

TERMS & CONDITIONS

Thank you for choosing Armed Forces Communications, Inc. d.b.a. Refuel (“REFUEL”). REFUEL shall provide services in accordance with the specifications and instructions in the insertion order and the Terms and Conditions that follow, all which are an integral part of any insertion order (together, the “Agreement”). The signing of this Agreement by CLIENT or Advertiser, as applicable, set forth in this Agreement (“CLIENT”) is an acceptance of such Terms and Conditions and the rates for services as set forth in this Agreement. When signed by CLIENT, this Agreement is a legally binding document. Refuel reserves the right to modify this Agreement at any time with 30 day notification.

DEFINITIONS

“**Ad**” means any advertisement provided by CLIENT on behalf of an Advertiser.

“**Advertiser**” means the advertiser for which CLIENT is the agent under an applicable IO.

“**Advertising Materials**” means artwork, copy, or active URLs for Ads.

“**Affiliate**” means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such entity.

“**CPA Deliverables**” means Deliverables sold on a cost per acquisition basis.

“**CPC Deliverables**” means Deliverables sold on a cost per click basis.

“**CPL Deliverables**” means Deliverables sold on a cost per lead basis.

“**CPM Deliverables**” means Deliverables sold on a cost per thousand impression basis.

“**CTR**” means Deliverables measure on a click through

“**Deliverable**” or “**Deliverables**” means the Advertising Services and inventory delivered by REFUEL (e.g., media planning, media buying, impressions, clicks, or other desired actions).

“**IO**” means a mutually agreed insertion order that incorporates these Terms, under which REFUEL will deliver Ads on Sites for the benefit of CLIENT or Advertiser.

“**REFUEL Properties**” are websites and/or media assets specified on an IO that are owned, operated, or controlled by REFUEL.

“**Network Properties**” means websites and/or media assets specified on an IO that are not owned, operated, or controlled by REFUEL, but on which REFUEL has a contractual right to place or serve Ads.

“**Policies**” means advertising criteria or specifications made conspicuously available, including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with REFUEL’s public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the Site on which the Ads are to appear), other editorial or advertising policies, and Advertising Materials due dates.

“**Representative**” means, as to an entity and/or its Affiliate(s), any director, officer, employee, consultant, contractor, agent, and/or attorney.

“**Site**” or “**Sites**” means REFUEL Properties and Network Properties.

“**Third Party**” means an entity or person that is not a party to an IO; for purposes of clarity, REFUEL, Agency, Advertiser, and any Affiliates or Representatives of the foregoing are not Third Parties.

“**Third Party Ad Server**” means a Third Party that will serve and/or track Ads.

“**Inventory**”

1) INVENTORY AVAILABILITY

- a) Availability; Acceptance. REFUEL will make commercially reasonable efforts to notify CLIENT within five (5) business days of receipt of an IO signed by CLIENT if the specified inventory is not available. Acceptance of the IO and these Terms will be deemed the earlier of (i) written (which, unless otherwise specified, for purposes of these Terms, will include paper, fax, or e-mail communication) approval of the IO by REFUEL and CLIENT, or (ii) the initiation of the specified campaign details by REFUEL, unless otherwise agreed on the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless approved in writing by both REFUEL and CLIENT.

- b) Revisions. Revisions to accepted IOs will be made in writing and acknowledged by the other party in writing.

2) **AD PLACEMENT AND POSITIONING**

- a) Compliance with IO. REFUEL will comply with the IO, including all Ad placement restrictions, and, except as set forth in Section 6(c), will create a reasonably balanced delivery schedule.
- b) Changes to Site(s). REFUEL will use commercially reasonable efforts to provide CLIENT at least 10 business days prior notification of any material changes to any Site planned for inventory delivery that would materially change the target audience or materially affect the size or placement of the Ad specified on the applicable IO. Should such a modification occur with or without notice, as CLIENT's and Advertiser's sole remedy for such change, CLIENT may cancel the remainder of the affected placement without penalty within the 10-day notice period. If REFUEL has failed to provide such notification, CLIENT may cancel the remainder of the affected placement within 30 days of such modification and, in such case, will not be charged for any affected Ads delivered after such modification.
- c) Mechanicals & Technical Specifications. REFUEL will submit or otherwise make electronically accessible to CLIENT final mechanical & technical specifications for any placements itemized herein within five (5) business days of the acceptance of an IO. Changes by REFUEL to the specifications of already-purchased Ads after that five (5) business day period will allow Advertiser to suspend delivery of the affected Ad for a reasonable time (without impacting the end date, unless otherwise agreed by the parties) in order to (i) send revised Advertising Materials; (ii) request that REFUEL resize the Ad at REFUEL's cost, and with final creative approval of CLIENT, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within five (5) business days, immediately cancel the remainder of the affected placement without penalty.

