

# STANDARD TERMS AND CONDITIONS FOR MEDIA ORDERS

Quad Media Solutions

1. Order. The media insertion order or purchase order (the "Order") is an offer by Quad Media Solutions, LLC, or one of its affiliates identified on an Order ("Agency") for the purchase and placement of the media specified on the Order from the party to whom the Order is addressed (the "Provider"). Unless a valid services agreement exists between the parties and is expressly applicable to the Order, the Order is subject to these terms and conditions (the "Terms"), which are incorporated by reference into the Order. Agency is acting as agent for the client referenced in the Order (the "Advertiser").

2. Applicable Terms. Provider's acceptance of the Order is expressly limited to these Terms. These Terms control over, and Agency rejects, any conflicting, additional or different terms and conditions contained or referenced in Provider's acceptance, confirmation, quotation, invoice, or any other document or communication. The Order, together with these Terms and any other addenda or riders attached to or referenced in the Order, constitute the entire understanding and agreement of the parties with respect to the purchase by Agency of media or other services from Provider. Any modifications to the originally submitted Order will not be binding unless approved in writing by both Provider and Agency.

3. Acceptance. The Order is not binding upon Agency until Provider accepts the Order in writing (which, unless otherwise specified, for purposes of these Terms, will include paper, fax, or e-mail communication) or commences performance of the Order. Provider will make commercially reasonable efforts to notify Agency within two (2) business days of receipt of an Order signed by Agency if the specified inventory is not available. Agency may withdraw the Order at any time before being accepted by Provider. If Provider does not accept the Order as instructed by Agency, in writing or provide written notice that it has commenced performance within a reasonable time after Provider's receipt of the Order, the Order will lapse.

4. Cancellation.

(a) *Prior to Performance*. Agency reserves the right to cancel the Order, or any part thereof, for Agency's convenience at any time prior to performance by Provider with no penalty.

(b) *Without Cause*. Unless designated on the Order as non-cancelable, Advertiser may cancel the entire Order, or any portion thereof, as follows: (i) with two (2) business days prior written notice to Provider, without penalty, for any guaranteed deliverable or services, including, but not limited to, deliverables sold on a cost per thousand impression basis ("CPM Deliverables"); (ii) with two (2) business days prior written notice to Provider, without penalty, for any non-guaranteed deliverables or services, including, but not limited to, deliverables sold on a cost per click basis ("CPC Deliverables"), deliverables sold on a cost per lead basis ("CPL Deliverables"), or Deliverables

sold on a cost per acquisition basis ("CPA Deliverables"), as well as any non-guaranteed CPM Deliverables; (iii) with two (2) business days prior written notice to Provider, without penalty, for any flat fee-based or fixed-placement Deliverable, including, but not limited to, roadblocks, time-based or share-of-voice buys, and some types of cancelable sponsorships. Notwithstanding the foregoing, Advertiser will remain liable to Provider for amounts due for any custom content or development ("Custom Material") provided to Advertiser or completed by Provider or its third-party vendor prior to the effective date of termination. For Orders that contemplate the provision or creation of Custom Material, Provider will specify the amounts due for such Custom Material as a separate line item.

(c) *For Cause*. Either party may terminate an Order at any time if the other party is in material breach of its obligations hereunder, which breach is not cured within ten (10) days after receipt of written notice thereof from the non-breaching party, except as otherwise stated in these Terms with regard to specific breaches.

5. Proof of Services; Reporting.

(a) *Compliance with Order*. Provider will comply with the Order, including all Ad placement restrictions, and, will create a reasonably balanced delivery schedule. Any exceptions will be approved by Agency in writing. Agency and Advertiser will not pay for any services, including any ad impression, served outside of the approved flighting period, outside of the approved geography, and outside of the approved budget.

(b) *Confirmation of Campaign Initiation*. Provider will, within two (2) business days of the start date on the Order, provide confirmation to Agency, either electronically or in writing, stating whether the components of the Order have begun delivery.

(c) *Proof of Services*. Provider will supply to Agency commercially reasonable proof of the services being provided, including volume of insertions or other satisfactory proof that the services were provided as per the Order.

