

DOUBLEPOSITIVE MARKETING GROUP

TERMS OF USE

Last Updated on September 7, 2006

THIS DOCUMENT SETS FORTH THE TERMS OF USE (“TERMS OF USE”) FOR THE DOUBLEPOSITIVE MARKETING GROUP, INC. (“COMPANY,” “WE,” OR “OUR”) WEBSITE WWW.DOUBLEPOSITIVE.COM (“SITE”) AND THE INFORMATION, SERVICES, AND/OR PRODUCTS THAT MAY BE MADE AVAILABLE TO YOU THROUGH THE SITE. PLEASE READ THESE TERMS OF USE CAREFULLY. BY USING THE SITE, YOU AGREE TO BE BOUND BY THESE TERMS OF USE, INCLUDING THE BINDING ARBITRATION PROVISIONS IN SECTION 15, AND YOU ACKNOWLEDGE THAT YOU ARE A LEGAL ADULT AGE 18 OR OLDER. IF YOU DO NOT AGREE TO THESE TERMS OF USE, OR IF YOU ARE NOT A LEGAL ADULT AGE 18 OR OLDER, DO NOT USE THE SITE IN ANY MANNER.

1. DESCRIPTION OF SITE; CHANGES TO TERMS OF USE

We provide online advertising and marketing services across multiple channels and media, including to visitors to our Websites looking for deals on third party goods and services, and advertising and marketing professionals who access the Websites to use DoublePositive’s services including but not limited to live hot transfers, mobile pay-per-call, display advertising, leads, search engine marketing, and other online marketing services (collectively “Services”).

2. DOUBLEPOSITIVE’S PRODUCTS AND SERVICES

Company does not charge any fees for your access to the Site. Company does charge fees for your use of Company’s products and/or services. All sales of products and/or services are subject to Company’s terms and conditions of sale, a copy of which is available upon request. In the course of using the Site, you may be required to sign up as a member of the Site and/or required to enter certain information or to email certain information to Company. You agree to provide Company with correct information, and to promptly provide Company with updates to such information as may be necessary or appropriate.

3. SITE OWNERSHIP

The Site, including all text, logos, or graphic images appearing therein, is protected by copyright, trademark, patent, trade secret, and other laws. The Site and all Site content are the property of Company and/or its affiliates and/or third party licensors and all right, title, and interest in the Site shall remain with such entities. You may not download and/or save a copy of any of the Site screens for any purpose; provided, however, you may print a copy of the information on the Site for your records. Nothing in these Terms of Use transfers any rights to you or any third party except as expressly set forth herein. If you make other use of the Site, except as otherwise provided above, you may violate copyright and other laws of the United States and other countries, as well as applicable state laws, and you may be subject to penalties and/or damages.

4. HYPERLINKS

Not Endorsements. A link from the Site to a non-Company website does not mean that Company endorses or accepts any responsibility for the content, functioning, policies, or use of such website, and you enter any such website at your own risk. It is your responsibility to take precautions to ensure that whatever websites or other online materials that you select for use are free of viruses and other items of a destructive nature. Company expressly disclaims any liability related to such sites.

Unauthorized Links. Company prohibits unauthorized hypertext links to the Site or the framing of any content available through the Site. Company reserves the right to disable any unauthorized links or frames.

5. SITE USE RESTRICTIONS

You will not (i) post on or transmit to the Site any defamatory, libelous, obscene, pornographic, profane, threatening, infringing, or unlawful materials or any materials that could constitute or encourage conduct that would be considered a criminal offense or give rise to civil liability, whether under statute, common law, or equitable principles, or otherwise violate any law; (ii) modify, perform, mirror, publish, create derivative works from, transfer, sell, lease, rent, sublicense, loan, share, give away, or donate any information obtained from the Site or portions thereof; or (iii) use the Site in any manner that violates any applicable federal, state, local, and/or international laws, regulations, orders, or other restrictions.

6. PRIVACY.

Please see Company’s [Privacy Policy](#). By using the Site, you consent to Company’s use and disclosure of information that you provide Company in accordance with the Privacy Policy without any further notice or any liability to you or any other person.

7. USE MONITORING

Company is not obligated to monitor your or any other user’s use of the Site; such responsibility rests solely with you. Company reserves the right to monitor your use of the Site and to restrict or terminate your use of the Site or modify or remove any information found on the Site for any reason or no reason in Company’s sole judgment.

8. TERMINATION; VIOLATION OF TERMS OF USE

Company reserves the right to terminate at any time, at its sole discretion, the Site, your use of the Site, and/or your use of Company’s services, including without limitation for violation of these Terms of Use. Additionally, Company reserves the right to seek all remedies available for violation of these Terms of Use, including the right to block access from a particular Internet address to the Site.

