below, Customer shall own all right, title and interest in and to the Campaign Data, provided that Customer hereby grants Verve the perpetual right to use, reproduce, adapt, and publicly perform the Campaign Data as necessary to provide the Services, and for the creation of anonymized aggregated data, industry reports and/or statistics ("**Aggregate Data**") that do not identify Customer, to be used for Verve's business purposes and industry reporting/education.

4.5 Verve Network Data. Verve Network Data shall continue to be owned and controlled by the publishers and partners in the Verve Network and/or Verve, as set forth in the existing agreements between such publishers and partners and Verve, and nothing herein shall give rise to any ownership right or license to Customer of such data.

5. CONFIDENTIALITY. Each Party agrees that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party. Each Party further agrees to retain in confidence, not to disclose to third parties, and not to use except as necessary in connection with performance hereunder, any Confidential Information of the other Party. Confidential Information will not include information that: (a) is or becomes publicly available or enters the public domain through no fault of the recipient; (b) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (c) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; or (d) is independently developed by the recipient without any use of or by persons who have access to the other Party's Confidential Information. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law.

6. WARRANTY AND DISCLAIMER.

6.1 Verve Warranties. Verve represents and warrants that: (i) it will perform the Services in accordance with industry standards; (ii) it uses commercially reasonable efforts to detect and remove any viruses, trojan horses and other malware from the technology used to provide the Services; (iii) the Services themselves (apart from the Customer Content or an Ad) operates in conformance with all Applicable Laws; and (iv) Verve will not insert any Verve-owned content into an Ad that (A) gives rise to criminal or civil liability or infringe any copyright, patent, trademark or service mark, trade secret rights or any other personal, moral, contract, property or privacy right of any third party; or (B) contains or promote viruses, obscene, abusive, violent, bigoted, or hate-oriented content.

6.2 Customer Warranties. Customer represents and warrants that it intends to honor the offers of any Customer Content it provides in accordance with the terms contained therein. Customer represents and warrants that: (i) it holds all necessary rights to permit the use, reproduction, distribution, transmission or display of all Customer Content provided to Verve under this Agreement and any materials to which users can link through to from such Customer Content, or any products or services made available to users through the Customer Content and such Customer Content will not (A) give rise to criminal or civil liability or infringe any copyright, patent, trademark or service mark, trade secret rights or any other personal, moral, contract, property or privacy right of any third party; or (B) contain or promote viruses, obscene, abusive, violent, bigoted, or hate-oriented content; (ii) the use, reproduction, distribution, transmission or display of Customer Content or any materials to which consumers can link through to from such Customer Content, or any products or services that are the subject of any Ads do not violate any Applicable Laws; (iii) the application and/or landing page for each Ad (i.e., the Customer's website page where a consumer is directed when the consumer clicks on the Customer Content, fills in a registration form or takes a similar action) contains a prominent link to Customer's privacy policy, which policy shall comply with all applicable privacy laws and general industry accepted privacy practices; (iv) no Ads are targeted to children under the age of thirteen (13) and/or offers products or services that are illegal for minors to buy, possess or participate in; and (v) it will not load any computer program onto an individual's computer or mobile device, in connection with the Ads, including without limitation programs commonly referred to as adware or spyware but excluding cookies to the extent disclosed in Customer's privacy policy, without Verve's prior written approval and the individual's express consent after receiving clear and conspicuous notice about the nature of the application to be downloaded.

6.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VERVE PROVIDES ALL SERVICES "AS IS" AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VERVE DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES OR AGREEMENTS OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. VERVE MAKES NO PROMISE OR GUARANTEE ABOUT THE EFFECTIVENESS OF ANY SERVICES.

7. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM OR THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ARISING FROM ANY SOURCE, EVEN IF THE PARTY FROM WHICH SUCH DAMAGES ARE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL VERVE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID OR PAYABLE TO VERVE UNDER THE INSERTION ORDER UNDER WHICH THE CLAIM IS MADE. THESE LIMITATIONS ARE INTENDED

TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE FOREGOING LIMITATIONS SHALL NOT APPLY WITH RESPECT TO EACH PARTY'S INDEMNIFICATION OBLIGATIONS OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS.

