

## **VERIO**

### **Authorized Web Affiliate Agreement**

# **Web Affiliate Referral Agreement**

This Web Affiliate Referral Agreement ("**Agreement**") is made and entered into **<today's date>** by and between Verio Inc., a Delaware corporation ("**Verio**"), having its corporate headquarters at 8005 S. Chester Street, Suite 200, Englewood, Colorado 80112, and ("**Web Affiliate**").

WHEREAS, Verio is engaged in the business of providing Internet-related services (as more particularly defined below, the "**Verio Services**"); and

WHEREAS, Web Affiliate desires to become a sales representative for Verio pursuant to Verio's Web Affiliate Referral Program ("**WARP Program**"), and Verio wishes to engage Web Affiliate to solicit sales of the Verio Services.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Verio and Web Affiliate agree as follows:

#### **1. Appointment as Authorized Web Affiliate.**

Subject to the terms and conditions of this Agreement, Verio appoints Web Affiliate as a non-exclusive sales representative of Verio worldwide (the "**Territory**") for purposes of soliciting sales of Verio's Internet-related services as more particularly described at Verio's WARP Program Web site at [www.verio.com/partners/via1/enroll/contract/](http://www.verio.com/partners/via1/enroll/contract/) (the "**WARP Program Web Site**") (collectively, the "Verio Services") to customers in the Territory for the benefit of Verio's account. In order for the foregoing appointment to be effective, Web Affiliate must (i) evidence its acceptance of the terms and conditions of this Agreement by executing this Agreement and returning it to Verio as provided herein and at the WARP Program Web Site, and (ii) **BE ABLE TO RECEIVE A UNITED STATES BUSINESS CHECK AS REQUIRED UNDER SECTION 9 BELOW**. The parties hereto acknowledge that this is not an exclusive area or franchise agreement.

#### **2. Duties of Verio.**

During the term of this Agreement, Verio shall: (a) provide the Verio Services to customers originated by Web Affiliate in accordance with this Agreement who continue to meet Verio's conditions for the Verio Services as set forth in Verio's standard service agreement to which such customers shall become a party, including, without limitation, maintaining current payment status on account and use of computer hardware and software that Verio is reasonably able to support; (b) provide to Web Affiliate Verio's Web Affiliate Referral Program description in electronic form located at, [www.verio.com/partners/via1/enroll/contract/](http://www.verio.com/partners/via1/enroll/contract/), which includes, among other things, Web Affiliate guidelines, polices, procedures, forms, and relevant agreements, all of which may be amended from time to time by Verio (the "**WARP Program Information**"); and (c) provide a Web hosting co-branded "store front" which will allow potential customers to obtain the Verio Services online ("**Web Affiliate's Store Front**"), provided that Verio shall have the right to approve and/or change the content of the Web Affiliate's Store Front as it deems appropriate in Verio's sole discretion.

### **3. Duties of Web Affiliate.**

Web Affiliate represents and warrants that it is familiar with the Internet and the Verio Services and that it is presently qualified to promote the sale and provide sales support of such Verio Services in the Territory. Web Affiliate represents that the execution and implementation of this Agreement is not in breach nor in violation of any terms or conditions of any other contract, agreement or arrangement to which it is a party, including, but not limited, to any agreement regarding exclusivity or non-competition. Web Affiliate further represents that it has full legal capacity, power and authority to enter into this Agreement and that if Web Affiliate is an individual; Web Affiliate is at least eighteen (18) years old. Web Affiliate also represents that neither it nor any of the customers it solicits are located in a country subject to United States embargoes or listed on the United States Treasury Department's list of specially designated nationals or listed on the United States Commerce Department's denied persons list or entities list.

