

**ASSOCIATION OF NATIONAL ADVERTISERS
MASTER MEDIA BUYING SERVICES AGREEMENT TEMPLATE
VERSION 2.0
July 10, 2018**

This Association of National Advertisers (ANA) Template Agreement (Template) is a form for advertisers when contracting with media buying agencies. The ANA updated the Template, initially released in July 2016, to address developments in the media buying industry since releasing version 1.0. The Template represents what the ANA believes to be in the best interest of advertisers and best practices for the global marketplace.

There is no obligation on ANA members to use the Template. Each member is free to negotiate whatever terms and conditions such member deems appropriate. The ANA makes no representations or warranties as to the content of the Template. Anyone using the Template is advised to consult with experienced legal counsel before adopting the Template in whole or in part.

The ANA would like to acknowledge the work of its General Counsel, Reed Smith LLP, in preparing the Template, particularly Douglas Wood, Keri Bruce, and Michael Isselin. Questions may be directed to Bill Duggan, ANA, 708 3rd Ave. # 33, New York, NY 10017, telephone: + (212) 697-5950, email: bduggan@ana.net or to Keri S. Bruce (telephone: +1 (212) 549-0220, email: kbruce@reedsmith.com) or Douglas Wood (telephone: +1 (212) 549-0377, email: dwood@reedsmith.com), Reed Smith LLP, 599 Lexington Avenue, New York, New York 10022.

The ANA would like to thank the consultants and other industry experts who provided insight and recommendations to improve the Template, including FirmDecisions, Ebiquity, PjL Media LLC, MediaLink, KPMG, Cortex Media, AdFin, Ron Pullem, and the Trustworthy Accountability Group.

Governance also plays a key role. While the ANA does not endorse any particular governance structure, appended to the Template is a suggested governance structure developed by media consultant, Ron Pullem. It is intended as a supplement to the ANA White Paper, *Media Transparency: Prescriptions, Principles and Processes for Advertisers* (authored by Ebiquity and FirmDecisions).

Please note that the suggested terms in the Template are not intended to represent the only methodology by which the contractual relationship between an advertiser and its media buying agency can be addressed. The Template does, however, highlight the myriad of issues that should be openly discussed and resolved in order to insure transparency and consequent stability in any relationship.

Bracketed provisions highlighted in yellow are items that require insertions or should be considered, completed, and/or modified in utilizing the Template. This annotated version of the Template is also provided in a clean format for use by an advertiser.

MASTER MEDIA BUYING SERVICES AGREEMENT

THIS MASTER MEDIA BUYING SERVICES AGREEMENT is entered into on the _____ day of [Month] 20____ (“Effective Date”) by and between [Advertiser], a(n) [State] corporation, having a place of business at [Address] (“Advertiser”); and [Agency], a(n) [State] corporation, having a place of business at [Address] (“Agency”); individually referred to as a “Party” or collectively referred to as the “Parties”.

The Parties agree as follows:

1. Definitions & Interpretation & Precedence

- 1.1 **“Accredited Vendor”** means Advertiser’s chosen third party vendor, including Advertiser’s chosen MRC accredited third party vendor.
- 1.2 **“Advertiser Claims”** has the meaning set forth in Section 22.1.7.
- 1.3 **“Advertiser Code of Conduct”** means the code of conduct for Advertiser set forth in Schedule 6.
- 1.4 **“Advertiser Data”** means any data and information in written or electronic form collected by Agency, Agency Affiliates, a Media Owner Group Member or a Vendor on behalf of Advertiser or its Affiliates in the course of providing the Services (including, but not limited to, Media Plans, Key Performance Indicators, Goals, Results, Pacing, Transaction Data, Media invoices and data collected by Agency from Advertiser Properties and Media Placements) and any data derived from Advertiser Materials or produced as a result of calculations using all or a portion of Advertiser Data.
- 1.5 **“Advertiser Indemnitees”** means Advertiser and its officers, directors, employees and shareholders.
- 1.6 **“Advertiser Materials”** means any data or information, content, materials, website terms and conditions, policies or guidelines provided by Advertiser or by any third party at the direction of Advertiser in connection with this Agreement, and any other Intellectual Property Rights owned by Advertiser.
- 1.7 **“Advertiser Properties”** means any websites, social media pages, mobile apps or other digital platforms that are owned, controlled or operated by Advertiser.
- 1.8 **“Affiliates”** means, as to any Person, any other Person that is controlling, controlled by, or under common control with such Person, either directly or indirectly through one or more intermediaries (with “control” having the meaning in Section 1.30 hereof). With respect to Agency Affiliates, the use of Affiliates will always include Holding Company as well as all of Holding Company Affiliates. As of the Effective Date, such Agency Affiliates are listed in Schedule 4. Such Schedule will be amended from time to time as Holding Company acquires new members or divests itself of existing members on Schedule 4.
- 1.9 **“Agency”** means [Agency] and its subsidiaries. To the extent that an Agency Affiliate is providing Services, then “Agency” shall also mean the applicable Agency Affiliate.
- 1.10 **“Agency Claims”** has the meaning set forth in Section 22.2.5.
- 1.11 **“Agency Code of Conduct”** means the code of conduct for Agency set forth in Schedule 6.
- 1.12 **“Agency Data”** means all data processed by Agency which is not Advertiser Data and which Agency would otherwise collect and process independently of the provision of the Services to Advertiser.
- 1.13 **“Agency Indemnitees”** means Agency and its officers, directors, employees and shareholders.

- 1.14 **“Agency Information”** means software (including all programming code in object and source code form), Agency Data, methodology, know-how and processes and materials in relation to which the Intellectual Property Rights are owned by (or licensed to) Agency and which are:
- 1.14.1 in existence prior to the date the use of which falls within a Scope of Work; or
 - 1.14.2 created by or for Agency outside of a Scope of Work and which are intended to be reused across its business.
- 1.15 **“Agreement”** or **“Master Media Buying Services Agreement”** means this agreement including the General Terms, Scopes of Work and Schedules.
- 1.16 **“Annual Financial Compliance Certification”** means the document set forth in Schedule 3.
- 1.17 **“Annual Scope of Work”** means the Scope of Work setting out the Services to be provided by Agency on an annual basis, in the form as set out in Part 1 of Schedule 1, and as may be amended by the Parties from time to time in writing.
- 1.18 **“Applicable Laws”** means all applicable federal, state, and local laws, rules, guidelines and regulations governing the provision of the Services, including Data Protection Legislation, the Self-Regulatory Principles for Online Behavioral Advertising (as issued by the Digital Advertising Alliance), the FTC Enforcement Policy Statement on Deceptively Formatted Advertisements and Native Advertising: A Guide for Businesses, and the Word of Mouth Marketing Association (WOMMA) Social Media Disclosure Guide.
- 1.19 **“Associate”** means any individual that is an employee, officer, director, agent, or authorized representative of Agency, an Agency Affiliate or Advertiser.
- 1.20 **“Auditor”** means an external third party auditor(s), industry specialist(s) and/or an internal Advertiser Associate(s).
- 1.21 **“Authorized Agency Approver”** means those Agency Associates specified in the applicable Scope of Work who have the authority to bind Agency contractually in all matters relating to this Agreement (and any successor(s) notified to Advertiser).
- 1.22 **“Authorized Advertiser Approver”** means those Advertiser Associates specified in the applicable Scope of Work who have the authority to bind Advertiser contractually in all matters relating to this Agreement (and any successor(s) notified to Agency).
- 1.23 **“Barter”** means a transaction in which two unrelated parties exchange goods or services without cash payment and otherwise compliant with GAAP, related FASB rules, and the Tax Equity and Fiscal Responsibility Act of 1982.
- 1.24 Intentionally Omitted.
- 1.25 **“Blacklist Content”** means what is set forth in Section 7.3, which may be amended by Advertiser from time to time.
- 1.26 **“Business Day”** means any day other than a Saturday, Sunday or federal or [State] holiday.

- 1.27 **“CAN-SPAM Act”** means the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. 7701) and any successor legislation.
- 1.28 **“Change History”** means the history of changes to specified Advertiser Data, including, but not limited to, timestamp, identity of the Person who made the change, name of item changed, value before the change, and value after the change.
- 1.29 **“Claims”** means any claims, demands, or causes of action brought by a third party.
- 1.30 **“Control”** or **“Controlling”** means the ownership or power to manage or direct the affairs of the Person, whether by ownership of voting securities, by contract, or otherwise.
- 1.31 **“Competing or Antithetical Products or Services”** means those listed in Schedule 7.
- 1.32 **“Conflicts of Interest”** means any situation, arrangement, understanding, association, or agreement which might, in the reasonable opinion of Advertiser:
- 1.32.1 jeopardize the ability of Agency, an Agency Affiliate or Associates of either to represent Advertiser’s best interests;
 - 1.32.2 compromise the impartiality of Agency, an Agency Affiliate or Associates of either in providing Services, including
 - (a) any bonus or incentive to Associates based on upon spending recommendations;
 - (b) any financial interests or investments by Agency, an Agency Affiliate or Associates (whether by way of equity ownership, warrants, or otherwise or in the capacity of a director, officer, or consultant) in a third party that Agency recommends to Advertiser or provides services to Advertiser as part of Agency’s Services.
 - (c) the provision or receipt by Agency or and Agency Affiliate of any Services Provided at a Premium with a third party that Agency recommends to Advertiser;
 - (d) the establishment by Agency or an Agency Affiliate of a “preferred partner” or other equivalent relationship with other Agency Affiliates, Media Owner Group Members or Vendors; or
 - (e) the referral by Agency to an Agency Affiliate or Related Party for goods or services, including goods or services connected to any Media Placement, e.g., Native Advertising and outdoor billboards.
- 1.33 **“Confidential Information”** means information, as otherwise provided in Section 19, in oral, tangible or electronic form relating to either Party, its Affiliates, advertisers and/or customers (including their personal data), businesses, business plans or affairs, which information is proprietary and confidential to such Party, including materials protected by the Defend Trade Secrets Act.

- 1.34 **“Data Protection Legislation”** means all applicable local, state, federal, regional, divisional, and foreign law (including common law), statutes, rules or regulations, guidelines, self-regulatory practices, reporting requirements, ordinances, orders, decrees, judgments, consent decrees, settlement agreements and regulations applicable to a respective Party and privacy or data protection including, but not limited to, compliance with, as applicable, EU Data Protection and Privacy Laws, the GLBA, PCI DSS, state laws requiring notice of breaches involving PII, the Children’s Online Privacy Protection Act (15 U.S.C. Section 6501-6506) and the CAN-SPAM Act.
- 1.35 **“Deliverables”** means all reports, Media Plans, Advertiser Data, Records and other work product created or developed by Agency or on Agency’s behalf in connection with this Agreement.
- 1.36 **“Digital Media Placement”** means all Media Placements in digital media including, but not limited to, search, digital out-of-home media, over-the-top and advanced television, display, video, mobile and social media.
- 1.37 **“Dual Rate Cards”** means the agreement by Agency or an Agency Affiliate with a Media Owner Group Member or a Vendor to charge lower rates for Media Placements purchased by Agency Affiliates (e.g., agency trading desks) purchasing Media Placements through Principal Transactions versus when Agency or an Agency Affiliate purchases as an agent for Advertiser.
- 1.38 **“Editorial Content”** means independent news reporting or editorial content.
- 1.39 **“Effective Date”** means the date set forth in the preamble of this Agreement.
- 1.40 **“EU Data Protection and Privacy Laws”** means the General Data Protection Regulation (2016/679) as may be amended from time to time. Without limiting the foregoing, in the event the related ePrivacy regulation or a similar regulation is adopted and implemented by the European Union, the term “EU Data Protection and Privacy Laws” shall include such regulation.
- 1.41 **“Expenses”** means reasonable transportation, hotel, meals and other expenses incurred by Agency in connection with the supply of Services, provided that such expenses have either received Advertiser’s prior written approval or, where applicable, are in accordance with any expense policies which have been supplied to Agency or set out in the applicable Scope of Work.
- 1.42 **“FASB”** means the Financial Accounting Standards Board.
- 1.43 **“Fees”** means the fees due to Agency in connection with the Services as determined in accordance with this Agreement and the relevant Scope(s) of Work. For the avoidance of doubt, the Fees do not include Expenses or Third Party Costs.
- 1.44 **“Force Majeure”** means reasons or causes beyond a Party’s reasonable control, including war (whether or not declared), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of a public enemy, act of any government or any agency or subdivision thereof, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood, earthquake, or other act of God, which could not be reasonably expected to be avoided, or new laws or regulations forbidding or limiting the execution of this Agreement.
- 1.45 **“GAAP”** means the Generally Accepted Accounting Principles adopted by the U.S. Securities and Exchange Commission (SEC) and administered by the FASB. In the event the SEC should replace

GAAP with the International Financial Reporting Standards (IFRS), then and only in such event wherever GAAP is referred to herein, the IFRS shall apply.

- 1.46 “**General Terms**” means the terms and conditions set out in this Agreement but not including any other Schedules and/or Scopes of Work.
- 1.47 “**GLBA**” means the Gramm-Leach-Bliley Financial Modernization Act of 1999 and the regulations and interagency guidance and guidelines issued pursuant to it and its implementing regulations.
- 1.48 “**Goal**” means an expected Result for a given Media Placement.
- 1.49 “**Holding Company**” means [Insert full legal name of Agency holding company, e.g., WPP, IPG, Omnicom, Publicis, Dentsu, Havas, etc.] or any successor Person.
- 1.50 “**Holding Company Acknowledgement and Agreement**” means the document set forth in Schedule 2.
- 1.51 Intentionally Omitted.
- 1.52 “**Indemnified Party**” means the Party being indemnified by another Party under this Agreement.
- 1.53 “**Indemnifying Party**” means the Party indemnifying another Party under this Agreement.
- 1.54 “**Initial Period**” means the period of [Insert Length of Initial Term, e.g., “one Year commencing on the Effective Date”].
- 1.55 “**Intellectual Property Rights**” means any and all intellectual or proprietary rights, including:
- 1.55.1 any patents or patent applications;
 - 1.55.2 any trademarks (whether or not registered);
 - 1.55.3 inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
 - 1.55.4 copyright or design rights (whether registered or unregistered);
 - 1.55.5 database rights; and
 - 1.55.6 any goodwill in any trade or service name.
- 1.56 “**Key Individuals**” means individuals named in the Scope of Work and identified as Key Individuals.
- 1.57 “**Key Performance Indicator**” or “**KPI**” means agreed upon measures set forth in a SOW or Media Plan by which the performance of a Media Placement and Agency will be judged.
- 1.58 “**Losses**” means losses, damages, liabilities, penalties, fines, awards, costs and expenses (including reasonable outside legal and other professional expenses).

