

## **ADVERTISER LISTINGS SYNDICATION AGREEMENT**

This ADVERTISER LISTINGS SYNDICATION AGREEMENT (the "Agreement") is entered into on the date of the application being submitted to Search123 and the individual or entity named in the online application to participate in Search123's Traffic Partner Program located at ("Online Application") submitted by the prospective partner ("Partner") and between ValueClick International Limited with Address at: Penthouse Floor, Apex Building, Blackthorn Road, Sandyford, Dublin 18, Ireland ("Search123"), Vat number: IE 9690375D; Registered in Ireland number 455900

WHEREAS, Search123 operates a pay-per-click ("PPC") search engine service located at in which online advertisers list their websites and bid on keywords in order to attract visitors searching for their products and services (the "Search123 Service");  
WHEREAS, Partner operates a site entity named in the Online Application ("Partner Service").  
WHEREAS, Partner desires to include Search123's paid advertiser listings within the search results displayed on the Partner Service and Search123 desires to enable such integration of its advertiser listings under certain terms and conditions;  
NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

### **Definitions.**

1. "Accepted Countries" means the following countries: Great Britain; Ireland, France, Germany, Denmark, Sweden, Italy, Spain or United States of America (partner must advise of which countries they require feeds for); Search123 will only accept and credit Partner for Referrals originating from IP addresses from Accepted Countries, the determination of which shall be based solely on Search123's proprietary tracking and validation technology. Search123 retains the right to change its list of Accepted Countries at any time by providing Partner with three (3) days prior written notice of such change.
2. "Destination Page" means the Search123 advertiser's webpage accessed by an Internet User by clicking on a Search123 Advertiser Listing.
3. "Gross Click-Through Revenue" means the total amount of money generated by Search123 for Referrals under the terms of this Agreement and also from any provider Search123 has integrated now or wishes to integrate at any point in the future.
4. "Internet User" shall mean a natural person, performing a Query. Searches and clicks generated by hit bots, robots, spiders, scrapers, multiple clicking scripts, zeroframes, iframes, IRC cheats, or other software programs which may now exist or which may be developed in the future for artificially generating Internet searches or clicks, or any other mechanical or manual means of artificially generating Internet searches or clicks, shall be specifically excluded in the definition of Internet User.
5. "Partner Affiliate" shall mean a website that distributes the Partner Service or refers Internet Users to the Partner Service that are approved by Search123 to receive the Search123 Search Results. Prior to providing any Partner Affiliate with the Search123 Advertiser Listings, Partner shall submit a written request for approval to Search123, which request shall include the name, website URL address, proposed implementation date, and anticipated query volume of each proposed Partner Affiliate. Search123 shall provide a written approval or disapproval within twenty five (25) business days of receipt of such request from Partner. Search123 shall have the absolute right to approve, conditionally approve or disapprove any proposed Partner Affiliate, at its discretion, or to terminate Partner Affiliates at any time subsequent to approval.
6. "Partner Site" shall mean the default Internet home page that is located at the site the entity named in the Online Application
7. "Query" shall mean a bona fide English-language Internet search initiated by an Internet User on the Partner Site (or on a Partner Affiliate, if applicable) by actively entering single keywords or keyword phrases into a search box or by clicking on a text-based link. The Query, which shall not be modified by Partner in any way, generates Search123 Search Results (if available) that are relevant to such Query.
8. "Referral" occurs when an Internet User from an Accepted Country conducts a Query and clicks on a Search123 Advertiser Listing and accesses a Destination Page. Searches and clicks that are incentivised in any way (whether for monetary compensation or other

form of direct or indirect compensation), created as a result of a so-called "cheat group," or generated by any form of SPAM, including unsolicited email, newsgroups, ICQ, unauthorized adjustment of browsers shall not be counted as Referrals. The determination of whether a Referral occurs shall be based solely on Search123's proprietary tracking and validation technology.

9. "Search123 Advertiser Listing" means a text-based site title, description (maximum 255 characters, including spaces) and URL hyperlink (with tracking code) that is drawn from Search123's proprietary advertiser database and/or through its third party relationships in response to a Query for the purpose of generating a Referral.

