

# AGREEMENT FOR VIRGINIA STATE PARKS INFORMATION STATION ADVERTISING PLACEMENT

Form (VAPA)

This Agreement for Advertising Services ( the "Agreement") is made:

**Between:** Imperial Multimedia, LLC ( the "Advertising Service Provider"), a Limited Liability Corporation organized and existing under the laws of the State of Wisconsin, with its head office located at 717 South Boulevard Suite 4 Baraboo, Wisconsin 53913

**AND:** (the (Customer),

In consideration of the terms and covenants of this agreement, and other valuable consideration the parties agree as follows:

## RECITALS

- A. The Advertising Service Provider is contracted by the Commonwealth of Virginia Department of Conservation and Recreation (the owner) to solicit, place and maintain advertising on electronic information stations located in Virginia State Parks (the advertising site) The content of which consist of text, graphics and video information about the park, park maps, activities, amenities, area information and other State Parks.
- B. The Customer contracts placement for a defined advertising period on one or more kiosk and is described in the **Enrollment Application:** (VAPE)

## 1. ADVERTISING MATERIALS

- a. The Customer agrees to submit to the Advertising Service Provider, on or before the acceptance of this Agreement, advertising materials to be used by the Advertising Service Provider which shall meet its Media Format Requirements set forth and described in the Advertising Selection Guide (VASG).
- b. The Advertising Service Provider or the owner has the right and option to approve, in its absolute discretion the content of any advertising material that the Customer submits if the Advertising Service Provider or the owner finds that it does not meet its Media Format Requirements, if it is objectionable to the Advertising Service Provider in any way, if it contains false or misleading information, if it contains any illegal information, if it contains vulgar or pornographic items, or for any other reason, in the Advertising Service Provider sole discretion. If the Advertising Service Provider rejects any advertising material that the Customer submitted, the Advertising Service Provider will notify the Customer. Even after the Advertising Service Provider accepts the advertising, the Advertising Service Provider has the right to remove it if it does not function correctly or for any of the reasons described above. The Advertising Service Provider placing the advertising on its content does not signify its approval or waiver of the right to object to it in the future.
- c. The Advertising Service Provider has the right to terminate this Agreement if the Advertising Service Provider remove or fail to approve any materials that the Customer submits in which case any prepaid advertising fees shall be returned to Customer. The Customer will not have any damages or other remedies, in law or in equity against the Advertising Service Provider for failing to place or removing any Advertising except for the return of any unused prepaid advertising fees.
- d. The Customer may periodically make changes to its advertising material which the Advertising Service Provider must also approve. The Advertising Service Provider will charge a fee at its standard fee schedule rate for making changes to the Customer advertising materials on the Station. The Customer desires to integrate. The Advertising Service Provider will use its reasonable efforts to make the changes that Customer submits during regular scheduled quarterly updates.
- e. The Advertising Service Provider agrees to provide the advertising formats as described in the Enrollment Application (VAPE).

## 2. SERVICES TO BE PROVIDED

- a. The Advertising Service Provider does not guarantee any given amount of Impressions to Customer's advertisement as a result of its advertising services.
- b. The Advertising Service Provider will use its reasonable efforts to make its Advertising available for display through the Virginia State Park system. The Advertising Service Provider is not responsible for periodic downtime for maintenance, backup, acts of God, and other circumstances beyond its control.
- c. The Advertising Service Provider will not be held accountable for any monetary damages suffered by the Customer, sustained through contravention of this Agreement. This will include, but not limit to punitive damages related to lost clients and brand deterioration.

## 3. PLACEMENT OF ADVERTISING

The Advertising Service Provider reserves onto its own discretion all decisions and matters concerning placement of Customer's advertisement on the station, software solutions, hardware configurations and selection, system components, categories of advertising, search engine results and search parameters and other operational and administrative matters pertaining to the construction and operation of the station application.