- 1.59 **“Media”** means all platforms upon which Media Placements are placed that now exist or may hereinafter be invented, including but not limited to television, radio, print, outdoor, Internet, and mobile.
- 1.60 **“Media Owner”** means the Person that actually publishes or airs the Media Placements.
- 1.61 **“Media Owner Group Members”** means any Media Owner and all of its Affiliates, as well as any Person in which any of the foregoing has a financial interest or investment.
- 1.62 **“Media Placement”** means advertising, sponsorship or promotional Media purchased by Agency, either directly or indirectly from third parties or Agency Affiliates, in connection with the provision of Services. Payments for Media Placements may take any form, including cash, credits, or the transfer of funds by digital means.
- 1.63 **“Media Plan”** means a plan adopted by Advertiser that may or may not have been created by Agency that specifies the Media on which Advertiser’s Media Placements should appear in order to optimize Advertiser’s return on investment in the Media Placements and to reach Advertiser’s objectives and desired consumer demographic and psychographic profiles. A Media Plan may also reflect creative content and production requirements necessary to make an effective Media Placement.
- 1.64 **“MRC”** means Media Rating Council.
- 1.65 **“Native Advertising”** means any Media Placements (and all hyperlinks that link to any such editorial) that constitute product integration, content sponsorship, or any other form of advertising that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surrounds it online.
- 1.66 **“Net Media Spend”** means the actual payment(s) made to a Media Owner Group Member for Media Placements.
- 1.67 **“Non-Human and Fraudulent Traffic”** means data that counts or uses in calculations, anything other than natural persons viewing actually displayed Media Placements in the normal course of using any device, including, without limitation, browsing through online, mobile or any other technology or platform. For the avoidance of doubt, Non-Human and Fraudulent Traffic includes, without limitation, the inclusion or counting of views: (i) by a natural person who has been engaged for the purpose of viewing such Media Placements, whether exclusively or in conjunction with any other activities of that person; (ii) by non-human visitors; (iii) combinations of displays directed or redirected by any combination of (i) and/or (ii); and (iv) that are not actually visible to the human eye, discernible to human senses or perceived by a human being.
- 1.68 **“Non-Human and Fraudulent Traffic Prevention”** means technology, methodologies and actions to (i) prevent Non-Human and Fraudulent Traffic; (ii) detect Non-Human and Fraudulent Traffic should it occur; and (iii) prevent continuation and/or recurrence of occurrences thereof.
- 1.69 **“Pacing”** means the variance between actual Results and Goal during a given time period.
- 1.70 **“PCI DSS”** means the Payment Card Industry Data Security Standards maintained by the PCI Security Standards Council, LLC, or its successor.

- 1.71 **“Person”** means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organization, governmental authority or other entity.
- 1.72 **“PII”** means any information (i) which by itself or in combination with other information (A) can identify an individual, including, address, telephone number, account numbers, demographic, email addresses, (B) has, pursuant to Applicable Law, been determined to be information which can identify an individual and (ii) any other information that relates to an individual who has been so identified or authenticated.
- 1.73 **“Principal or Inventory Mark-Up”** means the maximum percentage by which Agency or an Agency Affiliate may mark-up a Principal or Inventory Sale over the cost of such goods or services incurred by Agency or an Agency Affiliate.
- 1.74 **“Principal or Inventory Sale”** the sale to Advertiser of Media Placements held by Agency or an Agency Affiliate, regardless of how Agency or Agency Affiliate obtained such Media Placements (e.g., through a Principal Transaction, Barter, private exchange or pooling arrangement, agency inventory, free time from Media, etc.).
- 1.75 **“Principal Transaction”** means the “at-risk” purchase of time, space, goods or services from third parties by Agency or an Agency Affiliate as a principal instead of as an agent for a disclosed principal. Principal Transactions include purchases by Agency of time, space, goods or services from an Agency Affiliate. Principal Transactions shall not include a transaction or a series of transactions by Agency or an Agency Affiliate that rely upon subsequent payments by Advertiser or other customers (in excess of compensation to which Agency or an Agency Affiliate is entitled to receive) that in the normal course of business materially limits or effectively eliminates actual risk of loss by Agency or an Agency Affiliate in connection with such purchase of time, space, goods, or services regardless of whether Agency or an Agency Affiliate is referred to as a “principal” in such transaction(s).
- 1.76 **“Programmatic Media”** means the buying and selling of online ad inventory primarily through automated methods rather than human actions, this includes, but is not limited to Real-Time Bidding (or “RTB”) and purchases through digital platforms, including, networks, exchanges, trading desks, and demand-side platforms (DSPs).
- 1.77 **“Project”** means any project(s) agreed between the Parties from time to time under which Agency is to perform Services to Advertiser in addition to those under an Annual Scope of Work, as more fully described in this Agreement and the applicable Project Scope of Work.
- 1.78 **“Project Commencement Date”** means the commencement date of each Project as set out in the corresponding Project Scope of Work.
- 1.79 **“Project Completion Date”** means the date by which each Project is to be completed, as set out in the corresponding Project Scope of Work.
- 1.80 **“Project Scope(s) of Work”** means a Scope of Work setting out the Services to be provided by Agency for a Project, in the form as set out in Part 2 of Schedule 1, and as may be amended by the Parties from time to time in writing.

1.81 **“Project Term”** means the period during which the Services for each Project will be provided as specified in the applicable Scope of Work.

1.82 **“Rebates and Incentives”** means, without limitation, any and all third party payments, incentives or other benefits (including but not limited to, cash rebates or other incentives, agency volume bonifications or AVBs;, receipt of a volume discount or compensation from media buys; discounted or unpaid media space or inventory; volume, early payment or other discounts; commissions; compensation, refunds or bonuses; bonus inventory, free or discounted media, sponsorship or promotional space; Value Pots; Services Provided at a Premium; consulting or research agreements, service level agreements or any other source of financial or other benefit) receivable directly or indirectly by Agency or an Agency Affiliate from third parties, including Media Owner Group Members and Vendors, which are either directly or indirectly related to:

1.82.1 Advertiser’s Media Placements; and/or

1.82.2 the aggregate traded volume across all or multiple advertisers of Agency or an Agency Affiliate with the relevant third party, including Media Owner Group Members and Vendors, regardless as to whether these amounts or benefits are calculated as a function of actual or anticipated media volume or given as a fixed amount and regardless of whether these amounts are given in advance or for achievement of particular spending thresholds.

Without limiting the foregoing, anything in the nature of Rebates and Incentives received by Agency or an Agency Affiliate on account of creative or production work performed on Advertiser’s behalf shall be included within the definition of “Rebates and Incentives” as used herein.

For purposes of calculating Advertiser’s Rebates and Incentives, such term shall mean the pro-rated share of the total Rebates and Incentives in a given Year, the numerator of which is Advertiser’s total spending placed via Agency or an Agency Affiliate with each third party, including Media Owner Group Members and Vendors, and the denominator of which is the total aggregate spending by Agency or an Agency Affiliate with such third party, including Media Owner Group Members and Vendors. Where a Rebate and Incentive is free or discounted inventory, Rebates and Incentives shall mean the pro-rated share of such inventory at a day part/quality mix consistent with the average mix with the same Media Owner, or if the Advertiser consents, the revenue generated by the Agency Affiliate from the sale of such inventory to a third party.

1.83 **“Records”** means:

1.83.1 all Media Placements and any and all other purchases and payments incurred under this Agreement and the financial records showing such transactions;

1.83.2 records relating to the calculation and verification of Expenses, Fees, Third Party Costs and Principal or Inventory Mark-Up;

1.83.3 all data, contracts, terms and conditions, purchases, sales and payments (received or incurred) and all other documentation (including purchase orders and Third Party Contracts and proof of appearance) between Agency and Agency Affiliates with Media Owner Group Members or Vendors that provide time, space, goods or services to Advertiser or relate to Advertiser, the Media Placements, Rebates and Incentives or Unbilled Media;

- 1.83.4 any and all documentation reasonably required by the Auditor or Advertiser to validate the allocation of Unbilled Media, Rebates and Incentives, Services Provided at a Premium and any other discounts, rebates, bonuses, payments, free space, service level agreements, or any other value afforded to Agency and/or Agency Affiliates contemporaneously or retrospectively by third parties, including Media Owner Group Members and Vendors. Where necessary for the calculation of Rebates and Incentives, access will be given to total Agency and Agency Affiliate volume data from Agency's and Agency Affiliate financial records; and
- 1.83.5 any other records reasonably required by the Auditor or Advertiser to audit pursuant to Section 18.
- 1.84 **"Related Parties"** means any Person in which Agency or its Affiliates has a financial interest or investment in and which also provide goods or services in connection with Agency's Services.
- 1.85 **"Restricted Staff"** means Agency Associates providing Services to Advertiser under this Agreement.
- 1.86 **"Result"** means a quantified measure of advertising performance for a given Key Performance Indicator.
- 1.87 **"Scope of Work"** means the Annual Scope of Work together with any Project Scope(s) of Work in the form set out in Schedule 1 as agreed and signed by the Parties from time to time containing a description of the relevant Services.
- 1.88 **"Services"** means the services to be supplied by Agency under this Agreement as set out in the relevant Scope(s) of Work, which includes the provision of the Deliverables.
- 1.89 **"Services Provided at a Premium"** means:
- 1.89.1 any goods or services provided by Agency or Agency Affiliates to third parties, including Media Owner Group Members and Vendors, which are above the true market value for such goods or services; or
- 1.89.2 any goods or services provided by third parties, including Media Owner Group Members or Vendors to Agency or Agency Affiliates which are below the true market value for such goods or services.
- 1.90 **"Signature"** means a handwritten signature or digitally secured electronic signature through the use of a secure electronic signature creation device.
- 1.91 **"Term"** means the duration of this Agreement as set forth in Section 3.1.
- 1.92 **"Territory"** means the [United States], unless expressly specified otherwise in the applicable Scope of Work.
- 1.93 **"Third Party Contracts"** means contracts entered into by Agency or Agency Affiliates with Vendors or Media Owner Group Members in respect of Services.

- 1.94 **“Third Party Costs”** means all third party costs incurred by Agency or any Agency Affiliates on behalf of Advertiser in performing the Services, including Vendor and Media Owner Group Member costs. For the avoidance of doubt, Third Party Costs do not include Agency’s Fees or Expenses.
- 1.95 **“Transaction Data”** means performance metrics as well as pricing, costs and fees incurred in the process of purchasing any Media for Advertiser (whether by negotiation or winning bid, independently or jointly with other Agency clients) and any other data reasonably requested (per IAB’s OpenRTB Specifications or similar industry standard or guidelines) by Advertiser in order to validate Media Placements and the performance, costs, expenses and Media Owners and Vendors leveraged along the supply chain.
- 1.95.1 “Transaction Data” includes, but is not limited to, event logs (impressions, clicks, conversions) and associated metadata (also referred to as log files).
- 1.95.2 “Transaction Data” costs should be itemized by Media Owner and Vendor and should indicate net fees paid to each Media Owner and Vendor leveraged in the process of purchasing Media for Advertiser (either independently or jointly with other Agency clients).
- 1.96 **“Unbilled Media”** means amounts in respect of Media Placements for which Advertiser has paid Agency in full or in part, but where the cost for the Media Placement remains unbilled in full or in part by the relevant Media Owner.
- 1.97 **“Value Pots”** means free or otherwise discounted Media or benefits provided by a Media Owner or Vendor to Agency or Agency Affiliates as a consequence of anticipated Media volume or provided as a fixed amount or share of expenditure which is not, at the time it is given, client specific.
- 1.98 **“Vendor”** means any Person (other than a Media Owner) that is required for the delivery, purchase or placement of the Media Placements and/or Agency’s provision of Services hereunder, including, without limitation, technology platforms (e.g., demand-side platforms, supply-side platforms, trading desks, ad exchanges, re-targeting companies, advertising networks, etc.), market research companies (e.g., MRI, Mendelsohn, Audit Bureau of Circulation, SRDS, Nielsen Advies, etc.), and technical service providers (e.g., providers of ad serving/delivery, ad tracking, listening and community management tools and other technology/technical services). For the avoidance of doubt, subject to Section 6.2, a Vendor may also be an Agency Affiliate, Related Party or Media Owner Group Member hereunder.
- 1.99 **“Viewability Standards”** means [, with respect to display Media Placements, [] of the pixels for such Media Placement is in view at any point in time and, with respect to video Media Placements, [] of the video is on screen or viewable and at least [] of the video Media Placement is played, with audio on after user initiation. With respect to mobile Media Placements, Viewability Standards will be consistent with the MRC Viewable Ad Impression Measurement Guidelines, but will be no less favorable than those used by Agency for any other Advertiser of Agency for the same or similar time, space, goods or services. In no event shall Viewability Standards be less than those generally recognized in the industry by the MRC.] / [the MRC/IAB viewability recommendations detailed at: (http://www.mediaratingcouncil.org/063014%20Viewable%20Ad%20Impression%20Guideline_Final.pdf)].
- 1.100 **“Whitelist”** means a list of Advertiser’s approved third party websites as described in Section 7.

1.101 “Year” means the twelve (12) month period commencing on and from the Effective Date and each twelve (12) month period thereafter during the Term.