10. "Search123 Feed" shall mean the text-based data feed, or other mutually acceptable form of technical implementation, that enables the Partner (and the Partner Affiliates, as applicable) to present the Search123 Search Results in response to an Internet User's keyword search query.

11. "Search123 Search Results" means a set of Search123 Advertiser Listings provided by Search123 through the Search123 Feed, these include all and any Advertiser Listings presented through the Search123 Feed. The Search123 Search Results, when integrated into the Partner Service, will appear on the Partner Service or Partner Affiliate search results page (as applicable) without any modification to the content of each Search123 Advertiser Listing as provided by Search123

12. "Traffic Quality Scale" means the scale used by Yahoo! (Search123's Supplemental Feed Partner) to measure traffic quality in a manner consistent among all Yahoo! search marketing publishers and syndication partners.

#### **Implementation.**

13. Search123 will provide Partner with access to the Application Programming Interface (the "API") for the Search123 Feed and shall provide commercially reasonable assistance to Partner in completing the implementation of the Search123 Feed. The web pages containing Search123 Search Results shall be served and hosted by Partner or by the Partner Affiliate (as applicable). The database and search algorithm (and any modifications thereto) used to generate the Search123 Search Results are proprietary to Search123 and shall remain entirely within Search123's control. Search123 retains the right to modify the content of the Search123 Search Results, as well as the underlying database and search algorithm, at its absolute discretion without providing any notice to Partner.

14. Traffic Increases. Partner will provide Search123 with seven (7) days prior written notice of any increase in search volume that Partner reasonably anticipates will increase Partner's then-current search traffic volume by twenty-five percent (25%) or more.

15. Partner Payment. Search123 shall pay Partner a total of Fifty percent (50%) of the Gross Click-Through Revenue received by Search123.uk.com on a monthly basis (the "Partner Revenue"). The Partner Revenue shall be paid within Thirty Five working days (35) of the close of the month in which the Partner Revenue was earned under the terms of this Agreement. If Search123 terminates this Agreement, final payment may be delayed for as long as sixty (60) additional days in cases in which the number of Referrals has not been validated to the satisfaction of Search123. In such cases where overpayment has been deemed to be paid by Search123 to Partner, Search123 shall deduct that amount from the following months Partner Payment.

For the relevant VAT jurisdictions, Search123 and Publisher hereby acknowledge and agree that Search123 shall provide Publisher with a value added tax ("VAT") invoice. Publisher agrees not to raise any VAT invoices with respect to the revenue due to it pursuant to this Agreement. Search123 will complete invoices showing the publishers' address, VAT Registration number, together with all details which constitute a full VAT invoice. Publisher agrees to notify Search123 in the event Publisher ceases to be registered under the VAT number delineated in this Agreement, transfers or sells its business or becomes registered under a different VAT number. Search123 agrees to make a new agreement in the event that the publisher's VAT registration changes. In the event Search123 intends to outsource responsibility for issuing VAT invoices under this Agreement to a third party, Search123 shall notify the Publisher of such outsourcing.

16. Traffic Quality. The Partner Affiliate's offering(s) need to remain at a content TQ 7 or above of the Traffic Quality Scale. The Partner Affiliate is aware that Termination may occur if it falls below TQ 7 by order of Search123 based on the Traffic Quality Scale where: (i) Publisher fails within 4 weeks to bring the traffic quality score to TQ 7; or (ii) following such cure period, the traffic quality score is less than TQ 7 in any subsequent report, **provided** that (a) Search123 make regular reports available to Partner Affiliate setting out the traffic quality score for the Partner Affiliate as measured on the Traffic Quality Scale; and (b) Search123 have verbally communicated this to the Partner Affiliate.

#### **Term.**

17. This Agreement shall commence upon the Effective Date and subject to clause 5 shall continue in full force for twelve months (12) and will renew for further periods of twelve months (12) unless written notice of termination is received by Search123 at least 90 Days prior to the end of the initial twelve month period or thereafter prior to the end of the relevant subsequent twelve month period.

18. This Agreement shall automatically terminate if Partner has not implemented the Search123 Feed within thirty (30) days of the Effective Date.