(d) *Provider Reporting*. If Provider is serving the campaign, Provider will make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified on the Order. Reports will be broken out by day and summarized by creative execution, content area (Ad placement), impressions, clicks, spend/cost, and other variables as may be defined on the Order (e.g., keywords). Once Provider has provided the online or electronic report, it agrees that Agency and Advertiser are entitled to reasonably rely on it.

(e) *Reporting Failure*. If Agency informs Provider that Provider has delivered an incomplete or inaccurate report, or no report at all, Provider will cure such failure within five (5) business days of receipt of such notice. Failure to cure may result in nonpayment for all activity for which data is incomplete or missing until Provider delivers

reasonable evidence of performance.

#### 6. Ad Materials

(a) *Submission.* Agency will submit any advertising materials (e.g., Ads) necessary for Provider to perform the services in accordance with the Order.

(b) *Late Creative.* If advertising materials are not received by the Order start date, Provider shall not be responsible for performing the Services until the advertising materials are received.

(c) *Damaged Creative.* If advertising materials provided by Agency are damaged, not to Provider's specifications, or otherwise unacceptable, Provider will promptly notify Agency.

(d) *No Modification.* Provider will not edit or modify the submitted advertising materials in any way, including, but not limited to, resizing the Ad, without Agency's approval. Provider will use all advertising materials in strict compliance with these Terms and any written instructions provided on the Order and for no other purposes.

(e) *Ad Tags.* When applicable, Third Party Ad Server tags will be implemented so that they are functional in all aspects.

(f) *Trademark Usage.* Provider, on the one hand, and Agency and Advertiser, on the other, will not use the other's trade name, trademarks, logos, or advertising materials in any public announcement (including, but not limited to, in any press release) regarding the existence or content of these Terms or an Order without the other's prior written approval.

#### 7. Ad Placement & Positioning (Digital Orders).

(a) *Changes to Site.* Provider will use commercially reasonable efforts to provide Agency at least ten (10) business days prior notification of any material changes to the websites specified on an Order that are owned, operated, or controlled by Provider ("Provider Properties") and websites specified on an Order that are not owned, operated, or controlled by Provider, but on which Provider has a contractual right to serve Ads ("Network Properties") that would materially change the target audience or materially affect the size or placement of the Ad specified on the applicable Order. Should such a modification occur with or without notice, as Agency's and Advertiser's sole remedy for such change, Agency may cancel the remainder of the affected placement without penalty within the ten (10) day notice period. If Provider has failed to provide such notification, Agency may cancel the remainder of the affected placement within thirty (30) days of such modification and, in such case, will not be charged for any affected Ads delivered after such modification.

(b) *Technical Specifications.* Provider will submit or otherwise make electronically accessible to Agency final

technical specifications within two (2) business days of the acceptance of an Order. Changes by Provider to the specifications of already-purchased Ads after that two (2) business day period will allow Advertiser to suspend delivery of the affected Ad for a reasonable time (without impacting the end date, unless otherwise agreed by the parties) to (i) send revised advertising materials; (ii) request that Provider resize the Ad at Provider's cost, and with final creative approval of Agency, within a reasonable time period to fulfill the guaranteed levels of the Order; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within five (5) business days, immediately cancel the remainder of the affected placement without penalty.

(c) *Editorial Adjacencies.* Provider acknowledges that certain Advertisers may not want their Ads placed adjacent to content that promotes pornography, violence, death, dismemberment, or the use of firearms, contains obscene language, or falls within another category stated on the Order ("Editorial Adjacency Guidelines"). Provider will use commercially reasonable efforts to comply with the Editorial Adjacency Guidelines with respect to Ads that appear on Provider Properties, although Provider will at all times retain editorial control over the Provider properties. For Ads shown on Network Properties, Provider and Agency agree that Provider's sole responsibilities with respect to compliance with these Editorial Adjacency Guidelines will be to obtain contractual representations from its participating network publishers that such publishers will comply with Editorial Adjacency Guidelines on all Network Properties and to provide the remedy specified below to Agency with respect to violations of Editorial Adjacency Guidelines on Network Properties. Should Ads appear in violation of the Editorial Adjacency Guidelines, Advertiser may request in writing that Provider remove the Ads and provide makegoods or, if no makegood can be agreed upon, issue a credit to Advertiser equal to the value of such Ads, or not bill Agency for such Ads. In cases where a makegood and a credit can be shown to be commercially infeasible for the Advertiser, Agency and Provider will negotiate an alternate solution. After Agency notifies Provider that specific Ads are in violation of the Editorial Adjacency Guidelines, Provider will make commercially reasonable efforts to correct such violation within twenty-four (24) hours. If such correction materially and adversely impacts such Order, Agency and Provider will negotiate in good faith mutually agreed changes to such Order to address such impacts. Notwithstanding the foregoing, for any page on a site that primarily consists of user-generated content, the preceding paragraph will not apply. Instead, Provider will make commercially reasonable efforts to ensure that Ads are not placed adjacent to content that violates the site's terms of use.

