



STANDARD TERMS & CONDITIONS FOR INTERNET ADVERTISING

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STANDARD TERMS AND CONDITIONS FOR INTERNET ADVERTISING FOR MEDIA BUYS ONE YEAR OR LESS

These Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less are intended to offer Media Companies, Advertisers, and their Agencies a voluntary standard for conducting business in a manner acceptable to all parties. This document is to accompany Agency or Media Company insertion orders and represents a common understanding for doing business. This document may not fully cover sponsorships and other arrangements involving content association or integration, and/or special production, but may be used as the basis for the media components of such contracts.

INSERTION ORDERS AND INVENTORY AVAILABILITY

- a. From time to time, parties may negotiate insertion orders ("IO"s) under which a Media Company will deliver advertisements provided by Agency ("Ad(s)") to Media Company's site(s) (the "Site") for the benefit of an Agency or Advertiser. At Agency's discretion, an IO may either be submitted by Agency to Media Company or be submitted by Media Company, signed by Agency and returned to Media Company. In either case, an IO will be binding only if accepted as provided in Section I(b) below. Each IO shall specify: (a) the type(s) and amount(s) of inventory to be delivered (e.g., impressions, clicks or other desired actions) (the "Deliverables"); (b) the price(s) for such Deliverables; (c) the maximum amount of money to be spent pursuant to the IO (if applicable), (d) the start and end dates of the campaign, and (e) the identity of and contact information for any third party ad server ("3rd Party Ad Server"), if applicable. Other items that may be included are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected.
- b. Media Company will make commercially reasonable efforts to notify Agency within two business days of receipt of an IO signed by Agency if the specified inventory is not available. Acceptance of the IO and these Terms and Conditions will be made upon the earlier of (a) written (which, unless otherwise specified, for purposes of these Terms and Conditions shall include paper, fax, or e-mail communication) approval of the IO by Media Company and Agency; or (b) the display of the first Ad impression by Media Company, unless otherwise agreed upon in the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless signed by both parties.
- c. Revisions to accepted IOs must be made in writing and acknowledged by the other party in writing.

II. AD PLACEMENT AND POSITIONING

- a. Media Company must comply with the IO, including all Ad placement restrictions, requirements to create a reasonably balanced delivery schedule, and provide within the scope of the IO, an Ad to the Site specified on the IO when such Site is called up by an Internet user. Any exceptions must be approved by Agency in writing.
- b. Media Company will use commercially reasonable efforts to provide Agency at least 10 business days, prior notification of any material changes to the Site that would change the target audience or significantly affect the size or placement of the Ad specified in the affected IO. Should such a modification occur with or without notice, as Agency's and Advertiser's sole remedy for change or notice, Agency may immediately cancel the remainder of the IO without penalty within the 10-day

notice period. If Media Company has failed to provide such notification, Agency may cancel the remainder of the IO within 30 days of such modification, and in such case shall not be charged for any affected Ads delivered after such modification.

- c. Media Company will submit or otherwise make electronically accessible to Agency within two business days of acceptance of an IO final technical specifications, as agreed upon by the parties. Changes to the specifications of the already-purchased Ads after that two business day period will allow Advertiser to suspend (without impacting the end date unless otherwise agreed by the parties) delivery of the affected Ad for a reasonable time in order to either (i) send revised artwork, copy, or active URLs ("Advertising Materials"); (ii) request that Media Company resize the Ad at Media Company's cost, and with final creative approval of Agency, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within 5 business days, immediately cancel the remainder of the IO for the affected Ad without penalty.
- d. Ad delivery shall comply with editorial adjacencies guidelines stated on the IO. As Advertiser's and Agency's sole remedy for a violation of the foregoing sentence: (i) Ads that run in violation of such editorial adjacencies guidelines, if Media Company is notified of such violation within 30 days of the violation, shall be non-billable; and (ii) after Agency notifies Media Company that specific Ads are in violation of such editorial adjacencies guidelines, Media Company will make commercially reasonable efforts to correct within 24 hours such violation. In the event that such correction materially and adversely impacts such IO, the parties will negotiate in good faith mutually agreed changes to such IO to address such impacts. In the event that the parties cannot reach agreement on such changes within five business days from the implementation of such correction, Agency or Media Company may, upon the conclusion of such 5 business day period, immediately cancel such IO, without penalty.

III. PAYMENT AND PAYMENT LIABILITY

a. Invoices

The initial invoice will be sent upon completion of the first month's delivery or within 30 days of completion of the IO, whichever is earlier. Invoices are to be sent to: Agency's billing address as set forth in the IO and must include information reasonably specified by Agency such as the IO number, Advertiser name, brand name or campaign name, and any number or other identifiable reference stated as required for invoicing on the IO. All invoices pursuant to the IO must be received within 180 days of delivery of all Deliverables. Failure by Media Company to send such invoice

or make such request shall be considered a waiver of right to payment for delivery of Ads for which no invoice was sent.

Media Company should provide invoices accompanied by proof of performance for the invoiced period, which may include access to online or electronic reporting as addressed in this document, subject to the notice and cure provisions of Section IV. Media Company should invoice Agency for the services provided on a calendar month basis with the net cost (i.e., the cost after subtracting Agency commission) based on actual delivery or based on prorated distribution of delivery over the term of the IO, as specified in the applicable IO.

b. Payment Date

Agency will make payment 30 days from receipt of invoice, or as otherwise stated in a payment schedule set forth in the IO. Media Company may notify Agency that it has not received payment in such thirty-day period and whether it intends to seek payment directly from Advertiser pursuant to Section IIIc, and may do so 5 business days after providing such notice.

c. Payment Liability

Unless otherwise set forth by Agency on the IO, Media Company agrees to hold Agency liable for payments solely to the extent proceeds have cleared from Advertiser to Agency for Ads placed in accordance with the IO. For sums not cleared to Agency, Media Company agrees to hold Advertiser solely liable. Media Company understands that Advertiser is Agency's disclosed principal and Agency, as agent, has no obligations relating to such payments, either joint or several, except as specifically set forth in this Section III(c) and Section X(c).

Agency agrees to make every reasonable effort to collect and clear payment from Advertiser on a timely basis.

Agency's credit is established on a client-by-client basis.

If Advertiser proceeds have not cleared for the IO, other Advertisers from the representing Agency shall not be prohibited from advertising on the Site due to such non-clearance if such other Advertisers' credit is not in question.

Agency will make available to Media Company upon request written confirmation of the relationship between Agency and Advertiser. This confirmation should include, for example, Advertiser's acknowledgement that Agency is its agent and is authorized to act on its behalf in connection with the IO and these Terms and Conditions. In addition, upon the request of Media Company, Agency will confirm whether Advertiser has paid to Agency in advance funds sufficient to make payments pursuant to the IO.

If Advertiser's or Agency's credit is or becomes impaired, Media Company may require payment in advance.

IV. REPORTING

- a. Media Company must, within 2 business days of the start date on the IO, provide confirmation to Agency, either electronically or in writing, stating whether the components of the IO have begun delivery.
- b. Media Company shall make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified in the IO. Reports must be broken out by day and summarized by creative execution, content area (Ad placement), and other variables defined in the IO, for example, impressions, keywords, and/or clicks.

Once Media Company has provided the online or electronic report, it agrees that Agency and Advertiser are entitled to reasonably rely on it, subject to receipt of Media Company's invoice for such period.

- c. In the event that Media Company fails to deliver an accurate and complete report by the time specified, Agency may initiate makegood discussions pursuant to Section VI below.

In the event that Media Company learns that it has delivered an incomplete or inaccurate report, or no report at all, Media Company must cure such failure within 5 business days. Failure to cure may result in nonpayment for all activity for which data are incomplete or missing, until Media Company delivers reasonable evidence of performance and such report must be delivered within 30 days of Media Company's learning of such failure or absent such knowledge, within 180 days of delivery of all Deliverables.

V. CANCELLATION AND TERMINATION

- a. At any time prior to the serving of the first impression of the IO, Agency may cancel the IO with 30 days prior written notice, without penalty. For clarity and by way of example, if Agency cancels the IO 15 days prior to the serving of the first impression, Advertiser will only be responsible for the first 15 days of the IO.
- b. Upon the serving of the first impression of the IO, Agency may cancel the IO for any reason, without penalty, by providing Media Company written notice of cancellation which will be effective after the later of: (i) 30 days after serving the first impression of the IO; or (ii) 14 days after providing Media Company with such written notice.
- c. Either party may terminate an IO at any time if the other party is in material breach of its obligations hereunder that is not cured within 10 days after written notice thereof from the nonbreaching party, except as otherwise stated in this Agreement with regard to specific breaches. Additionally, if Agency or Advertiser commit a violation of the same Policy (as defined below), where such Policy had been provided by Media Company to Agency, on three separate occasions after having received timely notice of each such breach, even if such breach has been cured by Agency or Advertiser, then Media Company may terminate the IO associated with such breach upon written notice. If Agency or Advertiser do not cure a violation of a Policy within the applicable ten day cure period after written notice, where such Policy had been provided by Media Company to Agency, then Media Company may terminate the IO associated with such breach upon written notice.
- d. Short rates will apply to cancelled buys to the degree stated on the IO.

VI. MAKEGOODS

- a. Media Company shall monitor delivery of the Ads, and shall notify Agency either electronically or in writing as soon as possible (and no later than two weeks before IO end date unless the length of the campaign is less than two weeks) if Media Company believes that an under-delivery is likely. In the case of a probable or actual under-delivery, the parties may arrange for makegood consistent with these Terms and Conditions.
- b. In the event that actual Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit), Agency and Media Company will make an effort to agree upon the conditions of a makegood flight either in the IO or at the time

of the shortfall. If no makegood can be agreed upon, Agency may execute a credit equal to the value of the under-delivered portion of the contract IO for which it was charged. In the event that Agency or Advertiser has made a cash pre-payment to Media Company, specifically for the campaign IO for which under-delivery applies, then if Agency and/or Advertiser is reasonably current on all amounts owed to Media Company under any other agreement for such Advertiser, Agency may elect to receive a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign. In no event shall Media Company provide a makegood or extend any Ad beyond the period set forth in the IO without prior written consent of Agency.

II. BONUS IMPRESSIONS

- a. Where Agency utilizes a 3rd Party Ad Server, Media Company will not bonus more than 10% above the Deliverables specified in the IO without prior written consent from Agency. Permanent or exclusive placements shall run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for Third Party Ad served activity. Agency will not be charged by Media Company for any additional Ads above any level guaranteed or capped in the IO. If a 3rd Party Ad Server is being used and Agency notifies Media Company that the guaranteed or capped levels stated in the IO have been reached, Media Company will use commercially reasonable efforts to suspend delivery and, within 48 hours, may either 1) serve any additional Ads itself or 2) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser after such notice has been provided and associated with overdelivery by more than 10% above such guaranteed or capped levels.
- b. Where Agency does not utilize a 3rd Party Ad Server, Media Company may bonus as many ad units as Media Company chooses unless otherwise indicated on the IO. Agency will not be charged by Media Company for any additional advertising units above any level guaranteed in the IO.

III. FORCE MAJEURE

- a. Excluding payment obligations, neither party will be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes. In the event that Media Company suffers such a delay or default, Media Company shall make reasonable efforts within five business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or makegood is reasonably acceptable to Agency, Media Company shall allow Agency a pro rata reduction in the space, time and/or program charges hereunder in the amount of money assigned to the space, time and/or program charges at time of purchase. In addition, Agency shall have the benefit of the same discounts that would have been earned had there been no default or delay.
- b. If Agency's ability to transfer funds to third parties has been materially negatively impacted by an event beyond the Agency's reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Agency shall make every reasonable effort to make payments on a timely basis to Media Company, but any delays caused by such condition shall be excused for the duration of such condition. Subject to the foregoing, such excuse for delay shall not in any way relieve Agency from any

of its obligations as to the amount of money that would have been due and paid without such condition.