3) **PAYMENT AND PAYMENT LIABILITY**

- a) Invoices. The initial invoice will be sent by REFUEL upon completion of the first month's delivery, or within sixty (60) days of completion of the IO if applicable **and payable in full within 30 days of the date invoiced**. Invoices will be sent to CLIENT's billing address as set forth on the IO and will include information reasonably specified by CLIENT, such as the IO number, Advertiser name, brand name or campaign name, and any number or other identifiable reference stated as required for invoicing on the IO. All invoices (other than corrections of previously provided invoices) pursuant to the IO will be sent within 90 days of delivery of all Deliverables and/or upon availability of proof of performance as required pursuant to this IO. REFUEL will invoice CLIENT for the services provided on a calendar-month basis based on actual delivery, flat-fee, or based on prorated distribution of delivery over the term of the IO, as specified or otherwise stated herein.
- b) If any item on an invoice is disputed, Client shall, within fourteen (14) days of receipt of the invoice, notify REFUEL of the disputed item(s) in writing. Payment of the disputed portion of an invoice may be withheld until the dispute is resolved. However, if the dispute is resolved in favor of REFUEL, REFUEL shall be entitled to interest at a rate of 1-1/2% percent per month on the withheld portion of the invoice from the invoice due date until paid in full. If no written notice of disputed items is received by REFUEL within fourteen (14) days of receipt of an invoice, the CLIENT shall be deemed to have accepted all invoice items and may not in the future contest any item therein set forth.
- c) All rates do not include any sales and/or use tax, which are the sole responsibility of the CLIENT and, if imposed on REFUEL, shall be billed back to CLIENT as an incremental charge. The rates hereunder are not subject to any reduction for early payment, commissions or any other similar charges to any agent unless expressly provided for in this Agreement, and if so provided, such adjustments shall serve to reduce amounts invoiced by REFUEL hereunder only if payment of such invoices are made when due.
- d) All past due balances are subject to an interest charge at a rate of one and one-half (1 & 1/2%) percent per month. Should CLIENT be late in payment, then, following not less than ten (10) days' notice to CLIENT, REFUEL shall have the right to cancel the balance of services hereunder and services under any other agreement between REFUEL and CLIENT. In such event, such services shall be deemed fully completed and CLIENT shall be responsible for and shall immediately pay the balance of any amounts under the applicable insertion orders, whether or not fully delivered.

- e) REFUEL shall have the right to obtain credit information to determine CLIENT's (or CLIENT's principal's, if CLIENT is an agency) credit worthiness to REFUEL's satisfaction. If requested by REFUEL, CLIENT shall provide all information that REFUEL may reasonably require to determine such credit worthiness. In the event CLIENT's (or principal's) credit is or becomes impaired, then, in REFUEL's sole determination, all outstanding invoices shall immediately become due and payable and REFUEL shall have the right to require payment in advance for the balance of services to be delivered.
- f) In the event that REFUEL is required to take legal or any other action including without limitation, the engagement of an attorney or collection company to enforce this Agreement or to collect funds due hereunder, CLIENT shall pay all costs, fees and expenses thereby actually incurred by REFUEL plus accrued interest for any balance due at the rates set forth in this Section 4.

4) **REPORTING & PROOF OF PERFORMANCE**

- a) Confirmation of Campaign Initiation. REFUEL will, provide confirmation to CLIENT, either electronically or in writing, stating whether the components of the IO have been initiated after the IO start date.
- b) Digital: If REFUEL is serving the campaign, REFUEL will make reporting available at least as agreed upon depending on monthly campaign spend and campaign objectives, either electronically or in writing, unless otherwise specified on the IO.
 - i) Reports will be summarized by creative execution, content area (Ad placement), impressions, clicks, spend/cost where applicable, and other variables as may be defined on the IO (e.g., keywords).
 - ii) Once REFUEL has provided the online or electronic report, it agrees that CLIENT is entitled to reasonably rely on it, subject to provision of REFUEL's invoice for such period.
- c) Out-Of-Home ("OOH")
 - i) Refuel Owned OOH:
 - (1) For College Out-of-Home, Proof of Performance will be given in combination of affidavits and photos of ad placement that together reflect between 65% and 75% of the total placement.
 - (2) For Elementary, Middle, and High School Out-of-Home, Proof of Performance will be given in combination of affidavits and photos of ad placement that together reflect a general sampling of the total placement.
 - (3) Such proof of performance shall be made available to the client by email or by means of a link to an online destination no later than 30 days after the end of the campaign.
 - ii) Military OOH: Proof of performance shall consist of a sampling of location photos within 30 days of postdate.
 - iii) General Market OOH: General Market Out of Home: Proof of performance shall consist of a sampling of location photos within 30 days of postdate.
- d) Print Advertising:
 - i) Youth Publications: For College Print Advertising, Proof of Performance will be sent to the client within 15 days to 3 months after placement. Such proof of performance shall be made available to the client through "tears" or "e-tears" – physical newspaper or PDF scan of the ad.
 - ii) Military Publications: Proof of performance shall consist of electronic tearsheet or one physical tearsheet within 90 days of run date unless otherwise specified on the IO.
 - iii) General Market Publications: Proof of performance shall consist of electronic tearsheet or one physical tearsheet within 90 days of run date unless otherwise specified on the IO.
- e) Broadcast: Proof of performance shall consist of post-log and/or signed affidavit within 30 days of run date.
- f) Other Proofs of Performance: All other proof of performance requirements not otherwise set forth shall be as mutually determined by the parties in good faith and set forth in the specifications and/or special instructions of this Agreement."