19. Effects of Termination. Upon termination of this Agreement, each party shall disable the Search123 Feed for the Partner and Partner Affiliates (as applicable) and the license granted hereunder by Search123 and the Licenses granted hereunder shall cease, except as the parties may agree in writing.

20. Exclusivity. This Agreement is intended to create an exclusive relationship between the parties that would limit the ability of either party to enter into similar agreements with third parties. Specifically with Google, Overture, Webfinder, Mirago and Espotting.

#### **Licenses.**

21. Database License. During the Term of this Agreement, and subject to the terms and conditions contained in this Agreement, Search123 hereby grants to Partner a royalty free, non-transferable, non-exclusive license, to (i) use, transmit, integrate, display and distribute the Search123 Search Results (the "Content") via the Partner Service, to Internet end-users on the Partner Site, and (ii) subject to the terms hereof, sublicense the Content to Partner Affiliates, provided that such Partner Affiliates shall enter into a written contract with Partner by which the same license and trademark limitations and restrictions are placed on Partner Affiliates as are placed hereby on Partner. The rights granted by Search123 hereunder, including without limitation the license regarding the Content, are limited to the display and distribution as part of the Partner Service.

22. Trademark License. During the Term of this Agreement, each party hereby grants to the other party a non-exclusive, non-sub-licensable, non-transferable, royalty-free right and license (the "Trademark License") to use, display and reproduce such party's name, logo, trademarks and service marks (the "Trademarks"), solely for the purposes of displaying and maintaining the Search123 Service and Partner Service as set forth in this Agreement. Each party acknowledges that the other party's Trademark is and will remain the exclusive property of such party and all use by each party of any Trademark will inure solely to the benefit of the owning party. Neither this Agreement nor any rights granted hereunder will operate as a transfer of any rights in or to any Trademark, except for the limited rights expressly granted under this Agreement. No party will take any action that would undermine, conflict with, or be contrary to the intellectual property rights and interest of the other party, including, without limitation, any use of, or attempt to register, any trademark, service mark or trade name substantially similar to any other party's Trademark.

23. Content & Data Ownership. Search123 shall retain all right, title and interest in, to and under the API, Content, algorithm and related technology, and all traffic data collected under this Agreement. Search123 will retain all right, title and interest in, to and under the intellectual property included in the Content (including, without limitation, ownership of all copyrights and other intellectual property rights therein). Other than as expressly set forth herein, Partner and its agents, officers, directors, employees, related parties, affiliates and representatives will not (i) sell, resell, rent, license, sublicense, transfer, assign or redistribute in any way the Content except as may be expressly permitted herein; or (ii) attempt to reverse engineer, decompile, disassemble or otherwise attempt

to derive any of Search123's Content, algorithms, databases, computer programs, ontology, directory structure, patents, copyrights, or other proprietary rights or Search123's methodology related to the creation and compilation of Search123 URLs from the Content or any other information furnished to Partner by Search123, or permit any third party to attempt any of the foregoing.

**Online Reporting; Books & Records; Auditing.**

24. Online Reporting. Search123 shall provide Partner with a username and password that allows Partner to access a secure, web-based online reporting interface that details the number of Referrals and the corresponding Gross Click-Through Revenue generated by the Partner through the date and time of the report ("Partner Reports"). The Online Reporting is an estimate of Gross Click-Through revenue and not the actual amount, the Partner Reports are subject to revision at any time prior to the issuance of payment to the Partner, based on Search123's proprietary month-end validation processes.

Search123 shall determine, at its exclusive discretion, the number of Referrals generated by the Partner, and the corresponding amount of Partner Revenue.

25. Books and Records; Auditing. During the Term of this Agreement and for a period of six (6) months thereafter, the parties shall each maintain accurate and complete books and records (including, in the case of partner, web logs) relating to such party's performance of its obligations under this Agreement. Each party shall have the right, no more than once in any twelve (12) month period during the Term, to audit the other party's books and records which are directly relevant to the performance of its obligations under this Agreement upon ten (10) days' prior written notice. Such audits will be performed by the auditing party's representatives and will be conducted during normal business hours. Costs for such audits will be paid for by the auditing party, unless the results of the audit show a shortfall or overpayment in any payment owed or paid to Partner during the period covered by the audit exceeding ten percent (10%), in which case the reasonable costs for the audit (up to a maximum of £1,500) will be paid by Search123 (in the case of a shortfall in payment to Partner) or by Partner (in the case of an overpayment to Partner).

