

# Vendor Participation Agreement

THIS IS A LEGAL AGREEMENT BETWEEN YOU ("VENDOR") AND 678-GOT-PAIN, PC. BY JOINING THIS PROGRAM YOU AGREE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT (THE "AGREEMENT").

## 1. DEFINITIONS

1. As used in this Agreement, "we," "us," and "our" will mean 678-GOT-PAIN, and "you," "your," and "yours" will mean Vendor.
2. "Booking" means a confirmed referral of a Service that is generated by (i) your acceptance of a Lead, or (ii) by direct reservations made into your reservation system through the 678-GOT-PAIN System (whether by email, direct internet connections, nightly batches or other method).
3. "Click" means each instance in which a User (i) navigates to your site using a link on 678-GOT-PAIN Affiliate's site, or (ii) mouse clicks on the "details" link related to your Services located on 678-GOT-PAIN Affiliate's Site in a search results page and such User is shown more information about your Services.
4. "Confidential Information" means any and all information received by you from us pursuant to this Agreement including, without limitation, all User Information and information about 678-GOT-PAIN Affiliates.
5. "678-GOT-PAIN Affiliate" means a consumer portal site that generates Leads, Bookings and advertising to service providers on the 678-GOT-PAIN System including, without limitation, the 678-GOT-PAIN Site.
6. "Competitor Site" means any site that offers online referral/marketing service reservations other than the respective vendor for those services.
7. "678-GOT-PAIN Site" means the site owned by 678-GOT-PAIN and located at
8. "678-GOT-PAIN System" shall mean the software and hardware located on 678-GOT-PAIN servers and all functions of such software and hardware, including, without limitation, all billing functions of the same. The 678-GOT-PAIN System shall also include each 678-GOT-PAIN Affiliate's site.
9. "678-GOT-PAIN Vendor Program" means the network of providers in the 678-GOT-PAIN System.
10. "Impression" means each instance in which a User fully loads a page on the 678-GOT-PAIN System and the 678-GOT-PAIN System displays your logo or name or lists your Services through search results on the 678-GOT-PAIN System.
11. "Lead" shall mean a notice sent through the 678-GOT-PAIN System that a User is interested in your Services. Such notice shall include sufficient User Information to conclude the sale of the requested Service: provided that no billing information shall be included.
12. "Other Fees" shall mean fees we charge you for optional services such as (i) the ability to place our private shopping engine on your site, (ii) the Virtual Store, (iii) web hosting and (iv) Clicks, Impressions and Premium Postings.
13. "Premium Posting", "Sponsoring vendor" mean a listing for your Services on a 678-GOT-PAIN Affiliate's site that, appears earlier in search results generated by the 678-GOT-PAIN System than non-Premium Postings on the 678-GOT-PAIN System in consideration of an additional fee paid by a Vendor to a 678-GOT-PAIN Affiliate. Vendors sponsor the reservation fees for placement in such search results.
14. "User Information" means any and all information about Users including, without limitation, name, address, phone number, email address, preferences, buying habits, transaction history and billing information (e.g. credit card numbers or bank account numbers).
15. "User" means a person or entity which uses the 678-GOT-PAIN System.

16. "Virtual Store" means a location on 678-GOT-PAIN, hosted by us that enable Users to view your inventory and rates and provides you with online Lead and Booking management. Information about your Services may be included such as pictures, prices, descriptions, terms and conditions, etc. This is a premium service that we offer to you for a fee.