8. INDEMNIFICATION.

8.1 By Verve. Verve agrees to indemnify, hold harmless and defend Customer, its officers, directors, employees and agents from and against any third-party losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Verve Technology or Verve Content infringes any U.S. patent, trademark, copyright or other U.S. intellectual property right. If such a claim is made or appears possible, Customer agrees to permit Verve, at Verve's discretion, to procure the right for Customer to continue to use the Verve Technology, or to modify or replace the applicable Verve Technology to make it non-infringing. If Verve determines that none of these alternatives is reasonably available, Verve may terminate this Agreement. This Section 8.1 shall not apply if the alleged infringement arises, in whole or in part, from the Verve Inventory or the Customer Content.

8.2 Customer. Customer agrees to indemnify, hold harmless and defend Verve, its officers, directors, employees and agents from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any third-party claim arising from or relating to any Customer Content.

8.3 Process. The foregoing indemnification obligations are conditioned on the indemnified Party: (a) notifying the indemnifying party promptly in writing of such action; (b) reasonably cooperating and assisting in such defense; and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying Party with the understanding that the indemnifying Party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified Party, without consent.

9. TERM; TERMINATION.

9.1 Term. This Agreement will commence on the Effective Date and run for a period of one (1) year at which point, it will automatically renew for successive one (1) year terms, unless either Party provides written notice to the other Party of its intent not to renew at least sixty (60) days prior to the end of the then-current term.

9.2 Termination for Breach. Each Party may terminate this Agreement upon notice to the other Party if such other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof.

9.3 Right to Suspend. Verve reserves the right, in its reasonable sole discretion, to immediately suspend the Services or any portion thereof: (i) if any Ad produces, or is reasonably likely to produce, a detrimental impact on other users or the operational performance of the Service or Verve Technology; or (ii) to protect

against the commission of suspected illegal activities; or (iii) if the provision of the Services or delivery of a particular Ad would likely violate any Applicable Law. Verve will attempt to contact Customer in advance of any such suspension, and, if possible, work with Customer to avert such action, but otherwise shall notify the Customer of a suspension under this Section 9.3 as soon as possible.

9.4 Effect of Termination. In the event of termination or expiration of this Agreement, Customer will promptly pay to Verve all amounts due and outstanding. The provisions of Sections 4, 5, 6, 7, 8, 9.4 and 10 will survive the termination or expiration of this Agreement.

10. GENERAL. This Agreement, together with all orders hereunder, is the entire agreement between the parties on the subject matter hereof, and it supersedes all prior agreements, understandings and discussions on this subject matter. The Agreement cannot be amended except by a writing signed by both Parties. If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force. No waiver hereunder will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Each Party will comply with all Applicable Laws in performing its rights and obligations under this Agreement. This Agreement will be governed in accordance with the laws of the State of Delaware, without regard to its conflict of laws provisions. In addition, Verve and Customer agree that sole jurisdiction to enforce or construe this Agreement shall lie in Delaware. Nothing in this Agreement will be construed to create any agency, partnership, or joint venture between Customer and Verve, and neither Party will represent itself as an agent or legal representative of the other Party. All notices relating to this Agreement will be in writing and will be sent by means of facsimile or certified mail, postage prepaid, to the Party at its address noted herein. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement. Neither Party will issue any press release or make any public announcement(s) relating to this Agreement without express prior written consent of the other Party, such consent not to be unreasonably withheld or delayed by the consenting Party. Neither this Agreement, nor any of the rights and obligations herein, may be assigned by either Party without the prior written consent of the other Party, except that no such consent shall be required in the event of an assignment to a successor in interest by way of a merger, consolidation or sale of all or substantially all of a Party's assets. Any attempt to assign this Agreement or the rights and obligations herein in breach of this Section 10 shall be of no force or effect.