- c. To the extent that a force majeure has continued for 5 business days, Media Company or Agency has the right to cancel the remainder of the IO without penalty.

IX. AD MATERIALS

- a. It is Agency's obligation to submit Advertising Materials in accordance with Media Company's then existing advertising criteria or specifications (including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with Media Company's public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the Site on which the Ads are to appear), other editorial or advertising policies, and material due dates) (collectively "Policies") in accordance with Section II(c). Media Company's sole remedy for a breach of this provision is set forth in paragraphs (b and c) below, Section V(c), and Section X(b). If Advertising Materials are late, Advertiser is still responsible for the media purchased pursuant to IO.
- b. Media Company reserves the right within its discretion to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked do not comply with its Policies, or that in Media Company's sole reasonable judgment, do not comply with any applicable law, regulation or other judicial or administrative order. In addition, Media Company reserves the right within its discretion to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked are or may tend to bring disparagement, ridicule, or scorn upon Media Company or any of its Affiliates (as defined below), provided that if Media Company has reviewed and approved such Ads prior to their use on the Site, Media Company will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from Agency.
- c. If Advertising Materials provided by Agency are damaged, not to Media Company's specifications, or otherwise unacceptable, Media Company will use commercially reasonable efforts to notify Agency within two business days of its receipt of such Advertising Materials.
- d. Media Company will not edit or modify the submitted Ads in any way, including, but without limitation, resizing the Ad, without Agency approval. Media Company shall use all such Ads in strict compliance with these Terms and Conditions and any written instructions provided by Agency.
- e. When applicable, Third Party Ad Server tags shall be implemented so that they are functional in all aspects.
- f. Media Company, on one hand, and Agency and Advertiser, on the other, will not use the other's trade name, trademarks, logos or Ads in a public announcement (including, but not limited to, through any press release) regarding the existence or content of these Terms and Conditions or an IO without the other's prior written approval.

X. INDEMNIFICATION

- a. Media Company agrees to defend, indemnify and hold harmless Agency and Advertiser, their Affiliates (as defined below) and their respective directors, officers, employees and agents from any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Losses") incurred as a result of a Third Party (as defined below) claim, judgment or proceeding relating to or arising out

of Media Company's breach of Section XII, Media Company's display or delivery of any Ad in breach of these Terms and Conditions or the terms of an IO, or that materials provided by Media Company (and not by Agency or Advertiser) for an Ad violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action, except to the extent (1) that such claim, judgment or proceeding resulted from such materials fulfilling Agency's or Advertiser's unique specifications provided that Media Company did not know or should not have reasonably known that such specifications would give rise to the Loss or (2) that such materials are provided to Agency or Advertiser for review and the Agency or Advertiser knew or should have reasonably known from the visual or sonic expression of the Advertisement, while Media Company did not know or should not have reasonably known, that such material violated any law, regulations or other judicial or administrative action, violate the right of a Third Party or are defamatory or obscene. An Affiliate means, with respect to either party, any corporation, firm, partnership, person or other entity, whether de jure or de facto, which directly or indirectly owns, is owned by or is under common ownership with such party to the extent of at least 50% of the equity having the power to vote on or direct the affairs of the entity, and any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party. A "Third Party" means an entity other than the parties to this Agreement, their respective Affiliates, and each of their respective directors, officers, employees and agents.

- b. Advertiser agrees to defend, indemnify and hold harmless Media Company its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of a Third Party claim, judgment or proceeding relating to or arising out of Advertiser's breach of Section XII, violation of Policies (to the extent the applicable terms of such Policies have been provided to Agency at least ten days prior to the violation giving rise to the claim), or the content or subject matter of any Ad or Advertising Materials to the extent used by Media Company in accordance with these Terms and Conditions or an IO, including but not limited allegations that such content or subject matter violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action.
- c. Agency represents and warrants that it has the authority as agent to Advertiser to bind Advertiser to these Terms and Conditions and each IO. Agency agrees to defend, indemnify and hold harmless Media Company its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of Agency's alleged breach of the foregoing sentence.
- d. If any action will be brought against either party (the "Indemnified Party") in respect to any allegation for which indemnity may be sought from the other party ("Indemnifying Party"), the Indemnified Party will promptly notify the Indemnifying Party of any such claim of which it becomes aware and will: (i) provide reasonable cooperation to the Indemnifying Party at the Indemnifying Party's expense in connection with the defense or settlement of any such claim; and (ii) be entitled to participate at its own expense in the defense of any such claim. The Indemnified Party agrees that the Indemnifying Party will have sole and exclusive control over the defense and settlement of any such third party claim. However, the Indemnifying Party will not acquiesce to any judgment or enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written consent of the Indemnified Party.
- e. Notwithstanding the foregoing, in the event that any Indemnifying Party is required to defend, indemnify or hold

harmless an Indemnified Party from a claim, judgment or proceeding of a Related Party (as defined below) of such Indemnified Party pursuant to this Section X, Losses incurred in connection with such claim, judgment or proceeding will be limited to those that are reasonably foreseeable. A "Related Party" is a party in a contractual relationship with the Indemnified Party where such specific contractual relationship relates to the Loss being asserted by that Related Party.

XI. LIMITATION OF LIABILITY

Excluding the parties obligations under Section X or damages that result from a breach of Section XII or intentional misconduct by the parties, in no event will either party be liable for any consequential, indirect, incidental, punitive, special or exemplary damages whatsoever, including without limitation, damages for loss of profits, business interruption, loss of information and the like, incurred by the other party arising out of this Agreement, even if such party has been advised of the possibility of such damages.

XII. NON-DISCLOSURE, DATA OWNERSHIP, PRIVACY AND LAWS

- a. Any marked confidential information and proprietary data provided by one party, including the Ad description, and the pricing of the Ad, set forth in the IO, shall be deemed "Confidential Information" of the disclosing party. Confidential Information shall also include information provided by one party, which under the circumstances surrounding the disclosure would be reasonably deemed confidential or proprietary. Confidential Information shall not be released by the receiving party to anyone except an employee, or agent who has a need to know same, and who is bound by confidentiality obligations. Neither party will use any portion of Confidential Information provided by the other party hereunder for any purpose other than those provided for under this Agreement.
- b. For purposes of this Section, Agency and Advertiser shall be considered one party. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" shall not include information which: (i) was previously known to a party; (ii) was or becomes generally available to the public through no fault of the receiving party ("Recipient"); (iii) was rightfully in Recipient's possession free of any obligation of confidence at, or subsequent to, the time it was communicated to Recipient by the disclosing party ("Discloser"); (iv) was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; or (v) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. Notwithstanding the foregoing, either party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange or as necessary to establish the rights of either party under this Agreement; provided, however, that both parties will stipulate to any orders necessary to protect said information from public disclosure.
- c. All personally identifiable information provided by individual web users who are informed that such information is being gathered solely on behalf of Advertiser pursuant to the Advertiser's posted privacy policy is the property of Advertiser, is subject to the Advertiser's posted privacy policy, and is considered Confidential Information. Any other use of such information must be set forth in the IO signed by both parties.
- d. Media Company, Agency, and Advertiser shall post on their respective Web sites their privacy policies and adhere to their privacy policies, which abide by the applicable laws. Failure by Media Company, on one hand, or Agency or Advertiser, on

the other, to continue to post a privacy policy or non-adherence to its own privacy policy is grounds for immediate cancellation of the IO by the other parties.

- e. Agency, Advertiser and Media Company will comply with at all times, all applicable federal, state and local law, ordinances, regulations and codes which are relevant to their performance of their respective obligations under this Agreement.

III. THIRD PARTY AD SERVERS

(Applicable if 3rd Party Server Is Used)

- a. a. Media Company will track delivery through its ad server and Agency will also track delivery through its proprietary or subcontracted 3rd Party Ad Server whose identity is set forth in the IO. Agency may not substitute the 3rd Party Ad Server specified in the IO without Media Company's consent. Agency and Media Company agree to give reciprocal access to relevant and non-proprietary statistics from both ad servers, or if such is not available, provide weekly placement-level activity reports to each other. In the event that the Media Company's ad server measurements are higher than those produced by the Agency's 3rd Party Ad Server by more than 10% over the invoice period, Agency will facilitate a reconciliation effort between Media Company and 3rd Party Ad Server. If the discrepancy cannot be resolved and Agency has made a good faith effort to facilitate the reconciliation effort, the Agency reserves the right to either:
 - 1. Consider the discrepancy an under-delivery of the Deliverables as described in Section VI(b) whereupon the parties shall act in accordance with that Section, including the requirement that Agency and Media Company make an effort to agree upon the conditions of a makegood flight, except that for purposes of this Section XIII(a)(1), delivery of any makegood shall be measured by the 3rd Party Ad Server, or
 - 2. Pay Media Company based on Agency 3rd party Ad Server reported data, plus a 10% upward adjustment to delivery.
- b. Media Company will make reasonable efforts to publish, and Agency shall make reasonable efforts to cause the 3rd Party Ad Server to publish, a disclosure in the form specified by the AAAA and IAB regarding their respective ad delivery measurement methodologies with regards to compliance with the IAB/AAAA Ad Measurement Guidelines.
- c. Section XIII(a) shall be terminated upon the establishment of an IAB/AAAA certification process for compliance with the IAB/AAAA Ad Measurement Guidelines. Upon such termination the parties shall negotiate in good faith a replacement or successor language for that Section.
- d. Where an Agency is utilizing a 3rd Party Ad Server and that 3rd Party Ad Server cannot serve the Ad, the Agency shall have a one-time right to temporarily suspend delivery under the IO for a period of up to 72-hours. Upon written notification by Agency of a non-functioning 3rd Party Ad Server, the Media Company has 24 hours to suspend delivery. Following that period, Agency will not be held liable for payment for any Ad that runs within the immediate 72-hour period thereafter until the Media Company is notified that the 3rd Party Ad Server is able to serve Ads. After the 72-hour period passes and Agency has not provided written notification that Media Company can resume delivery under the IO, Advertiser will pay for the Ads that would have run or are run after the 72 hour period but for the suspension and can elect Media Company to serve Ads until 3rd Party Ad Server is able to serve Ads. If Agency does not so elect for Media Company to

serve the Ads until 3rd Party Ad Server is able to serve Ads, Media Company may utilize the inventory that would have been otherwise used for Media Company's own advertisements or advertisements provided by a third party. Upon notification that the 3rd Party Ad Server is functioning, Media Company will have 72 hours to resume delivery. Any delay in the resumption of delivery beyond this period, without reasonable explanation, will result in Media Company owing a makegood to Agency.

XIV. MISCELLANEOUS

- a. Media Company represents and warrants that Media Company has all necessary permits, licenses, and clearances to sell the inventory represented in the IO subject to the terms and conditions of this agreement, including any applicable Policies. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in their Ads and Advertising Materials.
- b. Neither Agency nor Advertiser may resell, assign or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without Media Company's prior written approval will be null and void. All terms and provisions of these Terms and Conditions and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.
- c. These Terms and Conditions and the related IO constitute the entire agreement of the parties with respect to the subject matter and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same document.
- d. In the event of any inconsistency between the terms of an IO and these Terms and Conditions, the terms of the IO shall prevail. All IOs shall be governed by the laws of the State of []. Media Company and Agency (on behalf of itself and not Advertiser) agree that any claims, legal proceeding or litigation arising in connection with the IO (including these Terms and Conditions) will be brought solely in [], and the parties consent to the jurisdiction of such courts. No modification of these Terms and Conditions or any IO shall be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions shall remain in full force and effect. All rights and remedies hereunder are cumulative.
- e. Any notice required to be delivered hereunder shall be delivered three days after deposit in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Media Company and Agency shall be sent to the contact as noted in the IO with a copy to the Legal Department. All notices to Advertiser shall be sent to the address specified on the IO.
- f. Sections III, VI, X, XI, XII, and XIV shall survive termination or expiration of this Agreement and Section IV shall survive for 30 days after the termination or expiration of this Agreement. In addition, each party shall return or destroy the other party's Confidential Information and remove Advertising Materials and Ad tags.