2. Appointment & Scope of Work

- 2.1 During the Term, Agency will perform the Services to Advertiser in the Territory in accordance with the Annual Scope of Work and any Project Scopes of Work (if applicable) which are agreed to and executed between the Parties from time to time in writing. Agency shall perform the Services in a timely and professional manner using the degree of care, skill, and diligence generally observed by other first class media and marketing communications agencies, and in accordance with the highest professional and industry standards relevant to the Services as reasonably anticipated based on the applicable Scope of Work.
- 2.2 Except as expressly permitted under a Scope of Work or by an Authorized Advertiser Approver in writing, all Services will be performed by Agency employees and not by any other Person (e.g., not by a subcontractor, Agency Affiliate, Vendor, etc.). Agency must obtain permission, on a case-by-case basis from an Authorized Advertiser Approver before engaging any subcontractor and shall disclose the name of any such proposed subcontractor and shall identify in writing whether the proposed subcontractor is an Agency Affiliate or Related Party.
- 2.3 Agency shall remain responsible for the performance of all of its obligations under this Agreement, and for the performance of all Agency Associates and third parties providing Services hereunder. Any agreement between Agency and a permitted subcontractor must contain terms and provisions consistent with those contained in this Agreement.
- 2.4 Agency will act in all Third Party Contracts with regard to the provision of Services set out in a Scope of Work as an agent for a disclosed principal, unless an Authorized Advertiser Approver agrees in advance on a case by case basis to a Principal or Inventory Sale. Should an Authorized Advertiser Approver and Agency agree to a Principal or Inventory Sale from pre-identified third parties (including Agency Affiliates) in certain authorized instances, neither the transparency of such transactions nor Agency’s duty to act in the best interest of Advertiser shall be limited. It is Agency’s sole responsibility to obtain and retain all authorizations for Principal or Inventory Sales.
- 2.5 The Parties may agree on new Projects from time to time by agreeing to new Project Scopes of Work in writing which will automatically form part of this Agreement once signed by both the Authorized Agency Approver and Authorized Advertiser Approver.
- 2.6 The Annual Scope of Work may incorporate one or more Schedules which will form part of this Agreement for the duration of the Annual Scope of Work.
- 2.7 A Project Scope of Work may incorporate one or more Schedules which will form part of this Agreement only for the duration of that Project.
- 2.8 Upon execution of this Agreement and no later than thirty (30) days after the end of each Year during the Term, Agency will provide to Advertiser an executed Holding Company Acknowledgement and Agreement in the form set forth in Schedule 2.

3. Term

- 3.1 This Agreement will commence on the Effective Date and will continue until terminated in accordance with Section 25.
- 3.2 Where the Parties agree on Projects in addition to the Annual Scope of Work, each such Project will commence on the Project Commencement Date and continue until the Project Completion Date, subject to earlier termination in accordance with Section 25.

4. Advertiser's Obligations

- 4.1 Advertiser will provide Agency with clear instructions as to its requirements for the Services to be included in a Scope of Work. Advertiser will promptly inform Agency if Advertiser considers that any Deliverables submitted to Advertiser by Agency are inadequate or non-compliant with this Agreement or the applicable Scope of Work.
- 4.2 Advertiser will provide to Agency promptly and at no charge any Advertiser Materials necessary to provide the Services. Advertiser will ensure that it has all rights and licenses in place to enable use of all Advertiser Materials by Agency in accordance with this Agreement and the applicable Scope of Work.
- 4.3 Advertiser will comply with the Advertiser Code of Conduct.

5. Agency's Service Delivery

- 5.1 Agency will provide Advertiser with clear instructions as to Advertiser Materials that Agency reasonably requires to perform the Services.
- 5.2 Agency will:
 - 5.2.1 apply such time, attention, and reasonable skill and care as may be necessary or appropriate for its proper performance and provision of the Services;
 - 5.2.2 use industry and proprietary tools and data for the provision of Services that are generally accepted as suited to protect Advertiser's best interests;
 - 5.2.3 comply with all Applicable Laws in connection with its performance of Services hereunder;
 - 5.2.4 comply with all reasonable directions regarding the Services communicated to it from time to time by Advertiser;
 - 5.2.5 keep Advertiser Materials and Advertiser Data that are in its possession or control safe and secure;
 - 5.2.6 deliver all Deliverables by the dates set out in the applicable Scope of Work or any other delivery date(s) agreed by the Parties in writing; and
 - 5.2.7 comply with the Agency Code of Conduct.
- 5.3 If at any time Agency becomes aware that it may not be able to perform the Services or deliver any Deliverables by any date set out in the applicable Scope of Work (or any other deadline agreed by

the Parties in writing), Agency will promptly notify Advertiser and give details of the reasons for the delay. Unless the delay is caused by Force Majeure, in which case the provisions of Section 27 will apply, Agency's failure to perform the Services would represent a material breach of this Agreement entitling Advertiser to terminate this Agreement if the breach is not remedied in accordance with Section 25.5.2.

- 5.4 Where Advertiser introduces a particular policy that, due to regulatory, legal or industry code or best practices requirements, is relevant to the Services, Agency will comply in a timely manner with that policy once provided to Agency in writing. Agency will comply with any other Advertiser policies that are supplied to it in writing. In the event of a conflict between this Agreement and an Advertiser policy, Agency will notify Advertiser in writing and the Parties will use their reasonable efforts to resolve the conflict in question.
- 5.5 Agency will maintain a business continuity and disaster recovery plan in respect of the provision of the Services and will provide a copy to Advertiser. Agency may revise the plan as necessary during the Term, but must keep Advertiser informed of any material changes to the plan.

6. Agency Services and Transparency

- 6.1 Revenue earned by Agency or Agency Affiliates in connection with the Services provided to Advertiser shall solely be the Fees, unless otherwise agreed in writing. Neither Party shall earn money through the use of funds from the other Party. Should an Agency or an Agency Affiliate earn interest on Advertiser funds to be used for Third Party Costs, Agency shall return the amount of the interest based on the average prime rate.
- 6.2 Agency will notify Advertiser in writing at each instance if a recommended Media Owner or Vendor is also an Agency Affiliate or Related Party and obtain Advertiser's prior written approval, on a case-by-case basis, before commissioning services from any such Agency Affiliate or Related Party.
- 6.3 Agency will not (and will ensure that Agency Affiliates do not) enter into any arrangements (whether directly or indirectly) which would or could lead to any Conflicts of Interest this includes any consulting, research or other services agreement between Agency or an Agency Affiliate and a Media Owner or Media Owner Group Member or Vendor, unless Advertiser has authorized such arrangement and is satisfied that such arrangement does not pose a Conflict of Interest. Agency and Agency Affiliates shall disclose in writing any and all actual or potential Conflicts of Interest.
- 6.4 For each recommended Media Plan, a senior-level Agency Associate shall certify that the plan is free of undisclosed Conflicts of Interest.
- 6.5 Agency will not (and will ensure that Agency Affiliates and Associates do not) enter into any agreement or other arrangement (whether directly or indirectly) with a Media Owner Group Member or Vendor, which restricts or prevents Agency from fully complying with the terms of this Agreement, including in relation to the provision of Records.
- 6.6 Agency will purchase Media Placements in accordance with the Media Plans or other authorization policy that may from time to time be provided by Advertiser with notice to Agency.
- 6.7 Agency will use best efforts and skill in the selection and appointment of Media Owner Group Members and Vendors to optimize Advertiser's return on investment in the Media Placements and

to reach the optimal objectives and desired consumer demographic and psychographic profiles of Advertiser with Media Placements.

- 6.8 Agency and Agency Affiliates must disclose to Advertiser their policy regarding gifts to employees from Media Owner Group Members or Vendors, including but not limited to cash, rebates or gifts and shall describe in writing how Agency and Agency Affiliates enforce and ensure compliance with such policy. Agency and Agency Affiliates will provide Advertiser with updates to the policy (if any) on an on-going basis.
- 6.9 Upon Advertiser request, Agency will obtain quotes from multiple Media Owners and Vendors for the provision of time, space, goods or services and discuss such quotes with Advertiser before placing an order from such parties.
- 6.10 Unless expressly agreed in writing otherwise, Agency will at all times act as a fiduciary and in the best interest of Advertiser.
- 6.11 Agency will at all times act in the best interests of Advertiser when negotiating and entering into Third Party Contracts. Agency will use best efforts to ensure that Third Party Contracts provide for terms that are consistent with, or more favorable than, the terms of this Agreement. Further, Agency shall use best efforts to verify that all amounts billed by Media Owner Group Members reflect those amounts agreed upon and that such billed amounts are for services actually provided under the applicable Third Party Contract and shall promptly seek makegoods, refunds or credits (as applicable) where invoices do not match the services delivered.
- 6.12 Advertiser's spending for Media Placements may not contribute to Rebates and Incentives from Media Owner Group Members or Vendors without authorization from an Authorized Advertiser Approver receiving the Rebates and Incentives.
- 6.13 Agency will, to the extent applicable, require compliance by Media Owner Group Members with the Internet Advertising Bureau (IAB) Standard Terms and Conditions for Internet Advertising v.3.0 (or such other terms and conditions provided by Advertiser), all Applicable Laws (including with respect to cookies, self-regulatory guidelines, industry standards and best practices, such as MRC 3MS Standards), Advertiser's standard privacy policy and Advertiser's promotional guidelines provided to Agency in writing, in each case as they may be amended from time to time.
- 6.14 Agency will use best efforts to ensure that all purchases made hereunder by Agency or an Agency Affiliate are made under the principle of sequential liability where Agency will be held liable for payments to Media Owners and other Vendors only to the extent Agency has been paid by Advertiser for such purchases. For amounts owing but not paid to Agency, Advertiser will be held solely liable. Whenever a Media Owner or Vendor refuses to agree to sequential liability, Agency will inform Advertiser in writing.
- 6.15 Agency will use available industry systems, technology and proprietary tools which provide proof of appearance of Media Placements and ensure placement compliance with the insertion order, industry best practices, and Advertiser guidelines.
- 6.16 Agency will notify Advertiser in writing promptly if it becomes aware that any Media Owner Group Member or Vendor is, or is likely to, prevent from being published or aired or become unable, for any reason, to publish or air any Media Placement which has been purchased by or on behalf of Agency for Advertiser.

- 6.17 Without limiting any other provision of this Agreement, Agency shall operate on a fully transparent basis when offering and delivering Digital Media Placements, including, through Programmatic Media, in accordance with the transparency principles set forth in this Agreement which apply to all Services provided to Advertiser. Agency shall provide Advertiser with access to media buying platforms used in the purchase of Media Placements, including, but not limited to, access to Transaction Data. Agency shall agree with Advertiser regarding all fees and costs associated with delivering Digital Media Placements.
- 6.18 When and where applicable, Agency shall ensure that contracts with digital Media Owners or Vendors leveraged in the process of purchasing digital Media on behalf of Advertiser provide that the digital Media Owner or Vendor shall:
- 6.18.1 provide Agency and Advertiser with access to Transaction Data associated with Advertisers' Media Placements on a real-time basis, but no less than twenty-four (24) hours after the applicable Media Placement was delivered;
 - 6.18.2 clearly label and provide a definition of all data fields and attributes in the Transaction Data and communicate any changes to the fields to Advertiser and Agency in writing;
 - 6.18.3 attest in writing, upon request of the Advertiser or Agency, that the Transaction Data provided is accurate and has not been manipulated in any manner;
 - 6.18.4 silo Transaction Data for Advertiser from that of other advertisers;
 - 6.18.5 retain Transaction Data for three (3) Years.
- 6.19 Agency shall comply (and shall cause Agency Affiliates to comply) with Advertiser's requirements as issued to Agency from time to time in writing with respect to the nature and quality of digital Media being purchased, including, but not limited to, compliance with Advertiser's optimization and trading controls including tolerance of bid prices, floor prices, buying strategy on open marketplace and private market place deals, strategy budgets and campaign budgets including all standard campaign management controls in order to avoid unwarranted trading. In the absence of Advertiser's optimization and trading controls, Agency shall outline Agency's optimization and trading controls to Advertiser and receive written approvals from Advertiser prior to any trading activity commencing.
- 6.20 Agency shall fully disclose through periodic discussions with Advertiser, all Advertiser-specific and industry general learnings derived from the handling by Agency or any Agency Affiliates providing any services, directly or indirectly, for Advertiser's accounts. Agency shall actively make "best industry practice" recommendations to Advertiser from time to time regarding industry general learnings. In the event that any industry standards are adopted during the Term that improve the transparency of Media Placement transactions, reduce fraud, improve viewability or otherwise improve Media Placement operations, Agency agrees to discuss these standards with Advertiser promptly after Advertiser's request therefore so that the Parties can consider and, upon mutual written agreement, implement such standards.
- 6.21 Agency and Advertiser will mutually agree to the maximum Principal or Inventory Mark-Up amount to be made by the third party selling the applicable Media to Advertiser for any agreed upon Principal or Inventory Sale. Agency will provide Advertiser with proof and certification that any Media Placements through a Principal or Inventory Sale were legitimately sourced and the

favorable terms received on the underlying Media in a Principal or Inventory Sale by Agency or the applicable third party (which may be an Agency Affiliate), directly or indirectly, were not in whole or in part on account of Advertiser's spending with the applicable Media Owner or other Vendor.

- 6.22 Without the written consent of an Authorized Advertiser Approver, Agency will at no time agree to Dual Rate Cards.
- 6.23 Agency will provide ongoing training to Agency Associates who work on Advertiser's behalf on Agency's obligations as an agent and/or principal for Advertiser and Agency's ethical, contractual and confidentiality obligations hereunder.

