

Welcome to the SmartView First partnership application. This is a new program designed to provide all publishers the opportunity to grow and succeed in SmartNews.

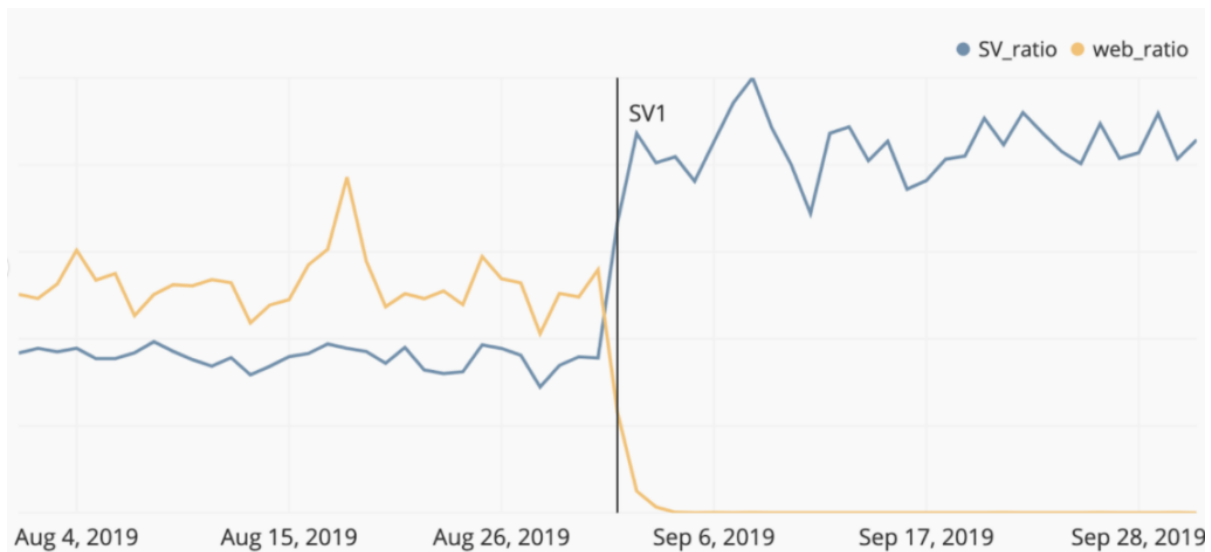
We're very excited to work with you. Before you begin, here's a quick outline of how our SmartView First partnerships work, as well as [specifications for the required SmartFormat feed.](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-) <  
<https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1->>

Please read both carefully in advance of completing the submission form on the following page.

## Why SmartView?

SmartView is a hosted, instantly loading and mobile-friendly version of your stories that is available offline in SmartNews.

SmartView stories drive more engagement from users in SmartNews than opening the article on your mobile site. Your brand gets a richer, more user-friendly appearance and users spend more time with your stories, reading and scrolling through them with greater depth. The algorithm then rewards high quality engagement like this, curating your stories more often and for more users.



Example post-launch engagement with SmartView First – scroll depth shown here nearly doubles.

## SmartNews Advertising

By participating in the SmartView First program, SmartNews will have the right to advertise on your stories and retain the revenue from that advertising. The advertising is sold on a blind basis across the network, meaning we do not sell advertising services based on against specific publications where the ads appear.

## Publisher-controlled revenue opportunities

You will have monetization opportunities with ads you control in your SmartFormat feed:

**Integrate video players:** If you use a video player that is supported by SmartNews, you will be able to integrate that player into your SmartFormat feed and insert a pre-roll advertising before the video. You will keep 100% of the revenue from that ad. Please see the [SmartFormat feed spec < https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1->](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-) for the list of supported video players.

**Insert display ads:** There is also the opportunity to insert a display ad into a SmartView page for which you can sell and retain 100% of the revenue. Programmatic advertising is allowed. Please see the [SmartFormat feed spec < https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1->](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-) for details.

**Add sponsored links:** Publishers can also include sponsored links, or calls to action for newsletter sign-ups, donations or other owned and operated pages on your site. Please see the [SmartFormat feed spec < https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1->](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-) for details.