In addition, Web Affiliate agrees to comply with the following provisions throughout the term of this Agreement:

(a) not to knowingly solicit customers who do not have the hardware or software specified by Verio from time to time; (b) to follow customer order placement procedures for the signing up of new customer accounts as set out in the WARP Program Information, as the same may be amended from time to time. In general, Web Affiliate's customers and potential customers can order services via Web Affiliate's Store Front or by contacting Web Affiliate's dedicated Verio account executive; (c) to use reasonable and lawful sales and marketing efforts to promote the sales of Verio Services; (d) where appropriate and mutually agreed upon, to provide post-sales support at a level reasonably necessary to permit customers to activate and operate the Verio Services; (e) not to engage in any activity harmful to Verio's goodwill or that would reflect unfavorably on Verio's business, brand names or trade or service marks, including unfair trade practices, publication of any false or misleading or deceptive advertising or the commission of any fraud or misrepresentation; (f) comply, at all times, with all applicable federal, state and local laws, rules, regulations and court orders; and (g) not to induce or actively attempt to influence any person to terminate, delay, or reduce in size or scope any contractual or business relationship with Verio.

### **4. General Terms and Conditions of Sales.**

Web Affiliate agrees to sell Verio Services on the terms or conditions set forth in this Agreement (including any and all exhibits attached hereto, as the same may be amended from time to time) and as specified in the WARP Program Information. All Customer orders are subject to acceptance by Verio, either in writing or by actual provision of the Verio Services. Verio retains the absolute right to reject any order that does not comply with Verio's ordering procedures or its terms and conditions for Verio Services. Verio also retains the absolute right to terminate any account that does not meet or continue to meet Verio's terms and conditions for Verio Services. No order rejection or termination of Services will subject Verio to any claim for reimbursement, commission, fee or other remuneration for the benefit of Web Affiliate or its customers or potential customers.

### **5. Marketing to Verio Customers.**

Web Affiliate shall not knowingly market the Verio Services to a current customer of Verio. In the event that Web Affiliate solicits a current customer of Verio to buy Verio Services, Verio shall have no obligation under this Agreement to pay a commission to Web Affiliate for such customer.

## **6. Intellectual Property; Sales and Marketing Materials.**

(a) Web Affiliate acknowledges that Verio owns all right, title and interest in and to certain intellectual property of Verio, including without limitation all Verio trademarks (including, without limitation, the trademark "Verio") trade names, service marks, trade dress or other designation, copyrights, trade secrets, patents, advertising material and all goodwill, if any, in each case, whether presently existing or later developed by either Verio or its affiliates, (collectively "**Verio Intellectual Property**"). Nothing herein shall give Web Affiliate any right, title or interest in any Verio Intellectual Property, or except as provided below, any right to use any Verio Intellectual Property in any way, including without limitation in any advertising, publicity or marketing materials. Web Affiliate covenants not to prejudice or impair the interest of Verio in the Verio Intellectual Property. At no time shall Web Affiliate challenge or assist others to challenge any of the Verio Intellectual Property or the registration thereof or attempt to register any trademark, trade name or any other mark confusingly similar to any of the Verio Intellectual Property.

(b) If approved in advance and in writing by Verio by an authorized Verio representative, Web Affiliate may use advertising or marketing materials prepared by Verio for the sole purpose of Web Affiliate carrying out its obligations under this Agreement. Web Affiliate may use such advertising materials only upon the terms and conditions stated by Verio from time to time; provided, however, that Web Affiliate may not modify or amend any such advertising materials, which it is authorized to use without the prior written consent of Verio.

(c) Notwithstanding the foregoing, if Web Affiliate desires to produce its own printed sales and marketing materials referring to the Verio Services and rates, using certain of the Verio Intellectual Property or otherwise suggest a relationship between Web Affiliate and Verio ("**Web Affiliate Produced Materials**"), Web Affiliate shall submit the Web Affiliate Produced Materials to and obtain advance written approval from an authorized representative of Verio prior to printing and the dissemination of any such Web Affiliate Produced Materials to any third party. Verio shall have sole discretion to approve or disapprove of all Web Affiliate Produced Materials and has the right to require Web Affiliate to enter into a trademark license as a condition to granting any approval. As soon as practicable following expiration or termination of this Agreement, all Web Affiliate Produced Materials in Web Affiliate's possession or in the possession of its employees, agents or subcontractors, together with all similar situated advertising and marketing materials of the type referred to in clause (b) above, shall be delivered to Verio.