INTERNET ADVERTISING AGREEMENT

This Agreement entered into this ____th day of _____, 200____, by and between _____, ("Agency"), located at _____, and _____, ("Media Company"), located at _____.

WHEREAS, Agency desires to purchase interactive media advertising on behalf of its clients for periods of 1 year or less (the "Advertiser") on Media Partner's Web site, ("Site"), and Media Partner desires to sell such advertising to Agency.

NOW THEREFORE, for good and valuable consideration, sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

I. INSERTION ORDERS AND INVENTORY AVAILABILITY

- a. From time to time, parties may negotiate insertion orders ("IO"s) under which a Media Company will deliver advertisements provided by Agency ("Ad(s)") to Media Company's site(s) (the "Site") for the benefit of an Agency or Advertiser. At Agency's discretion, an IO may either be submitted by Agency to Media Company or be submitted by Media Company, signed by Agency and returned to Media Company. In either case, an IO will be binding only if accepted as provided in Section I (b) below. Each IO shall specify: (a) the type(s) and amount(s) of inventory to be delivered (e.g., impressions, clicks or other desired actions) (the "Deliverables"); (b) the price(s) for such Deliverables; (c) the maximum amount of money to be spent pursuant to the IO (if applicable); (d) the start and end dates of the campaign, and (e) the identity of and contact information for any third party ad server ("3rd Party Ad Server"), if applicable. Other items that may be included are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected.
- b. Media Company will make commercially reasonable efforts to notify Agency within two business days of receipt of an IO signed by Agency if the specified inventory is not available. Acceptance of the IO and these Terms and Conditions will be made upon the earlier of (a) written (which, unless otherwise specified, for purposes of these Terms and Conditions shall include paper, fax, or e-mail communication) approval of the IO by Media Company and Agency; or (b) the display of the first Ad impression by Media Company, unless otherwise agreed upon in the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless signed by both parties.
- c. Revisions to accepted IOs must be made in writing and acknowledged by the other party in writing.

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- a. Media Company must comply with the IO, including all Ad placement restrictions, requirements to create a reasonably balanced delivery schedule, and provide within the scope of the IO, an Ad to the Site specified on the IO when such Site is called up by an Internet user. Any exceptions must be approved by Agency in writing.
- b. Media Company will use commercially reasonable efforts to provide Agency at least 10 business days prior notification of any material changes to the Site that would change the target audience or significantly affect the size or placement of the Ad specified in the affected IO. Should such a modification occur with or without notice, as Agency's and Advertiser's sole remedy for change or notice, Agency may immediately cancel the remainder of the IO without penalty within the 10-day notice period. If Media Company has failed to provide such notification, Agency may cancel the remainder of the IO within 30 days of such modification, and in such case shall not be charged for any affected Ads delivered after such modification.
- c. Media Company will submit or otherwise make electronically accessible to Agency within two business days of acceptance of an IO final technical specifications, as agreed upon by the parties. Changes to the specifications of the already-purchased Ads after that two business day period will allow Advertiser to suspend (without impacting the end date unless otherwise agreed by the parties) delivery of the affected Ad for a reasonable time in order to either (i) send revised artwork, copy, or active URLs ("Advertising Materials"); (ii) request that Media Company resize the Ad at Media Company's cost, and with final creative approval of Agency, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within 5 business days, immediately cancel the remainder of the IO for the affected Ad without penalty.
- d. Ad delivery shall comply with editorial adjacencies guidelines stated on the IO. As Advertiser's and Agency's sole remedy for a violation of the foregoing sentence: (i) Ads that run in violation of such editorial adjacencies guidelines, if Media Company is notified of such violation within 30 days of the violation, shall be non-billable; and (ii) after Agency notifies Media Company that specific Ads are in violation of such editorial adjacencies guidelines, Media Company will make commercially reasonable efforts to correct within 24 hours such violation. In the event that such correction materially and adversely impacts such IO, the parties will negotiate in good faith mutually agreed changes to such IO to address such impacts. In the event that the parties cannot reach agreement on such changes within five business days from the implementation of such correction, Agency or Media Company may, upon the conclusion of such 5 business

day period, immediately cancel such IO, without penalty.

III. PAYMENT AND PAYMENT LIABILITY

- a. **Invoices.** The initial invoice will be sent upon completion of the first month's delivery or within 30 days of completion of the IO, whichever is earlier. Invoices are to be sent to: Agency's billing address as set forth in the IO and must include information reasonably specified by Agency such as the IO number, Advertiser name, brand name or campaign name, and any number or other identifiable reference stated as required for invoicing on the IO. All invoices pursuant to the IO must be received within 180 days of delivery of all Deliverables. Failure by Media Company to send such invoice or make such request shall be considered a waiver of right to payment for delivery of Ads for which no invoice was sent.

Media Company should provide invoices accompanied by proof of performance for the invoiced period, which may include access to online or electronic reporting as addressed in this document, subject to the notice and cure provisions of Section IV. Media Company should invoice Agency for the services provided on a calendar month basis with the net cost (i.e., the cost after subtracting Agency commission) based on actual delivery or based on prorated distribution of delivery over the term of the IO, as specified in the applicable IO.

- b. **Payment Date.** Agency will make payment 30 days from receipt of invoice, or as otherwise stated in a payment schedule set forth in the IO. Media Company may notify Agency that it has not received payment in such thirty-day period and whether it intends to seek payment directly from Advertiser pursuant to Section IIIc, and may do so 5 business days after providing such notice.
- c. **Payment Liability.** Unless otherwise set forth by Agency on the IO, Media Company agrees to hold Agency liable for payments solely to the extent proceeds have cleared from Advertiser to Agency for Ads placed in accordance with the IO. For sums not cleared to Agency, Media Company agrees to hold Advertiser solely liable. Media Company understands that Advertiser is Agency's disclosed principal and Agency, as agent, has no obligations relating to such payments, either joint or several, except as specifically set forth in this Section III(c) and Section X(c).

Agency agrees to make every reasonable effort to collect and clear payment from Advertiser on a timely basis.

Agency's credit is established on a client-by-client basis.

If Advertiser proceeds have not cleared for the IO, other Advertisers from the representing Agency shall not be prohibited from advertising on the Site due to such non-clearance if such other Advertisers' credit is not in question.

Agency will make available to Media Company upon request written confirmation of the relationship between Agency and Advertiser. This confirmation should include, for example, Advertiser's acknowledgement

that Agency is its agent and is authorized to act on its behalf in connection with the IO and these Terms and Conditions. In addition, upon the request of Media Company, Agency will confirm whether Advertiser has paid to Agency in advance funds sufficient to make payments pursuant to the IO.

If Advertiser's or Agency's credit is or becomes impaired, Media Company may require payment in advance.

IV. REPORTING

- a. Media Company must, within 2 business days of the start date on the IO, provide confirmation to Agency, either electronically or in writing, stating whether the components of the IO have begun delivery.
- b. Media Company shall make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified in the IO. Reports must be broken out by day and summarized by creative execution, content area (Ad placement), and other variables defined in the IO, for example, impressions, keywords, and/or clicks. Once Media Company has provided the online or electronic report, it agrees that Agency and Advertiser are entitled to reasonably rely on it, subject to receipt of Media Company's invoice for such period.
- c. In the event that Media Company fails to deliver an accurate and complete report by the time specified, Agency may initiate makegood discussions pursuant to Section VI below. In the event that Media Company learns that it has delivered an incomplete or inaccurate report, or no report at all, Media Company must cure such failure within 5 business days. Failure to cure may result in nonpayment for all activity for which data are incomplete or missing, until Media Company delivers reasonable evidence of performance and such report must be delivered within 30 days of Media Company's learning of such failure or absent such knowledge, within 180 days of delivery of all Deliverables.

V. CANCELLATION AND TERMINATION

- a. At any time prior to the serving of the first impression of the IO, Agency may cancel the IO with 30 days prior written notice, without penalty. For clarity and by way of example, if Agency cancels the IO 15 days prior to the serving of the first impression, Advertiser will only be responsible for the first 15 days of the IO.
- b. Upon the serving of the first impression of the IO, Agency may cancel the IO for any reason, without penalty, by providing Media Company written notice of cancellation which will be effective after the later of: (i) 30 days after serving the first impression of the IO; or (ii) 14 days after providing Media Company with such written notice.
- c. Either party may terminate an IO at any time if the other party is in material breach of its obligations hereunder that is not cured within 10 days after written notice thereof from the nonbreaching party, except as otherwise stated in this Agreement with regard to specific breaches. Additionally, if Agency or Advertiser commit a violation of the same Policy (as defined below), where such Policy had been provided by Media Company to Agency, on three separate occasions after

having received timely notice of each such breach, even if such breach has been cured by Agency or Advertiser, then Media Company may terminate the IO associated with such breach upon written notice. If Agency or Advertiser do not cure a violation of a Policy within the applicable ten day cure period after written notice, where such Policy had been provided by Media Company to Agency, then Media Company may terminate the IO associated with such breach upon written notice.

- d. Short rates will apply to cancelled buys to the degree stated on the IO.

VI. **MAKEGOODS**

- a. Media Company shall monitor delivery of the Ads, and shall notify Agency either electronically or in writing as soon as possible (and no later than two weeks before IO end date unless the length of the campaign is less than two weeks) if Media Company believes that an under-delivery is likely. In the case of a probable or actual under-delivery, the parties may arrange for makegood consistent with these Terms and Conditions.
- b. In the event that actual Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit), Agency and Media Company will make an effort to agree upon the conditions of a makegood flight either in the IO or at the time of the shortfall. If no makegood can be agreed upon, Agency may execute a credit equal to the value of the under-delivered portion of the contract IO for which it was charged. In the event that Agency or Advertiser has made a cash pre-payment to Media Company, specifically for the campaign IO for which under-delivery applies, then if Agency and/or Advertiser is reasonably current on all amounts owed to Media Company under any other agreement for such Advertiser, Agency may elect to receive a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign. In no event shall Media Company provide a makegood or extend any Ad beyond the period set forth in the IO without prior written consent of Agency.

VII. **BONUS IMPRESSIONS**

- a. Where Agency utilizes a 3rd Party Ad Server, Media Company will not bonus more than ten (10) percent above the Deliverables specified in the IO without prior written consent from Agency. Permanent or exclusive placements shall run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for Third Party Ad served activity. Agency will not be charged by Media Company for any additional Ads above any level guaranteed or capped in the IO. If a 3rd Party Ad Server is being used and Agency notifies Media Company that the guaranteed or capped levels stated in the IO have been reached, Media Company will use commercially reasonable efforts to suspend delivery and, within 48 hours, may either 1) serve any additional Ads itself or 2) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser after such notice has been provided and associated with overdelivery by more than 10% above such guaranteed or capped levels.

- b. Where Agency does not utilize a 3rd Party Ad Server, Media Company may bonus as many ad units as Media Company chooses unless otherwise indicated on the IO. Agency will not be charged by Media Company for any additional advertising units above any level guaranteed in the IO.