7. Content Verification, Brand Safety and Standards

- 7.1 At Advertiser's request, Agency will provide Advertiser with a list of URLs (including web pages) and other Media that Agency considers safe and protective of Advertiser's brand so that Advertiser can create its own Advertiser Whitelist to be used as a guide for Media Placements.
- 7.2 Unless otherwise agreed to in writing by Advertiser, Agency will use its best efforts to ensure that Media Placements will appear solely on websites on the Advertiser Whitelist. Advertiser will have the right to amend the Advertiser Whitelist on **[Insert Number]** Business Days' notice to Agency.
- 7.3 Agency will not, without the prior written consent of Advertiser, place Media Placements on websites and/or mobile applications (including insertion orders based on non-Programmatic Media buys, unless expressly agreed to by the Parties) that it should reasonably be aware are, contain or link to the following content ("**Blacklist Content**"):
 - 7.3.1 obscene, indecent or pornographic content (including child pornography);
 - 7.3.2 content that is hateful, threatening, harassing or abusive;
 - 7.3.3 violent content;
 - 7.3.4 content liable to incite racial hatred or other forms of unlawful discrimination;
 - 7.3.5 content liable to incite acts of terrorism;
 - 7.3.6 content containing excessive profanity;
 - 7.3.7 content relating to illegal drugs or drug paraphernalia;
 - 7.3.8 content relating to the sale of firearms, ammunition or other weapons;
 - 7.3.9 content that is defamatory or trade libelous;
 - 7.3.10 content relating to the sale or promotion of counterfeit goods;
 - 7.3.11 content that infringes any third party's Intellectual Property Rights, other proprietary rights or rights of publicity or privacy;

- 7.3.12 content that contains viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, surreptitiously intercept, detrimentally interfere with or expropriate any system, data or personal data;
- 7.3.13 content that is otherwise harmful, unlawful or illegal;
- 7.3.14 URLs (or web pages) that are fraudulent and/or are used for sourcing Non-Human and Fraudulent Traffic;
- 7.3.15 [alcohol-related content;]
- 7.3.16 [gambling-related content;]
- 7.3.17 [tobacco-related content;]
- 7.3.18 [content relating to prescription drugs;]
- 7.3.19 [blogs or unmoderated forums;]
- 7.3.20 [content that is harmful to minors in any way or otherwise unsuitable for them to view;]/
[content targeted at children under [XX]]
- 7.3.21 [fake news/disinformation;]
- 7.3.22 [add additional as per Advertiser policies.]

and will use appropriate software tools to verify that the websites on the Advertiser Whitelist do not contain any Blacklist Content.

- 7.4 In the event that Agency discovers or is notified that a Media Placement has appeared on a website or mobile application that contains or links to Blacklist Content, Agency will immediately notify Advertiser and use Agency's best efforts to remove the Media Placement immediately upon discovery or notification. In addition, the Advertiser shall be entitled to require the immediate removal, suspension or cancellation of an entire campaign on that Media Owner's platform without penalty. Notwithstanding the foregoing, Agency will not be in breach of this Section or any other Section in this Agreement if Media Placements are made on Advertiser Whitelist websites and mobile applications featuring Editorial Content about Blacklist Content. Further, Advertiser understands that certain publishers may not pre-screen user-generated content; in the event Advertiser instructs Agency to make Media Placements on such websites, Agency will use commercially reasonable efforts to ensure that Advertiser's Media Placements are promptly removed from such sites containing unacceptable user-generated content in accordance with Advertiser's instructions.
- 7.5 With respect to Digital Media Placements, Agency shall, in conjunction with the Advertiser, conduct [quarterly] reviews, updates and audits of the Blacklist Content and Advertiser Whitelist against all Digital Media Placements. Advertiser shall be entitled to request for specific websites and mobile applications to be removed/blocked from its Digital Media Placements (provided such notice is given at least [24] hours before activation).

- 7.6 In order to ensure that Media Placements are made in safe environments and associated Media spend is protected from criminal activity, Agency is or shall become within [XX] days of execution of this Agreement, registered with the Trustworthy Accountability Group (TAG) and Certified Against Fraud by TAG. Agency will work with Advertiser to identify major downstream digital Media partners, such as demand-side platforms, ad exchanges, ad networks, supply-side platforms, and Media Owners to ensure such third parties are also protecting Advertiser's Media Placements and Media spend by being registered with TAG and Certified Against Fraud by TAG. Advertiser may work with Agency to expand these protections, including requiring further certifications to limit brand exposure to illicit content, inappropriate agencies, and malware that could negatively impact consumers.
- 7.7 Agency will undertake by all legally enforceable means, to ensure that all third parties to which Media Placements are delivered, displayed or made available have adopted and implemented commercially reasonable Non-Human and Fraudulent Traffic Prevention tactics. Without limiting the foregoing, Agency will use commercially reasonable efforts to implement Non-Human and Fraudulent Traffic Prevention, including without limitation, ensuring Media Owners and Vendors are maintaining best practices for Non-Human and Fraudulent Traffic Prevention and, in collaboration with Advertiser, implementing fraud tools.
- 7.8 Agency agrees that Advertiser will have no obligation hereunder, for compensation, liability or otherwise in respect of Non-Human and Fraudulent Traffic and will not be billed or required to pay for Non-Human and Fraudulent Traffic and shall only pay for ad impressions, clicks or post-campaign conversions verified by the ad fraud tool(s) as being natural human traffic. To enable the Advertiser to verify compliance with the foregoing, the Agency shall provide the Advertiser with access to monthly campaign level ad fraud reports and [read-only] [administrative] access to the Advertiser's account on the ad fraud detection platform. To the extent any payment attributable to Non-Human and Fraudulent Traffic is discovered to have been paid by Advertiser, Agency will promptly use diligent and commercially reasonable efforts to cause the applicable Media Owner or Vendor to reimburse and refund such payment to Advertiser, together with reasonably adequate documentation to substantiate the accuracy of any such reimbursement or refund.
- 7.9 Agency is aware of IAB Tech Lab initiatives, including without limitation, Ads.txt and Ads.cert, and will only purchase inventory from resellers of inventory that have been identified as legitimate sources via these methods.
- 7.10 Agency will adopt and implement all commercially reasonable technology and methodologies to track and report to Advertiser all Media Placements and the flow of monies between the amount paid by Advertiser for such Media Placements and the monies that are ultimately paid to the Media Owners.
- 7.11 Agency will adopt and implement technology and methodologies (i.e., ad fraud tool(s)) to track and report to Advertiser accurate Media Placements using, where applicable, Accredited Vendors. Except as set forth in this Agreement, Media Placement reporting details should be set forth in the applicable Scope of Work. Advertiser must be made aware of and approve the use of any ad network(s) or ad exchanges before any Media purchases are made by Agency.
- 7.12 Agency will undertake all reasonable efforts to maximize Advertiser's investment in Media Placements by evaluating and limiting the dilution of its investment along the supply line chain by agreement.

- 7.13 With respect to all emails or electronic newsletters sent by Agency on behalf of an Advertiser or by a Media Owner pursuant to a Media Placement which mentions Advertiser in any manner, unless otherwise agreed in writing, Agency agrees that it will be solely responsible for ensuring that the content of such emails complies in all respects with the CAN-SPAM Act.
- 7.14 Notwithstanding any other provision or agreement to the contrary, it is expressly agreed and acknowledged that Advertiser will not be obligated to pay for Media Placements which do not meet the Viewability Standards (where applicable). Viewability Standards will be measured using the viewable impression data generated by an Accredited Vendor for all tracking, reporting and invoicing purposes for applicable Media Placements, and Agency hereby agrees to accept Advertiser's Accredited Vendor as the basis for measurement and payment for all applicable Media Placements.
- 7.15 Agency will follow any instructions provided by Advertiser in connection with Native Advertising. Such instructions may include ensuring that any such Native Advertising is clearly, conspicuously, and proximately labelled or identified to consumers as sponsored material or advertising copy in accordance with all Applicable Laws.
- 7.16 Agency will disclose in writing all technology employed (for example ad servers) for distribution or storage of Advertiser's Media Placements and related Advertiser Data, together with Agency's commercial rationale and net costs for using such technology. Advertiser has the right to audit and evaluate technology Vendors against Advertiser's requirements to determine effectiveness and objectivity. Advertiser may, in its sole discretion, direct Agency to use specific technology Vendors for the Services provided to Advertiser.

8. Rebates and Incentives

- 8.1 It is the mutual intent of the Parties that all transactions entered into on Advertiser's behalf by Agency and Agency Affiliates, the flow of Advertiser's funds entrusted to Agency, and any Rebates and Incentives received by Agency and Agency Affiliates from third parties, including Media Owner Group Members and Vendors, directly or indirectly, will be transparent and fully disclosed to Advertiser.
- 8.2 Agency and Agency Affiliates will at no time receive (without disclosure to Advertiser) or retain, either inside the United States or outside the United States, any Rebates and Incentives or other benefits of any value from third parties, including Media Owner Group Members and Vendors, as a direct or indirect result of Advertiser's spending under this Agreement.
- 8.3 Except to the extent prohibited by any mandatory laws in the Territory prohibiting the passing on of Rebates and Incentives to Advertiser, Agency must provide Advertiser on a quarterly basis (during the Term and for twelve (12) months thereafter) with a full and accurate report of:
- 8.3.1 each and every rate card and terms of payment offered to Agency or Agency Affiliates in the ordinary course of business between the Agency or Agency Affiliates (before any Rebates and Incentives have been applied) and a Media Owner Group Member for any Media Placements made by Agency or Agency Affiliates on behalf of Advertiser;
- 8.3.2 the gross amounts of Rebates and Incentives Agency or any Agency Affiliate, directly or indirectly, receives or is entitled to receive in sufficient detail to permit an accurate assessment by Advertiser of the Rebates and Incentives due to Advertiser;

- 8.3.3 any actions by Advertiser, Agency or Agency Affiliates that are required in order for the Rebates and Incentives to accrue; and
- 8.3.4 any early payment discounts received by or eligible to be received by Agency or Agency Affiliates from a Media Owner Group Member or Vendor. Advertiser is entitled to receive any early payment discounts received by Agency or Agency Affiliate on account of Advertiser's Media Placements, unless Advertiser expressly chooses not to receive such discounts or Agency notifies Advertiser with reasonable advanced notice of the deadline to qualify for such early payment discounts and Advertiser fails to pay Agency for such Media Placement within the qualification period to receive such discounts.
- 8.4 Agency must provide to Advertiser in writing the amount of all of the Rebates and Incentives received by Agency or Agency Affiliate from third parties, including Media Owner Group Members and Vendors, in respect of Advertiser, whether such Rebates and Incentives are reflected in the amount invoiced by the Media Owner or subsequently provided (even after the expiration of the Term) directly or indirectly to any Agency Affiliate. Such information will indicate, in the event Agency or an Agency Affiliate aggregates Advertiser's spending with other Agency or Agency Affiliate advertisers, the portion of such Rebates and Incentives allocated to Advertiser and the basis upon which such allocation is made to ensure that any such allocation is compliant with the formula provided in Section **Error! Reference source not found.2**.
- 8.5 It is of the essence to this Agreement that Advertiser receives the Rebates and Incentives in the same form as they are received by Agency (or Agency Affiliate) but Advertiser will inform Agency as to how it wishes the Rebates and Incentives to be passed back (such as by way of credit note issued against old invoices, credit note against future Media Placements, or invoiced for payment by Agency). Where Rebates and Incentives are to be paid back to Advertiser, Agency will pay such sums to Advertiser within thirty (30) days of receipt of the same by Agency or Agency Affiliate. Where Rebates and Incentives are free or discounted inventory, Agency or Agency Affiliate shall provide written details to Advertiser of such inventory and timing for when such inventory must be used.
- 8.6 Agency will take all reasonable steps to pursue third parties, including Media Owner Group Members and Vendors, for any Rebates and Incentives.
- 8.7 Agency will keep Advertiser fully informed of any relevant discounted Media space available to Advertiser on account of Agency's dealings with Media Owner Group Members together with any dates by which such discounted Media space must be used by Advertiser in order to take advantage of the discount (and for the avoidance of doubt such discounted Media space will be included in the definition of Rebates and Incentives for the purpose of this Agreement whether directly or indirectly related to Advertiser's Media Placements).
- 8.8 The Parties agree to enter into a separate written agreement to the extent that any use of Barter services (either by bartering Advertiser goods or services or selling Bartered goods or services to Advertiser) are provided by Agency or Agency Affiliates.
- 9. Unbilled Media**
- 9.1 Agency will calculate and report to Advertiser any Unbilled Media arising on an annual basis (by no later than thirty (30) days after the end of each Year related to Unbilled Media arising in the

previous Year). Unless otherwise agreed by Advertiser, Agency will pay back such Unbilled Media to Advertiser by no later than sixty (60) days from the end of each Year.

- 9.2 Where Agency passes back monies for Unbilled Media to Advertiser and Agency subsequently receives (within a period of twelve (12) months from the date the monies for Unbilled Media was passed back to Advertiser) a valid Media Placement invoice from the Media Owner relating to the value of the Media Placement which has been passed back to Advertiser as Unbilled Media, Advertiser shall, upon receipt of Media Owner's invoice from Agency, repay the same to Agency on the payment terms set out in this Agreement.

10. Relationship; Exclusivity

- 10.1 Advertiser's relationship with Agency is non-exclusive and Advertiser will therefore be entitled to appoint any other agency to perform services and deliver deliverables which are the same or similar to the Services.
- 10.2 Prior to providing any Services to Advertiser, Agency will inform Advertiser in writing of the existence of any contracts or business relationships that Agency and/or Agency Affiliates have with companies manufacturing, distributing or selling Competing or Antithetical Products or Services. For the Term of this Agreement, Agency will not accept new assignments from any Person that markets or sells Competing or Antithetical Products or Services.
- 10.3 Restricted Staff (while employed by Agency) will not, during the Term and for twelve (12) months after each such individual ceases providing services to Advertiser, without the prior written consent of Advertiser, provide services to any Person other than Advertiser that markets or sells Competing or Antithetical Products or Services. Agency will ensure that there is no overlap of teams or Associates with any existing Agency advertiser that markets or sells Competing or Antithetical Products or Services and will take reasonable steps to ensure the confidentiality of Advertiser's information including, restricting access to systems and erecting a "virtual wall" so that none of the Restricted Staff working on Advertiser's business shares any information with people working on Competing or Antithetical Products or Services.

11. Associates

- 11.1 Agency will allocate suitable Associates with appropriate levels of experience and seniority to provide the Services. The composition of Agency's team assigned to Advertiser and the allocation of their work time will comply with the specifications set forth in the relevant Scopes of Work. Notwithstanding the foregoing, Advertiser acknowledges and agrees that it may be necessary for Agency to replace Associates providing the Services with alternative Associates with similar levels of seniority and experience.
- 11.2 Agency will appoint Key Individuals to be actively involved in the provision of the Services. Advertiser will approve all such Key Individuals. Should any Key Individual leave the Agency or cease to be involved in the provision of Services for any reason (including, by way of example, because the Key Individual is promoted to a different role within the Agency), Agency will consult with Advertiser and, subject to Advertiser's prior written approval, appoint a suitable replacement. Any such change in the Key Individuals will occur with full and timely transfer of know-how at Agency's sole expense.

