

**BallantyneKids.com - ADVERTISING TERMS AND CONDITIONS**  
**5/18/2012**

This Contract (this "Contract") is entered into as of the date set forth on the signature page hereto and is by and between the undersigned vendor ("Vendor") and Charlotte FYI, LLC ("CFYI") doing business through it website www.BallantyneKids.com.

WHEREAS, CFYI is in the business of providing online Internet advertising for vendors of kid oriented products and services; and

WHEREAS, Vendor wishes to advertise products and services on the Internet through CFYI on its website www.Ballantynekids.com.

NOW THEREFORE, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Definitions.**

- a. "Advertising" shall include, but is not limited to, text, graphics, promotions, listings, coupons, hypertext links, websites, e-mail, video, audio, maps, or other material, facilities or features which promote or advertise the products and services of Vendor.
- b. "Internet Advertising" shall mean Advertising provided on the Internet through CFYI.
- c. "Publication" shall mean the listing of Vendor's Advertising on www.ballantynekids.com and does not indicate the publication of any paper directory.

**2. Term of Contract.** The term of this Contract shall begin on the date of first Publication. Vendor and CFYI have agreed to the initial term set forth on Exhibit A (Registration Form) attached hereto and incorporated herein by reference (the "Contract Period"). The term shall end upon the earlier of (i) the end of Contract Period (including any applicable Renewal Periods, as such term is defined herein) or (ii) the termination of this Contract in accordance with its terms.

Publication shall occur no later than thirty (30) days from the Contract date; provided that, if CFYI in its sole discretion determines that a delay in Publication beyond such thirty (30) day period has been or will be caused by Vendor, CFYI, in its sole discretion, may publish Vendor's Internet Advertising using a place marker or other suitable means as chosen by CFYI. Any delay in publication caused by Vendor shall not subject CFYI to any liability for such delay, and CFYI is not obligated to publish the Internet Advertising using a place marker or other similar means, and may terminate this Contract upon notice to Vendor.

**3. Payment.** Vendor agrees to pay CFYI the amount and pay period ("Pay Period") set forth in Exhibit A (Registration Form) attached hereto and incorporated herein by reference, plus any applicable taxes or requisite start-up fees as stated in the applicable invoice. Conditions of payment are as follows:

- a. Payment obligations commence upon Publication, and payment is due within thirty (30) days of each Pay Period.

- b. CFYI reserves the right, in CFYI's sole discretion, to require partial or full payment in advance as a condition of Publication or to charge Vendor an additional fee for requests that exceed customary services, including, for example, excessive content changes, protracted design development or in-house visits to Vendor.
- c. Method of Payment is to be by Check, or Credit Card as detailed in Exhibit A (Registration Form) attached hereto and incorporated herein by reference. CFYI will charge a \$25.00 returned check fee on any check that is returned unpaid by the bank for any reason.

4. **Default.** A default will result if one or more of the following events (herein called "Events of Default") shall occur and be continuing at the time of any notice required to be given is given as hereinafter provided:

- a. Failure by Vendor to make payments within thirty (30) days of the applicable pay period, or within thirty (30) days of the applicable invoice billed to Vendor for additional services.
- b. Default of Vendor under any other agreement with CFYI or any of its affiliates.
- c. Failure to keep or perform or abide by any requirement, term, condition, covenant or agreement of this Contract, or breach of any representation or warranty set forth in this Contract, and such default shall continue for a period of ten (10) days after notice to Vendor of such default.

5. **Remedies.** Upon the occurrence of an Event of Default, and failure to cure the same, CFYI shall have all rights and remedies allowed at law, in equity, or by statute, including without notice or demand, to:

- a. Suspend or terminate Advertising, accelerate all charges, and require immediate payment of all sums due for Internet Advertising for the remainder of the Contract Period.
- b. Impose a finance charge of 1 1/2% per month (annual percentage rate of 18%), or the highest rate permitted by applicable law, of the outstanding balance due to CFYI, and any credit card number information previously furnished may be charged for outstanding fees and expenses.
- c. Impose an additional late charge fee.
- d. Terminate this Contract.

Vendor also agrees to pay any costs of collection, including court costs, reasonable attorneys' fees and expenses that may be incurred in collecting any unpaid amount. "Reasonable attorney's fees" shall mean fees incurred at the customary hourly rates for time incurred and without reference to any statutory presumption. Any notice required by this Paragraph shall be sent in accordance with the terms set forth in Paragraph 20 of this Contract.

6. **Renewal.** No later than the end of the Contract Period (or any subsequent Renewal Period), the Contract may be renewed for the term (each such term, a "Renewal Period") set forth in the applicable Renewal Notice (as defined below) subject to the following terms and conditions:

- a. CFYI will send Vendor notice of renewal (a "Renewal Notice"), which Renewal Notice shall identify the proposed Renewal Period and contain any proposed change in payment, terms and conditions from this Contract. Vendor may refuse the proposed renewal by giving CFYI written notice within fifteen (15) days from the date of CFYI's Renewal Notice, or by the deadline contained in the Renewal Notice, whichever is first. If no refusal is received by CFYI by the deadline set forth in the Renewal Notice or by the expiration of such fifteen (15) day period, Vendor shall be deemed to have accepted the terms of the Renewal Notice, and the terms of this Contract as modified by such Renewal Notice.

- b. For the avoidance of doubt, Vendor and CFYI agree that CFYI may require terms set forth in the Renewal Notice to coincide with CFYI's publication dates for online listings.
- c. CFYI reserves the right, upon written notice to Vendor at any time prior to renewal:
  - i. not to renew this Contract for any reason, including but not limited to, those reasons set forth in Paragraph seven (7) below; or
  - ii. to eliminate or modify any terms, conditions, standards, specifications, products, headings or policies (including without limitation priority placement of Advertising) affecting the Advertising.

7. **Conditions of Publication.** At any time after the execution of this Contract, CFYI may refuse to publish Vendor's Internet Advertising if:

- a. In the sole Judgment of CFYI, the Internet Advertising requested by Vendor does not conform to CFYI's specifications and editorial standards ("Standards").
- b. Vendor has failed to pay any amounts due pursuant to the terms of this Contract.
- c. CFYI finds at any time that Vendor's credit records do not meet CFYI's credit requirements.

The content and form of all Internet Advertising shall be subject to prior approval of CFYI. CFYI shall at all times have the right to reject, in whole or in part, any Internet Advertising that CFYI, in its sole discretion, finds does not conform to CFYI's Standards. These Standards include but are not limited to all civil and criminal laws, rules, and regulations and public interest standards as determined in CFYI's sole discretion.

All positioning and placement of Internet Advertising within the website is at the sole discretion of CFYI. Except as specifically provided in this Contract, in no event will any adjustment, replacement or refund be made because of the position or placement of Internet Advertising.

Vendor shall be responsible for adhering to all deadlines imposed by CFYI with respect to the submission of Internet Advertising. Vendor is responsible for checking all Internet Advertising proofs and material for corrections and providing CFYI with prompt written notice of errors or changes within the applicable deadlines.

Vendor's input shall be considered when fulfilling Internet Advertising orders, however, if input is not timely received, CFYI reserves the right to fulfill and publish the Internet Advertising, using a suitable copy as chosen by CFYI.

All Internet "search" or "network distribution" products ordered by Vendor will be fulfilled on any of the websites or Internet partners of CFYI, which may change from time to time without notice to Vendor. CFYI does not guarantee traffic usage and Impression levels, the validity of Impressions, traffic, or "Clicks", or the placement of Internet Advertising on Vendor's websites or on the websites of CFYI's Internet partners. For purposes of this Contract, "Clicks" shall mean each time a web user presses down on the mouse and releases while selecting a link on CFYI's website to the Vendor's Internet content, and "Impression" shall mean each time Vendor's advertisement is placed by CFYI or its vendors appears on a search engine result page.

CFYI also reserves the right to make changes to Internet directories (including, without limitation, changes to content layout, monthly traffic levels, format, medium, scope, coverage area, and the identity of the search engines upon which Vendor's Internet Advertising will be displayed).

In addition to all Internet Advertising being required to conform to the Standards of CFYI, all Internet Advertising must also conform to the standards of the web hosting provider.

If CFYI receives two (2) or more complaints from customers of Vendor within a twelve (12) month period, CFYI reserves the right to remove the Internet Advertising from its site and terminate the Contract immediately upon notice to Vendor. In such event, Vendor shall receive a prorated refund for any remaining time left under the Contract Period and shall have no further recourse against CFYI for damages.

8. **Proofs.** CFYI may send to Vendor proofs of Internet Advertising to review. Vendor agrees:

- a. CFYI reserves the right to require Vendor to return proofs to CFYI, signed with Vendor's approval or corrections, within the deadline set forth in the notice accompanying the proofs.
- b. Failure to return such proofs by the deadline set forth in such notice may, at CFYI's option, result in cancellation of Vendor's Advertising and termination of this Contract.
- c. CFYI shall bear no liability for errors resulting from proofs being returned to CFYI after the deadline specified in such notice.

9. **Advertising Content.** Vendor has the sole legal responsibility for the content of its Advertising and warrants that:

- a. Vendor is authorized and prepared to sell all products and/or services in its Advertising.
- b. Vendor has the right to use all trademarks, service marks, names, information, artwork, and likenesses in its Advertising.
- c. Vendor is the author of all images, text, and other words of authorship to be reproduced or otherwise published in its Advertising and has the sole responsibility to register and protect the same, or Vendor is authorized by the author of all images, text, and other works of authorship to reproduce, to prepare derivative works of, and to distribute copies of such works of authorship in its Advertising, and in turn hereby authorizes CFYI to do the same.
- d. Vendor's Advertising and the publication of its Advertising will not infringe on any trademark, copyright, right to publicity, right of privacy or other intellectual property right of a third party, nor will it constitute false, deceptive or unfair advertising or disparagement under applicable law.
- e. Vendor's Advertising complies with all federal, state and local laws, rules and regulations, including without limitation licensing requirements, contest rules, and administrative and professional rules and regulations.
- f. Any prices, discounts or product availability quoted in Vendor's Advertising shall be complete, accurate and applicable throughout its advertising duration.
- g. Vendor agrees to comply with all applicable laws, rules and regulations in accepting and fulfilling orders, to honor any special offers, prices or discounts contained in its Advertising and to assume sole responsibility for conducting any contests or drawing in connection with its Advertising.
- h. Advertisement material shall contain:
  - i. No misleading, unwarranted, exaggerated or doubtful claims or statements, and Vendor guarantees the truth of all claims and statements made in all Internet Advertising.
  - ii. No disparagement of any competitor or any competitor's goods or services.
  - iii. No statements or announcements that are slanderous, obscene, profane, vulgar, repulsive or offensive in any manner.

- iv. No mention by name of other generally advertised products or services.
- v. No lotteries, drawings or other contests prohibited by law.
- vi. No contest of any nature, unless Vendor shall first submit full details thereof in writing to CFYI, and CFYI approves of such contest in writing.

#### **10. Advertising Rights and License.**

- a. Vendor grants to CFYI a nonexclusive, royalty-free license to reproduce and to create derivative works from all or any portion of Vendor's Internet Advertising in which Vendor may have a copyright or interest for CFYI's use, exploitation, publication and commercialization:
  - i. as provided in this Contract.
  - ii. in databases and any other compilations.
  - iii. in other Advertising formats or media, such as the Internet.
  - iv. for archival or back-up purposes.
  - v. of derivative works created or derived from Vendor's Advertising.
- b. As to Advertising that CFYI creates for Vendor, whether in whole or in part, and any derivative work that CFYI creates from Vendor's Advertising, Vendor acknowledges that CFYI is the author and assigns to CFYI any independently copyrightable contribution Vendor might have made to the Advertising.
- c. Vendor further acknowledges that CFYI retains all right, title and interest, including the copyright, in such Advertising produced by CFYI and that CFYI does not intend for such Advertising to constitute a joint work.
- d. Vendor must obtain prior written consent from or through CFYI in order to reproduce CFYI's copyrighted work, to have it reproduced by others or to use CFYI's name or marks in any way.

#### **11. Limitation of Liability.** Vendor acknowledges that:

- a. Alternative and competing Advertising media are available to Vendor.
- b. This is a commercial business transaction between an advertiser and a business which desires advertising, and is not a consumer transaction.
- c. Any errors, omission, or misplacements in Advertising cannot be corrected until the Advertising can be replaced based on CFYI's availability and schedule.
- d. Any potential harm from an error, omission or misplacement in Advertising is speculative in nature.
- e. CFYI does not warrant that Vendor's Advertising will result in any revenue or profit, even if Advertising rates are based upon revenue or profit.
- f. CFYI does not make any warranties regarding either the number of people who will view Vendor's Internet Advertising or the validity of traffic Impressions, or "Clicks" on Internet Advertising.
- g. CFYI assumes no responsibility other than as contained in this Contract.
- h. UNLESS OTHERWISE AGREED TO IN WRITING, FOR MUTUAL CONSIDERATION, VENDOR AGREES THAT ANY LIABILITY WHICH CFYI MAY HAVE DUE TO ERRORS, OMISSIONS, ACCESSIBILITY OR MISPLACEMENTS IN VENDOR'S ADVERTISING SHALL NOT EXCEED THE AMOUNT OF CHARGES FOR THE AFFECTED ADVERTISING FROM THE TIME CFYI IS NOTIFIED OF THE ERROR, OMISSION, OR MISPLACEMENT UNTIL ITS CORRECTION. Any such liability shall be discharged by abatement of all Advertising charges for any complete omission, or

by reduction of the applicable charges in proportion to any reduction of the cost of the Advertising due to error, omission or misplacement for the period of the error.

- i. CFYI DOES NOT WARRANT THAT THE FUNCTION OF THE NETWORK WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THERE WILL BE NO DEFECTS IN CFYI'S NETWORK OR THE NETWORKS OF ITS INTERNET PARTNERS, WHICH MAY CHANGE FROM TIME TO TIME WITHOUT NOTICE TO VENDOR.
- j. THE WARRANTIES AND UNDERTAKINGS CONTAINED IN THIS CONTRACT ARE IN LIEU OF ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.
- k. Notwithstanding that any damages suffered by Vendor shall not, as provided above, exceed the amount of charges for the affected Advertising from the time of notice of any error, omission, or misplacement until its correction, this limitation of liability is not a liquidated damages provision, and does not relieve Vendor of any burden under applicable law, including without limitation, the requirement of proving the amount of damages with reasonable certainty.
- l. Vendor agrees that its Advertising is intended only for its own benefit and any benefits to others is merely incidental.
- m. Any claim arising out of an error in publication of online Advertising must be made in writing to CFYI.
- n. This Limitation of Liability applies to CFYI, any of its authorized sales agents, any employees and any of its affiliated companies. The Limitation of Liability applies to claims in contract, tort, and strict liability or otherwise to any loss of business, profits, reputation, income, or additional Advertising costs, which Vendor may incur. It also applies to any special, incidental, consequential or punitive damages and to any claim against Vendor by any third party regarding its Advertising.

**12. Indemnity.** Vendor agrees to indemnify and hold CFYI and any affiliates, assignees, heirs and successors in interest harmless as to any attorneys' fees, costs, expenses, losses, damages, claims, demands, and/or expenses which CFYI may sustain in those situations including but not limited to those:

- a. Arising out of or relating to the character, content or subject matter of any Internet Advertising published pursuant to this Contract, including, without limitation, any violation or alleged violation or infringement or alleged infringement of any copyright, trademark, trade name or other proprietary right or any claim for libel, slander, unfair or illegal trade practice, unfair or illegal competition or invasion or violation of any right of privacy.
- b. Arising out of the negligence or willful misconduct of Vendor.
- c. Arising out of the sale or delivery of Vendor's products or services.

CFYI's acceptance or approval of any Internet Advertising shall not affect Vendor's indemnification obligations under this Contract. Notwithstanding any other provision of this Contract, all indemnification provisions of this Contract shall survive the expiration or termination of this Contract. Vendor hereby authorizes CFYI to publicly disclaim any liability to third parties.

**13. Assignment.** Vendor may not assign, and will remain responsible for, its obligations under this Contract. CFYI may assign this Contract in whole or in part at its sole option to any third party by notifying Vendor in writing, whereupon CFYI shall be relieved of all its obligations hereunder and Vendor shall look solely to such third party for performance of this Contract.

**14. Denial of Credit.** If Vendor's payment by means of credit is denied, Vendor has the right to a written statement of specific reasons for the denial. Vendor should direct their inquiries to their credit card provider for specific information.

**15. Time.** Time is of the essence. Unless otherwise noted, time periods specified in this Contract and any addendum to this Contract are calendar days and shall expire at midnight on the date stated unless the parties agree in writing to a different date and/or time.

**16. Reliance Disclaimer.** CFYI will not be bound by and Vendor acknowledges that Vendor is not relying on any of the following:

- a. Any representation or warranty concerning revenue or profit to be generated from Vendor's Advertising.
- b. Any representation or warranty regarding either the number of people who will view Vendor's Advertising or the validity of traffic, Impressions or "Clicks" on Internet Advertising.
- c. Any custom or prior course of dealing, such as the location of Vendor's Advertising, any variation in color, darkness or clarity related to the monitor on which the advertising is displayed, or the nature of others' Advertising, or any changes which Vendor may later request in its Advertising.

**17. Relationship of Parties.** This Contract does not create a partnership, joint venture, employer/employee, franchisor/franchisee, agency or other similar relationship. The relationship of the parties hereto shall be that of independent contractors with it being acknowledged that each of the parties is engaged in its own separate and distinct business and is not under the control of the other party in the performance of the agreements herein contained.

**18. Severability.** If any of the provisions of this Contract shall be invalid or unenforceable under the laws of the jurisdiction applicable to this Contract, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Contract, but rather the entire Contract shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and CFYI's rights shall be construed and enforced accordingly.

**19. Attorneys' Fees.** If any action is brought by either party to enforce any of the terms of this Contract or to recover any payment to be made hereunder, the prevailing party in such action, and any appeal therefrom, shall be entitled to recover its reasonable expenses of litigation including reasonable attorneys' fees. "Reasonable attorney's fees" shall mean fees incurred at the customary hourly rates for time incurred and without reference to any statutory presumption.

**20. Notices.** All notices permitted or required hereunder shall be given in writing and shall be to Vendor and CFYI at their respective addresses by U.S. Mail.

**21. Force Majeure.** CFYI shall not be held responsible for any delay or failure in performance of any part of this Contract to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, terrorist act, civil or military authority, act of God, or other similar causes beyond CFYI's control (any such event, a "Force Majeure Event").

If CFYI shall be temporarily prevented in whole or in part from performing its obligations hereunder by virtue of any Force Majeure Event, then CFYI's obligations under this Contract shall be

excused for a period of time equal to the period during which it shall have been prevented from performing. In no event shall Vendor be entitled to any damages, payment or remedy hereunder as a result of any such Force Majeure Event.

If any Force Majeure Event makes it permanently impractical or impossible for CFYI to fulfill its obligations under this Contract, CFYI shall give prompt written notice thereof to Vendor, and, as of the date of such written notice, this Contract shall terminate and CFYI and Vendor shall be relieved from further performance hereunder. If this Contract is so terminated, Vendor shall be entitled to an adjustment of the amount previously paid hereunder for that portion of the Contract Period that remains.

**22. Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original hereof and all of which shall be considered one and the same instrument.

**23. Headings.** The section headings herein are for convenience of reference only and are not part of and shall not affect the construction of this Contract.

**24. Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the state of North Carolina. The terms, obligations and conditions of this Contract shall survive the expiration or termination of this contract.

**25. Authority.** The individuals signing this Contract for both Vendor and CFYI warrant and covenant that he or she is authorized to bind each party to the terms and conditions of this Contract.

**26. Jurisdiction; Venue.** The parties hereto agree that for the adjudication of any controversy, dispute, or claim arising from this Contract, jurisdiction and venue are proper in, and such matter shall exclusively be resolved in the United State District Court for the Western District of North Carolina or the Superior Court of Mecklenburg County, North Carolina.

**27. Entire Agreement.** Vendor represents that Vendor has read this Contract and that the same constitutes the entire agreement between Vendor and CFYI, and no other agreements, promises or warranties, either expressed or implied, except those expressly set forth herein, have been made to Vendor by CFYI, or its agents, representatives or employees. No modification of this Contract shall be claimed by Vendor subsequent to the execution hereof, unless first reduced to writing and executed by the parties hereto.

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