VIII. **FORCE MAJEURE**

- a. Excluding payment obligations, neither party will be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes. In the event that Media Company suffers such a delay or default, Media Company shall make reasonable efforts within five business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or makegood is reasonably acceptable to Agency, Media Company shall allow Agency a pro rata reduction in the space, time and/or program charges hereunder in the amount of money assigned to the space, time and/or program charges at time of purchase. In addition, Agency shall have the benefit of the same discounts that would have been earned had there been no default or delay.
- b. If Agency's ability to transfer funds to third parties has been materially negatively impacted by an event beyond the Agency's reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Agency shall make every reasonable effort to make payments on a timely basis to Media Company, but any delays caused by such condition shall be excused for the duration of such condition. Subject to the foregoing, such excuse for delay shall not in any way relieve Agency from any of its obligations as to the amount of money that would have been due and paid without such condition.
- c. To the extent that a force majeure has continued for 5 business days, Media Company or Agency has the right to cancel the remainder of the IO without penalty.

IX. **AD MATERIALS**

- a. It is Agency's obligation to submit Advertising Materials in accordance with Media Company's then existing advertising criteria or specifications (including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with Media Company's public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the Site on which the Ads are to appear), other editorial or advertising policies, and material due dates) (collectively "Policies") in accordance with Section II (c). Media Company's sole remedy for a breach of this provision is set forth in paragraphs (b and c) below, Section V(c), and Section X(b). If Advertising Materials are late, Advertiser is still responsible for the media purchased pursuant to IO.
- b. Media Company reserves the right within its discretion to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked do not comply with its Policies, or that in Media Company's sole reasonable judgment, do not comply

with any applicable law, regulation or other judicial or administrative order. In addition, Media Company reserves the right within its discretion to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked are or may tend to bring disparagement, ridicule, or scorn upon Media Company or any of its Affiliates (as defined below), provided that if Media Company has reviewed and approved such Ads prior to their use on the Site, Media Company will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from Agency.

- c. If Advertising Materials provided by Agency are damaged, not to Media Company's specifications, or otherwise unacceptable, Media Company will use commercially reasonable efforts to notify Agency within two business days of its receipt of such Advertising Materials.
- d. Media Company will not edit or modify the submitted Ads in any way, including, but without limitation, resizing the Ad, without Agency approval. Media Company shall use all such Ads in strict compliance with these Terms and Conditions and any written instructions provided by Agency.
- e. When applicable, Third Party Ad Server tags shall be implemented so that they are functional in all aspects.
- f. Media Company, on one hand, and Agency and Advertiser, on the other, will not use the other's trade name, trademarks, logos or Ads in a public announcement (including, but not limited to, through any press release) regarding the existence or content of these Terms and Conditions or an IO without the other's prior written approval.

X. **INDEMNIFICATION**

- a. Media Company agrees to defend, indemnify and hold harmless Agency and Advertiser, their Affiliates (as defined below) and their respective directors, officers, employees and agents from any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Losses") incurred as a result of a Third Party (as defined below) claim, judgment or proceeding relating to or arising out of Media Company's breach of Section XII, Media Company's display or delivery of any Ad in breach of these Terms and Conditions or the terms of an IO, or that materials provided by Media Company (and not by Agency or Advertiser) for an Ad violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action, except to the extent (1) that such claim, judgment or proceeding resulted from such materials fulfilling Agency's or Advertiser's unique specifications provided that Media Company did not know or should not have reasonably known that such specifications would give rise to the Loss or (2) that such materials are provided to Agency or Advertiser for review and the Agency or Advertiser knew or should have reasonably known from the visual or sonic expression of the Advertisement, while Media Company did not know or should not have reasonably known, that such material violated any law, regulations or other judicial or administrative action, violate the right of a Third Party or are defamatory or obscene. An Affiliate means, with

respect to either party, any corporation, firm, partnership, person or other entity, whether de jure or de facto, which directly or indirectly owns, is owned by or is under common ownership with such party to the extent of at least 50% of the equity having the power to vote on or direct the affairs of the entity, and any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party. A "Third Party" means an entity other than the parties to this Agreement, their respective Affiliates, and each of their respective directors, officers, employees and agents.

- b. Advertiser agrees to defend, indemnify and hold harmless Media Company its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of a Third Party claim, judgment or proceeding relating to or arising out of Advertiser's breach of Section XII, violation of Policies (to the extent the applicable terms of such Policies have been provided to Agency at least ten days prior to the violation giving rise to the claim), or the content or subject matter of any Ad or Advertising Materials to the extent used by Media Company in accordance with these Terms and Conditions or an IO, including but not limited allegations that such content or subject matter violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action.
- c. Agency represents and warrants that it has the authority as agent to Advertiser to bind Advertiser to these Terms and Conditions and each IO. Agency agrees to defend, indemnify and hold harmless Media Company its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of Agency's alleged breach of the foregoing sentence.
- d. If any action will be brought against either party (the "Indemnified Party") in respect to any allegation for which indemnity may be sought from the other party ("Indemnifying Party"), the Indemnified Party will promptly notify the Indemnifying Party of any such claim of which it becomes aware and will: (i) provide reasonable cooperation to the Indemnifying Party at the Indemnifying Party's expense in connection with the defense or settlement of any such claim; and (ii) be entitled to participate at its own expense in the defense of any such claim. The Indemnified Party agrees that the Indemnifying Party will have sole and exclusive control over the defense and settlement of any such third party claim. However, the Indemnifying Party will not acquiesce to any judgment or enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written consent of the Indemnified Party.
- e. Notwithstanding the foregoing, in the event that any Indemnifying Party is required to defend, indemnify or hold harmless an Indemnified Party from a claim, judgment or proceeding of a Related Party (as defined below) of such Indemnified Party pursuant to this Section X, Losses incurred in connection with such claim, judgment or proceeding will be limited to those that are reasonably foreseeable. A "Related Party" is a party in a contractual relationship with the Indemnified Party where such specific contractual relationship relates to the Loss being asserted by that Related Party.

XI. **LIMITATION OF LIABILITY**

Excluding the parties obligations under Section X or damages that result from a breach of Section XII or intentional misconduct by the parties, in no event will either party be liable for any consequential, indirect, incidental, punitive, special or exemplary damages whatsoever, including without limitation, damages for loss of profits, business interruption, loss of information and the like, incurred by the other party arising out of this Agreement, even if such party has been advised of the possibility of such damages.

XII. **NON-DISCLOSURE, DATA OWNERSHIP, PRIVACY AND LAWS**

- a. Any marked confidential information and proprietary data provided by one party, including the Ad description, and the pricing of the Ad, set forth in the IO, shall be deemed "Confidential Information" of the disclosing party. Confidential Information shall also include information provided by one party, which under the circumstances surrounding the disclosure would be reasonably deemed confidential or proprietary. Confidential Information shall not be released by the receiving party to anyone except an employee, or agent who has a need to know same, and who is bound by confidentiality obligations. Neither party will use any portion of Confidential Information provided by the other party hereunder for any purpose other than those provided for under this Agreement.
- b. For purposes of this Section, Agency and Advertiser shall be considered one party. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" shall not include information which: (i) was previously known to a party; (ii) was or becomes generally available to the public through no fault of the receiving party ("Recipient"); (iii) was rightfully in Recipient's possession free of any obligation of confidence at, or subsequent to, the time it was communicated to Recipient by the disclosing party ("Discloser"); (iv) was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; or (v) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. Notwithstanding the foregoing, either party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange or as necessary to establish the rights of either party under this Agreement; provided, however, that both parties will stipulate to any orders necessary to protect said information from public disclosure.
- c. All personally identifiable information provided by individual web users who are informed that such information is being gathered solely on behalf of Advertiser pursuant to the Advertiser's posted privacy policy is the property of Advertiser, is subject to the Advertiser's posted privacy policy, and is considered Confidential Information. Any other use of such information must be set forth in the IO signed by both parties.
- d. Media Company, Agency, and Advertiser shall post on their respective Web sites their privacy policies and

adhere to their privacy policies, which abide by the applicable laws. Failure by Media Company, on one hand, or Agency or Advertiser, on the other, to continue to post a privacy policy or non-adherence to its own privacy policy is grounds for immediate cancellation of the IO by the other parties.

- f. Agency, Advertiser and Media Company will comply with at all times, all applicable federal, state and local law, ordinances, regulations and codes which are relevant to their performance of their respective obligations under this Agreement.

XIII. **THIRD PARTY AD SERVERS**
(Applicable if 3rd Party Server Is Used)

- a. Media Company will track delivery through its ad server and Agency will also track delivery through its proprietary or subcontracted 3rd Party Ad Server whose identity is set forth in the IO. Agency may not substitute the 3rd Party Ad Server specified in the IO without Media Company's consent. Agency and Media Company agree to give reciprocal access to relevant and non-proprietary statistics from both ad servers, or if such is not available, provide weekly placement-level activity reports to each other. In the event that the Media Company's ad server measurements are higher than those produced by the Agency's 3rd Party Ad Server by more than 10% over the invoice period, Agency will facilitate a reconciliation effort between Media Company and 3rd Party Ad Server. If the discrepancy cannot be resolved and Agency has made a good faith effort to facilitate the reconciliation effort, the Agency reserves the right to either:
 1. Consider the discrepancy an under-delivery of the Deliverables as described in Section VI (b) whereupon the parties shall act in accordance with that Section, including the requirement that Agency and Media Company make an effort to agree upon the conditions of a makegood flight, except that for purposes of this Section XIII (a)(1), delivery of any makegood shall be measured by the 3rd Party Ad Server, or
 2. Pay Media Company based on Agency 3rd party Ad Server reported data, plus a 10% upward adjustment to delivery.
- b. Media Company will make reasonable efforts to publish, and Agency shall make reasonable efforts to cause the 3rd Party Ad Server to publish, a disclosure in the form specified by the AAAA and IAB regarding their respective ad delivery measurement methodologies with regards to compliance with the IAB/AAAA Ad Measurement Guidelines.
- c. Section XIII (a) shall be terminated upon the establishment of an IAB/AAAA certification process for compliance with the IAB/AAAA Ad Measurement Guidelines. Upon such termination the parties shall negotiate in good faith a replacement or successor language for that Section.
- d. Where an Agency is utilizing a 3rd Party Ad Server and that 3rd Party Ad Server cannot serve the Ad, the Agency shall have a one-time right to temporarily suspend delivery under the IO for a period of up to 72-

hours. Upon written notification by Agency of a non-functioning 3rd Party Ad Server, the Media Company has 24 hours to suspend delivery. Following that period, Agency will not be held liable for payment for any Ad that runs within the immediate 72-hour period thereafter until the Media Company is notified that the 3rd Party Ad Server is able to serve Ads. After the 72-hour period passes and Agency has not provided written notification that Media Company can resume delivery under the IO, Advertiser will pay for the Ads that would have run or are run after the 72 hour period but for the suspension and can elect Media Company to serve Ads until 3rd Party Ad Server is able to serve Ads. If Agency does not so elect for Media Company to serve the Ads until 3rd Party Ad Server is able to serve Ads, Media Company may utilize the inventory that would have been otherwise used for Media Company's own advertisements or advertisements provided by a third party. Upon notification that the 3rd Party Ad Server is functioning, Media Company will have 72 hours to resume delivery. Any delay in the resumption of delivery beyond this period, without reasonable explanation, will result in Media Company owing a makegood to Agency.