11.3 Should Agency fail to provide at least the staffing mutually agreed upon by Advertiser and Agency during the term of the applicable Scope of Work, Advertiser will have the right, in addition to any other right set forth herein, to prospectively renegotiate Agency Fees in light of any staffing deficiency.

12. Scope of Work Amendments and Project Cancellations

12.1 Subject to Sections 12.2 and 25.3, Advertiser may request Agency to cancel, suspend or amend any Project or part thereof, including any plans, schedules or work in progress in respect of any Project. Agency will take all reasonable steps to comply with any such request provided that Agency is able to do so within its contractual obligations to Vendors. For the avoidance of doubt, any cancellation or termination of the Annual Scope of Work will be subject to Advertiser giving notice to Agency, in accordance with Section 25.1.

12.2 In the event of any such cancellation, suspension or amendment, Advertiser will reimburse Agency for all Fees up to the date of cancellation, suspension or amendment, together with any Third Party Costs or other Expenses incurred by Agency or to which Agency is committed as well as any charges or other costs imposed on Agency by third parties (including Media Owners) arising from the cancellation, suspension or amendment provided that Agency will use commercially reasonable efforts to mitigate any such Third Party Costs or Expenses wherever possible.

13. Approvals and Authority

13.1 This Agreement takes precedence over any other agreements relating to the same subject matter entered into by the Parties and cannot be superseded without authorization by the signatories to this Agreement or such other person(s) authorized in writing by Advertiser President, Chief Financial Officer, Chief Marketing Officer or General Counsel.

13.2 For the purposes of this Agreement, any reference to "approval" to be given by Advertiser will mean Advertiser giving approval by one of the following methods:

13.2.1 Advertiser issuing a written confirmation of such approval by way of purchase order or otherwise bearing the Signature of an Authorized Advertiser Approver;

13.2.2 e-mail from the individual business e-mail address of an Authorized Advertiser Approver;
or

13.2.3 the Signature of an Authorized Advertiser Approver(s) on Agency's documentation.

13.3 For the purposes of this Agreement, any reference to "approval" to be given by Agency will mean Agency giving approval by one of the following methods:

13.3.1 e-mail from the individual business e-mail address of an Authorized Agency Approver; or

13.3.2 the Signature of an Authorized Agency Approver on Advertiser's documentation.

13.4 If a Party is requested to give approval under this Agreement or in connection with it (or disapproval where Advertiser has such right), such approval (or disapproval) will not be unreasonably withheld or delayed.

- 13.5 Without limiting Advertiser's rights of approval provided elsewhere in this Agreement, Agency will seek Advertiser's prior approval of:
- 13.5.1 any estimates or quotations for any Third Party Costs to be paid by Advertiser;
 - 13.5.2 any Media Plans;
 - 13.5.3 any Media Placements;
 - 13.5.4 any Key Performance Indicators; and
 - 13.5.5 any Goals.

Advertiser's approval of such estimates will be Agency's authority to enter into contracts with relevant third parties, subject to the terms and conditions of this Agreement.

- 13.6 With respect to approvals for Media Placements, Agency acknowledges and agrees that Media Placements must be executed only in accordance with Advertiser's approval, it being understood that Advertiser will not be responsible for payment in connection with any Media purchase outside the scope of an approved Media Placement.

14. Relationship Management and Contact Reports

- 14.1 During the Term, Agency will keep Advertiser fully informed as to the progress and status of all Services. Agency will prepare and submit written reports at such intervals and in such format as is agreed by the Parties and will promptly inform Advertiser of any actual or anticipated problems relating to delivery of the Services.
- 14.2 During the Term, the Parties will arrange and attend meetings to review the status and progress of the Services and the Project(s), and to seek to resolve any issues that have arisen. Such meetings will be held at such locations and at such intervals as will be agreed by the Parties.

15. Reporting

- 15.1 Agency will provide to Advertiser, Advertiser Data and Change History, in addition to any other reports specified in a Scope of Work or elsewhere in this Agreement. Such reporting and data will be supplied in relation to all of the Services which have been provided, at a frequency and in a form and format acceptable to Advertiser. The reporting and data that will be supplied by Agency include, but are not limited to, the following: **[Insert Details]**.
- 15.2 Agency shall provide Advertiser with full access to reports on a **[quarterly]** basis regarding the Advertiser's Digital Media Placements including data on the websites and mobile applications blocked, any infringement of the Blacklist Content using the ad fraud tools and any other applicable engagement metrics agreed between the Parties in relation to each Digital Media Placement. Where available, the reports shall also include details of any brand safety issues and ad collision in relation to each Digital Media Placement.
- 15.3 Agency shall provide standardized metrics/KPIs for reporting the percentage of Advertiser's spend paid to each Media Owner on a **[quarterly]** basis.

- 15.4 Advertiser will be provided with (i) full access to Advertiser Data and Change History and (ii) online access to relevant parts of Agency's systems where Advertiser will be able to review (and download/export if it so desires) the following information regarding the Services: [Insert Details— e.g., third party technologies, including technologies used in programmatic or real time buying, which enable the purchase of programmatically traded media and data, including but not limited to agency trading desks and demand-side platforms]. Agency will provide appropriate training to Advertiser's staff and a reasonable level of ongoing technical support. All information provided will be classed as Confidential Information of Advertiser.
- 15.5 Within [one hundred and twenty (120) days] after the close of the Holding Company's fiscal year, Agency shall provide Advertiser reports on all revenues and profits generated by Agency Affiliates on Advertiser-related billings, including without limitation, those revenues and profits generated by the Agency and Agency Affiliates, detailed by Affiliate.
- 15.6 In relation to any Digital Media Placements carried out by or on behalf of Agency, Agency shall retain for at least [thirty-six (36)] months all Transaction Data it receives. Where retention of such Transaction Data is cost prohibitive for Agency, it shall notify Advertiser and Agency shall make an arrangement for a periodic data dump with Client to securely store all applicable Transaction Data.
- 15.7 No later than [thirty (30) days] after the end of each Year, the Holding Company Chief Financial Officer shall provide to Advertiser's Chief Financial Officer an Annual Financial Compliance Certification.

16. Fees, Expenses and Invoicing

- 16.1 The Fees, Expenses and Third Party Costs will be invoiced by Agency in accordance with the payment terms set out in the applicable Scope of Work and will be payable (subject to Section 17.5) within [Insert Number] days of the date of the relevant invoice, or such other reasonable period as the Parties may agree in the applicable Scope of Work. Agency shall provide Advertiser with a copy of all invoices sent to Advertiser upon Advertiser's written request. Agency acknowledges and agrees that Advertiser will not be responsible for payments in connection with any Media Placements that are not (i) expressly set forth in the applicable insertion order, (ii) approved by Advertiser in writing if not in a specific insertion order, or (iii) included in a Media Owner's invoice to Agency.
- 16.2 Where a Project is agreed in addition to the Annual Scope of Work, notwithstanding any other provision of this Agreement, Advertiser will not be obliged to pay Fees relating to that Project and Agency will not be obliged to supply any Services for a Project until each Party has signed the applicable Project Scope of Work.
- 16.3 The Parties will commence negotiations in good faith on or before [Insert Date] and then on or before [Insert Date] in each subsequent Year of the Term to agree to a new Annual Scope of Work for the next Year of the Term of this Agreement. If the Parties fail to reach agreement before the start of that Year, Advertiser will have the option of rolling forward the Scope of Work for the previous Year without any increase whatsoever in the applicable Fees.
- 16.4 All sums stated in this Agreement or in any Scope of Work, quotation or estimate exclude VAT and any other applicable sales tax (unless otherwise stated) which will also be payable by Advertiser at the rate prevailing from time to time. Advertiser will not be responsible for the payment of any

income, franchise, gross receipts or personal property tax paid by Agency as a result of the Services or this Agreement. Agency will be responsible for any penalties or interest attributable to its failure to remit to a governmental authority any taxes owing on its professional service Fees unless Agency had properly invoiced Advertiser for such taxes and Advertiser did not timely pay the invoiced amount of such taxes to Agency as required by this Agreement. Agency will cooperate with Advertiser to lawfully minimize or obtain refunds of any taxes available to Advertiser. Agency will notify Advertiser if it is aware Advertiser could obtain refunds of taxes paid.

- 16.5 Unless otherwise agreed in writing, the Fees are inclusive of any costs payable in respect of the Services in relation to Agency tools and systems. The Fees do not cover the performance of services which are outside of a Scope of Work nor do they cover the performance of services outside the Territory. If any such services are required the terms relating to their provision together with the applicable fees will be agreed in writing by the Parties.
- 16.6 In the event that Advertiser fails to make any undisputed payment in full when due to Agency under this Agreement, then without prejudice to its other rights and remedies under or in connection with this Agreement or otherwise in law, Agency will be entitled to charge Advertiser interest on such overdue sum at the lesser rate of [Insert Percentage Number] % or the maximum amount allowable by law calculated from the due date up to the date of payment, provided that:
- 16.6.1 Agency has notified Advertiser in writing that its undisputed payment is overdue and such payment is not made within five (5) Business Days of receipt of the written notification; and
- 16.6.2 Agency will not be entitled to set off any claim for interest against any other payments payable by Agency to Advertiser.
- 16.7 Advertiser reserves the right to withhold payment of any invoice or part of an invoice where Advertiser has a bona fide reason to challenge the validity or accuracy of such invoice. On receipt of any such invoice Advertiser will:
- 16.7.1 within ten (10) Business Days of discovery of the inaccuracy or disputed amounts, notify Agency in writing of the reason for such withholding;
- 16.7.2 pay the undisputed part of such invoice in accordance with Section 16.1; and
- 16.7.3 work promptly and in good faith with Agency to resolve any such dispute over the relevant invoice.
- 16.8 Where a late fee or other surcharge is invoiced by a Media Owner or Vendor against Agency due to a late payment and such late payment results from late payment by Advertiser with respect to the time, space, goods or services specified in the Media Owner or Vendor's invoice, Advertiser will reimburse to Agency within [Insert Number of Days] of a receipt of an invoice from Agency for the amount of such surcharge together with appropriate documentary evidence of such charge, together with any accrued interest charged by the Media Owner or Vendor in respect of the overdue amount.
- 16.9 Agency will be liable for any late advertising materials charge made by a Media Owner against Agency due to advertising materials being delivered late unless due to Advertiser's own negligent or willful act or omission, in which case Advertiser will reimburse Agency within [Insert Number of

Days of a receipt of an invoice from Agency for the amount of such late advertising materials charge together with appropriate documentary evidence of such charge.

17. Third Party Costs

- 17.1 All Third Party Costs will be approved by Advertiser in advance in writing, including the cost of Media Placements.
- 17.2 Unless otherwise approved by Advertiser, or set out in a Scope of Work, all Third Party Costs will be charged to Advertiser at net cost paid by Agency or its Affiliates without any mark up and with full credit to Advertiser for all Rebates and Incentives obtained by Agency or any Agency Affiliate. Agency will use its best efforts to minimize Third Party Costs and, unless otherwise agreed upon by the Parties in writing, will use a three-bid process acceptable to Advertiser when selecting subcontractors and Vendors.
- 17.3 Agency will advise Advertiser promptly of any changes in estimated Third Party Costs. Subject to Section 17.4, if the sum paid or owing by Agency in respect of Third Party Costs in a particular instance is greater than the relevant sum approved by Advertiser, the amount of the difference will be disclosed and, unless agreed to in writing by an Authorized Advertiser Approver, such additional costs will be borne by Agency.
- 17.4 The actual cost to Agency of Third Party Costs in respect of materials or services purchased overseas for the Deliverables may be more or less than the cost anticipated at the date when Agency ordered the relevant materials or services (or obtained Advertiser's approval for such Third Party Costs) as a result of fluctuations in the rate of currency exchange. If so, Agency will charge Advertiser at the rate of currency exchange in operation on the date Agency pays for the relevant Third Party Costs, which will be deemed to be the closing mid-point rate in the United States for that day as subsequently quoted in the next published edition of The Wall Street Journal or such other quotation source as the Parties may agree upon.
- 17.5 Agency will disclose to Advertiser all payment terms for Third Party Costs as negotiated and committed to with the relevant third party and will supply Advertiser with evidence of such payment terms on request and with copies of Third Party Contracts relating to the Services. Agency will notify Advertiser in writing as soon as reasonably practicable in the event a Media Owner or Vendor requires payment in advance or sooner than the payment terms set out in Section 16.1.

18. Audit and Access to Records

- 18.1 Advertiser will be entitled to choose any Auditor(s) (including an external third party Auditor or industry specialist and/or an internal Advertiser team) to: (i) audit the performance of the Services and Agency's compliance with this Agreement (including any prior agreements between Agency and Advertiser); and (ii) audit and benchmark Media Placements pursuant to criteria determined by Advertiser, including quality and cost, in Advertiser's absolute discretion. Advertiser will be entitled to determine the scope of any and all audits.
- 18.2 During the Term and for six (6) Years after its termination, Agency will maintain clear, accurate, complete and up-to-date Records in respect of the performance of its and Agency Affiliates' obligations under this Agreement, and such Records will be kept in accordance with GAAP consistently applied and in such manner as may be readily audited. Agency will procure

compliance by Agency Affiliates with its obligation to maintain Records as set out in this Agreement, including, but not limited to, access to all Advertiser Data and Change History.