9. PASSWORD

In using the Site, you may be assigned a password. You are responsible for maintaining the security of your password. Company is not liable for any loss that you may suffer through the use of your password by others. You shall notify Company immediately of any unauthorized use of your account or of any other breach of security known to you with respect to the Site.

10. FEEDBACK IS THE PROPERTY OF COMPANY

To the extent permitted by applicable law, by sending any comments or materials (collectively "Feedback") to Company, including without limitation questions, submissions, suggestions, ideas, postings, comments, or the like, or posting Feedback to the Site, you grant Company a perpetual, non-revocable, transferable, unrestricted, non-exclusive, absolute, royalty-free, worldwide license to use the Feedback in any format or media now or hereafter known. Company shall have no obligation of any kind with respect to such Feedback and shall be free to modify, copy, perform, publish, transmit, reproduce, use, exhibit, disclose, display, transform, create derivative works, distribute the Feedback to others, and otherwise exploit the Feedback without limitation, in whole or in part, alone or in conjunction with other materials, as well as the right to attempt to do so or permit others to do so or attempt to do so. Further, Company shall be free to use any ideas, concepts, know-how, or techniques contained in such Feedback for any purpose whatsoever, including but not limited to developing, manufacturing, and marketing products and/or services incorporating any Feedback.

11. NOTICES AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

Company will investigate notices of copyright infringement and take appropriate actions under the Digital Millennium Copyright Act, 17 U.S.C. § 512(c)(2) ("DMCA"). Written notification of claimed copyright infringement should be submitted to Company's designated agent using the following contact information:

[NAME OF AGENT, ADDRESS, PHONE NUMBER & EMAIL ADDRESS – MUST ALSO REGISTER WITH COPYRIGHT OFFICE FOR \$30].

12. REPRESENTATION AND WARRANTY DISCLAIMER

THE SITE AND ALL INFORMATION ON THE SITE, INCLUDING TEXT, IMAGES, AND LINKS, AND THE INFORMATION ON ANY WEBSITES, WHETHER AFFILIATED OR UNAFFILIATED WITH COMPANY, WHICH YOU MAY VISIT THROUGH THE SITE, ARE PROVIDED "AS IS" AS A CONVENIENCE TO ALL USERS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND TO YOU OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES (I) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) OF INFORMATIONAL CONTENT OR ACCURACY; (III) OF NON-INFRINGEMENT; (IV) OF QUIET ENJOYMENT; (V) OF TITLE; (VI) THAT THE SITE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION; (VII) THAT ANY DEFECTS OR ERRORS IN THE SITE WILL BE CORRECTED; (VIII) THAT THE SITE IS COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM; OR (IX) THAT ALL SERVICES OFFERED BY COMPANY WILL BE AVAILABLE IN ALL MARKETS. EFFORTS BY COMPANY TO MODIFY THE SITE SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS. IN THE EVENT YOUR JURISDICTION DOES NOT ALLOW OR LIMITS THE EXCLUSION OF WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

13. LIMITATION OF LIABILITY

COMPANY, ITS STOCKHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, CONTENT AND SERVICE PROVIDERS, AND PARTNERS SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, WHETHER UNDER THESE TERMS OF USE, AS A RESULT OF THE USE OF THE SITE AND/OR THE INFORMATION, SERVICES AND/OR PRODUCTS THAT MAY BE PROVIDED TO YOU BY COMPANY IN CONNECTION WITH THE SITE, UNDER STATUTE, REGULATION, COMMON LAW PRECEDENT, OR DOCTRINE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY SUCH LOSSES ARISING OUT OF A THIRD PARTY'S UNAUTHORIZED ACCESS TO YOUR PERSONAL INFORMATION, EVEN IF COMPANY AND/OR ITS STOCKHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, CONTENT AND/OR SERVICES PROVIDERS, AND/OR PARTNERS WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND/OR WERE NEGLIGENT. FURTHERMORE, IN NO EVENT SHALL COMPANY AND ITS STOCKHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, CONTENT AND SERVICES PROVIDERS, AND PARTNERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY ACTIONS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES IN ANY WAY ARISING OUT OF OR RELATED TO THE SITE, YOUR USE OF THE SITE, AND/OR THE INFORMATION, SERVICES, AND/OR PRODUCTS THAT MAY BE PROVIDED TO YOU BY COMPANY IN CONNECTION WITH THE SITE FOR AN AGGREGATE AMOUNT IN EXCESS OF THE VALUE OF THE SERVICES AND/OR PRODUCTS SERVICES PROVIDED TO YOU BY COMPANY. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT, OR OTHERWISE. IN JURISDICTIONS THAT PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY, LIABILITY HEREUNDER IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