XIV. **MISCELLANEOUS**

- a. Media Company represents and warrants that Media Company has all necessary permits, licenses, and clearances to sell the inventory represented in the IO subject to the terms and conditions of this agreement, including any applicable Policies. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in their Ads and Advertising Materials.
- b. Neither Agency nor Advertiser may resell, assign or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without Media Company's prior written approval will be null and void. All terms and provisions of these Terms and Conditions and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.
- c. This Agreement will have a term of one year from the date first set forth above, with automatic one year renewals unless either party notifies the other in writing of its intention to terminate this Agreement at least thirty (30) days prior to the date of expiration of the current term of the Agreement. Such expiration shall not affect any IO's executed prior to the date of expiration which shall continue in full force and effect for the duration of the campaign set forth in such IO.
- d. These Terms and Conditions and the related IO constitute the entire agreement of the parties with respect to the subject matter and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same document.
- e. In the event of any inconsistency between the terms of an IO and these Terms and Conditions, the terms of the IO shall prevail. All IOs shall be governed by the laws

of the State of _____. Media Company and Agency (on behalf of itself and not Advertiser) agree that any claims, legal proceeding or litigation arising in connection with the IO (including these Terms and Conditions) will be brought solely in _____, and the parties consent to the jurisdiction of such courts. No modification of these Terms and Conditions or any IO shall be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions shall remain in full force and effect. All rights and remedies hereunder are cumulative.

- f. Any notice required to be delivered hereunder shall be delivered three days after deposit in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Media Company and Agency shall be sent to the contact as noted in the IO with a copy to the Legal Department. All notices to Advertiser shall be sent to the address specified on the IO.
- g. Sections III, VI, X, XI, XII, and XIV shall survive termination or expiration of this Agreement and Section IV shall survive for 30 days after the termination or expiration of this Agreement. In addition, each party shall return or destroy the other party's Confidential Information and remove Advertising Materials and Ad tags.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date above written.

Media Company: _____

By: _____

Title: _____

Date: _____

Agency: _____

By: _____

Title: _____

Date: _____



STANDARD TERMS AND CONDITIONS VERSION 2.0

EDUCATIONAL INTRODUCTION

For the past year and a half, agency and publisher representatives have worked to obtain acceptance of an IAB and AAAA'S standardized set of Terms and Conditions Guidelines (Version 1.0) for online media buys. Even with the complexity of our marketplace, ongoing innovation, and individual needs of clients, agencies, and publishers, Version 1.0 was a success in that it focussed our industry on streamlining the acceptance and execution of media buys.

Because of the changing nature of our business and the fact that a number of important issues were not addressed by Version 1.0, common industry accepted language for online media buys have continued to elude us.

The release of Version 2.0 is an attempt to move our industry closer to that goal.

For the past six months, both IAB and AAAA's representatives have worked diligently to evolve the Standard Terms and Conditions Guidelines document. Our discussions have centered on identifying key business practices so that a foundation of understanding can drive negotiations. We believe strongly that Version 2.0 represents the best and most comprehensive set of terms and conditions achievable.

As you review Version 2.0, it is critical that you consider the document in its entirety – and not pass judgement solely on individual elements. Realize that the language represents a balance of negotiated solutions.

To help you understand both the intent and practical business expectations/responsibilities that result, we have drafted the attached educational document.

Version 2.0 is not a final solution. As measurement standardization/3rd party ad-serving and data privacy/ownership issues continue to evolve, added modification to the document will be required. You will notice that sections of Version 2.0 encompassing these subjects either contain contingency language that suggest change once agreements are met (ad-serving) or have not addressed specificity at all (aggregated data usage rights).

Due to the voluntary nature of this agreement, no agency or publisher is required to use Version 2.0. Some may choose to add additional language and/or modify recommended guidelines. In such cases, both the IAB and 4As urge you to use the recommended "Addendum" format to outline modifications. Based on how agreements were achieved in this document, you should realize that such attempts could result in additional modifications being requested by the other party.

Both the IAB and 4A's recommend the language contained in Version 2.0, and believe strongly that acceptance of these Terms and Conditions Guidelines will result in significant efficiency in the media buying process. We urge you to review the attached documents, and hope that you can decide to use Version 2.0 in its entirety.



STANDARD TERMS AND CONDITIONS FOR INTERNET ADVERTISING FOR MEDIA BUYS ONE YEAR OR LESS

These Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less are intended to offer Media Companies, Advertisers, and their Agencies a voluntary standard for conducting business in a manner acceptable to all parties. This document is to accompany Agency or Media Company insertion orders and represents a common understanding for doing business. This document may not fully cover sponsorships and other arrangements involving content association or integration, and/or special production, but may be used as the basis for the media components of such contracts.

This version of the T&C document (no signature lines) was developed for agencies/publishers who wish to have all T&C terminology attached to every IO. The signature line on the IO (or the serving of the campaign, as noted below in section I) will serve as indicating agreement. Also note that this paragraph notes that this set of T&Cs was developed for standard ad placements – and that additional terms may be required for special/unique buys. The terms and conditions, however, should be used as the basis for any media components of a larger online marketing program contract. In such cases, this document could be attached as an exhibit, and referenced as the terms for any/all media placements. If you prefer to sign one T&C document with a Media Company and reference it in all IOs over the course of a year, you may do so by using the alternate Version 2.0 T&C document, which includes a signature line for both Agencies and Media Companies.

I. INSERTION ORDERS AND INVENTORY AVAILABILITY

- a. From time to time, parties may negotiate insertion orders ("IO's") under which a Media Company will deliver advertisements provided by Agency ("Ad(s)") to Media Company's site(s) (the "Site") for the benefit of an Agency or Advertiser. At Agency's discretion, an IO may either be submitted by Agency to Media Company or be submitted by Media Company, signed by Agency and returned to Media Company. In either case, an IO will be binding only if accepted as provided in Section I(b) below. Each IO shall specify: (a) the type(s) and amount(s) of inventory to be delivered (e.g., impressions, clicks or other desired actions) (the "Deliverables"); (b) the price(s) for such Deliverables; (c) the maximum amount of money to be spent pursuant to the IO (if applicable), (d) the start and end dates of the campaign, and (e) the identity of and contact information for any third party ad server ("3rd Party Ad Server"), if applicable. Other items that may be included are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected.

of The process by which the IO and related terms and conditions are initiated is at Agency's discretion. The 4As advises agencies to initiate these documents with Media Companies. As a result of inclusion in this document of 3rd party ad serving, the 3rd party ad server that will be used for individual campaigns has to be specified. You will not be able to switch 3rd party ad servers mid-campaign without written consent from the Media Company. Please also note that any buy specifications that are not covered by the standard T&C guidelines which follow must be outlined on the IO in order to be binding.

- b. Media Company will make commercially reasonable efforts to notify Agency within two business days of receipt of an IO signed by Agency if the specified inventory is not available. Acceptance of the IO and these Terms and Conditions will be made upon the earlier of (a) written (which, unless otherwise specified, for purposes of these Terms and Conditions shall include paper, fax, or e-mail communication) approval of the IO by Media Company and Agency; or (b) the display of the first Ad impression by Media Company, unless otherwise agreed upon in the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless signed by both parties.

If you forward an IO, Media Companies must use reasonable efforts to notify you if the inventory is not available. You should consult with your agency attorney for specific definition of this legal term. There is, however, no penalty for notification failure other than the detrimental affect to your ongoing business relationship with that Media Company. Note that there are two ways an IO can be accepted by the Media Company: by signing the IO; or, by serving the first impression. This process was established to facilitate execution of campaigns that have limited lead time. However, it is up to agencies to decide what process to implement on an ongoing basis (either for the entire agency, by client, or by campaign). If you want to require that all IOs are signed and returned to you, then this requirement must be noted on the IO. For campaigns that are purchased on a long-term basis, or for IOs that are sent with significant lead time, we recommend that signatures are secured so that no questions arise about whether inventory was actually contracted. Please also note that the definition of "written approval" includes paper, fax, or e-mail.

The last sentence of this section refers specifically to modifications to an original IO that are sent prior to the acceptance (signature, or start of a campaign). In practical terms, if during the course of negotiations, a modification is made to an original IO, it should be noted as a revision, and written approval to its acceptance should be secured. This process was developed in order to ensure that confusion does not arise between Agency and Media Company over which IO should be followed.

- c. Revisions to accepted IOs must be made in writing and acknowledged by the other party in writing.

Once an IO has either been signed or the campaign has started running, revised IOs must be accepted/agreed to with written approvals. Again, this is to ensure that each party is managing the campaign based on the most recent, agreed to order.

II. AD PLACEMENT AND POSITIONING

- a. Media Company must comply with the IO, including all Ad placement restrictions, requirements to create a reasonably balanced delivery schedule, and provide within the scope of the IO, an Ad to the Site specified on the IO when such Site is called up by an Internet user. Any exceptions must be approved by Agency in writing.

Agencies should note that the Media Company is only held to comply with parameters specified in the IO. As such, it is critical for Agencies to note any and all requirements in the IO, including

parameters addressing impression phasing. In our discussions with Media Companies, "balanced delivery" generally implied that impressions should be delivered in accordance with general pattern of traffic to placements that were purchased. This will mean that time of day, or day of week delivery still may be skewed if a site's traffic pattern is not completely even.

- a. Media Company will use commercially reasonable efforts to provide Agency at least 10 business days prior notification of any material changes to the Site that would change the target audience or significantly affect the size or placement of the Ad specified in the affected IO. Should such a modification occur with or without notice, as Agency's and Advertiser's sole remedy for change or notice, Agency may immediately cancel the remainder of the IO without penalty within the 10-day notice period. If Media Company has failed to provide such notification, Agency may cancel the remainder of the IO within 30 days of such modification, and in such case shall not be charged for any affected Ads delivered after such modification.

Paragraph (b) above specifies that Media Companies must notify Agencies of any material changes to a site that would impact the expected delivery of an ad unit. This includes (but is not limited to) changes to ad size, placement on page, number of other ad units on the page, technical specifications, or navigation to a page on which the ad unit sits that affects the target composition or makeup of audience traffic. Media Companies should notify you with 10 days advance notice of these changes, in which case, you will have the right to cancel the remainder of the entire buy (both placements that were affected, and those that were not) without penalty if you feel the modifications negatively affect your order. You also have the right to negotiate a mutually acceptable revised schedule without penalty if you wish. If a Media Company fails to notify you of changes with advance notice, and you identify a material change to a placement that has been purchased, you may cancel your entire order up to 30 days after the modification and refuse payment for all activity that ran from the date the modification was made.

- c. Media Company will submit or otherwise make electronically accessible to Agency within two business days of acceptance of an IO final technical specifications, as agreed upon by the parties. Changes to the specifications of the already-purchased Ads after that two business day period will allow Advertiser to suspend (without impacting the end date unless otherwise agreed by the parties) delivery of the affected Ad for a reasonable time in order to either (i) send revised artwork, copy, or active URLs ("Advertising Materials"); (ii) request that Media Company resize the Ad at Media Company's cost, and with final creative approval of Agency, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within 5 business days, immediately cancel the remainder of the IO for the affected Ad without penalty.

This paragraph establishes requirements for the Media Company to confirm final technical specifications for all ad units within 2 days of acceptance of an IO. If the Media Company fails to confirm proper technical specifications, or changes technical specifications after an order has been accepted and the two day period has passed, then an Agency may enact any of the provisions listed above.

- d. Ad delivery shall comply with editorial adjacencies guidelines stated on the IO. As Advertiser's and Agency's sole remedy for a violation of the foregoing sentence: (i) Ads that run in violation of such editorial adjacencies guidelines, if Media Company is notified of such violation within 30 days of the violation, shall be non-billable; and (ii) after Agency notifies Media Company that specific Ads are in violation of such editorial adjacencies guidelines, Media Company will make commercially reasonable efforts to correct within 24 hours such violation. In the event that such correction materially and

adversely impacts such IO, the parties will negotiate in good faith mutually agreed changes to such IO to address such impacts. In the event that the parties cannot reach agreement on such changes within five business days from the implementation of such correction, Agency or Media Company may, upon the conclusion of such 5 business day period, immediately cancel such IO, without penalty.

