

## **AFFILIATE PROGRAM TERMS AND CONDITIONS**

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You ("Publisher") and 1-800 CONTACTS, INC. ("1-800 CONTACTS" or "Advertiser") have each entered into separate service agreements with Commission Junction, Inc. ("CJ"). You have entered into a "Publisher Service Agreement" with CJ in order to participate in CJ's Network Service. These Terms and Conditions are applicable to your membership in 1-800 CONTACTS' affiliate program, as such program is defined in the Publisher Service Agreement (the "Program").

Any 1-800 CONTACTS content, trademarks, logos, service marks, trade dress, slogans, copyrighted or other proprietary material, or links contained there that are authorized by 1-800 CONTACTS to be provided to you through the Network Service, are considered "Advertiser Content."

In consideration for participating in the Program, you agree to the following terms:

### **1. INCORPORATION**

Any capitalized term that is not defined in these Terms and Conditions will have the meaning set forth in the Publisher Service Agreement. In the event of an inconsistency between the Publisher Service Agreement and these Terms and Conditions, these Terms and Conditions will control.

### **2. ONGOING COMPLIANCE**

Your continuing compliance with these Terms and Conditions is a condition of your continuing participation in the Program. If 1-800 CONTACTS determines, at its sole discretion, that you are not in compliance with any provision of these Terms and Conditions, or your site is unsuitable for our program, or you are in Material Breach of the Publisher Service Agreement, 1-800 CONTACTS may (without limiting any other remedies available to it) pursue any or all of the following actions:

- \* Warn you that 1-800 CONTACTS will remove you from the Program upon any further occurrences;
- \* Withhold all compensation otherwise payable to you beginning with the date on which you violated the terms of these Terms and Conditions or the Publisher Service Agreement; and/or
- \* Remove you from the Program permanently.

### **3. CANCELLED ORDERS**

Commissions will not be paid for any orders cancelled or returned by the customer within 30 days of the order date. 1-800 CONTACTS reserves the right to terminate upon seven days notice any Publisher associated with a disproportionate number of cancelled or returned orders.

### **4. UNACCEPTABLE CONTENT**

1-800 CONTACTS reserves the right to determine what is unacceptable content within its Program. For further elaboration of unacceptable content, please refer to Sections 1b. and 2.3 of the Publisher Service Agreement.

### **5. USE OF ADVERTISER CONTENT**

Notwithstanding Section 4.1 of the Publisher Service Agreement, you agree that 1-800 CONTACTS has sublicensed to you only the exact Advertiser Content provided by 1-800 CONTACTS to you directly or through the Network Service and in the form and manner available from and as specified in the Network Service. You further agree to the following duties and restrictions regarding your use of any Advertiser Content:

- \* You may not distribute, transfer, sublicense or otherwise use Advertiser Content in a manner inconsistent with these Terms and Conditions.
- \* You acknowledge that 1-800 CONTACTS owns and will retain all right, title and interest in the Advertiser Content, including, without limitation, any proprietary rights which may be developed in the future.
- \* You will not remove or modify any trademark, service mark or privacy policy notices from the Advertiser Content.
- \* You will not present or use any Advertiser Content in a manner that (i) could reasonably be interpreted to suggest that editorial content has been authored by or represents the views or opinions of 1-800 CONTACTS or 1-800 CONTACTS' representatives; (ii) is, in 1-800 CONTACTS' reasonable opinion, misleading, defamatory, libelous, obscene or otherwise objectionable; (iii) infringes, derogates, dilutes or impairs 1-800 CONTACTS' rights in the Advertiser Content; or (iv) uses a name of a product or service of a company other than 1-800 CONTACTS.
- \* You will make any changes to your use of the Advertiser Content that are requested by 1-800 CONTACTS.

### **6. USE OF SOFTWARE**

Your use of any client-side software in connection with the Advertiser Content or the Program is prohibited unless approved by 1-800 CONTACTS in writing.