8. No Guaranty of Volume; Non-Exclusivity. Unless otherwise agreed in a separate written agreement between

Advertiser/Agency and Provider, Agency does not promise or guaranty that any particular volume of media will be purchased from Provider. Nothing in the Order (including these Terms) will be construed as prohibiting or limiting Agency from placing similar media in the same or other channels.

9. Rates; Additional Charges.

(a) *Rates.* Rates are as set forth in the Order, or if no rate is stated, in accordance with Provider's then-current rate card. No increase in the price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Agency. Provider represents that the rate stated in the Order is the lowest rate at which a substantially equivalent advertisement, for the same class of advertising, would be published, broadcast or distributed by Provider at the time the Order is accepted.

(b) *Additional Charges.* Provider shall not charge Agency, and Agency will not pay, any costs, fees or other expenses not specifically set forth in the Order including without limitation zoning charges, gatefolds, wraps or spadeas, or finance charges.

10. Taxes. Sales, use and excise taxes will be separately stated on Provider's invoice. Provider must timely pay any and all such taxes collected from Agency to the proper governing authorities. If Provider fails to properly compute, invoice, collect or pay any such tax, Provider will be responsible for the tax and all penalties and interest levied against Agency or Advertiser resulting from such failure.

11. Invoices; Payment.

(a) *Invoices.* Unless otherwise stated in the Order, Provider will invoice all charges arising out of the Order as soon as practicable after the run date(s) of the media, but not more than thirty (30) days after run date(s). Provider acknowledges that failure by Provider to send an invoice within such period may cause Agency to be contractually unable to collect payment from the Advertiser, and Agency shall not be responsible for paying any invoices submitted after such time period. The Order number must be stated on the invoice. Provider will not charge or invoice Agency for any services not actually performed or quantities not actually inserted, and Agency and Advertiser shall only pay for the actual services and quantities inserted and no more than the insertion order quantity.

(b) *Payment.* Unless contrary payment Terms are specified in the Order, Agency (or Advertiser) will pay all properly invoiced amounts due to Provider, except for any amounts disputed by Agency in good faith within sixty (60) days after Agency's receipt of Provider's invoice. Provider may notify Agency that it has not received payment in such sixty (60) day period and whether it intends to seek payment directly from Advertiser, and Provider may do so

five (5) business days after providing such notice. Payments will be in United States dollars.

(c) *Liability of Agency.* Provider 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 paragraph. Agency will not be responsible for payment for any media or other services of Provider except to the extent Agency receives payment for said media or services from Advertiser. For sums not cleared to Agency, Provider agrees to hold Advertiser solely liable. Agency will use commercially reasonable efforts to assist Provider in collecting payment from the Advertiser or obtaining Advertiser's consent to dispense funds. 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 Order, other advertisers from Agency will not be prohibited from receiving services from or advertising on site due to such non-clearance if such other advertisers' credit is not in question. Upon request, Agency will make available to Provider 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 Order and these Terms.

(d) *Dispute Resolution.* If Agency in good faith disputes all or any portion of an invoice, the parties will negotiate in good faith and with reasonable diligence to seek an amicable resolution of such dispute. If such negotiations fail to resolve the matter within sixty (60) days after the date the invoice is due, the parties may pursue any and all remedies available to such parties under these Terms or applicable law.

12. Permits; Compliance. Provider will secure all licenses and permits required, and will comply with all applicable laws, ordinances, rules and regulations, in the performance of its obligations under the Order.