If you establish editorial adjacency requirements in an IO (either as part of a sponsorship, or to restrict adjacencies to certain types of content), you should routinely check placement delivery to ensure that requirements are being followed. This can be done manually, by surfing a site/network, or in an automated fashion by securing log file reports from your adserver about ad placements. If you identify any instances where adjacency requirements are not being fulfilled, you may notify a Media Company and require them to resolve the situation within 24 hours. If you are advertising a campaign, and the infraction is especially troubling, another solution would be to serve blank ads into the Media Company's environment until the situation is resolved. In either case, if a mutually agreeable resolution cannot be identified within 5 business days, Agencies may immediately cancel the order without penalty. Additionally, Agencies will not be liable for media that runs in violation of editorial adjacency guidelines as long as notification is provided to Media Companies within 30 days of the infraction.

III. PAYMENT AND PAYMENT LIABILITY

a. Invoices

The initial invoice will be sent upon completion of the first month's delivery or within 30 days of completion of the IO, whichever is earlier. Invoices are to be sent to: Agency's billing address as set forth in the IO and must include information reasonably specified by Agency such as the IO number, Advertiser name, brand name or campaign name, and any number or other identifiable reference stated as required for invoicing on the IO. All invoices pursuant to the IO must be received within 180 days of delivery of all Deliverables. Failure by Media Company to send such invoice or make such request shall be considered a waiver of right to payment for delivery of Ads for which no invoice was sent.

Media Company should provide invoices accompanied by proof of performance for the invoiced period, which may include access to online or electronic reporting as addressed in this document, subject to the notice and cure provisions of Section IV. Media Company should invoice Agency for the services provided on a calendar month basis with the net cost (i.e., the cost after subtracting Agency commission) based on actual delivery or based on prorated distribution of delivery over the term of the IO, as specified in the applicable IO.

Again, any and all individual requirement for an Agency related to invoicing must be detailed specifically on the IO. Media Companies are only bound to comply with instructions included on the IO. Note that if a Media Company fails to invoice an Agency for activity within 180 days of completion of the IO, the Agency and Advertiser will not be held liable for payment. All invoicing will be based on calendar month periods, unless otherwise requested in your IO. Agencies also must note in the IO whether they wish to be billed based on actual delivery, or based on prorated distribution of the order (in which case, you will have to actualize and reconcile payments during the last month of activity so as to ensure that overpayment is not made).

b. Payment Date

Agency will make payment 30 days from receipt of invoice, or as otherwise stated in a payment schedule set forth in the IO. Media Company may notify Agency that it has not received payment in such thirty-day period and whether it intends to

seek payment directly from Advertiser pursuant to Section III(c), and may do so 5 business days after providing such notice.

Payment is due to Media Companies 30 days after receipt of invoice – not from the date of invoice. From a process standpoint, Agencies should begin to log or date stamp all invoices on the day they are received. Also, please note language that this relates to a Media Company's ability to collect payment directly from Advertisers. The first part of the second sentence above indicated that a Media Company "may" notify an agency that it has not received payment and that it intends to seek payment directly from an Advertiser pursuant to Section III(c). A few key points about this language:

- 1) the word "may" was used so that Media Companies would not be forced to notify Agencies every time payment has not been received within 30 days of receipt of invoice. In many cases, Media Companies will not choose to notify Agencies (if payment history is good), and not choose to collect payments directly from Advertisers (this will be a business decision). If a Media Company intends to seek payment directly from an Advertiser, though, then notification would be required, and no contact can be made with the Advertiser for 5 business days from date of notification to an Agency;
- 2) if a Media Company notifies an Agency that payment has not been received, the Agency would have 5 business days to respond to the Media Company with status; if payment has been received by the Agency from the Advertiser, then pursuant to Section III(c), the Agency should notify the Media Company that monies have been collected, but not paid (in this case, the Advertiser would no longer be liable for payment per the sequential liability language, and the Media Company will be restricted from contacting the Advertiser); and,
- 3) if the Media Company notifies an Agency it intends to seek payment directly from Advertiser and after review, the Agency identifies that payment was not made due to an Agency mistake, then the Agency should notify the Media Company of the situation and seek a delay in the Media Company's direct contact with the Advertiser (the point of the 5 day waiting period is to allow Agencies to manage any potential client service issues with their Advertisers and Media Company partners).

c. **Payment Liability**

Unless otherwise set forth by Agency on the IO, Media Company agrees to hold Agency liable for payments solely to the extent proceeds have cleared from Advertiser to Agency for Ads placed in accordance with the IO. For sums not cleared to Agency, Media Company agrees to hold Advertiser solely liable. Media Company understands that Advertiser is Agency's disclosed principal and Agency, as agent, has no obligations relating to such payments, either joint or several, except as specifically set forth in this Section III(c) and Section X(c).

Agency agrees to make every reasonable effort to collect and clear payment from Advertiser on a timely basis.

Agency's credit is established on a client-by-client basis.

If Advertiser proceeds have not cleared for the IO, other Advertisers from the representing Agency shall not be prohibited from advertising on the Site due to such non-clearance if such other Advertisers' credit is not in question.

Agency will make available to Media Company upon request written confirmation of the relationship between Agency and Advertiser. This confirmation should include, for example, Advertiser's acknowledgement that Agency is its agent and is authorized to act on its behalf in connection with the IO and these Terms and Conditions. In addition, upon the request of Media Company, Agency will confirm whether Advertiser has paid to Agency in advance funds sufficient to make payments pursuant to the IO.

If Advertiser's or Agency's credit is or becomes impaired, Media Company may require payment in advance.

This section remains relatively unchanged versus Version 1.0. Key points to remember are:

- Agencies should not accept any liability for payment for Advertisers activity as long as they are working as the Advertiser's agent, and as long as payment was not received and cleared from Advertiser to Agency.
- In cases where an Advertiser fails to make payment to an agency and the Advertiser has contracted to buy authorized media, Media Company's will hold the Advertiser solely liable for payments
- Once payment (either upfront, or ongoing) is received by Agency, Media Companies can hold Agencies liable for payment.
- Media Companies have agreed to establish credit on a client by client basis, so if an Agency has one delinquent client, Agency's ability to conduct business with Media Companies under normal business terms should not be impaired. Additionally, Media Companies should not delay implementation of other client campaigns should one Agency client fail to make payments in a timely fashion.
- In order to confirm sequential liability, Agencies may be required to supply a Media Company with written documentation of the contractual relationship with an Advertiser and/or the status of payment terms that have been extended to an Advertiser. Media Companies can use this information to decide on whether they will agree to sequential liability for particular Advertisers (and/or decide whether pre-payment will be required).

IV. REPORTING

- a. Media Company must, within 2 business days of the start date on the IO, provide confirmation to Agency, either electronically or in writing, stating whether the components of the IO have begun delivery.

Paragraph (a) has been modified from Version 1.0, and now only requires that a Media Company notify an Agency that components of a media buy have launched (within 2 business days of the start date of the IO). The intent of this paragraph is to obligate a Media Company to notify an Agency that implementation has been achieved successfully. Specific activity reporting is not required.

- b. Media Company shall make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified in the IO. Reports must be broken out by day and summarized by creative execution, content area (Ad placement), and other variables defined in the IO, for example, impressions, keywords, and/or clicks.

Once Media Company has provided the online or electronic report, it agrees that Agency and Advertiser are entitled to reasonably rely on it, subject to receipt of Media Company's invoice for such period.

Agencies must specify in the IO the level of detail that is required for ongoing performance reporting. Although the second paragraph of this section noted that Agency's should be able to reasonably rely on these reports, Media Company's invoices will be the only binding detail on Media Company reported delivery.

- c. In the event that Media Company fails to deliver an accurate and complete report by the time specified, Agency may initiate makegood discussions pursuant to Section VI below.

In the event that Media Company learns that it has delivered an incomplete or inaccurate report, or no report at all, Media Company must cure such failure within 5 business days.

Failure to cure may result in nonpayment for all activity for which data are incomplete or missing, until Media Company delivers reasonable evidence of performance and such report must be delivered within 30 days of Media Company's learning of such failure or absent such knowledge, within 180 days of delivery of all Deliverables.

Should a Media Company fail to deliver a performance report in a timely fashion, or should the report be inaccurate, Media Companies have 5 business days to correct deliverables, and ensure that monthly invoices correctly detail actual delivered activity. Agencies may hold payment for activity until updated/corrected performance reports are delivered.

V. **CANCELLATION AND TERMINATION**

- a. At any time prior to the serving of the first impression of the IO, Agency may cancel the IO with 30 days prior written notice, without penalty. For clarity and by way of example, if Agency cancels the IO 15 days prior to the serving of the first impression, Advertiser will only be responsible for the first 15 days of the IO.

Please note the above example for definition of how this cancellation right plays out prior to the serving of the first impression. If cancellation occurs prior to the serving of the first impression, Agency will not be held to a full 30 day schedule. Media Companies may alter cancellation rights for content integration or sponsorship deals by requiring a longer "firm" commitment. Agencies should recognize that cancellation rights for integrated programs that require Media Companies to develop unique content or functionality should be negotiable.

- b. Upon the serving of the first impression of the IO, Agency may cancel the IO for any reason, without penalty, by providing Media Company written notice of cancellation which will be effective after the later of: (i) 30 days after serving the first impression of the IO; or (ii) 14 days after providing Media Company with such written notice.

After the first 30 days of activity, an order is cancelable with 14 days written notice. If Agency forwards notice on day 16 of a campaign, Agency does have the ability to terminate a campaign as of the 30th day of activity (you are not limited to providing notice after the first 30 days). A revised IO should always be sent, and signed, confirming any cancellation request.

- c. Either party may terminate an IO at any time if the other party is in material breach of its obligations hereunder that is not cured within 10 days after written notice thereof from the nonbreaching party, except as otherwise stated in this Agreement with regard to specific breaches. Additionally, if Agency or Advertiser commit a violation of the same Policy (as defined below), where such Policy had been provided by Media Company to Agency, on three separate occasions after having received timely notice of each such breach, even if such breach has been cured by Agency or Advertiser, then Media Company may terminate the IO associated with such breach upon written notice. If Agency or Advertiser do not cure a violation of a Policy within the applicable ten day cure period after written notice, where such Policy had been provided by Media Company to Agency, then Media Company may terminate the IO associated with such breach upon written notice.

Please consult with your Agency attorney to understand the definition of "material breach". Also, please note that once notice of material breach is delivered to either a Media Company or Agency, a 10 day cure period exists prior to a party having any termination rights. Specific language has also been included in this section to protect Media Companies from recurring breach by the same Advertiser. If an Agency or Advertiser breaches the same policy

resulting in material breach, then the Media Company reserves the right to terminate the IO immediately upon written notice. This clause is intended to protect Media Companies from Advertisers who continually, for example, violate privacy policy requirements, or who violate advertising policy requirements. Find out a Media Company's policies before placing a buy as part of due diligence on a site.

- d. Short rates will apply to cancelled buys to the degree stated on the IO.

Given the cancellation rights above, and because standard rate card rates do not exist in the industry, Media Companies and Agencies should come to upfront agreement on short rates and specify them in the IO. Agencies are not obligated to being this issue up during negotiations, and may choose to reject any short rate stipulations from Media Companies if they wish (although this may impact acceptance of your order by a Media Company). If no short rates are identified on the IO, Media Companies are precluded from charging any cancellation penalties or cost premiums for activity that was run.