5) **CANCELLATION AND TERMINATION**

- a) All campaigns are subject to space and service availability at the time a signed Agreement is received by REFUEL. With respect to Out of Home Media, final placement of all ads is at the sole discretion of venue sponsor and is subject to change based on varying contractual agreements and right of final determination clause exercised by

venue partner based on venue policies and procedures. All cancellation requests must be made in writing to REFUEL.

- b) Without Cause. Unless designated on the IO as non-cancelable, CLIENT may cancel the entire IO, or any portion thereof, as follows:
- i) Digital:
 - (1) With 14 days' prior written notice to REFUEL, without penalty, for any guaranteed Deliverable, including, but not limited to, CPM Deliverables. For clarity and by way of example, if CLIENT cancels the guaranteed portions of the IO eight (8) days prior to serving of the first impression, CLIENT will only be responsible for the first six (6) days of those Deliverables.
 - (2) With seven (7) days' prior written notice to REFUEL, without penalty, for any non-guaranteed Deliverable, including, but not limited to, CPC Deliverables, CPL Deliverables, or CPA Deliverables, as well as some non-guaranteed CPM Deliverables as noted herein.
 - (3) With 30 days' prior written notice to REFUEL, without penalty, for any flat fee-based or fixed-placement Deliverable, including, but not limited to, roadblocks, time-based or share-of-voice buys, and some types of cancelable sponsorships.
 - (4) CLIENT will remain liable to REFUEL for amounts due for any custom content or development ("Custom Material") provided to CLIENT or completed by REFUEL or its third-party vendor prior to the effective date of termination. For IOs that contemplate the provision or creation of Custom Material, REFUEL will specify the amounts due for such Custom Material as a separate line item. CLIENT will pay for such Custom Material within 30 days from receiving an invoice therefore.
 - ii) Out of Home ("OOH"): All OOH placements are non-cancelable once contract signed including but not limited to, owned, military, general market billboards and transit locations.
 - iii) Print Advertising: CLIENT may cancel sixty (60) days prior to the Closing Date. "Closing Date" shall be defined as the final date on which REFUEL accepts advertiser commitments for ad placement in a particular print issue, as established by REFUEL in its internal production schedule and previously made known to Client.
 - iv) Broadcast: All broadcast media is non-cancelable unless otherwise stated herein.
 - v) Military Morale, Welfare & Recreation properties ("MWR"): All MWR properties are non-cancelable once contract signed including, but not limited to online, print, on-base and out-of-home.
 - vi) Without limiting the provisions herein, advertising placements in third party publications and third party out of home/location media properties are not cancellable at will and REFUEL reserves the right to require payment in advance prior to making such placements. In the event of cancellation by Client of any services or placements hereunder and regardless of when cancelled, Client shall be responsible for the payment of services or placements provided by REFUEL originally as added-value or at no additional charge to Client. Such charge shall be at the standard REFUEL rates, or, if no published rate exists, at the rate generally charged by REFUEL for such service or placement, including any out of pocket expenses incurred by REFUEL for such services or placements.
 - vii) If notice of cancellation is received later than the deadlines set forth in Section 5(b), then Client shall be responsible for the payment of the entire contracted fee, except in the case of standard online display advertising. For standard online display advertising and subject to the provisions of Section 5(b), Client shall be responsible for the fee for the impressions, video views and/or online activity contracted following the planned start date for a period that is equal to the lesser of (i) thirty (30) days, or (ii) the number of days from the day following receipt of such notice by REFUEL to the contracted end date of the campaign.
 - viii) In all cases, Client shall be liable for and shall pay all out of pocket costs and staff time (including both REFUEL employees and third party staff resources) incurred by REFUEL and not otherwise included in the base contracted fee up to the date of such cancellation. Negotiated rates with any 3rd party that may be adjusted due to any cancellation, will be the responsibility of CLIENT.

- c) For Cause. Either REFUEL or CLIENT may terminate an IO at any time if the other party is in material breach of its obligations hereunder, which breach is not cured within 10 days after receipt of written notice thereof from the non-breaching party, except as otherwise stated in these Terms with regard to specific breaches. Additionally, if CLIENT breaches its obligations by violating the same Policy three times (and such Policy was provided to CLIENT) and receives timely notice of each such breach, even if CLIENT or Advertiser cures such breaches, then REFUEL may terminate the IO or placements associated with such breach upon written notice. If CLIENT does not cure a violation of a Policy within the applicable 10-day cure period after written notice, where such Policy had been provided by REFUEL to CLIENT, then REFUEL may terminate the IO and/or placements associated with such breach upon written notice.