The Parties agree to the above terms and have executed this Agreement as of the Effective Date.

CUSTOMER: _____

By: _____

Name: _____

Title: _____

VERVE WIRELESS, INC.

By: _____

Name: _____

Title: _____

Exhibit A

SERVICES DESCRIPTION

AD MANAGER ACCESS

1. OVERVIEW

The Services are designed to give access to Verve's proprietary Ad Manager technology ("ADM") providing mobile advertising reach extension for publishers within the markets in which they sell mobile advertising. Verve's location-powered mobile display advertising platform combines high quality inventory, engaged consumers, real time opportunity, and industry leading mobile location technologies to drive business for local merchants. ADM access gives Customer a scalable method of providing the maximum number of its local merchant partners with industry leading mobile advertising solutions.

2. IMPLEMENTATION/EXECUTION

2.1 ADM Access. Verve will provide ADM access to Customer to support the following:

2.1.1 Customer Management: Provision & activate new Ad campaigns on the ADM system. Verve will also provide specific endpoints to update Ad information should such information change.

2.1.2 Ad Unit Management: Facilitate the creation and updates of/to specific Ads (including the delivery of Customer Content (if any)).

2.1.3 Campaign Management: Initiate a campaign with a begin and an end date and targeting information (if any). Verve will also provide a mechanism to de-activate active Ads for the purpose of terminating or suspending campaigns for any reason.

2.2 Campaign Creative.

2.2.1 Customer shall upload all campaign creative elements to the ADM system for each Ad and Customer shall be solely and exclusively liable for the quality, functionality, and all other aspects of the Ad campaign creative. Verve's sole responsibility for Ad campaign creative shall be to serve such Ad campaign creative per the terms of this Agreement.

2.3 Campaign Execution

2.3.1 Customer will provide pre-determined campaign budgets and specify campaign duration, delivery requirements and any other information required to run each Ad campaign.

2.3.2 Advertising budgets (and advertising campaign duration) are determined by Customer, in its sole discretion, provided that each Ad campaign budget must include no less than fifty thousand (50,000) Impressions per thirty (30) day period.

2.3.3 To the extent an Ad campaign is geo-fenced, Customer and Verve will mutually agree to the specific geo-targeting, zip code targeting or DMA targeting.

2.3.4 The Services shall provide on-going management of active Ad campaigns and optimize such Ad campaigns using the Service's targeting and optimization capabilities to increase Ad performance, including click-through-rates and conversions, if applicable.

2.3.5 Verve shall have the right to block any Ads that, in Verve's reasonable discretion, pose a channel conflict with Verve's premium National ad sales program, or if Verve Network partners require Ads to be blocked due to channel conflicts with their Local sales programs.

2.4 Reporting. Reporting provided to Customer via the Verve Dashboard shall include, without limitation, the following:

2.4.1 Monthly reports, per Ad campaign, which shall include the following:

- Ad campaign name/ID
- flight dates
- impressions
- clicks
- unique users

- conversion data (if available)

2.4.2 Customer may, on a self-service basis, access more frequent than the monthly reporting (e.g. daily or weekly) provided per Section 2.4.1 above via Customer's access to ADM.

2.5 Operational Support. Verve will assign an account manager who will work closely with Customer to manage and implement the Services. This person's responsibilities shall include, but is not restricted to, setting-up the ADM, testing inventory sources and reporting deliveries.

Exhibit B

FEES

- Verve will serve the Ads and Customer will pay on a cost per thousand Impressions ("CPM") basis as calculated and invoiced by Verve on a monthly basis.
- Customer shall pay the then-current CPM, as updated (if at all) and provided by Verve to Customer from time to time during the term of this Agreement, for standard banner and geo-fenced Ad campaigns, at the time the Ad campaign was entered to the ADM system regardless of duration of such Ad campaign.