VI. **MAKEGOODS**

- a. Media Company shall monitor delivery of the Ads, and shall notify Agency either electronically or in writing as soon as possible (and no later than two weeks before IO end date unless the length of the campaign is less than two weeks) if Media Company believes that an under-delivery is likely. In the case of a probable or actual under-delivery, the parties may arrange for makegood consistent with these Terms and Conditions.

Paragraph (a) specifically places the obligation of tracking activity delivery on the shoulders of the Media Company, and notifying Agencies when underdelivery is expected.. This includes in cases where a 3rd party adserver is being used. Agencies must realize that in such cases (where 3rd party adservers are being used), they are obligated to provide access to reporting that will allow Media Companies to complete this obligation. Media Companies will monitor campaigns based on their reported data, but Agencies should compare Media Company numbers to 3rd party numbers on an ongoing basis to ensure variance issues are not causing unaccounted for underdeliveries.

- b. In the event that actual Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit), Agency and Media Company will make an effort to agree upon the conditions of a makegood flight either in the IO or at the time of the shortfall. If no makegood can be agreed upon, Agency may execute a credit equal to the value of the under-delivered portion of the contract IO for which it was charged. In the event that Agency or Advertiser has made a cash pre-payment to Media Company, specifically for the campaign IO for which under-delivery applies, then if Agency and/or Advertiser is reasonably current on all amounts owed to Media Company under any other agreement for such Advertiser, Agency may elect to receive a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign. In no event shall Media Company provide a makegood or extend any Ad beyond the period set forth in the IO without prior written consent of Agency.

In its most basic form, this paragraph establishes that if underdelivery occurs, an Agency should first work with a Media Company to negotiate a mutually-acceptable make-good, but that if no make-good is acceptable (or if one is not desired because the campaign was time sensitive), then Media Company should only bill Agency for delivered activity. This will result in either a downward adjustment to the actual invoice (from purchased amounts) or a

cash refund in cases where prepayment was made. A Media Company cannot hold credits/refunds if other Advertising clients of the Agency are delinquent in payment. They may only hold credits/refunds in cases where the same Advertiser affected by the underdelivery is significantly past due on prior balances owed.

VII. BONUS IMPRESSIONS

- a. Where Agency utilizes a 3rd Party Ad Server, Media Company will not bonus more than 10% above the Deliverables specified in the IO without prior written consent from Agency. Permanent or exclusive placements shall run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for Third Party Ad served activity. Agency will not be charged by Media Company for any additional Ads above any level guaranteed or capped in the IO. If a 3rd Party Ad Server is being used and Agency notifies Media Company that the guaranteed or capped levels stated in the IO have been reached, Media Company will use commercially reasonable efforts to suspend delivery and, within 48 hours, may either 1) serve any additional Ads itself or 2) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser after such notice has been provided and associated with overdelivery by more than 10% above such guaranteed or capped levels.

This section is new to Version 2.0, and attempts to address the problem of unapproved bonus impression delivery impacting adserver charges. First and foremost, Media Companies should be held to bonusing no more than 10% overdelivery without Agency approval. This cap, however, does not address the issue of sponsorship placements, which often, do not have adequate impression counts included on the IO (due to the fact sponsorships are not impression buys, but rather time/placement buys). In order to facilitate a compromise in this area, one can put an impression cap listed on IOs for sponsorship placements. Agencies are responsible for notifying Media Companies when activity levels approach the cap, and they must provide direction for ongoing delivery. An Agency can elect to:

- Approve continued aderving (after identifying incremental aderving budgets to cover the impression overage)
- Traffic materials to the site, and require the Media Company to site serve remaining activity

If a Media Company fails to follow the above instructions, and their actions results in unapproved aderving cost overages, the Agency can hold the Media Company liable for such charges.

- b. Where Agency does not utilize a 3rd Party Ad Server, Media Company may bonus as many ad units as Media Company chooses unless otherwise indicated on the IO. Agency will not be charged by Media Company for any additional advertising units above any level guaranteed in the IO.

VIII. FORCE MAJEURE

- a. Excluding payment obligations, neither party will be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes. In the event that Media Company suffers such a delay or default, Media Company shall make reasonable efforts within five business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or makegood is reasonably acceptable to Agency, Media Company shall allow Agency a pro rata reduction in the space, time and/or program charges hereunder in the amount of money assigned to the space, time and/or program charges at time of purchase. In addition, Agency shall have the benefit of the same discounts that would have been earned had there been no default or delay.

- b. If Agency's ability to transfer funds to third parties has been materially negatively impacted by an event beyond the Agency's reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Agency shall make every reasonable effort to make payments on a timely basis to Media Company, but any delays caused by such condition shall be excused for the duration of such condition. Subject to the foregoing, such excuse for delay shall not in any way relieve Agency from any of its obligations as to the amount of money that would have been due and paid without such condition.
- c. To the extent that a force majeure has continued for 5 business days, Media Company or Agency has the right to cancel the remainder of the IO without penalty.

This section for the most part protects the parties and excuses their performance in case of natural disasters or disasters which are beyond their control. An Agency's obligation to make payments would only be excused if such a disaster impacts the banking system.

IX. AD MATERIALS

- a. It is Agency's obligation to submit Advertising Materials in accordance with Media Company's then existing advertising criteria or specifications (including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with Media Company's public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the Site on which the Ads are to appear), other editorial or advertising policies, and material due dates) (collectively "Policies") in accordance with Section II(c). Media Company's sole remedy for a breach of this provision is set forth in paragraphs (b and c) below, Section V(c), and Section X(b). If Advertising Materials are late, Advertiser is still responsible for the media purchased pursuant to IO.

Please note Agency obligations as they relate to ensuring that all Media Company guidelines are followed (beyond simply ad spec requirements). We recommend that as part of the RFP process, or upon order confirmation, that Agencies identify and secure from Media Companies all relevant policy requirements that pertain to the IO.

- b. Media Company reserves the right within its discretion to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked do not comply with its Policies, or that in Media Company's sole reasonable judgment, do not comply with any applicable law, regulation or other judicial or administrative order. In addition, Media Company reserves the right within its discretion to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked are or may tend to bring disparagement, ridicule, or scorn upon Media Company or any of its Affiliates (as defined below), provided that if Media Company has reviewed and approved such Ads prior to their use on the Site, Media Company will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from Agency.

This paragraph is especially important to note, since it outlines specific instances where Media Companies have the right to reject, suspend, or remove ad materials from a site. First and foremost, they have reserved the right to immediately remove materials from their sites if they do not confirm to all policies detailed above. If, however, ad materials were submitted for approval to a Media Company, and approval was received, then a Media Company cannot immediately remove an Advertiser's activity. The Media

Company would be obligated to inform the Agency of the problem, and work to reach a mutually agreeable resolution. This last section is aimed at protecting Agencies and Advertisers who follow all proper procedures and produce materials based on Media Company approvals.

- c. If Advertising Materials provided by Agency are damaged, not to Media Company's specifications, or otherwise unacceptable, Media Company will use commercially reasonable efforts to notify Agency within two business days of its receipt of such Advertising Materials.
- d. Media Company will not edit or modify the submitted Ads in any way, including, but without limitation, resizing the Ad, without Agency approval. Media Company shall use all such Ads in strict compliance with these Terms and Conditions and any written instructions provided by Agency.
- e. When applicable, Third Party Ad Server tags shall be implemented so that they are functional in all aspects.
- f. Media Company, on one hand, and Agency and Advertiser, on the other, will not use the other's trade name, trademarks, logos or Ads in a public announcement (including, but not limited to, through any press release) regarding the existence or content of these Terms and Conditions or an IO without the other's prior written approval.

X. INDEMNIFICATION

- a. Media Company agrees to defend, indemnify and hold harmless Agency and Advertiser, their Affiliates (as defined below) and their respective directors, officers, employees and agents from any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Losses") incurred as a result of a Third Party (as defined below) claim, judgment or proceeding relating to or arising out of Media Company's breach of Section XII, Media Company's display or delivery of any Ad in breach of these Terms and Conditions or the terms of an IO, or that materials provided by Media Company (and not by Agency or Advertiser) for an Ad violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action, except to the extent (1) that such claim, judgment or proceeding resulted from such materials fulfilling Agency's or Advertiser's unique specifications provided that Media Company did not know or should not have reasonably known that such specifications would give rise to the Loss or (2) that such materials are provided to Agency or Advertiser for review and the Agency or Advertiser knew or should have reasonably known from the visual or sonic expression of the Advertisement, while Media Company did not know or should not have reasonably known, that such material violated any law, regulations or other judicial or administrative action, violate the right of a Third Party or are defamatory or obscene. An Affiliate means, with respect to either party, any corporation, firm, partnership, person or other entity, whether de jure or de facto, which directly or indirectly owns, is owned by or is under common ownership with such party to the extent of at least 50% of the equity having the power to vote on or direct the affairs of the entity, and any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party. A "Third Party" means an entity other than the parties to this Agreement, their respective Affiliates, and each of their respective directors, officers, employees and agents.

This language is changed from Version 1.0. The Media Company is no longer responsible for third party claims with regard to their site. Instead the Media Company is responsible for breaches of this Agreement and only for certain parts of what it provides as part of an ad. Thus, before having a Media Company develop any content for

any part of an ad, an Agency should understand each party's roles and responsibilities.

- b. Advertiser agrees to defend, indemnify and hold harmless Media Company its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of a Third Party claim, judgment or proceeding relating to or arising out of Advertiser's breach of Section XII, violation of Policies (to the extent the applicable terms of such Policies have been provided to Agency at least ten days prior to the violation giving rise to the claim), or the content or subject matter of any Ad or Advertising Materials to the extent used by Media Company in accordance with these Terms and Conditions or an IO, including but not limited allegations that such content or subject matter violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action.

Advertisers would be responsible for breaches, for violating Policies (again, read before placing the IO) and for Ad content.

- c. Agency represents and warrants that it has the authority as agent to Advertiser to bind Advertiser to these Terms and Conditions and each IO. Agency agrees to defend, indemnify and hold harmless Media Company its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of Agency's alleged breach of the foregoing sentence.

Agency is responsible for the fact that it is the Advertiser's agent.

- d. If any action will be brought against either party (the "Indemnified Party") in respect to any allegation for which indemnity may be sought from the other party ("Indemnifying Party"), the Indemnified Party will promptly notify the Indemnifying Party of any such claim of which it becomes aware and will: (i) provide reasonable cooperation to the Indemnifying Party at the Indemnifying Party's expense in connection with the defense or settlement of any such claim; and (ii) be entitled to participate at its own expense in the defense of any such claim. The Indemnified Party agrees that the Indemnifying Party will have sole and exclusive control over the defense and settlement of any such third party claim. However, the Indemnifying Party will not acquiesce to any judgment or enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written consent of the Indemnified Party.
- e. Notwithstanding the foregoing, in the event that any Indemnifying Party is required to defend, indemnify or hold harmless an Indemnified Party from a claim, judgment or proceeding of a Related Party (as defined below) of such Indemnified Party pursuant to this Section X, Losses incurred in connection with such claim, judgment or proceeding will be limited to those that are reasonably foreseeable. A "Related Party" is a party in a contractual relationship with the Indemnified Party where such specific contractual relationship relates to the Loss being asserted by that Related Party.

If an Advertiser has a co-marketing partner, that co-marketing partner is not really a third party for the purposes of this Agreement and so the Media Co. will not face open ended liability to that marketing partner.