6) **MAKEGOODS**

- a) Makegood Procedure. If actual Deliverables for any campaign fall below guaranteed levels, as set forth on the IO, and/or if there is an omission of any Ad (placement or creative unit), CLIENT and REFUEL will use commercially reasonable efforts to agree upon the conditions of a makegood flight, either on the IO or at the time of the shortfall. If no makegood can be agreed upon, CLIENT may execute a credit equal to the value of the under-delivered portion of the IO for which it was charged. If CLIENT has made a cash prepayment to REFUEL, specifically for the campaign IO for which under-delivery applies, then, if CLIENT and/or Advertiser is reasonably current on all amounts owed to REFUEL under any other agreement for such Advertiser, CLIENT may elect to receive a refund for the under-delivery equal to the difference between the applicable pre-payment and the value of the delivered portion of the campaign. In no event will REFUEL provide a makegood or extend any Ad beyond the period set forth on the IO without the prior written consent of CLIENT.
- b) Notification of Digital Under-delivery. REFUEL will monitor delivery of the Ads, and will notify CLIENT either electronically or in writing as soon as possible (and no later than 14 days before the applicable IO end date unless the length of the campaign is less than 14 days) if REFUEL believes that an under-delivery is likely. In the case of a probable or actual under-delivery, CLIENT and REFUEL may arrange for a makegood consistent with these Terms.
- c) Unguaranteed Digital Deliverables. If an IO contains CPA Deliverables, CPL Deliverables, or CPC Deliverables, the predictability, forecasting, and conversions for such Deliverables may vary and guaranteed delivery, even delivery, and makegoods are not available.

7) **BONUS IMPRESSIONS**

- a) With Third Party Ad Server. Where CLIENT uses a Third Party Ad Server, REFUEL will make reasonable efforts not to deliver more than 10% above the Deliverables specified on the IO without the prior written consent of CLIENT. Permanent or exclusive placements will run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for Third Party Ad Server activity. If a Third Party Ad Server is being used and CLIENT notifies REFUEL that the guaranteed or capped levels stated on the IO have been reached, REFUEL will use commercially reasonable efforts to suspend delivery within 48 hours of receiving such notice.
- b) No Third Party Ad Server. Where CLIENT does not use a Third Party Ad Server, REFUEL may bonus as many ad units as REFUEL chooses unless otherwise indicated on the IO. CLIENT will not be charged by REFUEL for any additional Deliverables above any level guaranteed on the IO.

8) **AD MATERIALS**

- a) All required creative material, sampling product, sampling inserts, scheduling instructions, and other materials to be furnished by Client (collectively, "Materials") must be furnished to REFUEL by no later than the following dates, or such other dates mutually agreed-to in writing by the parties:
- i) Standard online display advertising and email campaigns – five (5) business days prior to the start date of the campaign.
 - ii) Non-standard online display advertising and email campaigns (including integrated videos, widgets/applications, or rich media) – ten (10) business days prior to the start date of the campaign.
 - iii) Location media postings provided by Client – Fifteen (15) business days prior to the scheduled posting date

- iv) All other services – on dates determined by REFUEL and approved by Client in writing (such approval not to be unreasonably withheld or delayed), but always subject to REFUEL’s standard and reasonable technical requirements and procedures.
- b) If any Materials are received by REFUEL after the stated due dates, REFUEL shall employ, without incurring any liability and solely as an accommodation to Client, commercially reasonable efforts to process Materials by the agreed upon start date, or REFUEL may, at its option, not process the Materials, whether received or not, and invoice Client for the entire contracted fee for the applicable service. If REFUEL opts to process such Materials, then Client shall be charged for all out of pocket expenses incurred by REFUEL in connection with the processing of Materials delivered late. REFUEL reserves the right to revise, in a reasonable manner and at any time with notice to Client, the due dates for Materials.
- c) REFUEL shall have the right to review all Materials prior to acceptance and may then and thereafter censor, reject or withdraw Materials that do not meet its standards of content or technical quality, are not appropriate for the targeted age demographic contracted, or due to legal or governmental requirements. In the event such Materials are censored, rejected or planned to be withdrawn, REFUEL shall notify Client. If Client (i) fails to provide Materials required by REFUEL to provide Services hereunder or (ii) if replacement Material is required and not supplied by Client by the required dates set forth above, then in either case REFUEL shall have the right to terminate this Agreement and Client shall be responsible for the payment of the contracted fee for the applicable service. In connection with advertisements, inserts or samples distributed or placed in merchandise catalogs or other print properties, REFUEL reserves the right to remove mentions of postal addresses or URL addresses of websites providing online shopping that are competitors of REFUEL’s print property providers prior to the distribution or placement of such advertisements, inserts or samples. In connection with advertising provided by Client that contains music or audio/visual elements, Client shall be responsible for the payment of any fees, royalties and performance fees to any contributor of any such music or audio/visual elements and shall hold REFUEL harmless in connection therewith.
- d) Advertisers, manufacturers and all advertisements and products to be distributed through sampling and media channels are subject to approval by REFUEL prior to display or distribution.
- e) Prior to the execution of a campaign hereunder and if reasonably required, REFUEL shall prepare production and concept prototypes, mock-ups and /or other materials (together the “Specification Schedule”) for Client’s approval. Such approval, and any other approvals required of Client hereunder, shall not be unreasonably withheld, delayed or conditioned. In the event Client requests changes or alterations to submitted materials that is otherwise in compliance with the Specification Schedule, then REFUEL shall at its option, without incurring any liability or limiting any of its rights hereunder and solely as an accommodation to Client, employ commercially reasonable efforts to accommodate such change requests, but always subject to the Specification Schedule deadlines. If REFUEL is required to incur additional costs or expenditure of human resources due to such change requests, then Client shall be charged for such additional costs at REFUEL’s actual costs or, in the case of expenditure of REFUEL human resources, at REFUEL’s standard card rate for such additional services.
- f) Digital Ad Submissions.
 - i) Late Creative. If Advertising Materials are not received by the IO start date, REFUEL will begin to charge CLIENT on the IO start date on a pro rata basis based on the full IO, excluding portions consisting of performance-based, non-guaranteed inventory, for each full day the Advertising Materials are not received. If Advertising Materials are late based on the Policies, REFUEL is not required to guarantee full delivery of the IO.
 - ii) Compliance. REFUEL reserves the right within its discretion to reject or remove Ads for which the Advertising Materials, software code associated with the Advertising Materials (e.g. pixels, tags, JavaScript), or the website to which the Ad is linked do not comply with its Policies, or that in REFUEL’s sole reasonable judgment, do not comply with any applicable law, regulation, or other judicial or administrative order. In addition, REFUEL reserves the right within its discretion to reject or remove from its Site any Ads for which the Advertising Materials or the website to which the Ad is linked are, or may tend to bring, disparagement, ridicule, or scorn upon REFUEL or any of its Affiliates (as defined below), provided that if REFUEL has reviewed and approved such Ads prior to their use on the Site, REFUEL will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually acceptable alternative Advertising Materials from CLIENT.