## **7. Pricing.**

Apart from rights expressly given under this Section 7, Web Affiliate shall not have the right to quote or price Verio Services at its discretion. Web Affiliate must utilize the standard approved price list, terms and conditions of Verio in offering Verio Services, described in electronic format at: [www.verio.com/partners/via1/](http://www.verio.com/partners/via1/). Verio reserves the right to amend its offering of Verio Services and to add, delete, suspend or modify the terms and conditions of the Verio Services, at any time and from time to time, and to determine whether and when any such changes apply to both existing or future customers.

## **8. Order Placement.**

For each potential customer, Web Affiliate shall follow and direct potential customers to follow the procedures set forth in the WARP Program Guide. In general, Web Affiliate's customers and potential customers can order services via Web Affiliate's Store Front or by contacting Web Affiliate's dedicated Verio account executive. Web Affiliate shall be responsible for any customer fraud losses incurred by

Verio in the event that Web Affiliate fails to adhere to Verio's policies and procedures for order placement or any other breach of this Agreement.

## **9. Commission.**

(a) Verio agrees to pay to Web Affiliate a commission on Qualified Cash Received (as defined on the Commission Schedule) at the applicable percentage and time intervals set forth in the commission schedule in the WARP Program Information located at [www.verio.com/partners/via1/](http://www.verio.com/partners/via1/) (the "**Commission Schedule**"). Verio will not be obligated to pay Commissions to Web Affiliate if Web Affiliate fails to abide by the provisions of Sections 3(b), 4, 5, and 8 of this Agreement. Commissions to Web Affiliate's that are companies (as opposed to individuals) will be paid in the name of the Company set forth on the signature page hereto and not to an individual. Commissions will be paid only in currency of the United States. **WEB AFFILIATE MUST BE ABLE TO RECEIVE A UNITED STATES BUSINESS CHECK IN ORDER TO RECEIVE PAYMENT. VERIO IS NOT REQUIRED TO MAKE PAYMENT BY ANY OTHER MEANS AND IF WEB AFFILIATE CANNOT CASH A UNITED STATES BUSINESS CHECK, VERIO SHALL HAVE NO RESPONSIBILITY WITH RESPECT TO ANY LOSS OF FUNDS BY WEB AFFILIATE.**

(b) Verio shall pay Web Affiliate commissions on cash received during the term of this Agreement from Web Affiliate's customers with respect to initial, upgrade and renewal order(s) for Verio Services by Web Affiliate's customers. Web Affiliate may not at any time provide any billing arrangement or payment on behalf of any of its customer and Verio shall have no obligation to pay any commission with respect to any cash received in breach of this restriction.

(c) Web Affiliate will be able to view an updated commission statement on its control panel containing a mathematical representation of the commission due to Web Affiliate.

(d) The remuneration structure referenced in this Section 9 is agreed to be the sole compensation and remuneration to Web Affiliate for the performance of its services under this Agreement.

## **10. Expenses.**

All expenses incurred by Web Affiliate in connection with its activities hereunder shall be for Web Affiliate's account. Web Affiliate shall not be entitled to reimbursement from Verio for any such expenses and Web Affiliate shall hold Verio harmless therefrom.

## **11. Relationship Between the Parties; Scope of Authority; Indemnification.**

(a) Web Affiliate shall perform all services hereunder as an independent contractor, and agrees not to hold itself out as an agent of Verio with authority apart from authority expressly granted under the terms of this Agreement with respect to and in connection with the sale of Verio Services. Web Affiliate shall have no expressed or implied authority to assume or create any obligation on behalf of Verio. Furthermore, it is agreed that neither party is a fiduciary or quasi-fiduciary of the other. Accordingly, it is agreed that nothing in this Agreement shall be (i) construed as constituting Web Affiliate as other than a limited agent of Verio for any purpose whatsoever or (ii) deemed to create an employer-employee, partnership, franchise or joint venture relationship between Verio and Web Affiliate. Web Affiliate hereby waives the benefit of any state or federal laws or regulations dealing with the establishment and regulation of franchises.