## 2. 678-GOT-PAIN VENDOR PROGRAM

1. Vendor Agreement and Application. To participate in the 678-GOT-PAIN Vendor Program, you must read and accept the terms of this Agreement. If you accept the terms of this Agreement, you will then have the opportunity to fill out the Membership application and submit it to us. We, in our sole discretion, will determine whether your services and/or products (each, a "Service") are suitable for the 678-GOT-PAIN System and will evaluate your application. Not all applicants will be permitted to join the 678-GOT-PAIN Vendor Program. We, in our sole discretion, may deny any Vendor Application for any reason. After our evaluation of your completed Vendor Application, we will notify you via email of our acceptance or rejection of such application. We maintain the right, at any time during your participation in the 678-GOT-PAIN Vendor Program, to re-evaluate your participation in the 678-GOT-PAIN Vendor Program and may, in our sole discretion, terminate your participation in the 678-GOT-PAIN Vendor Program for any reason.
2. Ineligibility. You are not eligible to participate in the 678-GOT-PAIN Vendor Program if you are a 678-GOT-PAIN Competitor Site (an "Ineligible Party"). If you are an Ineligible Party, or are not sure whether you are or are not an Ineligible Party, you must contact us before attempting to accept the terms of this Agreement. If you are an Ineligible Party and you accept the terms of this Agreement, you agree to (i) terminate this Agreement immediately if you become or we determine you are an Ineligible Party at any time and (ii) keep confidential any Confidential Information, which you have gained access to during your participation in the Vendor Program. ANY BREACH OF THIS PROVISION SHALL BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.
3. Access to the 678-GOT-PAIN Program. If you are admitted to the 678-GOT-PAIN Vendor Program, you will be given a printed directory, at least, twice a year that includes the listing/directories of all vendor participants; however, non-print directory may be updated more frequently. We reserve the right to change the exact print date and Vendor hereby agrees that exact print date is not a material element of this Agreement. New vendors are hereby advised that they may not be included in the directory until the next print, depending on the date the vendor enters into this Agreement. Vendors shall be included in the directory if they are fully paid up and in Good Standing within 30 days prior to such print date. At all times during vendor's participation we shall include the vendor on 678-GOT-PAIN website including vendors name, business name, location, and map and advertising information. Vendors advertising information shall be fully subject to review and edit under sole discretion by us. We reserve the right to modify or reject any information we deem inappropriate or unprofessional. You will have access to information about specific referrals contact information made using the 678-GOT-PAIN System.
4. Vendor Updates. You are solely responsible for the accuracy of factual information concerning your Services, facilities and the description of your company provided to us. You agree to keep all information regarding your Services up to date on the 678-GOT-PAIN System. Any and all restrictions, cancellation policies and other terms of use of your Services shall be listed on the 678-GOT-PAIN System. You hereby agree to abide by the terms (including, without limitation, any pricing information) listed on the 678-GOT-PAIN System as they relate to your Services, to the extent they are more favorable to Users than new terms that may be applicable. Additionally, you agree to provide Users with pricing, availability, refunding and booking policies no less favorable than you provide to any other entity. You agree to treat Users no less favorably than average customers in all respects including, without limitation, with respect to over-bookings and pricing.
5. Terms and Conditions. You expressly agree to abide by all of the terms and conditions of use related to the 678-GOT-PAIN Vendor program.
6. Bookings. Any Bookings made through the 678-GOT-PAIN System must be honored. A booking must be confirmed or declined by either the Vendor or an Affiliate on Vendor's behalf.
7. Electronic Notification. You will receive notice of Leads and Bookings and information about any other inquiries by Users which relate to your services and products listed on the 678-GOT-PAIN System (each, an "Inquiry") electronically through the 678-GOT-PAIN System. Such notification may be provided via email and using the other electronic method chosen by you and available by 678-GOT-PAIN through the Vendor Notification Method. You hereby consent to have all notices (and other information hereunder) sent via the Notification Method and via email.
8. Fast Response to Inquiries. You agree to use commercially reasonable efforts to respond to all Inquiries within one business day. Such response may be made via the Vendor Interface or directly with the User using the contact information included in the User Information provided to you by us.

9. Acceptance of 678-GOT-PAIN Affiliates. You agree to accept Leads and Bookings from every 678-GOT-PAIN Affiliate that is not an Excluded Affiliate including, without limitation, any sites that become 678-GOT-PAIN Affiliates after the date hereof. Unless otherwise agreed between an 678-GOT-PAIN Affiliate and you, such Leads and Bookings shall be made pursuant to this Agreement.

### **3. FEES; TAXES**

In exchange for becoming a Vendor in 678-GOT-PAIN program: Vendor hereby agrees to pay \$995.00 per month to us for a term of 12 months. Vendor can purchase an additional zip codes at a reduced monthly fee of \$495.00 and subsequent ones at \$295.00 each. If Vendor does not make us aware of their intention to cease membership with a 60 day written notice, Vendor agrees that agreement will automatically renew for a twelve consecutive month term immediately. You have the option to cancel your membership at any time without penalty after six months. The prices are subject to change for future members or contract re-newals.

1. You will charge the monthly service fee for Services rendered for such Vendor to the credit card number included in the Vendor application. If Vendor revokes, cancels or changes this charge account, then Vendor must provide written authority to us within 7 days in order to update charge account information. If Vendor fails to do so then Vendor's membership in the program shall be revoked and all material may be removed from any and all internet and printed directories. The vendor will still be obligated to pay any unpaid contractually agreed dues and 678-Got-Pain shall not be obligated to refund any fees.
2. Taxes. You agree to provide us with all tax information applicable to your Services through the Vendor System. You are solely responsible for the accuracy of such tax rate information. You shall be responsible for paying to the appropriate tax authorities the full amount of all taxes applicable to Services rendered to Users.

### **4. INTELLECTUAL PROPERTY**

1. User Information. You agree that Users and 678-GOT-PAIN Affiliates will be considered our customers, and we will own all User Information and information related to 678-GOT-PAIN Affiliates.
2. Intellectual Property. You agree that we own all intellectual property rights (including, without limitation, all copyrights, patents, trademarks and trade secrets) in connection with and in all versions of the 678-GOT-PAIN Site and the 678-GOT-PAIN Vendor System.
3. Publicity. You must obtain our prior written consent to create, publish, distribute or use any written, electronically transmitted or other form of publicity that makes reference to us or 678-GOT-PAIN Affiliates.
4. Monitoring. You agree that we have the right to monitor your Services at any time and from time to time to determine if you are following the terms and conditions of this Agreement. If you are not following the terms and conditions of this Agreement, we may, in our sole discretion (i) require you to modify your Services to comply with this Agreement or (ii) terminate this Agreement (such termination will be considered made as a result of your material breach of this Agreement).
5. Confidentiality. You agree to protect and secure the confidentiality of all Confidential Information. Except with our prior written consent (or as permitted by this Agreement), you agree that all information concerning us, the Users, the 678-GOT-PAIN Affiliates, the 678-GOT-PAIN Site and the 678-GOT-PAIN Vendor System, including, without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, User Information and pricing and sales information, will remain confidential and will not be disclosed or utilized, directly or indirectly, by you for any purpose except and to the extent (a) necessary to complete obligations under this Agreement or (b) that any such information is known or available to the public through a source or sources other than you. A separate HIPPA Business Associate Agreement is attached and made a part hereof.
6. Non-Compete. Without our prior written consent, from the date of this Agreement until 2 years after this Agreement is terminated in accordance with its terms, you agree not to engage, or assist any person or entity in engaging, either directly or indirectly, individually, or as a director, officer, employee, shareholder, manager, member, partner, owner, agent, consultant, investor, lender or principal, or in any other capacity, in any business that could become a Competitor. We hereby reserve the right to revoke vendors membership and advertising, based on our sole discretion, if vendor is found to be associated with any such competitor.

7. Proprietary Marks. You hereby grant to us the right to use and disclose to Users and 678-GOT-PAIN Affiliates your names and logos and information regarding your Services. You represent and warrant that such use and disclosure does not infringe on any third party rights.

## **5. LIABILITY; INDEMNIFICATION; REPRESENTATIONS**

1. NO WARRANTIES. WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE 678-GOT-PAIN SITE OR ANY 678-GOT-PAIN AFFILIATE SITE OR THE 678-GOT-PAIN VENDOR SYSTEM OR THEIR PERFORMANCE, AVAILABILITY OR FUNCTIONALITY. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT FROM US ARE EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, WE MAKE NO REPRESENTATION OR WARRANTY THAT THE OPERATION OF OUR SITE WILL BE UNINTERRUPTED OR ERROR FREE AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.
2. DAMAGES. WE WILL NOT BE LIABLE TO YOU UNDER ANY CIRCUMSTANCES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR GOODWILL OR ANTICIPATED PROFITS OR LOST BUSINESS), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL OUR CUMULATIVE LIABILITY TO YOU ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL FEES ACTUALLY PAID BY YOU TO US UNDER THIS AGREEMENT.
3. No Guarantees. You understand and agree that we make no warranties or representations regarding the FPC Site or any FPC Affiliate's site or our ability to obtain any Leads or Bookings for your Services or the accuracy or completeness of User Information or information about FPC Affiliates.
4. Indemnification. You agree to indemnify, defend and hold us and each FPC Affiliate and our and their employees, representatives, agents and suppliers (each, an "Indemnified Party") harmless, against any and all claims, suits, actions, or other proceedings brought against the Indemnified Party based on or arising from any claim (i) that the use of any material provided by you infringes on any copyright, patent, trademark, trade secret or any other intellectual property or other right of any third party, (ii) resulting from your breach of this Agreement, or (iii) related to your site or Services. You will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by the Indemnified Party in connection with or arising from any such claim, suit, action, or proceeding.
5. Vendor Representations. You represent and warrant to us that a) you are not an Ineligible Party; b) you are the sole and exclusive owner of your proprietary marks and have the right to grant to us and the 678-GOT-PAIN Affiliates the license to use them as described in this Agreement; c) your Services are in compliance with all applicable laws and regulations; d) you, if you are a company, are duly organized, validly existing and in good standing, and are qualified and/or licensed to do business in all jurisdictions to the extent necessary to carry out your obligations under this Agreement; e) your execution, delivery and performance of this Agreement will not violate or constitute a default under any agreement to which you are a party; f) you have the legal capacity and power to execute, deliver and perform this Agreement; g) this Agreement has been duly and validly executed and delivered by you by your signature at the end of this Agreement and constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms; h) you have the full right, power, and authority to enter into and be bound by the terms and conditions of this Agreement and to perform your obligations under this Agreement, without the approval or consent of any other party; i) you have sufficient right, title, and interest in and to your materials to grant the rights granted to us in this Agreement; j) there is no pending, or to the best of your knowledge, threatened claim, action or proceeding against you, or any supplier of yours, with respect to your execution, delivery or performance of this Agreement, or with respect to the materials or Services you will deliver under this Agreement, and, to the best of your knowledge, there is no basis for any such claim, action or proceeding. These representations and warranties shall survive termination or expiration of this Agreement.

## **6. MISCELLANEOUS**

1. Modification. We may modify the terms and conditions of this Agreement at any time in our sole discretion. You will be notified of such change through the Notification Method. Modifications may include, but are not limited to, changes in the scope of advertising fees, payment procedures and the 678-GOT-PAIN Vendor Program rules. IF ANY MATERIAL MODIFICATION IS UNACCEPTABLE TO YOU, YOU MAY TERMINATE THIS AGREEMENT AS YOUR SOLE RECOURSE. IF YOU CONTINUE TO

PARTICIPATE IN THE 678-GOT-PAIN VENDOR PROGRAM FOLLOWING A CHANGE NOTICE, YOU WILL BE DEEMED TO HAVE ACCEPTED SUCH MODIFICATIONS.

2. Term; Offset. This Agreement will begin on the date we notify you of our acceptance of your Vendor Application. We may terminate this Agreement at any time, with or without cause, by notifying you in writing by mail, email or fax. If this Agreement terminates because you have violated the terms of this Agreement, you will not be eligible to receive any payments, including any payments earned prior to termination. We reserve the right to recoupment and offset for any amounts owed to us by you under this Agreement or any other agreement between you and us. Upon written notice, a party may terminate this Agreement immediately if any the other party ceases to do business, becomes insolvent, or is subject to bankruptcy or insolvency proceedings, whether actual or reasonably believed to be imminent.
3. No Joint Venture; No Assignment. Each party will at all times be deemed to be an independent contractor with respect to the subject matter of this Agreement and nothing contained in this Agreement will be deemed or construed in any manner as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship. You may not assign your rights or obligations under this Agreement to any party.
4. Other Agreements; No Reliance. You understand that we may at any time, directly or indirectly, engage in similar arrangements on terms that may differ from those contained in this Agreement. You have independently evaluated this Agreement and are not relying on any representation, guarantee, or statement from us or anyone else, other than as expressly set forth in this Agreement.
5. Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF. YOU CONSENT TO THE EXCLUSIVE JURISDICTION IN THE STATE AND/OR FEDERAL COURTS LOCATED IN GEORGIA IN ANY DISPUTE INVOLVING THIS AGREEMENT. Amendments; Waivers; Entire Agreement. Except as otherwise permitted by this Agreement, no amendment to this Agreement or waiver of any right or obligation created by this Agreement will be effective unless it is in writing and signed by both you and us. Our waiver of any breach or default will not constitute a waiver of any different or subsequent breach or default. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such a provision or any other provision of this Agreement. This Agreement represents the entire agreement between us and you and supersedes all prior agreements and communications we may have had with respect to the subject matter hereof, oral or written.
6. Force Majeure; Severability; Headings. In the event we deem, in our sole discretion, that military action or extraordinary political, economic, or other conditions or occurrences beyond our control significantly impacts the travel business, our businesses, access or navigation to FPC from you or your business(es) and alters our exposure under this Agreement, we may, at any time, suspend performance (in part or whole) of any or all terms and conditions of this Agreement, suspend payment due hereunder (in part or whole) or terminate this Agreement (in part or whole), in our sole discretion. We will provide you with written notice five (5) days prior to the effective date of such change(s). If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The headings and titles contained in this Agreement are included for convenience only and will not limit or otherwise affect the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representative/s.

**For the Vendor:**

Company \_\_\_\_\_

Address \_\_\_\_\_

Name \_\_\_\_\_

Print Name

Signature \_\_\_\_\_

Date \_\_\_\_\_

For 678 GOT PAIN, PC.

By: \_\_\_\_\_

Dr. Ramin Stephan Bayani D.C.  
on behalf of 678-Got-Pain  
236 Johnson Ferry Rd N.E.  
Atlanta, GA. 30328

Signature: \_\_\_\_\_

Date \_\_\_\_\_

By: \_\_\_\_\_

Dr. C. Paul Willis D.C.  
on behalf of 678-Got-Pain  
1431 Riverside Parkway  
Lawrenceville, GA. 30043

Signature: \_\_\_\_\_

Date: \_\_\_\_\_