- 18.3 Agency will obtain at its own cost all necessary rights in Records with respect to all services or products which Agency or Agency Affiliates obtain from third parties to enable Agency to supply to Advertiser and its Auditor all such data as the Auditor reasonably requires to fully perform an audit hereunder, including with respect to the principle of full transparency in the flow of Advertiser's payments to Agency and any Rebates and Incentives received by Agency or Agency Affiliates and access to agreements between Agency or Agency Affiliates and Media Owner Group Members or Vendors to confirm whether such agreements relate at all to time, space, goods or services provided to Advertiser.
- 18.4 Except to the extent that any Records relate exclusively to Agency's Confidential Information or Agency's other Agency advertisers and do not in any manner, directly or indirectly, relate at all to Advertiser, all rights in the Records (including Intellectual Property Rights and any data and information created, obtained, compiled or verified by Agency, including prices paid for Media Placements by Agency or Agency Affiliates, directly or indirectly, on behalf of Advertiser) will belong to Advertiser, will constitute Confidential Information of Advertiser and will be deemed to be assigned to Advertiser under Section 24.1 for the purpose of this Agreement;
- 18.5 Agency and Agency Affiliates will allow the Auditor access to all Records, including all documents and information to verify Principal or Inventory Mark-Ups and contracts and invoices for Advertiser's Media Placements (provided that Agency or Agency Affiliates may redact from Third Party Contracts the individual names of other advertisers). Any such access will be at any time during normal business hours for the purposes of auditing or otherwise inspecting the Records. Agency and Agency Affiliates will provide all Records and data in a format reasonably requested by the Auditor(s).
- 18.6 Should any audit or inspection of the Records by Advertiser reveal that Advertiser has been overcharged, Agency will reimburse to Advertiser:
- 18.6.1 the amount of the overcharge, plus interest at the rate of not less than [Insert Percentage Number] % up to the maximum amount allowable by law calculated from the date at which benefits were received by Agency but not passed through to Advertiser or the date of payment (as applicable), within seven (7) days, provided that Agency has invoiced Client pursuant to the terms of this Agreement; and
- 18.6.2 the third party costs charged by the Auditor, investigator, or legal counsel in respect of the audit, if such overcharge relates to the Fees and is more than [Insert Percentage Number] % of the Fees for the Year audited; if such overcharge relates to Media Placement costs and is more than [Insert Percentage Number] % of the Media Placement spending for the Year audited; or if such overcharge relates to any other Third Party Costs, and is more than [Insert Percentage Number] % of the Third Party Costs (excluding Media Placements) spending for the Year audited.
- 18.7 Agency and Agency Affiliates will afford the Auditor all reasonable assistance in the performance of the audit. Advertiser shall require the Auditor to sign a confidentiality agreement, in the form attached at Schedule 8 before the Agency provides the Auditor with any access to the Records. The Auditor may, upon Advertiser's request, deliver a copy of its preliminary observations to Agency to provide Agency with an opportunity to comment on any inconsistencies or inaccuracies

(it being understood that such preliminary observations reported by Auditor shall be used by Agency solely for the purpose of client management). Agency shall submit its comments back to the Auditor within five (5) Business Days of receipt of the Auditor's observations. Agency acknowledges that when submitting its final report to the Advertiser, the Auditor will also provide Advertiser with a summary of any amendments made to the report as a consequence of Agency's comments.

- 18.8 Advertiser and the Auditor will ensure that any information obtained in the course of the audit relating specifically to Agency's and Agency Affiliates' business (excluding the Records) is kept in the strictest confidence. Advertiser will not employ an Auditor on a contingency basis. The report and results of any audit shall be considered Advertiser Confidential Information and Agency and Agency Affiliates shall protect such information in accordance with Section 19 and the terms of this Agreement and shall not at any time use such information for benchmarking purposes or for negotiations with Media Owner Group Members or Vendors.

19. **Confidentiality**

- 19.1 Each Party acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it may receive or otherwise become aware of **Confidential Information** belonging to the other Party.
- 19.2 Confidential Information will include any document marked "Confidential", or any information which the receiving Party has been informed is confidential or which it ought reasonably to expect the disclosing Party would regard as confidential.
- 19.3 Confidential Information will exclude information which:
- 19.3.1 at the time of receipt by the receiving Party is in the public domain;
 - 19.3.2 subsequently comes into the public domain through no fault of the receiving Party or its Associates;
 - 19.3.3 is lawfully received by the receiving Party from a third party on an unrestricted basis; and/or
 - 19.3.4 can be demonstrated to have already been known to the receiving Party before receipt hereunder.
- 19.4 Each Party undertakes to maintain the confidentiality of the other Party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own Confidential Information to keep the other Party's Confidential Information reasonably secure. Without limiting the generality of the foregoing, each Party will institute, implement and maintain at all times during the Term appropriate information security measures designed to: (i) help ensure the security and confidentiality of the other Party's Confidential Information, (ii) reduce the risk of reproduction, misuse, or modification of the other Party's Confidential Information (including, but not limited to, consumer data and cookies), (iii) identify potential threats or hazards to the security or integrity of the other Party's Confidential Information and help protect against any anticipated threats or hazards, and (iv) help protect against unauthorized access to or use of the other Party's Confidential Information.

- 19.5 Neither Party will at any time, whether during the Term or at any time thereafter, without the prior written approval of the other Party, use, disclose, exploit, copy or modify any of the other Party's Confidential Information (including, without limitation, Media audit reports), or authorize or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Agreement.
- 19.6 Agency undertakes to disclose Advertiser's Confidential Information only to those of its Associates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.
- 19.7 Neither Party will be in breach of this Section 19 if it discloses the other Party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the owner of the Confidential Information is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.
- 19.8 Neither Party will be held criminally or civilly liable under any federal or state trade secret law for the disclosure of the other Party's Confidential Information related to such Party's trade secrets that is made in confidence to a federal, state or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of the law. Nor shall either Party be held criminally or civilly liable under any federal or state trade secret law for the disclosure of the other Party's Confidential Information related to such Party's trade secrets made in a complaint or other document filed in a lawsuit or similar proceeding, if such filing is made under seal. If a Party files a lawsuit for retaliation by the other Party for reporting a suspected violation of the law, the filing Party may disclose Confidential Information related to the other Party's trade secrets to the filing Party's attorney, and use that information in the court proceeding; provided, that the Party that files any document containing the other Party's Confidential Information related to such Party's trade secrets under seal and does not otherwise disclose the other Party's Confidential Information related to trade secrets, except pursuant to a court order.
- 19.9 Each Party acknowledges that money damages may not be sufficient remedy for any prohibited or unauthorized disclosure or use of Confidential Information of the other Party and that the other Party will be entitled, in addition to any other remedies available at law or otherwise, to an order of specific performance or other equitable relief against the breaching Party, without needing to post bond or other surety.

20. Agency Representations and Warranties

Agency represents and warrants that:

- 20.1 it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;
- 20.2 any Associate, Media Owner, Media Owner Group Member, Agency Affiliate or Vendor that Agency uses to perform the Services is and will be competent and suitable, whether as to qualifications, experience or otherwise, to provide the Services; and
- 20.3 it will comply with all Applicable Laws in connection with its performance under this Agreement.

21. Advertiser Representations and Warranties

Advertiser represents and warrants that:

- 21.1 it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;
- 21.2 to the best of its knowledge, Advertiser Materials will not, when used in accordance with this Agreement and any written instructions given by Advertiser, infringe third party copyright; and
- 21.3 to the best of its knowledge and belief, Advertiser Materials will comply with all Applicable Laws.

22. Indemnification; Limitation of Liability

22.1 Agency will defend Advertiser Indemnitees from and against any and all Claims which any of them may suffer, incur, or which may be asserted against any of them, in whole or in part, to the extent by reason of, or to the extent in connection with, the following:

- 22.1.1 the Services provided by Agency, including its Associates and any of their respective suppliers or personnel (except to the extent such Claims are brought as a result of any inaccuracy, incompleteness or impropriety of information provided to Agency by Advertiser);
- 22.1.2 any breach of Agency's representations, warranties, covenants and obligations set forth in this Agreement;
- 22.1.3 acts by Agency or its Associates of negligence or willful misconduct;
- 22.1.4 any death, injury to person or damage to property in connection with the Services caused by the acts or omissions of Agency or its Associates;
- 22.1.5 Any breach by Agency Associates of Section 31 (Data Protection);
- 22.1.6 any alleged or actual violation by Agency of any Applicable Laws; or
- 22.1.7 agreements between Agency and the third party bring the Claim that are made in furtherance of Agency's Services under this Agreement (22.1.1-22.1.7, collectively, "**Advertiser Claims**").

Agency will further indemnify and hold harmless Advertiser Indemnitees from any and all Losses incurred by Advertiser Indemnitees in connection with such Advertiser Claims.

22.2 Advertiser will defend Agency Indemnitees from and against any and all Claims which any of them may suffer or incur, or which may be asserted against any of them in whole or in part, to the extent by reason of, or to the extent in connection with, the following:

- 22.2.1 Advertiser Materials, including the inaccuracy, incompleteness or impropriety of information provided by Advertiser to Agency;
- 22.2.2 any breach of Advertiser's representations, warranties and covenants set forth in this Agreement;

- 22.2.3 acts by Advertiser of gross negligence or willful misconduct;
- 22.2.4 death, injury to person or damage to tangible property arising from use of Advertiser's products; or
- 22.2.5 payments for authorized Third Party Costs that Advertiser fails to pay in accordance with this Agreement (22.2.1-22.2.5, collectively, "**Agency Claims**").

Advertiser will further indemnify and hold harmless Agency Indemnitees from any and all Losses incurred by Agency Indemnitees in connection with such Agency Claims.

22.3 Indemnification obligations are subject to the Indemnified Party complying with the following process in the event that a Claim arises:

22.3.1 the Indemnified Party must promptly notify the Indemnifying Party in writing of the Claim for which it is seeking indemnification;

22.3.2 the Indemnified Party must not make any admission of liability, settlement or compromise without the prior written consent of the Indemnifying Party;

22.3.3 the Indemnified Party must give the Indemnifying Party express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such Claim, provided that the Indemnifying Party regularly consults the Indemnified Party on the conduct and defense of the Claim and does not settle or compromise such Claim without the prior written consent of the Indemnified Party, which will not be unreasonably withheld;

22.3.4 the Indemnified Party must provide the Indemnifying Party with all available information and assistance in relation to such Claim as the Indemnifying Party may reasonably require at the Indemnifying Party's cost and expense; and

22.3.5 Notwithstanding Section 22.3.3 above, if within ninety (90) days after the Indemnifying Party's receipt of notice of any such Claim, the Indemnifying Party fails to take action to defend or settle such Claim, the Indemnified Party may at the Indemnifying Party's expense undertake the defense, compromise or settlement of the Claim as it sees fit upon written notice to the other Party.

22.4 Nothing in this Agreement will exclude or in any way limit either Party's: (i) indemnification obligations, (ii) breach of its confidentiality obligations, (iii) gross negligence or willful misconduct, or (iv) any other liability to the extent such liability may not be excluded or limited as a matter of law.

22.5 Subject to Section 22.4, in no event will either Party be liable under or in connection with this Agreement for:

22.5.1 loss of actual or anticipated income or profits;

22.5.2 loss of goodwill or reputation;

22.5.3 loss of anticipated savings; or

22.5.4 any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

23. Insurance and Risk Management

23.1 Agency will take out and maintain insurance policies to the values set forth in Schedule 5. Upon Advertiser's reasonable request Agency will provide Advertiser with evidence that such insurance is in place.

23.2 Agency will implement risk management processes to reduce risks to the maximum extent possible, including risks associated with patent infringement. Upon the request of Advertiser, Agency will provide Advertiser with its risk management protocol, which protocol will be subject to Advertiser's reasonable approval. Should Advertiser fail to approve any part of Agency's protocol, Agency will take such steps as necessary to address and correct any deficiencies cited by Advertiser.

24. Intellectual Property

24.1 Agency acknowledges that, as between Agency and Advertiser, Advertiser will own all rights, title and interest (including all Intellectual Property Rights) in and to any Advertiser Materials and Advertiser Data (including any modifications or adaptations of such Advertiser Materials or Advertiser Data produced in the course of providing the Services). Advertiser hereby grants to Agency a non-exclusive, non-transferrable license during the Term to use Advertiser Materials and Advertiser Data solely for the purposes of providing the Services.

24.2 Agency acknowledges and agrees that all Deliverables will constitute "works made for hire" and belong exclusively to Advertiser. To the extent that the ownership of any Deliverable or other original works of authorship do not vest in Advertiser by operation of law and in accordance with the foregoing, Agency hereby agrees, and will cause its Associates to agree, to the extent permitted by law, to irrevocably assign and hereby does irrevocably assign to Advertiser all of its and their respective rights, title and interest in and to any and all Deliverables and any and all proprietary rights contained therein. Agency will ensure and hereby agrees that all Associates creating such Deliverables have executed a work-for-hire agreement and/or assigned to Agency (or Advertiser directly) all of their rights in such Deliverables on terms no less favorable to Advertiser than those set forth herein.

24.3 Advertiser acknowledges and agrees that Agency Information may be incorporated, in whole or part, into the Deliverables and that, notwithstanding any other provision of this Agreement, Agency retains all rights and interest in and to Agency Information subject only to a perpetual, royalty-free, non-exclusive, non-transferrable worldwide irrevocable license granted to Advertiser and its current and future Affiliates to use, modify, amend, create derivative works or otherwise alter such Agency Information solely to the extent necessary for Advertiser to use the Deliverables for its intended purpose. The foregoing license includes the right to grant any of the foregoing rights to third parties engaged by Advertiser or any of its Affiliates, provided that such third parties use the foregoing solely for the benefit of Advertiser or such Affiliates. Agency will seek Advertiser's prior written approval before incorporating third party materials into Deliverables and shall inform Advertiser in writing if Advertiser's ownership of Deliverables will be limited in any way by the rights of third parties.

24.4 Agency agrees, at Advertiser's request and expense, to take all such actions and execute all such documents as are necessary (in Advertiser's reasonable opinion) to enable Advertiser to obtain, defend or enforce its rights in the Deliverables, and will not do or fail to do any act which would or might prejudice Advertiser's rights under this Section 24.

25. Termination

25.1 Advertiser may terminate this Agreement and the Annual Scope of Work at any time after expiration of the Initial Period without cause by giving not less than ninety (90) days prior written notice to Agency.

25.2 Agency may terminate this Agreement and the Annual Scope of Work at any time after expiration of the Initial Period without cause by giving not less than one hundred and eighty (180) days prior written notice to Agency.