(b) THROUGHOUT THE TERM OF THIS AGREEMENT AND AFTER THIS AGREEMENT IS TERMINATED OR EXPIRES, VERIO SHALL RETAIN FULL AND EXCLUSIVE OWNERSHIP OF ALL CUSTOMERS ORIGINATED BY WEB AFFILIATE RELATIVE TO THE VERIO SERVICES, ALL INFORMATION RELATING TO SUCH CUSTOMERS AND ALL OF VERIO'S OTHER PROPERTY AND ASSETS IN THE TERRITORY. Verio shall maintain its absolute and unrestricted right to manage its business, to sign all documents on its behalf, to decide on its behalf, and to carry on its business separately and solely according to its full power and discretion. Web Affiliate shall have no powers to enter into any agreements for or on behalf of Verio.

(c) Web Affiliate agrees to indemnify, defend, save and hold Verio and its affiliates and employees harmless from and against all liabilities, damages, judgments, claims, costs and expenses (including, but not limited to, reasonable attorneys' fees), as a result of or arising out of any breach of any obligation, warranty or representation in this Agreement by Web Affiliate.

## **12. Non-Exclusivity.**

Verio reserves the right to market and sell Verio Services through its own employees or other representatives or Web Affiliates, and to appoint other sales representatives, both within and outside of the geographic areas in which Web Affiliate operates.

## **13. Confidential Information; Non-solicitation of Customers.**

(a) All documents and other materials made available to Web Affiliate or its employees or agents by Verio in connection with this Agreement and the Verio Services, including, but not limited to, any and all lists of Verio's customers, and any information relating to Verio's business, including, but not limited to, sales and marketing materials, maintenance techniques, credit policies, advertising, promotions, marketing techniques and prices, or to Verio's customers developed by Web Affiliate during the course of this Agreement (collectively "**Verio Confidential Information**"), shall be deemed to be confidential to Verio and shall remain the exclusive property of Verio during and after the term of this Agreement. Web Affiliate acknowledges and agrees that Verio has developed Verio Confidential Information through substantial expenditures of time, money and effort and constitutes unique and valuable property of Verio. Web Affiliate shall keep in strict secrecy and confidence all Verio Confidential Information and shall not during the term of this Agreement or thereafter use Verio Confidential Information for its own benefit or disclose or permit any of its employees or agents to disclose, through any medium, Verio Confidential Information to any other person.

(b) Upon termination or expiration of this Agreement or upon request, Web Affiliate shall return all Verio Confidential Information to Verio and certify in writing that it has returned all such information to Verio and has not kept copies thereof in any medium.

(c) Web Affiliate agrees not to solicit any customers of Verio, whether or not originated by Web Affiliate, for Web hosting, e-commerce and other Internet related services for a period of two (2) years after expiration or termination of this Agreement.

## **14. Warranties; Limitation of Liability.**

(a) *Disclaimer of Warranties.* Verio disclaims all warranties with regard to the Verio Services rendered under this Agreement, including all implied warranties of merchantability and fitness for a particular purpose. Web Affiliate shall extend no warranties or guarantees without the prior written consent of an authorized representative of Verio

(b) *Limitation of Liability.* Neither Verio nor any of its affiliates nor its and their respective directors, officers, employees, agents or suppliers shall be liable to Web Affiliate or any third party for special, consequential, incidental, indirect, tort or cover damages, including, without limitation, damages resulting from the use or inability to use any Verio Services, delay of delivery and/or implementation of a Verio Service, or loss of profits, data, business or goodwill, whether or not such party has been advised or is aware of the possibility of such damages. Verio's liability for all claims of any kind arising out of or relating to this Agreement during its term shall be limited solely to money damages and shall not exceed the amount of commissions paid to Web Affiliate during the twelve months preceding the event giving rise to the claim or claims.

(c) *No Liability for Expiration or Lawful Termination.* Except as expressly permitted otherwise in this Agreement, neither party shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for good will or otherwise made in connection with the business contemplated by this Agreement, solely as a result of the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM TO COMPENSATION OR INDEMNITY SOLELY AS A RESULT OF THE TERMINATION OF THE BUSINESS RELATIONSHIP SET FORTH HEREUNDER, UNLESS SUCH TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.