**Standard Terms & Conditions.**

The Standard Terms and Conditions attached hereto as Schedule "A" is incorporated herein by this reference and thereby made part of this Agreement.

26. Where Search123.uk.com becomes aware that it has paid Partner Payment in respect of internet user traffic which is not from Query it shall be entitled to deduct the relevant amount of such Partner Payment from the next payment of Partner Payment due.

**SCHEDULE "A"**

**STANDARD TERMS AND CONDITIONS**

27. Payment. All payments shall be made in pounds sterling. The Partner Revenue payable by Search 123 shall include all sums in respect of value added tax or any similar sales tax ("VAT") as may be properly chargeable by the Partner under this Agreement, provided that Search 123 has received a valid VAT invoice from the Partner.

28. Representations and Warranties. Each party represents and warrants to the other that:

(a) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full corporate power and authority to enter into this Agreement and to carry out its provisions; (b) it is duly authorized to execute and deliver this Agreement and to perform its obligations; and, (c) this Agreement is valid and legally binding upon it and the execution, delivery and performance of this Agreement by such party does not conflict with any other agreement, instrument or understanding to which it is a party or by which it may be bound nor would violate any law or regulation of any court, governmental body or agency having jurisdiction over it. Partner warrants that it will use commercially reasonable efforts to ensure that the Partner Site and all approved Partner Affiliate web sites, and the content contained thereon, will not be, or contain any material that is, obscene, pornographic, profane, fraudulent, libelous or defamatory, or infringing of any intellectual property rights, privacy rights or other rights of any third party.

Disclaimer. SEARCH123 AND PARTNER EACH DISCLAIM ALL WARRANTIES OR

CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR USE, NON-INFRINGEMENT AND THAT THE SEARCH123 SEARCH RESULTS AND/OR THE SEARCH123 FEED WILL BE UNINTERRUPTED OR ERROR-FREE. NEITHER PARTY SHALL BE RESPONSIBLE FOR ANY CONTENT PROVIDED BY THIRD PARTIES (INCLUDING ADVERTISERS), OR FOR ANY THIRD PARTY SITES THAT CAN BE LINKED TO OR FROM SUCH PARTY'S WEB SITE. IN ADDITION, SEARCH123 DISCLAIMS ALL LIABILITY OF ANY KIND OF SEARCH123'S ADVERTISERS, LICENSORS AND OTHER SUPPLIERS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY WARRANTIES WITH RESPECT TO ITS SERVICES.

Liability Limitations. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (I) INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM SUCH PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER ANY PROVISION OF THIS AGREEMENT OR THE PROVISION OF SUCH PARTY'S SERVICES (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, OR (II) ANY AMOUNT IN EXCESS OF THE AMOUNT PAYABLE BY PARTNER DURING THE FIRST YEAR OF THE TERM. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THIS SECTION SHALL NOT LIMIT EITHER PARTY'S LIABILITY TO THE OTHER FOR NEGLIGENTLY CAUSE DEATH OR PERSONAL INJURY OR FRAUD NOR ITS LIABILITY FOR WILLFUL AND MALICIOUS MISCONDUCT, BREACH OF CONFIDENTIALITY OBLIGATIONS, OR FULFILLMENT OF ANY INDEMNIFICATION OBLIGATIONS HEREUNDER.

29. No Indemnification. Search 123 will not, under any circumstances whatsoever, indemnify Partner for any losses which Partner may suffer arising out of or in connection with this Agreement.

30. Confidentiality. The parties shall maintain the terms and conditions of this Agreement confidential. All information furnished to or shared with a party by the other party with regard to this Agreement or a party's business, unless such information is known by the general public, shall be kept confidential by a party and shall not be disclosed to any third party except: (i) at the written consent of a party; (ii) to the extent necessary to comply with any law, regulation or valid order of a court or agency of competent jurisdiction; (iii) as a part of a party's normal reporting requirements to its auditors and attorneys; or (iv) to the extent necessary to permit the performance of a party's obligations under this Agreement or to enforce a party's rights under this Agreement.