25.3 Advertiser may cancel or terminate a Project at any time subject to the provisions of Section 12.

25.4 Advertiser may cancel or terminate this Agreement at any time in the event of a change of ownership of Agency.

25.5 Either Party may terminate this Agreement or any Project immediately upon written notice to the other Party:

25.5.1 pursuant to Section 27 (Force Majeure);

25.5.2 in the event of any material breach of this Agreement by the other Party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the Party not in default of a written notice on the defaulting Party, specifying the nature of the breach and requiring such breach to be remedied;

25.5.3 if the other Party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due;

25.5.4 if the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal or enters into any compromise or arrangement with its creditors (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other Party with other companies);

25.5.5 if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of that other Party (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other Party with other companies); or

25.5.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party.

26. Consequences of Termination

- 26.1 Termination of a Project in accordance with the terms of this Agreement by either Party will not serve to terminate this Agreement, which will continue in full force and effect.
- 26.2 Upon termination of this Agreement under Section 25.1 or 25.4, all outstanding Scope of Works will also be terminated.
- 26.3 Upon termination of this Agreement, the Annual Scope of Work or a Project:
- 26.3.1 Except if termination is by Advertiser pursuant to Section 25.5.2, Advertiser will pay Agency all Fees, Expenses and Third Party Costs due to Agency (in accordance with Section 12 where relevant) during the notice period;
- 26.3.2 Each Party will on the reasonable request of the other Party promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Scope of Work, and will on the request of the other Party certify in writing that the same has been done;
- 26.3.3 Agency will co-operate in transferring, with the approval of the relevant third parties, all reservations, contracts and arrangements with third parties, to Advertiser or any successor agency of Advertiser;
- 26.3.4 Agency will return all outstanding monies to Advertiser in accordance with the timeframes agreed under this Agreement, including all Unbilled Media balances and Rebates and Incentives; and
- 26.3.5 Agency will provide Rebates and Incentives declarations and return Rebates and Incentives to Advertiser in accordance with the terms of this Agreement for all periods in which Advertiser's spend contributes, directly or indirectly, including all periods post termination.

27. Force Majeure

In the event that either Party will be rendered wholly or partially unable to carry out its obligations under this Agreement due to Force Majeure, then the performance of either Party or both Parties, as they are affected by such cause, will be excused during the continuance of any inability so caused, but such inability will be remedied with all reasonable dispatch. In the event such Force Majeure affecting either Party continues for more than thirty (30) days, the Party not subject to the Force Majeure may terminate this Agreement. During the period of a Force Majeure, Advertiser will be entitled to seek an alternative service provider at its own cost with respect to the Services affected. Advertiser will be relieved of the obligation to pay any Fees or any other charges for the provision of the affected Services throughout the duration of such Force Majeure. Notwithstanding the foregoing, in no event will any delay caused by a strike or other labor dispute within Agency excuse Agency's obligation to perform as required under this Agreement.

28. Notices

- 28.1 A notice given to a Party under or in connection with this Agreement will be in writing and sent to the Party at the address given in this Agreement or as otherwise notified in writing to the other Party, and addressed to **[Insert Job Titles of Each Party]**.
- 28.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On Signature of a delivery receipt.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the second Business Day after posting.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Business Day after posting.

- 28.3 For the purpose of this Section and calculating receipt, all references to time are to local time in the place of deemed receipt.
- 28.4 This Section does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

29. Assignment and Sub-Contracting

- 29.1 Without limiting the generality of Section 2.2, Agency will not be entitled to sub-contract its performance of the Services without the prior written approval of an Authorized Advertiser Approver.
- 29.2 In the event that Advertiser authorizes Agency to sub-contract its performance of the Services in accordance with Section 29.1:
 - 29.2.1 any sub-contracting will not relieve Agency from its obligations to Advertiser under this Agreement, including its obligations of transparency and to avoid Conflicts of Interest;
 - 29.2.2 Agency will ensure that any agreement it enters into which relates solely to the Services for Advertiser will be assignable to Advertiser at Advertiser's request and include a provision stating that Advertiser is the intended third party beneficiary of the subcontractor's obligations under its agreement with Agency and that Advertiser will have the right to directly enforce the terms and conditions of the agreement; and
 - 29.2.3 Advertiser will have the right to require Agency to discharge any subcontractor that is no longer reasonably acceptable to Advertiser.

29.3 This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement is personal to Agency, and Agency may not directly or indirectly assign this Agreement [(by operation of law or otherwise) / (whether by agreement, divestiture, reorganization, asset transfer, transfer of securities, merger, consolidation or otherwise)] or any of its rights or obligations under the Agreement without the prior written consent of Advertiser, including full or partial assignment, delegation to any agent or subcontractor, and any purported assignment not permitted hereunder will be null and void.

30. Publicity

30.1 Agency and Agency Affiliates, together with their respective Associates will not, without Advertiser's prior written consent and a potential applicable fee in each instance, use Advertiser's or any of its Affiliates', divisions' or brands' names or logos, or any of its employees' or agents' names or identities, or refer to any of them in any media release, public announcement or public disclosure relating to this Agreement or any Scope of Work including any promotional materials, web sites, customer lists, referral lists or business presentation.

30.2 No attribution to Agency or any Agency Affiliate will appear on any Advertiser Properties, advertisement or other advertising material, without Advertiser's written prior approval by an Authorized Advertiser Approver. Agency and Agency Affiliates may not link to any Advertiser Properties without Advertiser's written prior approval by an Authorized Advertiser Approver. Any approvals granted hereunder may be rescinded at any time.

31. Data Protection

31.1 Each Party warrants to the other that it is and will continue to be in compliance with, and be appropriately notified under, the terms of any applicable Data Protection Legislation and any other relevant data protection laws, legislation and regulation.

31.2 Unless otherwise agreed by an Authorized Advertiser Approver in writing, Agency agrees for itself and Agency Affiliates and shall ensure that Media Owner Group Members and Vendors agree by contract or otherwise that:

31.2.1 they will not collect or retain Advertiser Data;

31.2.2 all Advertiser Data is owned by Advertiser;

31.2.3 Advertiser shall have the right to access, store or otherwise download, export, track, transfer or use Advertiser Data;

31.2.4 they will delete Advertiser Data in accordance with Advertiser's direction;

31.2.5 they will not disclose, sell, assign, lease or otherwise provide Advertiser Data to third parties;

31.2.6 they will not commercially exploit Advertiser Data on behalf of itself or third parties;

31.2.7 they will not aggregate Advertiser Data with the data of any third party; and

- 31.2.8 they will not use the Advertiser Data for any purpose other than for the provision of Services.
- 31.3 Agency will process Advertiser Data in the course of providing the Services as a data processor on behalf of Advertiser. Agency will process Advertiser Data solely in accordance with Advertiser's instructions and such policies as may be provided by Advertiser from time to time and only for the purpose of providing the Services. Advertiser shall have the right to require that Agency use specific Vendors with respect to where, how and in what manner Advertiser Data is used and stored.
- 31.4 Agency will not and will ensure that its Associates do not use cookies to collect data from any individual who has opted out of receiving cookies from Agency or Advertiser whether through Agency's own notice and consent mechanisms or those provided on Advertiser Properties.
- 31.5 Where Agency or its Associates uses any Agency Data in the course of providing the Services Agency will ensure that all such use is in accordance with Data Protection Legislation and that any required consents have been provided by the data subjects.
- 31.6 Where Agency or its Associates processes PII on behalf of Advertiser, then Agency will, and will procure that its Associates will:
- 31.6.1 process such data solely in accordance with Advertiser's instructions from time to time and in accordance with its duties under Data Protection Legislation;
 - 31.6.2 adopt and maintain reasonably appropriate security and organizational measures against unauthorized, unlawful processing, accidental loss or destruction of such data;
 - 31.6.3 notify Advertiser promptly in the event that it or its Associates receive any request from a data subject for access to that person's personal data, where such personal data is processed by or on behalf of Agency as part of the Services; and
 - 31.6.4 notify Advertiser promptly in the event that it or its Associates receive any complaint, notice or communication that relates directly to its compliance with Data Protection Legislation and/or the processing of personal data under or in connection with this Agreement.

32. General

- 32.1 This Agreement will take precedence over and supersedes any other agreements or terms and conditions between Advertiser and Agency and Agency Affiliates relating to Media Placements (including, but not limited to, any trading desk or inventory media terms and conditions which are made available to Advertiser from time to time). Any attempt to amend this Agreement by the Parties will not be valid unless signed by the Authorized Advertiser Approver in writing. For the avoidance of doubt, the Signature or acceptance by a member of staff of Advertiser to other contractual terms with Agency or Agency Affiliates will not be valid, unless and until the Authorized Advertiser Approver has signed such contractual terms.
- 32.2 Unless the context otherwise requires, the words "include" and "including" will be construed without limitation.

- 32.3 The failure of either Party to enforce or exercise at any time any term or any right under this Agreement does not constitute and will not be construed as a waiver of such term or right and will in no way affect that Party's later right to enforce or to exercise it.
- 32.4 Provisions of this Agreement which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination (including audit provisions) will remain in full force and effect notwithstanding termination of this Agreement.
- 32.5 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term will, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and will in no way affect the legality, validity or enforceability of the remaining terms provided that if any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it valid.
- 32.6 This Agreement contains all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. Each of the Parties acknowledges and agrees that:
- 32.6.1 in entering into this Agreement it has not relied on, and will have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and
- 32.6.2 its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement will be for breach of contract as provided in this Agreement. Nothing in this Section 32.6.2 will, however, operate to limit or exclude any liability for fraud.
- 32.7 No modification or variation of this Agreement will be valid unless it is in writing and signed by each of the Parties. Unless expressly set out in this Agreement, no modification or variation of this Agreement will:
- 32.7.1 be valid if made by e-mail;
- 32.7.2 be construed as a general waiver of any provisions of this Agreement; or
- 32.7.3 affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and obligations of the Parties will remain in full force and effect, except and only to the extent that they are so modified or varied.
- 32.8 Except as set forth in Section 2.1, nothing in this Agreement is intended to or will operate to create a partnership or joint venture of any kind between the Parties or to authorize either Party to act as agent for the other, and neither Party will have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 32.9 Nothing in this Agreement, express or implied, will create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

- 32.10 This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by PDF file (portable document format file) will be as effective as delivery of a manually executed counterpart of this Agreement.
- 32.11 In this Agreement, references to Sections, schedules and appendices are to Sections of and schedules to and appendices to this Agreement. Where any provision contained in the Schedules or a Scope of Work conflicts with any provision of the General Terms the following order of precedence will apply (unless otherwise expressly stated in the Scope of Work):
- 32.11.1 Schedules;
 - 32.11.2 General Terms;
 - 32.11.3 Scope of Work;
- 32.12 Paragraph headings in this Agreement are for ease of reference only and will be disregarded in construing or interpreting the Agreement.
- 32.13 For purposes of this Agreement, whenever the context requires:
- 32.13.1 the singular number shall include the plural, and vice versa;
 - 32.13.2 the masculine gender shall include the feminine and neuter genders, the feminine gender shall include the masculine and neuter genders, the neuter gender shall include the masculine and feminine genders; and
 - 32.13.3 the words include and including, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words without limitation.
- 32.14 Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.
- 32.15 This Agreement will be governed by and construed in accordance with the laws of the State of [State] applicable to contracts made and performed in such State without regard to conflicts of law principles. The Parties irrevocably submit to the exclusive jurisdiction of any federal or state court located within the City of [City], County of [County], and State of [State] over any dispute arising out of or relating to this Agreement and each Party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action, or proceeding related thereto may be heard and determined in such courts. The Parties irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Signed by:.....

by (print name):.....

As an Authorized Agency Approver for and on behalf of

[Agency]

Date.....

Signed by:.....

by (print name):.....

As an Authorized Advertiser Approver for and on behalf of

[Advertiser]

Date.....

Schedule 1

Template Scopes of Work

Part 1 - Annual Scope of Work

This Annual Scope of Work is issued pursuant to and is in accordance with the Master Media Buying Services Agreement entered into between the parties dated [Insert Effective Date of Agreement].

Accounts

[Specify Advertiser products/brands in relation to which Agency will be providing services]

Territory

[If services will be supplied outside the United States, then specify any additional territories]

Advertiser Affiliates

[If relevant, specify any Advertiser Affiliates that you wish to be able to enforce the terms of the agreement]

Services/Deliverables

[Describe the Services and Deliverables to be supplied by Agency including any service levels – if only certain types of media will be covered then this should be clarified. In some cases, for example where Agency will be providing creative services, the purpose of the Deliverables and how Advertiser intends to make use of them should be stated, as this information will be relevant with respect to the third party licenses, consents and clearances that Agency needs to obtain.]

Example headings and service descriptions:

Media Planning (including all traditional and digital media)

- General account management of full media strategy and planning service
- Development and analysis of Advertiser's paid media strategy
- Supply of detailed Media Plans and any updates or amendments to those plans (as required)
- Identification and selection of channels and setting relevant Goals per channel
- Budget setting, analysis and justification
- Providing regular insights, market updates, training and know how sharing on topics relevant to Advertiser's media planning including upcoming trends and developments
- Monitoring paid media activities of Advertiser's competitors and providing [Insert Frequency, e.g., Monthly] overview

- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)

Media Buying (including all traditional and digital media)

- General account management of full media buying service
- Negotiation of agreements and placing of orders with Media Owners (including negotiation of optimized rebates/discounts and payment terms)
- Campaign optimization
- Monitoring of placements and compliance with agreements by Media Owners (e.g. ensuring that placements reflect the relevant orders and invoices, Advertiser guidelines have been followed, etc.)
- Pre- and post-campaign analysis and reporting. Media Placement reporting should include at minimum (where relevant):
 - Webpage (URL) placement of all impressions, and instances of non-approved placements (whitelist/blacklist).
 - Performance versus all agreed target metrics (for example audience, CPM, click-through rates).
 - Declaration of all audience extension/sourced traffic unless otherwise agreed.
 - Viewability rates at the agreed standards (for example, percentage of advertisement and duration), after deduction of invalid traffic (for example, invalid impressions).
 - Presence of invalid traffic by Media Owner/webpage.
 - Reporting of underperformance of trades based on viewable impressions, with associated compensation methodology.
 - Completion rates for all online video.
 - Actual net cost of all placements by Media Owner/site and format, in aggregated and individual form.
 - Click-through rates or other agreed metrics by Media Owner/site and format.
- Online audience measurement through third party tools, such as Nielsen OCR
- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)

Fees and Expenses

[Describe how the fees and expenses payable to Agency will be calculated (e.g. whether they will be paid on a commission basis, via a fixed fee, on a time/materials basis, etc.). It may be that the parties decide to use a combination of these different methods, impose maximum or minimum fee caps, etc. If fees will be charged on a time/materials basis, then Agency's standard rate card should be attached. If reconciliation is necessary, include language regarding reconciliation of payables vs. receivables, e.g., on a quarterly basis. Relevant invoice dates or milestones that trigger payment should be stated. The rules that apply to the recovery of expenses should also be set out here.]