13. Code of Conduct. Provider at all times in performing the Order will follow Quad's Supplier Code of Conduct, found at: <https://www.qg.com/~media/Sites/QG/Files/Suppliers/SupplierCode.pdf?la=en>.

14. Labor, Materials, Tools and Equipment. Provider will supply all labor, materials, tools, equipment and other resources required for the performance of its obligations under the Order.

15. Ownership of Deliverables. To the extent that Provider produces or creates any advertising or marketing materials for Agency under the Order, including ROP or other deliverables ("Deliverables"), the following provisions will apply:

(a) *Ownership.* Agency and its successors and assigns (including the Advertiser) will be the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all copyrights and other intellectual property rights therein. In furtherance of the foregoing, Provider has created and will create all Deliverables as “works made for hire” as defined in section 101 of the Copyright Act of 1976. To the extent any Deliverable does not qualify as a work made for hire, Provider agrees to and does hereby irrevocably (i) assign, transfer and convey to Agency and its successors and assigns (including the Advertiser), irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to such Deliverables, including all copyrights and other intellectual property rights therein; and (ii) waive any and all claims Provider may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to such Deliverables.

(b) *Assistance.* Upon reasonable request of Agency, Provider will promptly take such further actions, including execution and delivery of all appropriate assignments and other instruments of conveyance, as may be necessary to assist Agency in registering, perfecting, recording or enforcing its rights in any Deliverables. If Agency is unable, after reasonable effort, to obtain Provider’s execution of any such assignments, Provider hereby irrevocably designates and appoints Agency as Provider’s agent and attorney-in-fact, to execute on Provider’s behalf any such assignments or other documents related to the Deliverables, with the same legal force and effect as if Provider had executed them. This power of attorney is durable and coupled with an interest, and survives fulfillment or cancellation of the Order.

16. Bonus Impressions.

(a) *With Third Party Ad Server.* Where Agency uses third party that will serve and/or track Ads (“Third Party Ad Server”), Provider will not bonus more than 10% above the Deliverables specified on the Order without the prior written consent of Agency. Permanent or exclusive placements will run for the specified period of time regardless of over-delivery, unless the Order establishes an impression cap for Third Party Ad Server activity. Agency will not be charged by Provider for any additional Deliverables above any level guaranteed or capped on the Order. If a Third Party Ad Server is being used and Agency notifies Provider that the guaranteed or capped levels stated on the Order have been reached, Provider will use commercially reasonable efforts to suspend delivery and, within 48 hours of receiving such notice, Provider may either (i) serve any additional Ads itself or (ii) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser but only (A) after such notice has been provided, and (B) to the extent such charges are associated with over delivery by more than

10% above such guaranteed or capped levels.

(b) *No Third Party Ad Server.* Where Agency does not use a Third Party Ad Server, Provider may bonus as many ad units as Provider chooses unless otherwise indicated on the Order. Agency will not be charged by Provider for any additional Deliverables above any level stated on the Order.

17. Independent Contractor. Provider is an independent contractor of Agency, and the Order (including these Terms) will not be construed to create any association, partnership, joint venture, employment or agency relationship between Provider and Agency for any purpose. Agency is interested only in the results achieved by the services of Provider; the manner of legally achieving those results is the responsibility of Provider.

18. Insurance. During the Term, Provider will, at its own expense, maintain and carry in full force and effect, the types and amounts of insurance coverage customary for media companies of similar type and size as Provider. Upon the written request of Agency, Provider will provide Agency with copies of the certificates of insurance and policy endorsements for such insurance coverage.

19. Indemnification. Provider agrees to indemnify, defend and hold harmless Agency, Advertiser, and their affiliates, and their respective officers, directors, employees, agents, successors and assigns, from and against any third party claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys’ fees and disbursements, arising from or relating to: (a) any acts or omissions of Provider or Provider’s agents, contractors and employees in connection with the performance of its obligations under the Order, including but not limited to personal injuries, death or property damage; or (b) any breach by Provider of any of these Terms.