- iii) Damaged Creative. If Advertising Materials provided by CLIENT are damaged, not to REFUEL's specifications, or otherwise unacceptable, REFUEL will use commercially reasonable efforts to notify CLIENT within two (2) business days of its receipt of such Advertising Materials.
- iv) No Modification. REFUEL will not edit or modify the submitted Ads in any way, including, but not limited to, resizing the Ad, without CLIENT's approval which may incur additional cost to CLIENT. REFUEL will use all Ads in strict compliance with these Terms and any written instructions provided on the IO.
- v) Ad Tags. When applicable, Third Party Ad Server tags will be implemented so that they are functional in all aspects. In such cases REFUEL will be granted reporting access to the CLIENT'S AdServer with a clear description of all metrics including applicable Floodlight tags. In the event that such access is not given, REFUEL will refrain from campaign launch until resolved. In applicable cases REFUEL'S DBM must be linked to CLIENT'S AdServer (7) business days prior to campaign launch.
- g) Trademark Usage. REFUEL, on the one hand, and CLIENT, on the other, will not use the other's trade name, trademarks, logos, or Ads in any public announcement (including, but not limited to, in any press release) regarding the existence of content of these Terms or an IO without the other's prior written approval.

9) **FORCE MAJEURE**

- a) Generally. A party hereunder shall not be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to fire, flood, accident, earthquakes, telecommunication lines failure, electrical outages, network failures, hosting failures, acts of God, or labor disputes. In the event such delay or default causes the start or continuation of a campaign or service to be delayed in excess of five (5) days, then the parties shall make commercially reasonable efforts to determine a make good adjustment or alternative service. If the parties cannot agree on a make good after good faith deliberation, then REFUEL shall grant a pro rata reduction in the space, time, and/or campaign fees for the period of such delay or default.
- b) Cancellation. If a Force Majeure event has continued for ten (10) business days, REFUEL and/or CLIENT has the right to cancel the remainder of the IO without penalty.

10) **INDEMNIFICATION & LIABILITY**

- a) If Client is an agent and/or agency of an advertiser, it shall disclose its principal(s) to REFUEL and by such disclosure warrants Client's authority to bind its principal(s) to all of the terms and conditions of this Agreement. Client and its principal(s) shall be jointly and severally liable for all payments of account balances due REFUEL, and for all other obligations and warranties made by the other under this Agreement.
- b) Each party shall indemnify, defend and hold the other party, its parent companies, subsidiaries, affiliates and its and their respective officers, employees and agents harmless from and against any and all claims, demands and causes of action, liability, judgments, damages, costs and expenses, including reasonable attorney's fees and court costs (collectively "Claims") arising out of or relating to: (i) any breach of the warranties and representations made by a party to the other hereunder, (ii) any materials provided by either of them to the other, including but not limited to claims that materials provided violate the rights of any third party or statute, and/or (iii) the acts or omissions of a party. In addition and not in limitation of the foregoing, Client shall indemnify, defend and hold REFUEL, its parent companies, subsidiaries, affiliates and their respective officers, employees and agents harmless from and against any and all Claims arising out of or relating to product or samples provided by Client in connection with this Agreement including, but not limited to, Claims related to product liability. If Client is an agent of a principal, then the foregoing indemnifications shall also apply as between REFUEL and the principal.
- c) Other than in connection with its indemnification obligations hereunder, neither party shall be liable to the other for any incidental, consequential, special, or punitive damages or lost or imputed profits or royalties arising out of this Agreement or its termination, whether for breach of warranty or any obligation arising there from or otherwise, whether liability is asserted in contract or tort (including negligence and strict product liability) and irrespective of whether a party has advised or has been advised of the possibility of any such loss or damage. Each

party hereby waives any claims that these exclusions deprive it of an adequate remedy.