XI. LIMITATION OF LIABILITY

Excluding the parties obligations under Section X or damages that result from a breach of Section XII or intentional misconduct by the parties, in no event will either party be liable for any consequential, indirect, incidental, punitive, special or exemplary damages whatsoever, including without limitation, damages for loss of profits,

business interruption, loss of information and the like, incurred by the other party arising out of this Agreement, even if such party has been advised of the possibility of such damages.

There is no cap on total damages, but there is a cap on the type of damages as between the Advertiser/Agency and Media Company to direct damages only, not to consequential damages, such as lost sales, etc.

XII. NON-DISCLOSURE, DATA OWNERSHIP, PRIVACY AND LAWS

- a. Any marked confidential information and proprietary data provided by one party, including the Ad description, and the pricing of the Ad, set forth in the IO, shall be deemed "Confidential Information" of the disclosing party. Confidential Information shall also include information provided by one party, which under the circumstances surrounding the disclosure would be reasonably deemed confidential or proprietary. Confidential Information shall not be released by the receiving party to anyone except an employee, or agent who has a need to know same, and who is bound by confidentiality obligations. Neither party will use any portion of Confidential Information provided by the other party hereunder for any purpose other than those provided for under this Agreement.
- b. For purposes of this Section, Agency and Advertiser shall be considered one party. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" shall not include information which: (i) was previously known to a party; (ii) was or becomes generally available to the public through no fault of the receiving party ("Recipient"); (iii) was rightfully in Recipient's possession free of any obligation of confidence at, or subsequent to, the time it was communicated to Recipient by the disclosing party ("Discloser"); (iv) was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser; or (v) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. Notwithstanding the foregoing, either party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange or as necessary to establish the rights of either party under this Agreement; provided, however, that both parties will stipulate to any orders necessary to protect said information from public disclosure.
- c. All personally identifiable information provided by individual web users who are informed that such information is being gathered solely on behalf of Advertiser pursuant to the Advertiser's posted privacy policy is the property of Advertiser, is subject to the Advertiser's posted privacy policy, and is considered Confidential Information. Any other use of such information must be set forth in the IO signed by both parties.

This applies only if the user is told that the PII being gathered in the Ad is for the Advertiser.

- d. Media Company, Agency, and Advertiser shall post on their respective Web sites their privacy policies and adhere to their privacy policies, which abide by the applicable laws. Failure by Media Company, on one hand, or Agency or Advertiser, on the other, to continue to post a privacy policy or non-adherence to its own privacy policy is grounds for immediate cancellation of the IO by the other parties.

This concept is new - check the Advertiser's privacy policy, as well as the Media Company's privacy policy.

- e. Agency, Advertiser and Media Company will comply with at all times, all applicable federal, state and local law, ordinances,

regulations and codes which are relevant to their performance of their respective obligations under this Agreement.

Please note that this section does not address the issue of click-stream data. You should discuss with Advertisers, and Media Companies, their current policies regarding aggregation and usage of click stream data and determine uses of such data that would be acceptable to you, the Advertiser, and individual Media Companies.

XIII. THIRD PARTY AD SERVERS

(Applicable if 3rd Party Server Is Used)

- a. Media Company will track delivery through its ad server and Agency will also track delivery through its proprietary or subcontracted 3rd Party Ad Server whose identity is set forth in the IO. Agency may not substitute the 3rd Party Ad Server specified in the IO without Media Company's consent. Agency and Media Company agree to give reciprocal access to relevant and non-proprietary statistics from both ad servers, or if such is not available, provide weekly placement-level activity reports to each other. In the event that the Media Company's ad server measurements are higher than those produced by the Agency's 3rd Party Ad Server by more than 10% over the invoice period, Agency will facilitate a reconciliation effort between Media Company and 3rd Party Ad Server. If the discrepancy cannot be resolved and Agency has made a good faith effort to facilitate the reconciliation effort, the Agency reserves the right to either:

This section is new to Version 2.0 and establishes basic parameters for acceptance of 3rd party ad serving. As described earlier, this section would preclude an Agency from switching 3rd party serving platforms without the consent of the Media Company. There are also clear obligations for both Agency and Media Company to give reciprocal access to reporting interfaces. You should be cautious to make sure that you only provide access to Media Companies for data related to their specific IO, and to not provide access to proprietary data (like post-click information). Note also that reporting should be aligned with the invoicing calendar that you establish in the IO; if invoices are generated on a calendar month basis, the evaluation of 3rd party numbers to publisher reported numbers should be conducted on the same time-frame. In cases where the variance between 3rd party numbers and Media Company invoices is less than 10%, Agencies should pay Media Companies based on Media Company invoices (in full). If a variance of more than 10% exists, the Agency will be responsible for facilitating reconciliation between the 3rd party ad serving company, and the Media Company. This requirement was critical to publishers, as Agency's will have the most leverage with 3rd party ad serving companies. The 4As recommends that you address this issue in any contractual agreements with 3rd party ad serving companies. If, after analysis of log file data, a reconciliation cannot be identified, Agencies (not Media Companies) have the right to move forward in one of two ways.

1. Consider the discrepancy an under-delivery of the Deliverables as described in Section VI(b) whereupon the parties shall act in accordance with that Section, including the requirement that Agency and Media Company make an effort to agree upon the conditions of a makegood flight, except that for purposes of this Section XIII(a)(1), delivery of any makegood shall be measured by the 3rd Party Ad Server, or

An Agency's first option is to reconcile the variance via a general make-good (per Section VI(b)). However, in these cases, the make-good delivery would have to be measured via 3rd party ad server counts (as opposed to Media Company counts). This solution was developed to recognize that the variance potentially was caused by the failure of the Media Company's counting procedure.

2. Pay Media Company based on Agency 3rd party Ad Server reported data, plus a 10% upward adjustment to delivery.

If a make-good flight is not acceptable, Agencies have the option of paying Media Companies based on 3rd party ad serving counts, as long as they are adjusted up 10%. As an example, if:

- 1,000,000 impressions are purchased, and
- 1,000,000 impressions are invoiced by Media Company, and
- 800,000 impressions are tracked via a 3rd party ad server, and
- No reconciliation is possible, then
- Agency would pay Media Company for 880,000 impressions

This solution was developed in recognition of the 10% variance concept that is the foundation for the 3rd party ad serving section. The logic behind the solution is that if Agencies are agreeing to pay Media Companies 100% of invoiced activity in cases where 91% of impressions are tracked via a 3rd party ad server, then that concept should hold through for cases where payment is being based on 3rd party numbers. We are comfortable recommending this as an approach for purposes of Version 2.0 recognizing that legitimate debate continues regarding measurement standards and practices.

- b. Media Company will make reasonable efforts to publish, and Agency shall make reasonable efforts to cause the 3rd Party Ad Server to publish, a disclosure in the form specified by the AAAA and IAB regarding their respective ad delivery measurement methodologies with regards to compliance with the IAB/AAAA Ad Measurement Guidelines.

This paragraph was added recognizing the importance of gaining public understanding of measurement practices (versus the recently published IAB measurement guidelines). Until all parties begin publishing these practices, and gaining certification via an industry recognized practice, a final solution to 3rd party terms will be difficult to be reached. The intent of this paragraph is to move us all closer to that reality. Again, you should work with your 3rd party ad serving systems to advocate public dissemination of counting methodologies.

- c. Section XIII(a) shall be terminated upon the establishment of an IAB/AAAA certification process for compliance with the IAB/AAAA Ad Measurement Guidelines. Upon such termination the parties shall negotiate in good faith a replacement or successor language for that Section.

This section ends when the compliance guidelines are issued, and recognizes both the Agency and Media Company goal of establishing best practices for measurement.

- d. Where an Agency is utilizing a 3rd Party Ad Server and that 3rd Party Ad Server cannot serve the Ad, the Agency shall have a one-time right to temporarily suspend delivery under the IO for a period of up to 72-hours. Upon written notification by Agency of a non-functioning 3rd Party Ad Server, the Media Company has 24 hours to suspend delivery. Following that period, Agency will not be held liable for payment for any Ad that runs within the immediate 72-hour period thereafter until the Media Company is notified that the 3rd Party Ad Server is able to serve Ads. After the 72-hour period passes and Agency has not provided written notification that Media Company can resume delivery under the IO, Advertiser will pay for the Ads that would have run or are run after the 72 hour period but for the suspension and can elect Media Company to serve Ads until 3rd Party Ad Server is able to serve Ads. If Agency does not so elect for Media Company to serve the Ads until 3rd Party Ad Server is able to serve Ads, Media Company may utilize the

inventory that would have been otherwise used for Media Company's own advertisements or advertisements provided by a third party. Upon notification that the 3rd Party Ad Server is functioning, Media Company will have 72 hours to resume delivery. Any delay in the resumption of delivery beyond this period, without reasonable explanation, will result in Media Company owing a makegood to Agency.

This section was included to provide Agencies with the limited ability to suspend campaigns in cases where 3rd party ad servers fail to deliver advertising materials. Please note that a key requirement of this paragraph is notification by the Agency to the Media Company. This paragraph does not give the Agency the right to cancel commitments outside the scope of Section V. Because an Agency, and as a result an Advertiser, will potentially be held to at least 24 hours of potential contracted inventory, Agencies should establish:

- 1) a process for trafficking ad materials so that inventory which cannot be suspended is site served
- a 24/7 contact/process to cover weekend emergencies
- protection with 3rd party ad serving for damages due to failure of their systems

XIV. MISCELLANEOUS

- a. Media Company represents and warrants that Media Company has all necessary permits, licenses, and clearances to sell the inventory represented in the IO subject to the terms and conditions of this agreement, including any applicable Policies. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in their Ads and Advertising Materials.

Note the extent of the obligations run to the IO and the ad content only - not to the Advertiser or Media Company's site.

- b. Neither Agency nor Advertiser may resell, assign or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without Media Company's prior written approval will be null and void. All terms and provisions of these Terms and Conditions and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.
- c. These Terms and Conditions and the related IO constitute the entire agreement of the parties with respect to the subject matter and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same document.
- d. In the event of any inconsistency between the terms of an IO and these Terms and Conditions, the terms of the IO shall prevail. All IOs shall be governed by the laws of the State of []. Media Company and Agency (on behalf of itself and not Advertiser) agree that any claims, legal proceeding or litigation arising in connection with the IO (including these Terms and Conditions) will be brought solely in [], and the parties consent to the jurisdiction of such courts. No modification of these Terms and Conditions or any IO shall be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions shall remain in full force and effect. All rights and remedies hereunder are cumulative.

The Agency and Media Company must choose a location for dispute resolution, as well as which state law would apply to this agreement.

The location of disputes between the Advertiser and Media Co. would not be covered by this language.

- e. Any notice required to be delivered hereunder shall be delivered three days after deposit in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Media Company and Agency shall be sent to the contact as noted in the IO with a copy to the Legal Department. All notices to Advertiser shall be sent to the address specified on the IO.
- f. Sections III, VI, X, XI, XII, and XIV shall survive termination or expiration of this Agreement and Section IV shall survive for 30 days after the termination or expiration of this Agreement. In addition, each party shall return or destroy the other party's Confidential Information and remove Advertising Materials and Ad tags.



ADDENDUM TO INTERNET ADVERTISING AGREEMENT

This Addendum to the attached INTERNET ADVERTISING AGREEMENT is made a part of that Agreement.

The Internet Advertising Agreement is hereby modified as follows:

1. Section ____ is amended as follows:
2. Section ____ is amended as follows:

IN WITNESS WHEREOF, the parties have signed this Addendum as of the date above written.

Media Company: _____

By:

Title:

Date:

Agency: _____

By:

Title:

Date: