

Talley Media Search Marketing Additional Terms and Conditions

Page 1

1. Advertising. Advertiser shall purchase from Talley Media, and its affiliates and subsidiaries ("Publisher") the online advertising package at the rate listed and for the duration specified on the Order Form.
2. Positioning. Advertiser grants to Publisher a license to (a) display Advertiser's advertising materials (the "Ad(s)") on the websites, properties, applications and/or devices described on the insertion order (the "Distribution Network"); and (b) modify, copy, reformat, transmit and otherwise manipulate the Ad in connection with such display. Except as otherwise expressly provided herein, positioning of Ads within the Distribution Network is at the sole discretion of Publisher. Advertiser acknowledges that Publisher has not made any guarantees with respect to usage statistics or levels of impression for any advertising. Publisher provides Advertiser with any estimated usage and/or impression statistics only as a courtesy to the Advertiser and shall not be held liable for any claims relating to said statistics. Any information collected by Publisher, or its site vendors, relating to users of the Distribution Network (including and without limitation any personally identifiable transactional data, clickstream data or demographic information relating to users of the site), shall be the sole property of Publisher, and Advertiser shall not obtain any rights in such information by virtue of this Agreement. If, for any reason, Publisher, in its sole discretion, is unable to publish any Ad(s) in accordance with the terms of the applicable Insertion Order, Publisher will either (1) refund to Advertiser the amounts paid for such Ad(s) not published; (2) publish the Ad(s) at a later date, as reasonably determined by Publisher; or (3) publish the Ads in a different position, as determined by Publisher in its sole discretion.
3. Payment Terms. Publisher agrees to charge and Advertiser agrees to pay for services provided under this Agreement as set forth below:
 - (a) If Advertiser does not presently maintain credit with Publisher, payment will be made in advance, at the agreed upon rate set forth herein or on the Rate Card, upon submission of the Ad at Publisher's office in Atlanta, Georgia.
 - (b) If Publisher, in its sole discretion, extends credit to Advertiser and has given Advertiser written notice thereof, then Advertiser will be invoiced at the beginning of the contract period and on the first day of each month thereafter over the term of the contract period set forth herein. Payment shall be made to Publisher within thirty (30) days from the date of the invoice, which date shall be no earlier than the Ad date specified in the Agreement. Amounts paid after such date shall bear interest at the rate of one percent (1%) per month (or the highest rate permitted by law, if less).
 - (c) If any federal, state or local governmental entity with taxing authority over the services provided under this Agreement imposes a tax directly on those services, including without limitation a tax upon gross receipts where such receipts include advertising or distribution, Publisher may pass the amount of such cost on to Advertiser, and Advertiser shall promptly pay that portion of such cost which Advertiser, under this Agreement, bears to the total advertising or distribution for the same period or periods.
4. Cancellation and Termination. The initial term of the services shall be 90 days from activation date. At the conclusion of the initial term, this agreement will automatically renew on a month-to-month basis until terminated by either party on not less than 30 days prior written notice. Except as otherwise provided herein, this Agreement is noncancelable by Advertiser. Publisher may terminate this Agreement upon notice to Advertiser in the event of default by Advertiser in the payment of any invoice or any other breach of the terms of this Agreement. Upon such termination, all charges for services completed hereunder shall become immediately due and payable, including interest on any sums not paid when due, as provided in Paragraph 3 of this Agreement. Notwithstanding anything herein to the contrary, any termination or cancellation of this Agreement shall not release Advertiser from its obligation to make payment for all Ads that have been displayed on Publisher's site(s) or for other charges as provided herein incurred prior to the date such termination or cancellation becomes effective.
5. Collection. Advertiser hereby agrees to pay and/or to indemnify Publisher for all costs and expenses it may incur to enforce collection of any amount due under this Agreement, including without limitation actual attorneys' fees.
6. CHANGES TO RATES AND OTHER TERMS. PUBLISHER RESERVES THE RIGHT TO AMEND THE TERMS, CONDITIONS, RATES AND ANY OTHER PROVISIONS SPECIFIED IN THIS AGREEMENT UPON THIRTY DAYS (30) ADVANCE WRITTEN NOTICE TO THE ADVERTISER. IF THE PUBLISHER EXERCISES THIS RIGHT AS TO RATES, ADVERTISER MAY, AT ANY TIME WITHIN SAID THIRTY (30) DAYS, BY WRITTEN NOTICE TO THE PUBLISHER, CANCEL THE REMAINDER OF THIS AGREEMENT AND IN THAT EVENT THE UNAMENDED RATES SHALL APPLY TO ALL ADVERTISING AND DISTRIBUTION HEREUNDER BY ADVERTISER WITHIN THE THIRTY DAY NOTICE PERIOD.