**4. COMPENSATION**

In consideration of its advertising services, the Customer agrees to pay the advertising fees set forth on the fee schedule contained within the Enrollment Application (VAPE). The Customer will also pay any sales and other taxes based upon the fees set forth therein. Advertising fees will be annually, in advance. The Advertising Service Provider charge interest and service charges on accounts that are delinquent at the maximum rates allowable by law. The Customer will be responsible for all collection costs and attorney fees if it is necessary to pursue collection efforts to collect on an account. The Advertising Service Provider reserves the right to suspend advertising services until Customer's account is brought current as the Advertising Service Provider as the right to terminate this Agreement if any advertising fee is delinquent.

**5. PROPRIETARY RIGHTS**

The Advertising Service Provider will retain all proprietary rights in and to its respective kiosk application and other proprietary materials such as copyrights, trademarks, trade secrets, patents and confidential information. The Advertising Service Provider do not grant the other any rights in and to such proprietary material except that the Customer hereby grants the Advertising Service Provider a non-exclusive license to use the advertising material provided, including its trademarks and copyrights, during the term of this Agreement. Upon termination of this Agreement, the Advertising Service Provider agrees to remove the advertising material provided from its station application within a reasonable time.

**6. REPRESENTATIONS AND WARRANTIES**

- a. The Customer represents and warrants that the advertising provided is not false and misleading, does not contain any untrue, defamatory, harmful, abusive, vulgar or obscene materials, is in compliance with all applicable laws, does not infringe upon the rights of any other party, including but not limited to copyrights, trademarks, privacy rights, moral rights, trade secrets, patents and any other rights. The Customer also warrants and represents that it has the unrestricted and exclusive right to use all such materials.
- b. The Advertising Service Provider makes no warranties that the advertising contained on the station will be free from errors or defects or that the station advertising will be uninterrupted. The Advertising Service Provider specifically disclaims all express and implied warranties, including but not limited to warranties of merchantability, fitness for a particular purpose, and non-infringement on the rights of third parties. In no event shall the advertising service provider be liable, whether in contract, tort (including negligence), or otherwise, for any indirect, incidental, or consequential damages ( including lost sales or profit, lost data, business interruption or attorney's fees), even if notified in advance of such possibility.

**7. INDEMNIFICATION**

The Customer will indemnify and hold the Advertising Service Provider harmless from and against any claims, suits, threats, demands, settlements, actions, causes of action, liabilities, obligations and all other matters, including but not limited to court costs, attorney's fees, witness fees, settlement fees, and all other direct and indirect expenses and losses that may occur arising from the breach of any of the representations and warranties that the Customer has made to the Advertising Service Provider and otherwise arising directly or indirectly from the placement of its advertising materials on the Advertising Service Provider kiosk application.

**8. FORCE MAJEURE**

The Advertising Service Provider will not be responsible for any failure or delay in performance hereunder that is directly or indirectly related to acts of God, storm, natural disaster, act of terrorism, utility outages or interruptions, system transmission failure, server failure, strike, lockout, or any other situation which is beyond its control.

**9. TERMINATION**

The Customer may terminate this Agreement, with or without cause, by giving 90 days advance notice of its intent to terminate. The Advertising Service Provider reserves the right to terminate this Agreement for any reason, with or without cause, upon 90 days written notice to Customer.

**10. ENTIRE AGREEMENT**

This (AGREEMENT (VAPA)) the (ENROLLMENT APPLICATION (VAPE)) and the (ADVERTISING SELECTION GUIDE (VASG)) hereto constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. It supersedes and replaces all previous discussions, negotiations, and understandings between the parties. This Agreement may only be amended by a written amendment signed by authorized representative of both the companies.

**11. ASSIGNMENT**

The Customer is not permitted to assign its rights or responsibilities hereunder. If any dispute or lawsuit between the parties arises relative to this Agreement, the prevailing party will be entitled to an award of reasonable attorney's fees and costs.

**12. NOTICES**

All notices called for herein shall be to the parties at the addresses contained in this Agreement and shall be by certified mail, return receipt requested or by reputable national overnight delivery service, such as Federal Express.

**13. GOVERNING LAW**

This Agreement shall be interpreted under the laws of the State of Wisconsin. Any and all legal actions relative hereto shall be in the courts of Wisconsin.