14. INDEMNIFICATION

To the extent permitted by applicable law, you will indemnify, defend, and hold harmless Company and its stockholders, directors, officers, employees, agents, successors, assigns, affiliates, content and service providers, and partners from and against (and will pay upon demand each such person the amount of) any and all claims, losses, liabilities, suits, damages, and disputes, including attorneys fees made, suffered, or incurred by any third party that arises from, relates to, or is caused by any breach by you of any covenant, representation, or warranty contained in these Terms of Use and/or your use of the Site. In connection with any suit, action, or proceeding that may give rise to an obligation of you to indemnify a person as set forth above, Company shall have the exclusive right, at its option, to defend, compromise, and/or settle the suit, action, or proceeding, and you shall be bound by the determination of any suit, action, or proceeding so defended or any compromise or settlement so effected. The remedies provided in this section are not exclusive of and do not limit any other remedies that may be available to Company or any other party to be indemnified pursuant to this section.

15. DISPUTE RESOLUTION (ARBITRATION CLAUSE)

Arbitration. You and Company each agree to submit to binding arbitration in the event of a dispute, controversy, or claim (each, a "Claim") arising out of or in connection with these Terms of Use, the Privacy Policy, your or Company's rights and obligations under these Terms of Use, or the Privacy Policy, the Site, the use of the Site, and/or the information, services, and/or products that may be provided by or through or in connection with the Site. The arbitration will be held in Maryland before one arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a dispute as a class action. You also expressly waive your right to a jury trial. You may select one of the following arbitration organizations and its applicable rules: the National Arbitration Forum, Box 50191, Minneapolis, MN 55405-0191 (www.arb-forum.com), or JAMS, Two Embarcadero Center Suite 1100 San Francisco, CA 94111 (www.jamsadr.com). If you fail to select an arbitration organization within 30 days after notice from Company, Company may select the organization. You may obtain a copy of the rules of each organization by contacting the organization. In the event that any Claim cannot be submitted to binding arbitration pursuant to the rules of any such organization, such event shall not affect the enforceability of this clause so long as the Claim may be submitted to binding arbitration with the other organization. You and Company shall agree on one arbitrator to conduct the arbitration and the arbitrator shall be selected pursuant to the applicable rules. Each party shall be responsible for its own attorney, expert, and other fees, unless such fees are awarded by the arbitrator to the prevailing party. Notwithstanding anything to the contrary in this Section, to the extent you have in any manner violated or threatened to violate Company's intellectual property rights, Company may seek injunctive or other appropriate relief in any state or federal court in the State of Maryland, and you consent to exclusive jurisdiction and venue in such courts.

Arbitration Final. The arbitrator's award is final and binding on all parties. The Federal Arbitration Act (9 U.S.C. §1 et seq.), and not any state law concerning arbitration, governs all arbitration under this clause. Any court having jurisdiction may enter judgment on the arbitrator's award. If any part of this clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. Notwithstanding anything to the contrary contained herein, if the waiver of class action rights contained herein is not enforceable as to any person or persons, the provisions of Section 17 of these Terms of Use shall apply to such person or persons only, and all other persons shall continue to be governed by the Arbitration Clause.

No Class Action. These Terms of Use provide that all Claims will be resolved by binding arbitration and not in court or by jury trial. **BECAUSE THE ARBITRATION WILL BE ON AN INDIVIDUAL BASIS AND NOT AS A CLASS ACTION, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST COMPANY INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. WITHOUT LIMITATION, THIS MEANS THAT YOU WILL NOT HAVE THE RIGHT TO BRING OR PARTICIPATE IN A CLASS ACTION AS SET FORTH IN ANY STATE STATUTE.**

16. WAIVER

If you are a California resident, to the extent permitted by California law, you waive California Civil Code Section 1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor" as well as any other unknown claims under California Civil Code Section 1542 or any statute or common law principle of similar effect.