## **15. Term; Termination.**

(a) This Agreement shall commence on the date stated above and shall remain in effect until terminated pursuant clause (b) below.

(b) Either party may terminate this Agreement at any time without cause upon providing thirty (30) days' prior written notice to the other party. Moreover, Verio may terminate this Agreement immediately without notice at any time in the event of the occurrence of any of the following:

(i) Breach of any covenant, term or condition of this Agreement by Web Affiliate which breach continues unremedied for a period of ten (10) days after notice to Web Affiliate of such breach;

(ii) An assignment by Web Affiliate for the benefit of creditors or Web Affiliate becomes bankrupt or insolvent, or takes benefit of, or becomes subject to, any legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver or trustee of the property and assets of the Web Affiliate is conclusive evidence of insolvency; or

(iii) Verio is unable to provide the subject Verio Service by reason of any law, rule, regulation, or order of any municipal, state or federal authority.

(c) The provisions of Sections 6, 10, 11, 13, 14, 15(c) and 16 of this Agreement shall survive any expiration or termination of this Agreement (or any part thereof).

## **16. Miscellaneous.**

(a) *Force Majeure.* Verio shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, breakdown or damage to machinery, equipment or software, malfunctioning of software, corruption of data, interruption of or delay in transportation, acts or omissions of the other party, unavailability of or interruption or delay in telecommunications or third party services, failure of

third party software or inability to obtain raw materials, equipment, supplies or power used in or needed for provision of the Services.

(b) *Waiver.* No failure of Verio to pursue any remedy resulting from a breach of this Agreement by Web Affiliate shall be construed as a waiver of that breach neither by Verio, nor as a waiver of any subsequent or other breach unless such waiver is in writing and signed by an authorized representative of Verio.

(c) *Severability.* In the event any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

(d) *Non-Assignment.* Web Affiliate may not assign this Agreement or any rights or obligations of Web Affiliate under this Agreement, in whole or in part, without the express written consent of Verio. Any assignment made without Verio's written consent is hereby void and of no effect.

(e) *Choice of Law.* This Agreement shall be construed in accordance with the laws of the state of Colorado regardless of its choice of laws provision.

(f) *Notices.* Notices required to be given by one party to another shall be deemed properly given only when reduced to writing and sent to the addresses stated above or provided by either party from time to time by certified mail, return receipt requested, postage prepaid, by courier, by facsimile or email and shall be effective upon delivery. Either party may change the addresses for giving notice from time to time by written instructions to the other party of such change of address. Web Affiliate hereby acknowledges and agrees that Verio may email Web Affiliate from time to time in order to communicate with Web Affiliate regarding the WARP Program and/or Web Affiliate's performance thereunder.

(g) *Entire Agreement.* This Agreement, the Exhibits hereto, if any, and the WARP Program Guide, each as amended from time to time, constitute the entire understanding between the parties hereto in relation to the subject matter hereof and supersede all prior discussions, agreements and representations, whether oral or written and whether or not executed by Verio or Web Affiliate. Unless otherwise provided in this Agreement with respect to Verio's right to amend or modify the WARP Program Information from time to time, no modification, amendment or other change may be made to this Agreement or any part thereof unless reduced to writing and executed by authorized officer of both parties. Verio may change any terms of its WARP Program without prior notice to Web Affiliate; provided, however, that Web Affiliate shall be permitted to terminate this agreement and its participation in the WARP Program, in its sole discretion, within ten days of the implementation of any such change by Verio.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement (i) as of the date first stated above or (ii) if this Agreement is e-signed, as of the date of Web Affiliate's signature.

**Verio Inc:**

By: \_\_\_\_\_  
(Authorized Signature)  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

**Web Affiliate:**

\_\_\_\_\_  
(Company Name)  
\_\_\_\_\_  
(Federal Tax ID or Social Security Number)  
\_\_\_\_\_  
(Telephone Number)

By: \_\_\_\_\_  
(Authorized Signature)  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_