

*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 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.*

## **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; © 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. Ad delivery shall comply with editorial adjacencies guidelines. 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. CANCELLATION AND TERMINATION**

a. 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.

#### **IV. MAKEGOODS**

a. 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 prepayment 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.

#### **V. 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.

#### **VI. LIMITATION OF LIABILITY**

Excluding the parties obligations under the IO 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.

#### **VII. 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. 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 nonadherence to its own privacy policy is grounds for immediate cancellation of the IO by the other parties.

d. 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. 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.

***I agree to the terms and conditions set forth in this document for any Insertion Orders I may place with Agent (listed below).***

\_\_\_\_\_  
Authorized Signature (of Advertiser):

\_\_\_\_\_  
Print Name (of Advertiser):

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

***I agree to the terms and conditions set forth in this document for any Insertion Orders I may enter into with the Advertiser (listed above).***

\_\_\_\_\_  
Authorized Signature (of Agent):

\_\_\_\_\_  
Print Name (of Agent):

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