## **7. MISUSE OF 1-800 CONTACTS TRADEMARKS AND OTHER KEYWORDS**

You shall not bid on, register or purchase certain trademarks or variations of our trademark, or list them in any search engine, portal, sponsored advertising service or any other search or referral service. For a list of restricted terms, please see:

<http://www.1800contacts.com/coInfo/affiliate/restrictedterms.shtml>

All other variations of our trademarks are approved for your use in your search engine, portal, sponsored advertising service or any other search or referral service efforts; however, such approval is subject to the following condition: Your ad position must be below 1-800 CONTACTS' ad position on all other variations of our trademarks.

Furthermore, you are restricted from using the following trademarked phrases in your ad-copy or ad-text for any search engine, portal, sponsored advertising service or any other search or referral service:

"The World's Largest Contact Lens Store"

"We Deliver. You Save"

"We Make it Simple"

You must add certain negative keywords to your search marketing campaigns when directly advertising for or linking to 1-800 CONTACTS. For a list of required negative keywords, please see:

<http://www.1800contacts.com/coInfo/affiliate/restrictedterms.shtml>

You may not use 1-800 CONTACTS' name, any other 1-800 CONTACTS trademarks, or any variations thereof in hidden text.

## **8. PROHIBITED ACTIVITIES**

You agree not to do any of the following:

- \* Forced Clicks/Forced Cookies are not permitted. An end user must take an affirmative action (i.e., clicking on your link that is located on your website or has been submitted to a third-party search engine) for you to be compensated for a transaction;

- \* Overwrite any previously set publisher's cookies other than your own;

- \* Cause your website(s) or advertisements to appear in response to any Internet search for any of the websites or trademarks listed under Section 7 of these Terms and Conditions or located at any other website through which contact lenses and related products are sold (a "Competitor Website");

\* Attempt to intercept or re-direct traffic to or from, or divert referral fees to or from, any website that participates in the Program, any 1-800 CONTACTS' websites, any Competitor Website or any other website;

\* Record or document any information on any 1-800 CONTACTS customers or keep a copy of any of the names or associated data generated through the Program via cookies or other software, whether such software has been approved by 1-800 CONTACTS or otherwise, or through any other method. 1-800 CONTACTS retains sole and exclusive rights to this data.

\* Attempt to create the impression that your website is, or is part of, 1-800 CONTACTS' website or a part of our site, including, without limitation, (1) use of ad -text, or ad- copy, content, meta data or display URLs in search engines or any search or referral service intended to make the customer believe the ad or listing is from 1-800 CONTACTS, and (2) framing our site in any manner.

\* Publishers are not allowed to use domains with any variation of our trademark contained within the domain. Examples of variations of such prohibited domains include, but are not limited to: 1800contactdeals.com; 800contactcoupons.com; etc. Publishers found using variations of our trademark will be warned and given 15 business days to remove/ replace the offending URL to a domain that is compliant with our terms and conditions. If the publisher fails to make the necessary changes they will be removed from the program and will forfeit all commissions earned.

\* Typosquatting and all variations of cybersquatting are strictly prohibited. Typosquatting includes, but is not limited to, any URL with: common misspellings of our trademark, misspellings based on typing errors, and any variations on our top-level domain.

\*Scrape, spider or crawl 1-800 CONTACTS' website without getting pre-approval from 1-800 CONTACTS in writing.

\*Use incentivized methods of driving traffic without prior written permission from 1-800 CONTACTS. Examples of incentivized methods include, but is not limited to:, pay to surf programs wherein customers are awarded points or prizes for clicking on advertisements.

## **9. COUPON CODES**

You are allowed to use only those coupon codes made directly available to you through the Program. You agree to not market any erroneous and/or unauthorized coupon codes. Use or attempted use of any coupon code received from any source other than directly from the Program will result in lost commissions and/or removal from the Program.

In addition, you are not allowed to list 1-800 CONTACTS' coupon codes in your ad text appearing in any sponsored advertising service.

## **10. ELECTRONIC COMMUNICATION ACTIVITIES**

All mass electronic Internet communication currently available (e.g., emails, newsletters, instant messaging, internet radio broadcasts, etc.) or any electronic internet communication technologies developed in the future containing Advertiser Content or 1-800 CONTACTS trademarks or

promoting 1-800 CONTACTS, must be pre-approved in writing by 1-800 CONTACTS. Please contact 1-800 CONTACTS by email at [Affiliates@1800Contacts.com](mailto:Affiliates@1800Contacts.com) for more information on using mass electronic communications in conjunction with your participation in the Program.

In addition, under no circumstances shall you send "commercial electronic mail messages" as such term is defined in the federal CAN-SPAM Act of 2003, or as restricted by any future federal, state or local legislation, with respect to the Program. 1-800 CONTACTS reserves the right to collect, withhold or cancel any and all compensation related to the content you send via "commercial electronic mail messages."

## **11. COMMISSIONS**

The commission rate will be set forth on the CJ Program Page for 1-800 CONTACTS and may be changed from time to time by 1-800 CONTACTS upon 7 days notice by posting and notifying Publisher of a different commission rate as appears on CJ Program Join Program Page. In order to be eligible for a commission, referred web surfers must have their cookies setting enabled on their browser.

## **12. TERM AND TERMINATION**

These Terms and Conditions shall be in effect and legally binding upon you unless and until either party properly terminates these Terms and Conditions. You may terminate these Terms and Conditions at any time by removing 1-800 CONTACTS' links from your website(s) and terminating your affiliation with 1-800 CONTACTS through the Network Service. 1-800 CONTACTS may terminate these Terms and Conditions for any reason by giving you seven days prior written notice through the Network Services and may terminate these Terms and Conditions immediately upon your Material Breach of the Publisher Service Agreement or these Terms and Conditions.

## **13. MODIFICATIONS**

1-800 CONTACTS may modify any provision of these Terms and Conditions by giving you seven days prior written notice through the Network Service. Your continued participation in the Program following 1-800 CONTACTS' notification of a modification will constitute your legally binding acceptance of such change. If any modification is unacceptable to you, you must terminate your participation in the Program through the Network Service. Modifications to these Terms and Conditions may include, for example, changes in the scope of available referral fees, fee schedules, payment procedures and Program rules. You agree that your consent is not necessary to modify any of the terms of these Terms and Conditions.

## **14. RESPONSIBILITY FOR WEBSITE(S) AND INDEMNIFICATION**

You will be solely responsible for the development, operation and maintenance of your website(s) and for all content that appears on your website(s). 1-800 CONTACTS disclaims all liability for matters related to your website(s). Further, you agree to indemnify and hold 1-800 CONTACTS, and its subsidiaries, affiliates, officers, agents, co-branders or other partners and

employees harmless from all claims, damages, demands and expenses (including, without limitation, any reasonable attorneys' fees) relating to the development, operation, maintenance and contents of your website, your use of the Advertiser Content and 1-800 CONTACTS trademarks, your violation of these Terms and Conditions or your violation of any rights of another party. You will permit 1-800 CONTACTS, at its election, to assume and control the defense of any such claim.

## **15. GENERAL**

The Publisher Service Agreement, 1-800 CONTACTS' detail page on the Network Service, these Terms and Conditions and any amendments or addendums to any of the foregoing constitute the entire agreement between you and 1-800 CONTACTS and govern your participation in the Program, superseding any prior agreements between you and 1-800 CONTACTS. These Terms and Conditions and the relationship between you and 1-800 CONTACTS shall be governed by the laws of the State of Utah, without regard to its conflict of law provisions. Notwithstanding the choice of venue in the Publisher Service Agreement, you and 1-800 CONTACTS agree to submit to the personal jurisdiction of the federal and state courts located within Salt Lake County, Utah. The failure of 1-800 CONTACTS to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision. If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms and Conditions shall remain in full force and effect. You will not assign, transfer, sublicense or otherwise delegate your rights under these Terms and Conditions without the prior written consent of 1-800 CONTACTS. Any such assignment, transfer, sublicense or delegation in derogation of this provision shall be null and void.

**BY APPLYING FOR THE PROGRAM AND CLICKING ON THE "ACCEPT" ICON BUTTON YOU ARE SIGNIFYING YOUR AGREEMENT TO BE BOUND BY THESE TERMS AND CONDITIONS TO THE SAME EXTENT AS IF YOU HAD PERSONALLY SIGNED THIS AGREEMENT.**