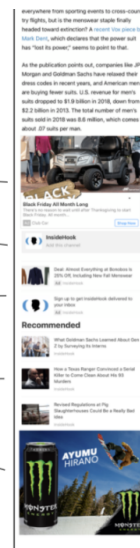
## Favorable publisher incentives

Control your content delivery and leverage publisher incentives for



video, analytics, and display advertising.

- Lead video is publisher's video player and pre-roll ad, no rev share to SmartNews.
- Earn revenue from SmartNews native format advertising insertion.
- One-tap ability for users to install your channel on SmartNews directly from within each story.
- Insert your own sponsored content, affiliate posts, or other promotions with no rev share to SmartNews.
- Three links out to recommended stories on your mobile website = direct traffic.
- Option to insert your own ad, via your own ad tag, with no rev share to SmartNews.
- Support for comScore, Omniture, Google Analytics & Parse.ly tags in feed



## Insights and Analytics

As a partner, you will have access to our Insights dashboard, which will display analysis on traffic, social sharing, and key metrics for your content.

You can also tie your existing analytics service (e.g. comScore, Google Analytics, Omniture, Parsely or Chartbeat) to your SmartFormat feed, allowing you to track performance of your articles on SmartNews in your regular dashboard. Please see the [SmartFormat feed spec < https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1 >](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1) for details.

## Content Requirements

### SITE-LEVEL CONSIDERATIONS

- Clearly identifiable ownership (including commercial, political, or

religious affiliations) with named editorial contact details including mailing address on an About or Contact page.

- Original content only; no feeds that redistribute or reproduce from other sources.
- We only accept English-language feeds at this time. Japanese-language publishers can submit their site via our [Japan site. < https://about.smartnews.com/ja/publishers/>](https://about.smartnews.com/ja/publishers/)
- All feeds must be **full text**.

## STORY-LEVEL CONSIDERATIONS

- Stories should include bylines or staff credit lines. Your site should also have an “About Us” or “Contact Us” section with details of your publication and regular contributors.
- News articles only. Please exclude classifieds, sponsored content, content marketing, press releases, and author profiles from your feed.
- For local news sites, please exclude death notices, birth and marriage announcements.

## Feed Validator

Beyond completion of this application and signature of the agreement, the key deliverable for you to launch in SmartNews is an RSS feed, customized to the [SmartFormat feed spec. <](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-)

[https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1->](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-)

You can also find a validator to check what’s required [here <](#)

<http://validator.engine.smartnews.be/>> .

## **Agreement**

You can find a copy of the SmartView Publisher's agreement [here < https://svf.smartnews.com/wp-content/uploads/2021/10/Content-Feed-and-Advertising-Services-Agreement-09-2020a.pdf>](https://svf.smartnews.com/wp-content/uploads/2021/10/Content-Feed-and-Advertising-Services-Agreement-09-2020a.pdf) , which incorporates the above terms. A signature ready version of the agreement is on the next page.

**NEXT > < HTTPS://SVF.SMARTNEWS.COM/CONTRACT-FORM/>**

## Frequently asked.

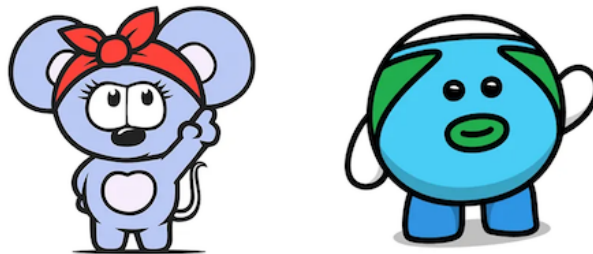
### ▼ My site is on WordPress, any tips?

We have a plug-in that makes it easy to create a SmartFormat feed. You can [download the plug-in here. < https://wordpress.org/plugins/smartformat/>](https://wordpress.org/plugins/smartformat/)

### ▼ My site is on Rebel Mouse, any tips?

RebelMouse has made a number of customizations to help RebelMouse publishers get on SmartNews. [Visit their site for more details. < https://www.rebelmouse.com/smartnews-integration>](https://www.rebelmouse.com/smartnews-integration)

# RebelMouse



# SmartNews

**▼ I've signed up for SmartView First. Why is SmartNews no longer redirecting to my mobile site?**

As part of the SmartView First program, your stories will appear in SmartView by default, and will no longer redirect to your mobile site. SmartView is a hosted version of your story that is optimized for mobile consumption. Any in-line links will still redirect to your site.