Examples of different wording for Fees:

Commission

The Fees will be calculated on the following basis: Advertiser will pay Agency a commission of [Insert Percentage Number] % ("Agreed Commission") of the Net Media Spend. For the avoidance of doubt, the Agreed Commission will be payable in addition to all Third Party Costs.

Annual Fee

Advertiser will pay Agency the Fee of \$[Insert Amount] in respect of each Year of the Services, payable in equal monthly installments. For the avoidance of doubt, the Fee will be payable in addition to all Third Party Costs.

This Fee is fixed for each Year of this Agreement and will not be increased or decreased unless the parties mutually agree to amend the Annual Scope of Work in accordance with Section 12.

Time Charges

The Fees will be calculated using the hourly charge out rates shown in the Annual Scope of Work. For the avoidance of doubt, the Fees will be payable in addition to all Third Party Costs.

Payment By Results

In addition to the Fees set out above, if Agency meets the criteria specified in this Annual Scope of Work for a performance related payment, Advertiser will also pay Agency the performance related payment.

Timetable

[Detail any timelines for different phases of the Services or key milestones in the supply of the Deliverables]

Advertiser Materials

[Provide details of any materials or information that Advertiser will provide to Agency (e.g. documents, imagery, etc.)]

License Duration and Purpose

[State the purposes for which any licenses are granted under Section 24, their duration and any other applicable restrictions]

Key Individuals

[Insert details of key employees from Agency that you wish to be involved in providing the Services, if relevant]

Authorized Agency Approver

[Insert details of the individual(s) who have the authority to agree decisions on behalf of Agency in relation to the Services]

Authorized Advertiser Approver

[Insert details of the individual(s) who have the authority to agree decisions on behalf of Advertiser in relation to the Services]

Special Terms

[Provide any special terms which you wish to take precedence over the General Terms and/or the Schedules]

Additional Appendices

[Insert]

Part 2 - Project Scope of Work

This Project Scope of Work is issued pursuant to and is in accordance with the **Master Media Buying Services Agreement** entered into between the parties dated **[Insert Effective Date of Agreement]**.

Project

[Provide an overview of the Project]

Project Commencement Date

[Set out the date on which the Project will commence]

Project Term

[Set out the duration of the Project]

Project Completion Date

[Set out the date on which the Project will complete]

Accounts

[Specify Advertiser products/brands in relation to which Agency will be providing services]

Territory

[If services will be supplied outside the United States, then specify any additional territories]

Advertiser Affiliates

[If relevant, specify any Advertiser Affiliates that you wish to be able to enforce the terms of the Agreement in relation to the Project]

Services/Deliverables

[Describe the Services and Deliverables to be supplied by Agency for this Project including any service levels. If only certain types of media will be covered then this should be clarified. In some cases, for example where Agency will be providing creative services, the purpose of the Deliverables and how Advertiser intends to make use of them should be stated, as this information will be relevant with respect to the third party licenses, consents and clearances that Agency needs to obtain. Example headings and service descriptions]:

Media Planning (including all traditional and digital media)

- General account management of full media strategy and planning service
- Development and analysis of Advertiser's paid media strategy

- Supply of detailed Media Plans and any updates or amendments to those plans (as required)
- Identification and selection of channels and setting relevant Goals per channel
- Budget setting, analysis and justification
- Providing regular insights, market updates, training and know how sharing on topics relevant to Advertiser's media planning including upcoming trends and developments
- Monitoring paid media activities of Advertiser's competitors and providing [Insert Frequency, e.g., Monthly] overview
- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)

Media Buying (including all traditional and digital media)

- General account management of full media buying service
- Negotiation of agreements and placing of orders with media vendors/owners (including negotiation of optimized rebates/discounts and payment terms)
- Campaign optimization
- Monitoring of placements and compliance with agreements by media vendors/owners (e.g. ensuring that placements reflect the relevant orders and invoices, Advertiser guidelines have been followed, etc.)
- Pre- and post-campaign analysis
- Online audience measurement through third party tools such as Nielsen OCR
- Cooperating fully with Advertiser strategic partners (e.g. Google, Facebook, Twitter, etc.) and third party technology providers (e.g. Data Management Platforms or Demand Side Platforms)
- Working in full collaboration with other agencies instructed by Advertiser (at Advertiser's request)

Fees and Expenses

[Describe how the fees and expenses payable to Agency will be calculated (e.g. whether they will be paid on a commission basis, via a fixed fee, on a time/materials basis, etc.). It may be that the parties decide to use a combination of these different methods, impose maximum or minimum fee caps, etc. If fees will be charged on a time/materials basis then Agency's standard rate card should be attached. Relevant invoice dates or milestones that trigger payment should be stated. The rules that apply to the recovery of expenses should also be set out here. Examples of different wording for Fees:]

Commission

The Fees will be calculated on the following basis: Advertiser will pay Agency a commission of [Insert Percentage Amount] % (“Agreed Commission”) of the Net Media Spend. For the avoidance of doubt, the Agreed Commission will be payable in addition to all Third Party Costs.

Annual Fee

Advertiser will pay Agency the Fee of \$[Insert Amount] in respect of each Year of the Services, payable in equal monthly instalments. For the avoidance of doubt, the Fee will be payable in addition to all Third Party Costs.

Time Charges

The Fees will be calculated using the hourly charge out rates shown in the Project Scope of Work. For the avoidance of doubt, the Fees will be payable in addition to all Third Party Costs.

Payment By Results

In addition to the Fees set out above, if Agency meets the criteria specified in this Project Scope of Work for a performance related payment, Advertiser will also pay Agency the performance related payment.

Timetable

[Detail any timelines for different phases of the Services or key milestones in the supply of the Deliverables]

Advertiser Materials

[Provide details of any materials or information that Advertiser will provide to Agency (e.g. documents, imagery, etc.)]

License Duration and Purpose

[State the purposes for which any licenses are granted under Section 24, their duration and any other applicable restrictions]

Key Individuals

[Insert details of key employees from Agency that you wish to be involved in the Project, if relevant]

Authorized Agency Approver

[Insert details of the individual(s) who have the authority to agree decisions on behalf of Agency in relation to the Project]

Authorized Advertiser Approver

[Insert details of the individual(s) who have the authority to agree decisions on behalf of Advertiser in relation to the Project]

Special Terms

[Provide any special terms which you wish to take precedence over the General Terms and/or the Schedules]

Additional Appendices

[Insert]

Schedule 2

Holding Company Acknowledgement and Agreement

[Advertiser]
[Street Address]
[City, State and Zip]
Attn: [Advertiser CFO or CMO]

[Date]

To Whom it May Concern:

Reference is hereby drawn to a certain Master Media Buying Services Agreement by and between [Agency] (“Agency”) and [Advertiser] (“Advertiser”) effective as of [Month] [Day], 20____ (the “Agreement”).

Wherever in this letter references appear in capital letters, such references shall be as defined in the Agreement.

For good and valuable consideration, the receipt whereof is hereby acknowledged and as an inducement for Advertiser to enter into the Agreement with Agency, the undersigned, on behalf of [Holding Company] (“Holding Company”), acknowledges and agrees as follows:

- Holding Company fully understands the Agreement;
- Transparency in all financial matters relating to payments made by Advertiser to Agency for Media Placements is of utmost importance;
- To verify the accuracy and transparency of Agency’s Services under the Agreement, Advertiser requires the right to audit contracts, documents and information relating to the Agency and Agency Affiliates;
- Advertiser is entitled to and will receive all Rebates and Incentives allocated to Advertiser as provided in the Agreement;
- Holding Company will and will ensure that it and its Affiliates comply with Section 18 (Audit and Access to Records) of the Agreement should Advertiser request that they do so;
- In all other respects where the Agreement imposes obligations or duties on the Holding Company or Agency Affiliates, the Holding Company agrees and will cause its Affiliates to comply with such obligations and duties;
- Holding Company will take all reasonable efforts to ensure that it and its Affiliates do not engage in activities that constitute Conflicts of Interest.

Very truly yours,

[Holding Company]

By: _____

Name: _____

Title: _____

Schedule 3

Annual Financial Compliance Certification

[Date]

[Full Name of Advertiser CFO]

[Advertiser]

[Address]

[Address]

[City, State ZIP]

Re: Annual Financial Compliance Certification

Dear [Advertiser CFO Surname]:

Reference is hereby made to a certain Master Media Buying Services Agreement dated [Date of Execution] between [Advertiser] (“Advertiser”) and [Agency] (“Agency”) and any amendments thereto that may have been entered into by Advertiser and Agency from time to time (collectively the “Agreement”). Capitalized references in this letter are as defined and used in the Agreement.

As the Chief Financial Officer of [Holding Company] (“Holding Company”), parent of Agency, I have read and understand the Agreement and hereby certify that I have conducted an appropriate review of all Services provided under the Agreement and to the best of my knowledge Agency, Holding Company, and Agency Affiliates together with their respective Associates have complied with all financial and disclosure obligations and limitations under the Agreement including, but not limited to the sections of the Agreement relating to Agency Services and Transparency, Rebates and Incentives, Principal or Inventory Mark-Up, Unbilled Media, Confidentiality, and Conflicts of Interest.

Nothing in this letter modifies or amends the respective rights and obligations of Advertiser and Agency under the Agreement.

Very truly yours,

[Holding Company]

By: _____
[Full Name of Holding Company CFO]
Chief Financial Officer

Schedule 4

Holding Company

[Insert Holding Company Corporate Tree]

Schedule 5

Insurance

Agency will at all times during the Term and for two (2) Years thereafter, without limiting Agency's liability to Advertiser, maintain the following insurance coverage:

(i) Worker's Compensation insurance of the type, and amount required to comply with all statutory or regulatory requirements of any nation, state, province or territory having jurisdiction over Agency's employees, including, if applicable, foreign worker's compensation insurance, as well as Employer's Liability insurance with limits of not less than \$1,000,000 per accident for bodily injury by accident and not less than \$1,000,000 for each employee for bodily injury by disease. Such Worker's Compensation Insurance will include a waiver of subrogation in favor of Advertiser as permitted under applicable law and such Employer's Liability insurance will provide defense coverage, with costs of defense outside the limits of liability.

(ii) Commercial General Liability" insurance written on an occurrence basis in an amount of not less than \$10,000,000 per occurrence, and including coverage for (a) premises and operations; (b) bodily injury and broad form property damage, including products and completed operations; (c) personal injury and advertising injury; and (d) contractual liability for bodily injury, property damage, personal injury and advertising injury, including contractual liability assumed by Agency pursuant to this Agreement and including this Agreement as an "insured contract"; (e) independent contractors liability; and (f) work performed by others for Agency. Such insurance will provide defense coverage, with costs of defense outside the limits of liability.

(iii) Automobile liability insurance with limits of not less than \$10,000,000 per occurrence for bodily injury and property damage and including coverage for owned, rented (or hired) and non-owned vehicles. Such insurance will provide defense coverage, with costs of defense outside the limits of liability.

(iv) Commercial Advertising Agency Liability insurance, including contractual liability coverage, and errors and omissions liability insurance, written on a claims made basis with limits of not less than \$10,000,000 per claim.

Such policy will provide coverage for: (A) personal and advertising injury perils including defamation, trade libel, right of publicity, outrageous conduct, infliction of emotional distress, unfair competition and copyright and trademark infringement, (B) negligent supervision of an employee or subcontractor, (C) comparative advertising, (D) temporary and leased personnel, (E) internet advertising content and (F) advertising professional services.

(v) All insurance required herein of Agency will: (i) provide that it is primary and non-contributory to any insurance or self-insurance that is maintained by or otherwise afforded to Advertiser, (ii) with respect to the coverages referenced in the Agreement and Schedules, other than the errors and omissions liability insurance pursuant to section (iv), name Advertiser and its current or future affiliates, and their respective officers, agents, directors and employees as additional insureds, as their interest may appear in this Agreement, and (iii) be placed with insurance carriers licensed in the State of [State] but in no event rated less than A by A.M. Best's Insurance Guide. Umbrella or excess liability insurance may be used to satisfy the limit of liability requirements imposed under this Agreement and Schedules. Cancellation or termination of any insurance policy required of Agency under this Agreement will not relieve Agency of its continuing obligation to maintain insurance coverages in accordance with this Schedule 5. Agency will

either extend its insurance to cover sub-contractors and Vendors or will make commercially reasonable efforts to cause subcontractors and Vendors to maintain commercially reasonable insurance coverage.

(vi) The terms of all insurance policies referred to in this Schedule 5 will provide that Agency and its insurers waive all right of recovery or subrogation against Advertiser. Any self-insured retention or deductible greater than \$10,000 per occurrence for any of the foregoing insurance must be approved by Advertiser in writing and Agency will be solely responsible for payment of any self-insured retention or deductible under the insurance required by this Agreement. To the extent that Agency maintains insurance greater than the minimum requirements set forth above, Agency agrees that such insurance will be applicable to any of Agency's obligations under the Agreement. In specifying minimum insurance requirements in this Agreement, Advertiser does not assert or recommend this insurance is adequate to Agency's requirements. Agency is solely responsible to inform itself of the types or amounts of insurance it may need beyond these requirements to protect itself from liability or loss.

(vii) This Schedule 6 will in no way affect the indemnification, remedies or warranty provisions of this Agreement.

Schedule 6

Codes of Conduct

Advertiser Code of Conduct

[Insert]

Agency Code of Conduct

[Insert]

Schedule 7

Competing or Antithetical Products or Services

[Insert]

Schedule 8

Non-Disclosure Agreement

[Insert]