31. Press Release. Neither party shall issue any press release in connection with this Agreement without the other party's prior written consent. The content of such press release or announcement shall be subject to the approval of Search123, which approval shall be exercised at Search123's exclusive discretion. Excluding disclosures that may be required by law, neither party shall disclose any other terms of this Agreement to any person or entity without the prior approval of the other party. Notwithstanding the foregoing and subject to any confidentiality obligations imposed upon a party under this Agreement, (i) Search123 shall have the right to notify its advertisers and potential advertisers of the general nature of this transaction, (ii) both parties shall be entitled to provide additional disclosures containing any and all information contained in any previously agreed disclosure or press release, and (iii) both parties shall be entitled to list the other party's name in advertising and other materials. When determining whether a disclosure is "required by law" both parties may rely on their respective legal counsels' advice on such matters.

32. Independent Contractors. The parties and their respective personnel, are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party

33. Assignment. Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part without the prior written consent of the other party, which consent shall not be unreasonably withheld.

34. Amendment. Amendment of any provision of the agreement either be done by (a) in a written amendment that is agreed upon and signed by both parties, or (b) email contract updates and acceptance assumed if no objection within 14 days.

35. Waiver. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

36. Notices. All notices shall be in writing and shall be deemed to be delivered when received by certified mail, postage prepaid, return receipt requested, or when sent by facsimile or e-mail confirmed by call back. All notices shall be directed to the parties at the respective addresses indicated on the signature page hereof or to such other address as either party may, from time to time, designate by notice to the other party.

37. Compliance with Law. Each party shall be responsible for compliance with all applicable laws, rules and regulations, if any, related to the performance of its obligations under this Agreement.

38. Choice of Law. This Agreement shall be construed and controlled by the laws of the Ireland. Any dispute arising in connection with this Agreement, including, without limitation, a breach of this Agreement, shall be governed by the laws of Ireland. The parties agree to submit to the non-exclusive jurisdiction of the English courts.

39. Headings. The headings of the sections of this Agreement have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

40. Counterparts. This Agreement may be entered into by each party in separate counterparts and shall constitute one fully executed Agreement upon execution by both Partner and Search123.

41. Prior Understanding. This Agreement constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written save that neither party excludes or limits its liability for fraudulent misrepresentation.

42. Interpretation. Whenever the context so requires in this Agreement, all words used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a joint venture, a trust, an estate or any other entity.

43. Partial Invalidity. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.

44. Force Majeure. If the performance of any part of this Agreement by either party, except for the obligation to pay amounts payable hereunder, is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the reasonable control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

BY SUBMITTING AN ONLINE APPLICATION TO PARTICIPATE IN SEARCH123'S TRAFFIC PARTNER PROGRAM, AND BY CHECKING THE BOX AT THE BOTTOM OF THE APPLICATION PAGE CONFIRMING ACCEPTANCE OF THIS AGREEMENT, THE PROSPECTIVE PARTNER HEREBY AGREES TO BE UNCONDITIONALLY BOUND BY EACH AND EVERY TERM AND CONDITION CONTAINED HEREIN IF SEARCH123 APPROVES THE PROSPECTIVE PARTNER'S APPLICATION TO PARTICIPATE IN THIS PROGRAM, WHICH APPROVAL OR DISAPPROVAL IS AT SEARCH123'S EXCLUSIVE DISCRETION.

**NOTE:** SEARCH123 HAS THE EXCLUSIVE DISCRETION TO MAKE CHANGES TO THIS AGREEMENT BY REVISING THE TERMS CONTAINED HEREIN. SEARCH123 IS NOT REQUIRED TO PROVIDE PARTNER WITH NOTICE OF ANY CHANGES MADE TO THIS

AGREEMENT. PARTNER SHOULD REGULARLY REVIEW THIS AGREEMENT AS COMPLIANCE WITH THE TERMS HEREOF IS ENTIRELY THE RESPONSIBILITY OF PARTNER