**▼ I signed up for SmartView First but I'm still seeing web traffic to my site. Where is that traffic coming from?**

In-line and recommended links within your stories will continue to redirect to your site, and so you will continue to see some web traffic, even after launching in SmartView First.



**▼ Why does SmartNews include an ad on my story in SmartView?**

Under the terms of the SmartView First program, SmartNews has the right to sell and retain revenue from advertising on participating publishers' stories.

**▼ Is SmartNews selling advertising directly against my publication?**

No. SmartNews sells advertising programmatically across the app as a whole, and does not sell ads directly against particular publishers.

**▼ I don't work with some types of advertisers. Does SmartNews have similar restrictions?**

Yes. SmartNews does not include advertising that:

- is unlawful or pornographic;
- promotes racism, bigotry, or violence, or contains hate speech, harassment or bullying content or

harassment, or bullying content, or similar content that advocates harm against an individual or group;

- promotes weapons, illegal drugs and drug paraphernalia, or any illegal products or activity; or
- infringes the rights of any third-party, including but not limited to intellectual property rights, moral rights, publicity rights, or privacy rights.

**▼ Can I still sell advertising against my content on SmartNews?**

Yes. You can include a display ad at the bottom of the page, and sponsored links on the page. If you have a video player, you can integrate it and include a pre-roll ad as well.

**▼ I use a video player and sell pre-roll ads. Does that integrate with SmartView First pages?**

SmartView supports a number of video players including YouTube, Vimeo, JW

Player, Brightcove and Ooyala. As long as you use their standard embed codes, SmartView will support them. For details, see the video section of [\*\*Which embedded media are supported in SmartView?\*\*](#) <

[\*\*https://publishers.smartnews.com/hc/en-us/articles/360052931553-Which-embedded-media-are-supported-in-SmartView-\*\*](https://publishers.smartnews.com/hc/en-us/articles/360052931553-Which-embedded-media-are-supported-in-SmartView-)>

### ▼ I have an RSS feed. Is it compatible with SmartFormat?

The SmartView pages are rendered using the an extension of the RSS spec outlined on our [\*\*SmartFormat feed specification.\*\*](#) <

[\*\*https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-\*\*](https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1-)> Please review the spec

and make sure your feed validates by using our [\*\*online feed validator\*\*](#) <  
[\*\*https://sf-\*\*](https://sf-validator.smartnews.com/)

[\*\*validator.smartnews.com/\*\*](https://sf-validator.smartnews.com/)> before applying to the program.

### ▼ Can I track my performance in SmartNews in my own analytics dashboard?

Yes. You can integrate tracking scripts from Google Analytics and comScore into the feed you provide to SmartNews, and continue to track your performance in the dashboard of your choosing. Details are documented in the [feed spec](#) <

<https://publishers.smartnews.com/hc/en-us/articles/360036526213-SmartFormat-Specification-Version-2-1->> under

`<snf:analytics>` or you can also refer to [How to add third-party analytics to your SmartView page](#) <  
<https://publishers.smartnews.com/hc/en-us/articles/360049353454-How-to-add-third-party-analytics-to-your-SmartView-page>>

### ▼ How can I promote my articles on SmartNews?

SmartNews uses a combination of human guidance and machine learning to curate the articles shown to readers.

SmartNews algorithmically determines specific content that matches the individual interests of each reader.

**▼ I've submitted my feed and signed the agreement. What happens next?**

Congratulations! You've officially launched in SmartView First. Our team will be in touch shortly with your credentials for the Insights Dashboard where you can track your performance going forward. We're excited to work with you.

**▼ Does SmartView support social media embeds?**

SmartView supports a number of social media embeds listed below. In all cases, we ask that you use the standard embed codes provided by the platform and place the embed code inline, into the body text of the article, so we know where to render the embed.

For details, please see ***Which embedded media are supported in***

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**SmartView? <**

**<https://publishers.smartnews.com>**

**</hc/en-us/articles/360052931553->**

**[Which-embedded-media-are-](#)**

**[supported-in-SmartView->](#)**

**Facebook < <https://www.facebook.com/SmartNewsInc>>**

**Twitter < <https://twitter.com/smartnews>>**

**Email**

**© 2023 SmartNews Partner Program <**

**<https://svf.smartnews.com/>>**

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## Content Feed and Advertising Services Agreement

THIS CONTENT FEED AND ADVERTISING SERVICES AGREEMENT (the “**Agreement**”) is between You (“**Publisher**”) and SmartNews, Inc. (“**SmartNews**”), each a “**Party**” and collectively the “**Parties**.”

### Recitals

- A. Publisher is in the content publishing business and has rights in content to be distributed to, and displayed through, SmartNews’s mobile applications for any and all mobile devices (including but not limited to smartphones and tablets);
- B. SmartNews has a mobile application which allows end-users to view news content;
- C. SmartNews desires to enable end-users to access Publisher’s content through SmartNews’s mobile applications; and
- D. Publisher desires to receive the Services (as defined in Section 1) from SmartNews.

In consideration of the mutual covenants and conditions herein contained, the sufficiency of which the parties hereby acknowledge, the Parties agree as follows:

### 1. DEFINITIONS.

- (a) “**End-Users**” means end users of SmartNews Application.
- (b) “**Full-Text Content**” means Publisher Content for which the full text of applicable news articles is displayed to End-Users through the SmartNews Application.
- (c) “**Full-Text Content Inventory**” means advertising inventory available to present to End-Users that are then-viewing the Full-Text Content from SmartNews Application.
- (d) “**Publisher Advertising**” means the advertising material that Publisher makes available to SmartNews pursuant to Section 2(b).
- (e) “**Publisher Brand Icon**” means the image that Publisher delivers to SmartNews for the purpose of associating the Publisher Content with Publisher.
- (f) “**Publisher Content**” means any and all content that is or was displayed on or through the Publisher Websites and any other content that Publisher delivers through the content feed contemplated herein.
- (g) “**Publisher Website(s)**” means website(s) owned or controlled by Publisher.
- (h) “**Reserved Inventory**” means the advertising inventory that SmartNews makes available for Publisher Advertising for presentation to end-users that are then-viewing Full-Text Content from the SmartNews Application. For clarity, Reserved Inventory does not include any advertising inventory on the SmartNews Application that is not displayed to

end-users then-viewing Full Text Content. For clarity, this is Publisher's 300x250 pixel maximum ad unit, defined as <snf:advertisement> in SmartFormat feed specifications.

(i) **"Services"** means the SmartNews Advertising Services (as defined in Section 2(a)) and SmartNews Insights.

(j) **"SmartNews Advertising"** means advertising material distributed and placed by SmartNews within the Full-Text Content Inventory. For clarity, SmartNews Advertising excludes Publisher Advertising.

(k) **"SmartNews Application"** means SmartNews's mobile application that SmartNews makes available for end-users to download from mobile platforms selected by SmartNews in its sole discretion.

(l) **"SmartFormat"** means SmartNews's standard formatting that SmartNews makes available to Publisher in accordance with Section 4(a)(ii).

(m) **"SmartNews Insights"** means SmartNews's online dashboard service that provides statistics, data, and analytics related to End-User page views on the SmartNews Application.

(n) **"SmartFormat Specifications"** means the specifications and requirements that SmartNews makes available to Publisher for implementation and use of SmartFormat.

## 2. **ADVERTISING TERMS.**

### (a) **Advertising.**

(i) Subject to Publisher's compliance with the terms and conditions of this Agreement, SmartNews agrees to present the Publisher Advertising on the Reserved Inventory during the Term (the **"SmartNews Advertising Services"**). Any and all revenue Publisher collects for the Publisher Advertising presented on the Reserved Inventory will belong solely to Publisher.