17. JURISDICTION AND VENUE

TO THE EXTENT A CLAIM IS NOT GOVERNED BY THE ARBITRATION CLAUSE, EXCLUSIVE JURISDICTION FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE, THE PRIVACY POLICY, YOUR OR COMPANY'S RIGHTS AND OBLIGATIONS UNDER THESE TERMS OF USE OR THE PRIVACY POLICY, THE SITE, THE USE OF THE SITE, AND/OR THE INFORMATION, SERVICES, AND/OR PRODUCTS THAT MAY BE PROVIDED BY OR THROUGH OR IN CONNECTION WITH THE SITE SHALL BE THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND – NORTHERN DIVISION, LOCATED IN BALTIMORE CITY, MARYLAND OR, IF FEDERAL JURISDICTION IS NOT AVAILABLE, IN THE APPROPRIATE COURT OF THE STATE OF MARYLAND THAT IS LOCATED IN BALTIMORE CITY, MARYLAND; PROVIDED, HOWEVER, THAT IN THE EVENT COMPANY IS SUED OR JOINED BY A THIRD PARTY IN ANY OTHER COURT OR IN ANY OTHER FORUM IN RESPECT OF ANY MATTER WHICH MAY GIVE RISE TO A CLAIM BY COMPANY HEREUNDER, YOU CONSENT TO THE JURISDICTION OF SUCH COURT OR FORUM OVER ANY CLAIM WHICH MAY BE ASSERTED BY COMPANY THEREIN. YOU IRREVOCABLY CONSENT TO THE EXERCISE OF PERSONAL JURISDICTION BY SUCH COURTS IN ANY SUCH ACTION. In addition, and notwithstanding the foregoing, YOU irrevocably waive, to the fullest extent permitted by law, any objection that YOU may now or hereafter have to the laying of the venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon YOU and may be enforced in any court in which YOU ARE subject to jurisdiction by a suit upon such judgment.

18. WAIVER OF TRIAL BY JURY

TO THE EXTENT A CLAIM IS NOT GOVERNED BY THE ARBITRATION CLAUSE, COMPANY AND YOU EACH hereby waive the right to a trial by jury in any court and in any suit, action, or proceeding, whether in tort, contract, or otherwise, in which ANY SUCH PARTY is a party, as to ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF USE, THE PRIVACY POLICY, YOUR OR COMPANY'S RIGHTS AND OBLIGATIONS UNDER THESE TERMS OF USE OR THE PRIVACY POLICY, THE SITE, THE USE OF THE SITE, AND/OR THE SERVICES AND/OR PRODUCTS THAT MAY BE PROVIDED BY OR THROUGH OR IN CONNECTION WITH THE SITE.

19. VIEWING OUTSIDE THE UNITED STATES

Company makes no claims that the Site may be lawfully viewed, accessed, or used outside the United States. Access or use of the Site may not be legal by certain persons or in certain countries. If you access or use the Site from outside of the United States, you do so at your own risk and you are responsible for compliance with the laws of your jurisdiction.

20. MISCELLANEOUS

Severability. Except as otherwise expressly provided by these Terms of Use, if any provision of these Terms of Use shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If any provision of these Terms of Use is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

Waiver of Contractual Right. The failure of Company to enforce any provision of these Terms of Use shall not be construed as a waiver or limitation of Company's right to subsequently enforce and compel strict compliance with that provision or any other provision of these Terms of Use

Parties in Interest. These Terms of Use shall be binding upon, inure to the benefit of, and be enforceable by the parties to these Terms of Use and their respective successors, heirs, legatees, personal representatives, and permitted assigns. No assignment, delegation, or other conveyance of these Terms of Use or of any rights or obligations hereunder may be made by you (by operation of law or otherwise) without the prior written consent of Company. Company may assign its rights and obligations under these Terms of Use to any other party.

Headings. The headings and other captions in these Terms of Use are for convenience and reference only and shall not be used in interpreting, construing, or enforcing any of the provisions of these Terms of Use. Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the context may require.

Entire Agreement. These Terms of Use constitutes the entire agreement between you and Company and they supersede all prior or contemporaneous communications, promises, and proposals, whether oral, written, or electronic, between you and Company with respect to the Site, the use of the Site, and/or the services and/or products that may be provided by or through or in connection with the Site.

Printed Terms of Use Admissible. A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Governing Law. These terms of use shall be governed by and construed in accordance with the laws of the State of Maryland, excluding any law or conflicts of law principle that would apply the law of another jurisdiction. **NOTWITHSTANDING THE FOREGOING, THE PARTIES EXPRESSLY OPT OUT OF THE MARYLAND UNIFORM COMPUTER TRANSACTIONS ACT ("MUCITA") AS PERMITTED BY SECTION 22-104 OF MUCITA.**

CONTACT US:

If you have questions or concerns regarding our Terms of Use or the site, please contact us at

Double Positive Marketing Group, Inc.,
1111 Light St Suite 350
Baltimore MD 21230 or terms@doublepositive.com

PLEASE RETAIN A COPY OF THESE TERMS OF USE FOR YOUR RECORDS.