11) **WARRANTIES & REPRESENTATIONS , MARKS & PUBLICITY**

- a) Client, and if Client is the agent of a principal, on behalf of such principal warrants and represents that it is the sole owner of Materials delivered to REFUEL for processing in any manner, and that it is the owner of all rights in connection with such Materials, including copyrights, literary, photographic, and musical or, if not the owner of the Materials, Client has secured all necessary permits, clearances and licenses for the utilization of such Materials under this Agreement. Client further warrants and represents that said Materials are (i) free from material defect and do not contain any disabling or malicious device, code, virus, or software that will have an adverse effect on the operability, functionality or performance of users' or REFUEL computers, networks or systems, (ii) are free of any lien or encumbrance, (iii) do not infringe upon or violate any third party right and (iv) are in compliance with all applicable laws and government regulations.
- b) REFUEL warrants and represents that any services provided hereunder shall be in compliance with all applicable laws and government regulations and that materials prepared for Client hereunder (other than materials provided by Client) are free of any lien or encumbrance.
- c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES MAKE NO OTHER WARRANTIES HEREUNDER AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- d) Client hereby grants to REFUEL a non-exclusive, royalty-free, non-sublicenseable worldwide license to use Client's (or Client's principal, if applicable) approved trademarks, trade names, service marks, slogans, logos, and name (collectively "Marks") only as necessary for REFUEL to perform its obligations in accordance with the terms of this Agreement and no other rights or ownership are transferred to REFUEL in connection with the Marks.
- e) Unless otherwise expressly provided for in this Agreement, REFUEL will not disclose to Client, nor shall Client own, any personally identifiable information ("PII") (such as e-mail addresses, names, mailing addresses and phone numbers) collected or otherwise obtained in connection with the provision of services under this Agreement. In the event this Agreement provides for the disclosure of PII to Client, then Client warrants and represents that it shall utilize such PII in compliance with all applicable international, federal, state and local laws and regulations pertaining to the collection and dissemination of PII.
- f) Notwithstanding anything to the contrary herein, Client agrees that REFUEL may, in connection with any marketing materials, presentations, and/or corporate filings and reports, (i) identify Client (or Client's principal, if applicable) as a client and describe the Services and the related campaigns provided hereunder and/or (ii) display or incorporate some or all of the elements of Client Property, in such documentation. Client (or Client's principal, if applicable) shall be depicted in all such instances in a positive light and no display or utilization of Client Property in all such instances shall imply or express any endorsement of REFUEL or of its products and/or services by Client (or by Client's principal, if applicable).

12) **NON-DISCLOSURE, DATA USAGE AND OWNERSHIP, PRIVACY AND LAWS**

- a) Definitions and Obligations. "**Confidential Information**" will include (i) all information marked as "Confidential," "Proprietary," or similar legend by the disclosing party ("**Discloser**") when given to the receiving party ("**Recipient**"); and (ii) information and data provided by the Discloser, which under the circumstances surrounding the disclosure should be reasonably deemed confidential or proprietary. Without limiting the foregoing, Discloser and Recipient agree that each Discloser's contribution to IO Details (as defined below) shall be considered such Discloser's Confidential Information. Recipient will protect Confidential Information in the same manner that it protects its own information of a similar nature, but in no event with less than reasonable care. Recipient shall not disclose Confidential Information to anyone except an employee, agent, Affiliate, or third party who has a need to know same, and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this section. Recipient will not use Discloser's Confidential Information other than as provided for on the IO.