(ii) SmartNews will have the right to place SmartNews Advertising within the Full-Text Content Inventory. Any and all revenue SmartNews collects for the SmartNews Advertising will belong solely to SmartNews.

### (b) **Delivery.**

(i) Publisher will deliver to SmartNews the creative content and HTML coding for all Publisher Advertising in digital format in accordance with SmartNews's reasonable instructions.

(ii) As soon as the Parties establish the SmartFormat connection, Publisher will use Smart Format to format the Publisher Advertising and transmit it to the SmartNews Application in accordance with the SmartFormat Specifications.

(iii) Publisher is solely responsible for the availability of content, quality, and any other aspects of the Publisher Advertising. Publisher understands that SmartNews's performance of the Advertising Service is dependent on Publisher delivering or



transmitting the Publisher Advertising that conforms to the requirements herein in a timely manner. Accordingly, Publisher will be responsible for and assumes the risk of any problems and delays resulting from its failure to deliver or transmit the Publisher Advertising. SmartNews reserves the right to reject or remove any Publisher Advertising that conflicts with the requirements or restrictions set forth in this Agreement.

**(c) Restrictions.** SmartNews will not deliver any SmartNews Advertising, and Publisher will not deliver any Publisher Advertising or Publisher Content, that:

- (i) is unlawful or pornographic;
- (ii) promotes racism, bigotry, or violence, or contains hate speech, harassment, or bullying content, or similar content that advocates harm against an individual or group;
- (iii) promotes weapons, illegal drugs and drug paraphernalia, or any illegal products or activity; or
- (iv) infringes the rights of any third-party, including but not limited to intellectual property rights, moral rights, publicity rights, or privacy rights.

### **3. SMARTNEWS INSIGHTS.**

**(a) Service.** Subject to Publisher's compliance with the terms and conditions of this Agreement, SmartNews agrees to provide Publisher access to SmartNews Insights during the Term. SmartNews Insights will be provided through the website located at a URL to be provided to Publisher (the "URL"). SmartNews may change the URL from time to time upon notice to Publisher. Publisher may access and use SmartNews Insights solely for its internal business purposes, and only Publisher's employees are authorized to access SmartNews Insights on behalf of Publisher.

**(b) Restrictions.** Publisher shall not attempt to interfere with or disrupt SmartNews Insights or the software used to provide such service, or attempt to gain access to any systems or networks that connect thereto (except as required to access and use SmartNews Insights). Publisher shall not allow access to or use of SmartNews Insights by anyone other than employees. Publisher shall not: (a) copy, modify or distribute any portion of the Services; or (b) rent, lease, or provide access to the Services on a time-share or service bureau basis.

### **4. PUBLISHER CONTENT.**

**(a) Access to Content.**

(i) Publisher hereby authorizes SmartNews to scrape all Publisher Content from Publisher Websites solely for purposes of presenting the Publisher Content through the SmartNews Application in accordance with the terms of this Agreement.

(ii) Publisher will (A) implement SmartFormat in accordance with the SmartFormat Specifications and (B) format all Publisher Content using SmartFormat and deliver it to SmartNews via Publisher's RSS feed(s) throughout the Term of this

Agreement. The availability, implementation, and use of SmartFormat will not terminate or otherwise limit the authorization provided pursuant to Section 4(a)(i).

(iii) SmartNews will provide Publisher the ability to delete any Publisher Content from SmartNews's index that Publisher does not want displayed through the SmartNews Application.

**(b) License.** Publisher hereby grants to SmartNews a non-exclusive, royalty-free, worldwide license to: (i) reproduce, publicly display, publicly perform, disseminate, distribute and otherwise transmit the Publisher Brand Icon and Publisher Content, and any portion thereof, solely for the purpose of making the Publisher Content available to end-users via the SmartNews Application and to market and promote the SmartNews Application; (ii) create derivative works of the Publisher Content solely to the extent necessary to format it for optimal display via the SmartNews Application; and (iii) sublicense end-users the right to temporarily cache Publisher Content provided via the SmartNews Application on end-users' mobile devices.

## **5. TERM & TERMINATION.**

**(a) Term.** The term of this Agreement will commence as of the Effective Date and, unless terminated earlier in accordance with the terms herein, will continue for an initial term of one year, after which it will automatically renew for successive one year renewal terms, unless either party provides notice of non-renewal at least thirty (30) days before the end of the initial term or any renewal term (the "**Term**").

**(b) Termination.** Either party may terminate this agreement: (i) with a 90 days prior notice without any penalty or additional charges; (ii) upon written notice if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice by the non-breaching party specifying the breach.

**(c) Effect of Termination.** Sections 5(c) and 6 through 11 will survive termination or expiration of this Agreement.

## **6. OWNERSHIP OF INTELLECTUAL PROPERTY.**

**(a) Publisher Content.** As between the Parties, the Publisher Content, Publisher Advertising, and Publisher Brand Icon, and all copyrights, trademarks, and service marks therein, are owned by, and will remain the sole and exclusive property of, Publisher.

**(b) SmartNews Application & Services.** As between the Parties, the SmartNews Application, SmartFormat, and SmartNews Insights, and all modifications to any of the foregoing, and all copyrights, trademarks, patents, and any other intellectual property rights therein (excluding the Publisher Content and Publisher Advertising), are owned by, and will remain the sole and exclusive property of, SmartNews.

## **7. CONFIDENTIAL INFORMATION.** The Parties acknowledge that, in the course of performing their respective obligations hereunder, each may obtain information relating to the other and the other's products, services, and business that is of a confidential and proprietary nature to such other party. "**Confidential Information**" means: (i) all information disclosed in writing or other tangible form that is marked "confidential" or "proprietary" at the time of disclosure; (ii) all information disclosed in oral or other non-

tangible form that is identified as “confidential” or “proprietary” at the time of disclosure and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; and (iii) all information which, under the circumstances, a person exercising reasonable business judgment should understand to be confidential or proprietary. Confidential Information will not include, however, any information that (i) is received by the receiving party from a third party without restriction on use or disclosure, (ii) the disclosing party gives to third parties without restriction on use or disclosure, or (iii) is previously known to the receiving party, or (iv) independently developed by the receiving party without reference to the disclosing party’s Confidential Information. Except to the extent that Confidential Information is required to be disclosed by law, each Party agrees to use reasonable efforts to hold all such Confidential Information in confidence, and not to disclose it to others or use it except for purposes of this Agreement. Each Party will retain ownership in its Confidential Information. Information disclosed by SmartNews that relates to statistics, analytics, or other information regarding SmartNews’s end-users and publishing partners and their publications on the SmartNews Application is deemed the Confidential Information of SmartNews.

## **8. REPRESENTATIONS AND WARRANTIES.**

(a) Each Party hereto represents and warrants that: (i) it has the power and authority to enter into, to grant the rights granted herein and perform its obligations under this Agreement; (ii) the execution and performance of this Agreement will not conflict with or result in a material breach of the terms of any other agreement to which it is a party; and (iii) it will comply with all applicable laws and regulations in the performance of its obligations hereunder, including but not limited to all federal, state, and local laws and regulations.

(b) THE EXPRESS WARRANTIES IN SECTION 8 ARE IN LIEU OF, AND EACH PARTY HEREBY DISCLAIMS, ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

## **9. INDEMNIFICATION.**

(a) **SmartNews Indemnity.** SmartNews will at all times defend, indemnify and hold harmless Publisher, its parent, subsidiaries, affiliates and divisions, and each of their respective officers, directors, shareholders, representatives, agents, employees, successors and assigns from and against any and all claims, actions, demands, damages, liabilities, costs, loss or expense, including, but not limited to, reasonable attorneys’ fees (“**Claims**”) incurred by reason of any third-party claim or suit arising out of or in connection with: (i) a breach by SmartNews of a term, representation or warranty in Sections 2(c) or 8, or any allegation by a third-party that, if true, would be a breach of a term, representation or warranty in Sections 2(c) or 8, or (ii) violation or infringement by the SmartNews Advertising of the rights of any third-party, including but not limited to intellectual property rights, moral rights, publicity rights, or privacy rights.

(b) **Publisher Indemnity.** Publisher will at all times defend, indemnify and hold harmless SmartNews, its parent, subsidiaries, affiliates and divisions, and each of their respective officers, directors, shareholders, representatives, agents, employees,

successors and assigns from and against any and all Claims, that incurred by reason of any third-party claim or suit arising out of or in connection with: (i) a breach by Publisher of a term, representation or warranty in Sections 2(c) or 8 or any allegation by a third-party that, if true, would be a breach of a term, representation or warranty in Sections 2(c) or 8, or (ii) violation or infringement by the Publisher Advertising, Publisher Content or Publisher Brand Icon of the rights of any third-party, including but not limited to intellectual property rights, moral rights, publicity rights, or privacy rights.

**(c) Indemnification Process.** The party or entity receiving indemnification (the “**Indemnified Party**”) agrees to give the indemnifying party (the “**Indemnifying Party**”) prompt notice of any Claim for which indemnification will be sought, cooperate with the Indemnifying Party in the defense of such Claim and any settlement, and permit the Indemnifying Party to control and manage the defense of such Claim and any settlement. Failure to give such prompt notification will relieve the Indemnifying Party of its indemnification obligations only to the extent that such failure has materially prejudiced the Indemnifying Party’s defense of such Claim. The Indemnifying Party will not, without the consent of the Indemnified Party, which consent will not be unreasonably withheld, conditioned or delayed, enter into any settlement or agree to any disposition that imposes any conditions or obligations on the Indemnified Party. Nothing contained herein will prohibit the Indemnified Party from retaining counsel of its own choosing, and its own expense, in relation to any Claim against the Indemnified Party.

- 10. LIMITATION OF LIABILITY.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS IN SECTION 9, OR A BREACH OF SECTION 3(b), OR THE CONFIDENTIALITY OBLIGATIONS IN SECTION 7, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR: (A) ANY LOSS OF PROFITS, INCOME, REVENUE, SAVINGS, GOODWILL, OR DATA, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) DAMAGES HEREUNDER THAT EXCEED THE GREATER OF (I) ONE THOUSAND DOLLARS (\$1000) AND (II) THE AMOUNTS PAID OR PAYABLE BY SMARTNEWS TO PUBLISHER HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES.

**11. GENERAL PROVISIONS.**

**(a) Independent Contractor.** The relationship of the parties is that of independent contractors and no employment relationship is created by this Agreement. Nothing contained in this Agreement will be deemed or construed as a joint venture, franchise or partnership between Publisher and SmartNews, and neither party is by virtue of this Agreement authorized as an agent, employee or legal representative of the other.

**(b) Notices.** All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; or (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All such notices will be sent to the addresses as may be specified by either Party to the other Party.

(c) **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent, provided, however, that SmartNews may assign this Agreement, without Publisher's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, the sale of all or substantially all of SmartNews's assets that relate to this Agreement, or the sale of that portion of SmartNews's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and assigns.

(d) **Force Majeure.** If a failure or delay in performance by either Party is caused by events or circumstances beyond its reasonable control (a "**Force Majeure Event**"), such failure or delay in performance will not be treated as a breach of this Agreement, provided that performance is resumed upon the end of such event of the Force Majeure Event.

(e) **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

(f) **Applicable Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its body of law controlling conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties irrevocably consent to the personal jurisdiction and venue therein.

(g) **Entire Agreement; Modification; Waiver.** This Agreement constitutes the complete and exclusive agreement between the parties concerning the subject matter herein and supersedes all prior understandings and agreements, whether written or oral, with respect to its subject matter. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties. Waiver of any term or provision of this Agreement or forbearance to enforce any term or provision by either party shall not constitute a waiver as to any subsequent breach or failure of the same term or provision or a waiver of any other term or provision of this Agreement. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. Except as expressly set forth in this Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. The Parties have entered into this Agreement to facilitate the presentation of content contemplated herein, and it should not be used or construed to show an understanding, implication, or suggestion that any rights or licenses are required, or not required, for such content presentation. The terms of this Agreement will supersede the terms of any Terms of Use or Terms of Service that govern Publisher Websites to the extent they conflict with the terms of this Agreement.