20. LIMITATION OF LIABILITY AND DAMAGES. IN NO EVENT WILL AGENCY OR ADVERTISER BE LIABLE UNDER ANY LEGAL THEORY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, HOWEVER CAUSED, ARISING OUT OF OR RELATING TO THE ORDER (INCLUDING THESE TERMS), EVEN IF AGENCY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF AGENCY OR ADVERTISER FOR ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES RESULTING IN ANY WAY FROM THE ORDER (INCLUDING THESE TERMS) WILL NOT EXCEED THE TOTAL FEES PAID TO PROVIDER UNDER THE ORDER.

21. Confidentiality.

(a) *Confidential Information.* “Confidential Information” means any non-public confidential, proprietary,

financial or business information of Agency or Advertiser that is disclosed, furnished or made available to Provider, orally or in writing and in whatever medium, whether before, on or after the date of the Order. Confidential Information includes but is not limited to current and prospective client lists, client contact information, and client data; current and prospective vendor lists, vendor information and vendor data; staffing, personnel and employee information; financial, accounting and operational information and data, including results, forecasts, budgets, pricing, costs, revenues, profits, margins and credit information; business processes, practices, methods, operations and techniques; advertising, marketing and business development plans and strategies; contracts, agreements, transactions and negotiations; know-how, inventions, unpublished patent applications, original works of authorship, creative works and other copyrightable materials; computer programs, computer software, applications, operating systems, software design, and web design; the terms of the Order and these Terms; and any other confidential, proprietary information or trade secrets of Agency, Advertiser or their businesses. The above list is not exhaustive, and Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

(b) *Exclusions from Confidential Information.* Confidential Information protected by these Terms does not include information that Provider proves by contemporaneous written documents that evidence the information: (i) was already publicly known at the time of Agency's disclosure thereof to Provider, its employees, contractors and agents; (ii) becomes publicly known through means other than the unauthorized disclosure by Provider, its employees, contractors and agents subsequent to the time of Agency's disclosure thereof to Provider; (iii) is obtained independently by Provider, its employees, contractors and agents from third parties who are authorized to make such disclosure without restriction; or (iv) is released from the obligations hereof by the written and signed authorization of an authorized representative of Agency.

(c) *Confidentiality Obligations.* Provider understands and agrees that Confidential Information will remain the exclusive property of Agency or Advertiser, as the case may be. Provider agrees:

(i) To treat all Confidential Information as strictly confidential;

(ii) Not to disclose, publish, communicate or make available Confidential Information, or allow it to be disclosed, published, communicated or made available, directly or indirectly, in whole or part, to any entity or

person whatsoever not having a need to know the Confidential Information in connection with the Order, except as strictly required in performing the Order; and

(iii) Not to use any Confidential Information for itself or anyone other than Agency or Advertiser, or for any purpose other than performing the Order.

(d) *Permitted Disclosure.* Provider may disclose Confidential Information to the extent required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation or order. Provider will promptly provide written notice of any such order to Agency, and will provide reasonable assistance, at Agency's cost and expense, in seeking a protective order or other limitations on disclosure.

(e) *Return.* Within fifteen (15) days after the earlier of fulfillment of the Order or written request by Agency, Provider will return to Agency all Confidential Information, including copies thereof, or at the request of Agency, will destroy any such Confidential Information and certify in writing to Agency that such Confidential Information has been destroyed.

(f) *No Representations by Agency.* Agency will be under no obligation to make any particular Confidential Information available to Provider, or to supplement or update any Confidential Information previously furnished. Agency has not made and does not make any representation or warranty, express or implied, as to the accuracy or completeness of any Confidential Information furnished to Provider.

(g) *Duration of Covenants.* The obligations of Provider with respect to Confidential Information disclosed under the Order (including these Terms) will survive for three (3) years after fulfillment or termination of the Order.

(h) *Employees.* Provider will be responsible for any violation thereof by Provider's employees, contractors and agents.

## 22. Default; Makegoods; Remedies.

(a) *Notification of Default.* Provider will monitor delivery of the services and Deliverables, and will notify Agency either electronically or in writing as soon as possible (and no later than fourteen (14) days before the applicable Order end date, unless the length of the campaign is less than fourteen (14) days, if Provider believes that any default or under-delivery is likely. In the case of a probable or actual default or under-delivery, Agency and Provider may arrange for a makegood consistent with these Terms.

(b) *Makegood Procedure.* If actual Services or Deliverables for any campaign fall below guaranteed levels, as set forth on the Order, and/or if there is any other default

or omission of any media or advertising placement, Agency and Media Company will use commercially reasonable efforts to agree upon the conditions of a makegood flight, either on the Order or at the time of the default. If no makegood can be agreed upon, Agency may, at its option, (i) obtain a refund or credit for the Order, (ii) require placement in accordance with supplemental date(s) agreed to by the parties, or (iii) obtain recovery from Provider of any sums Agency is required to pay or credit to Advertiser as a result of Provider's failure to provide the services in accordance with the Order and the insertion dates and deadlines. At Provider's instruction, Vendor agrees to run corrective advertising or the next schedule preprint for incorrect or missed insertions caused by Provider. The rights and remedies of Agency under this paragraph are cumulative of and in addition to, and not in substitution of, any other rights and remedies available at law or in equity or otherwise.

23. Audit. Agency and Advertiser shall have the right to conduct periodic reviews (or hire independent parties to conduct such periodic reviews) of Provider's relevant books and records with respect to the services under the Order, including without limitation actual insertions and reporting. If an error or misrepresentation is discovered, Agency (and Advertiser) shall be entitled to recover the charges incurred by Agency from Provider for the error and all print and distribution costs for the products that were the subject of the error or misrepresentation in addition to any other remedy available to Agency and Advertiser.

24. Miscellaneous.

(a) *Severability.* If any portion of the Order (including these Terms) is deemed invalid or unenforceable for any reason, the remaining portions will be valid and enforceable and carried into effect unless to do so would clearly violate the present legal and valid intention of the parties hereto.

(b) *Survival.* Any provisions of the Order (including these Terms) creating obligations extending beyond the Term of the Order will survive the expiration or termination of the Order, regardless of the reason for such termination.

(c) *Beneficiaries.* Advertiser and Agency's parents and subsidiaries shall be third-party beneficiaries to promises and obligations made by Provider under these Terms. No other third-party beneficiaries are permitted.

(d) *Amendments.* Any amendments to the Order (including these Terms) will be effective only if in writing and signed by both parties.

(e) *Entire Agreement.* The Order (including these Terms) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any previous agreements or understandings, whether oral or written. The Orders may be

executed in counterparts, each of which will be an original, and all of which together will constitute one and the same document.

(f) *Assignment.* Provider may not assign or otherwise transfer any of its rights, or delegate, subcontract or otherwise transfer any of its obligations or performance, under the Order. Any purported assignment, delegation or transfer in violation of this paragraph is void. All terms and conditions in these Terms and each Order will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors, and assigns.

(g) *Binding Effect.* The Order (including these Terms) is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(h) *Governing Law.* The Order (including these Terms) will be interpreted and construed under the laws of the State of New York, without regard to any choice or conflict of law provisions.

(i) *Venue; Jurisdiction.* Any proceeding arising out of or in connection with the Order (including these Terms) must be brought in the state courts situated in New York City, New York, or the United States District Court for the Southern District of New York. The parties hereby irrevocably consent to the personal jurisdiction and venue of such courts.

(j) *Legal Fees.* If Agency prevails in an action or proceeding arising under or out of the Order (including these Terms), or on account of any breach or default hereof by Provider, Agency will be entitled to receive from Provider its reasonable attorneys' fees, expert witness fees, investigation fees and other related fees, costs and expenses incurred in connection with such proceeding.

(k) *Waiver.* Failure of either party to insist upon strict performance of the Order (including these Terms), or to exercise any option herein, will not be construed as a modification or waiver of any provision, right, or obligation under these Terms.

(l) *Headings; Construction.* Headings used in the Order (including these Terms) are for reference purposes only and in no way define, limit, construe, or describe the scope or intent of these Terms. All the provisions of the Order (including these Terms) are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph thereof. The Order (including these Terms) will not be construed for or against any party on the basis of which party drafted them.

(m) *Notice.* Any notice required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically. All notices to Provider and Agency will be sent to the contact as noted on the Order

with a copy to the Legal Department. All notices to Advertiser will be sent to the address specified on the Order.

(n) *Time is of the Essence.* Time is of the essence in the performance of the parties' obligations under the Order (including these Terms).