- b) Exceptions. Notwithstanding anything contained herein to the contrary, the term “Confidential Information” will not include information which: (i) was previously known to Recipient; (ii) was or becomes generally available to the public through no fault of Recipient; (iii) was rightfully in Recipient’s possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser; (iv) was developed by employees or agents of Recipient independently of, and without reference to, Confidential Information; or (v) was communicated by Discloser to an unaffiliated third party free of any obligation of confidentiality. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange, or as necessary to establish the rights of either party under these Terms; provided, however, that both Discloser and Recipient will stipulate to any orders necessary to protect such information from public disclosure.
- c) Additional Definitions. As used herein the following terms shall have the following definitions:
- i) “**User Volunteered Data**” is personally identifiable information collected from individual users by REFUEL during delivery of an Ad pursuant to the IO, but only where it is expressly disclosed to such individual users that such collection is solely on behalf of Advertiser.
 - ii) “**IO Details**” are details set forth on the IO but only when expressly associated with the applicable Discloser, including, but not limited to, Ad pricing information, Ad description, Ad placement information, and Ad targeting information.
 - iii) “**Performance Data**” is data regarding a campaign gathered during delivery of an Ad pursuant to the IO (*e.g.*, number of impressions, interactions, and header information), but excluding Site Data or IO Details.
 - iv) “**Site Data**” is any data that is (A) preexisting REFUEL data used by REFUEL pursuant to the IO; (B) gathered pursuant to the IO during delivery of an Ad that identifies or allows identification of REFUEL, REFUEL’s Site, brand, content, context, or users as such; or (C) entered by users on any REFUEL Site other than User Volunteered Data.
 - v) “**Collected Data**” consists of IO Details, Performance Data, and Site Data.
 - vi) “**Repurposing**” means retargeting a user or appending data to a non-public profile regarding a user for purposes other than performance of the IO.
 - vii) “**Aggregated**” means a form in which data gathered under an IO is combined with data from numerous campaigns of numerous Advertisers and precludes identification, directly or indirectly, of an Advertiser.
- d) Use of Collected Data.
- i) Unless otherwise authorized by REFUEL, CLIENT will not: (A) use Collected Data for Repurposing; provided, however, that Performance Data may be used for Repurposing so long as it is not joined with any IO Details or Site Data; (B) disclose IO Details of REFUEL or Site Data to any Affiliate or Third Party except as set forth in Section XII(d)(iii).
 - ii) Unless otherwise authorized by CLIENT or Advertiser, REFUEL will not: (A) use or disclose IO Details of Advertiser, Performance Data, or a user’s recorded view or click of an Ad, each of the foregoing on a non-Aggregated basis, for Repurposing or any purpose other than performing under the IO, compensating data providers in a way that precludes identification of the Advertiser, or internal reporting or internal analysis; or (B) use or disclose any User Volunteered Data in any manner other than in performing under the IO.
 - iii) Advertiser, CLIENT, and REFUEL (each a “**Transferring Party**”) will require any Third Party or Affiliate used by the Transferring Party in performance of the IO on behalf of such Transferring Party to be bound by confidentiality and non-use obligations at least as restrictive as those on the Transferring Party, unless otherwise set forth in the IO.

- e) User Volunteered Data. All User Volunteered Data is the property of Advertiser, is subject to the Advertiser's posted privacy policy, and is considered Confidential Information of Advertiser. Any other use of such information will be set forth on the IO and signed by both parties.
- f) Privacy Policies. CLIENT, Advertiser, and REFUEL will post on their respective Web sites their privacy policies and adhere to their privacy policies, which will abide by applicable laws. Failure by REFUEL, on the one hand, or CLIENT or Advertiser, on the other, to continue to post a privacy policy, or non-adherence to such privacy policy, is grounds for immediate cancellation of the IO by the other party.
- g) Compliance with Law. CLIENT, Advertiser, and REFUEL will at all times comply with all federal, state, and local laws, ordinances, regulations, and codes which are applicable to their performance of their respective obligations under the IO.
- h) CLIENT Use of Data. CLIENT will not: (i) use Collected Data unless Advertiser is permitted to use such Collected Data, nor (ii) use Collected Data in ways that Advertiser is not allowed to use such Collected Data. Notwithstanding the foregoing or anything to the contrary herein, the restrictions on Advertiser in Section XII(d)(i) shall not prohibit CLIENT from (A) using Collected Data on an Aggregated basis for internal media planning purposes only (but not for Repurposing), or (B) disclosing qualitative evaluations of Aggregated Collected Data to its clients and potential clients, and Media Companies on behalf of such clients or potential clients, for the purpose of media planning.

13) **THIRD PARTY AD SERVING AND TRACKING (Applicable if Third Party Ad Server is used)**

- a) Ad Serving and Tracking. REFUEL will track delivery through its ad server and, provided that REFUEL has approved in writing a Third Party Ad Server to run on its properties, CLIENT will track delivery through such Third Party Ad Server. CLIENT may not substitute the specified Third Party Ad Server without REFUEL's prior written consent.
- b) Controlling Measurement. If both parties are tracking delivery, the measurement used for invoicing advertising fees under an IO ("**Controlling Measurement**") will be determined as follows:
 - i) Except as specified in Section XIII(b)(iii), the Controlling Measurement will be taken from an ad server that is certified as compliant with the IAB/AAAA Ad Measurement Guidelines (the "**IAB/AAAA Guidelines**").
 - ii) If both ad servers are compliant with the IAB/AAAA Guidelines, the Controlling Measurement will be the Third Party Ad Server if such Third Party Ad Server provides an automated, daily reporting interface which allows for automated delivery of relevant and non-proprietary statistics to REFUEL in an electronic form that is approved by REFUEL; provided, however, that REFUEL must receive access to such interface in the timeframe set forth in Section XIII(c), below.
 - iii) If neither party's ad server is compliant with the IAB/AAAA Guidelines or the requirements in subparagraph (ii), above, cannot be met, the Controlling Measurement will be based on REFUEL's ad server, unless otherwise agreed by CLIENT and REFUEL in writing.
- c) Ad Server Reporting Access. As available, the party responsible for the Controlling Measurement will provide the other party with online or automated access to relevant and non-proprietary statistics from the ad server seven (7) business days prior to campaign launch. The other party will notify the party with Controlling Measurement if such party has not received such access. If such online or automated reporting is not available, the party responsible for the Controlling Measurement will provide placement-level activity reports to the other party in a timely manner, as mutually agreed to by the parties or as specified in Section IV(b), above, in the case of Ads being served by REFUEL. If both parties have tracked the campaign from the beginning and the party responsible for the Controlling Measurement fails to provide such access or reports as described herein, then the other party may use or provide its ad server statistics as the basis of calculating campaign delivery for invoicing. Notification may be given that access, such as login credentials or automated reporting functionality integration, applies to all current and future IOs for one or more Advertisers, in which case new access for each IO is not necessary.
- d) Discrepant Measurement. If the difference between the Controlling Measurement and the other measurement exceeds 10% over the invoice period and the Controlling Measurement is lower, the parties will facilitate a reconciliation effort between REFUEL and Third Party Ad Server measurements. If the discrepancy cannot be resolved and a good faith effort to facilitate the reconciliation has been made, CLIENT reserves the right to either:

- i) Consider the discrepancy an under-delivery of the Deliverables as described in Section VI(b), whereupon the parties will act in accordance with that Section, including the requirement that CLIENT and REFUEL make an effort to agree upon the conditions of a makegood flight and delivery of any makegood will be measured by the Third Party Ad Server, or
 - ii) Pay invoice based on Controlling Measurement-reported data, plus a 10% upward adjustment to delivery.
- e) Measurement Methodology. REFUEL will make reasonable efforts to publish, and CLIENT will make reasonable efforts to cause the Third Party Ad Server to publish, a disclosure in the form specified by the AAAA and IAB regarding their respective ad delivery measurement methodologies with regard to compliance with the IAB/AAAA Guidelines.
 - f) Third Party Ad Server Malfunction. Where CLIENT is using a Third Party Ad Server and that Third Party Ad Server cannot serve the Ad, CLIENT will have a one-time right to temporarily suspend delivery under the IO for a period of up to 72 hours. Upon written notification by CLIENT of a non-functioning Third Party Ad Server, REFUEL will have 24 hours to suspend delivery. Following that period, CLIENT will not be held liable for payment for any Ad that runs within the immediately following 72-hour period until REFUEL is notified that the Third Party Ad Server is able to serve Ads. After the 72-hour period passes and CLIENT has not provided written notification that REFUEL can resume delivery under the IO, Advertiser will pay for the Ads that would have run, or are run, after the 72-hour period but for the suspension, and can elect REFUEL to serve Ads until the Third Party Ad Server is able to serve Ads. If CLIENT does not so elect for REFUEL to serve the Ads until Third Party Ad Server is able to serve Ads, REFUEL may use the inventory that would have been otherwise used for REFUEL's own advertisements or advertisements provided by a Third Party.
 - g) Third Party Ad Server Fixed. Upon notification that the Third Party Ad Server is functioning, REFUEL will have 72 hours to resume delivery. Any delay in the resumption of delivery beyond this period, without reasonable explanation, will result in REFUEL owing a makegood to CLIENT.

14) MISCELLANEOUS

- a) Necessary Rights. REFUEL represents and warrants that REFUEL has all necessary permits, licenses, and clearances to sell the Deliverables specified on the IO subject to these Terms. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in the Ads and Advertising Materials as specified on the IO and subject to these Terms, including any applicable Policies.
- b) Assignment. Neither CLIENT nor Advertiser may resell, assign, or transfer any of its rights or obligations hereunder, and any attempt to resell, assign, or transfer such rights or obligations without REFUEL's prior written approval will be null and void. All terms and conditions in these Terms and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors, and assigns.
- c) Entire Agreement. Each IO (including the Terms) will constitute the entire agreement of the parties with respect to the subject matter thereof and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which will be an original, and all of which together will constitute one and the same document.
- d) Conflicts; Governing Law; Amendment. In the event of any inconsistency between the terms of an IO and these Terms, the terms of the IO will prevail. All IOs will be governed by the laws of the State of New York. REFUEL and CLIENT (on behalf of itself and Advertiser) agree that any claims, legal proceedings, or litigation arising in connection with the IO (including these Terms) will be brought solely in New York, and the parties consent to the jurisdiction of such courts. No modification of these Terms will be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative.

- e) Notice. Any notice required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to REFUEL and CLIENT will be sent to the contact as noted on the IO with a copy to the Legal Department. All notices to Advertiser will be sent to the address specified on the IO.
- f) Survival. Sections III, VI, X, XI, XII, and XIV will survive termination or expiration of these Terms, and Section IV will survive for 30 days after the termination or expiration of these Terms. In addition, each party will promptly return or destroy the other party's Confidential Information upon written request and remove Advertising Materials and Ad tags upon termination of these Terms.
- g) Headings. Section or paragraph headings used in these Terms are for reference purposes only, and should not be used in the interpretation hereof.