7. Assignment. Advertiser assigns to Publisher all right title and interest, including copyright, to all layouts of Ads published which represent the creative effort of the Publisher or otherwise contain any material prepared by the Publisher. Advertiser shall not authorize reproduction of any such advertising layout, or any part thereof, in any other publication or web site without the express written consent of the Publisher. Advertiser may not assign this agreement, or resell, assign or transfer any of its rights under this Agreement, without the Publisher's prior written consent.
9. Publisher's Right to Review, Edit and/or Reject Advertising. Publisher may, at its sole discretion, review all advertising or preprinted material submitted hereunder to determine whether the same complies with Publisher's advertising policies, whether or not such policies are known to Advertiser, including without limitation the terms, provisions and conditions set forth herein and in the Rate Card. Publisher reserves the right, in its sole discretion to classify any or all advertising or preprinted material submitted hereunder and to edit, revise or reject any or all advertising, space reservation or position commitment submitted hereunder, and to change any of its policies regarding Ads without notice to Advertiser. Publisher shall also have the absolute right to reject any URL link embodied within any Ad.
10. Provision of Advertising Materials. Advertiser will provide all materials for the Ad (including GIF files), in accordance with Publisher's policies in effect from time to time, including (without limitation) the manner of transmission to Publisher and the delivery time prior to publication of the Ad. All expenses connected with the delivery to Publisher of advertising material or other web page content of Advertiser and any cost for return of such materials from Publisher shall be paid by Advertiser. Notwithstanding the foregoing, Publisher may dispose of any advertising materials delivered to it unless Advertiser has previously made acceptable prepaid return arrangements, in writing.
11. Advertiser's Representations.
 - (a) If Advertiser is a bona fide agency acting on behalf of a client named in this Agreement, Advertiser warrants and agrees that it has express actual and apparent authority to place such advertising on behalf of its clients and that both Advertiser as agent and client as principal agree to be jointly and severally liable for the performance of this Agreement including without limitation all payments, rebillings, adjustments, and other terms and conditions. Advertiser acknowledges that Publisher has no liability for any commission or other payment to Advertiser or to any agency.
 - (b) If Advertiser is a corporation, it shall promptly notify Publisher, in detail satisfactory to Publisher, of any changes or matters affecting its corporate status or credit, including without limitation any changes in its officers or resident agent, agreement to sell a substantial portion of its assets, insolvency or bankruptcy filing, and/or any known, contemplated or contracted substantial transfer of stock or control.
 - (c) Advertiser represents and warrants that it shall not broker the services provided hereunder, and further acknowledges that two or more firms may not advertise under a single agreement except in cases where one such firm owns the other(s) as a subsidiary company and this Agreement is signed by such parent firm.
12. Additional Representations and Warranties; Indemnification. Advertiser represents, warrants that it is responsible of its use of the services and that it shall comply with all applicable laws and regulations with respect to such use. Advertiser represents and warrants that it owns all right, title and interest to advertising submitted hereunder, and further that it shall not violate any law or infringe the rights of any third party in connection therewith. Advertiser further represents and warrants that it will not use this service to upload, post, transmit, or otherwise make available any material that contains viruses, worms, or any other computer code, programs or files designed to interfere with, interrupt, destroy, or limit the functionality of any computer software, hardware or telecommunications or other equipment, or to cause a security breach of such software, hardware, or other equipment. Advertiser will defend, indemnify and hold Publisher, and any other entities that own or operate the Distribution Network, and its and their subsidiaries, affiliates, successors and assigns, and their respective directors, officers, employees, agents, third-party service providers, and their parties distributing the Ads via the Distribution Network, harmless from and against any and all liability, damage, loss or expense of any kind (including reasonable attorneys' fees) that are incurred by any of them in connection with any and all claims that arise out of or in connection with any Ad or any

website or material to which users can link through such Ad, including without limitation, claims for libel, unfair competition, infringements of trademarks, copyrights and other intellectual property rights, violations of rights of privacy and from any other claims, causes of action or the like arising from Advertiser's breach of the terms and conditions of this Agreement or from any publication or distribution hereunder.

Advertiser may not agree to any settlement that imposes any obligation or liability on an indemnified party without such party's prior express written consent.

13. Limitation of Liability. The sole liability and obligation of the Publisher and any other entities that own or operate the Distribution Network, and their respective licensees, subcontractors and service providers (the "Releasees") for any breach of the terms, provisions and conditions contained in this Agreement, including without limitation those contained in the Rate Card, or for any act or omission with respect to any Ad submitted hereunder, including without limitation any mistake or error in a published Ad, or any late

Talley Media Search Marketing Additional Terms and Conditions

Page 2

or untimely publication of an Ad, shall not exceed the amounts paid or payable by Advertiser under any applicable Order Form, even if the Releasees had been advised of the possibility of such potential loss or damages. Such claims must be made to Publisher, in writing, within seven (7) days of the first occurrence of any such act or omission. In no event shall the Releasees be liable to the Advertiser or to any other party for direct, indirect, special or consequential damages of any kind, including without limitation those arising from any breach of this Agreement or from any act or omission of the Releasees with respect to an Ad submitted hereunder. The Releasees will not be liable for more than one incorrect insertion unless Publisher is notified by Advertiser of the inaccuracy sufficiently prior to the next insertion of the Ad for Publisher to change or remove it.

14. Disclaimer. ALL SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY SET FORTH HEREIN PUBLISHER AND ITS SUPPLIERS AND VENDORS DISCLAIM ALL WARRANTIES OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE SERVICES, OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE THEREOF, INCLUDING, WITHOUT LIMITATION, OR ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PUBLISHER NOR ITS SUPPLIERS AND VENDORS WARRANT OR GUARANTEE THAT THE SERVICES OR OPERATION THEREOF WILL BE UNINTERRUPTED, ERRORFREE OR WILL MEET YOUR REQUIREMENTS.

15. Ownership. As between Publisher and Advertiser, Publisher will own (i) all rights (including, without limitation, copyright rights) in all advertising material and other content that is furnished by Publisher; and (ii) all rights in any information collected by Publisher, or any other entities that own or operate the Distribution Network (including, without limitation, any personally identifiable transactional data and "clickstream" data).

16. Miscellaneous. Nothing stated herein shall be deemed to create the relationship of partners, joint venturers, employer-employee or franchiser-franchisee between the parties. The warranties, indemnification obligations and limitations of liability included herein shall survive the termination or expiration of this Agreement. All notices that either party may be required or may desire to serve upon the other may be served personally, by national overnight delivery service or by U.S. mail to the addresses on the first page of this Agreement. The Agreement shall be governed by the laws of the State of Georgia, without regard to its conflict of law provisions. Any court of competent jurisdiction sitting in Fulton County, Georgia shall be the exclusive jurisdiction and venue for any dispute arising out of or relating to this Agreement. Should any portion or part of any provision of this Agreement be void or unenforceable, such provision, or part thereof, shall be restated to match most closely the intentions of the parties, and the remainder of this Agreement shall continue in full force and effect. Advertiser acknowledges and agrees that Publisher's suppliers and vendors are intended third party beneficiaries to this Agreement and may directly enforce Advertiser's obligations under this Agreement directly against Advertiser. The titles of the sections of this Agreement are presented for convenience only and shall not affect the interpretation of any section of this Agreement or of this Agreement itself. This Agreement cancels and supersedes all previous agreements and proposals for the specific advertising package designated in this Agreement between the Advertiser and the Publisher. Any changes in the terms or conditions of this Agreement must be in writing, signed by the contracting parties and submitted as an addendum to this Agreement. This Agreement shall not be binding on the Publisher unless and until it is accepted and signed on behalf of the Publisher in the space provided therefore by Publisher's Advertising Director or On-Line Manager at the Publisher's Home Office in Atlanta, Georgia. Except as is otherwise specified, all abbreviations, symbols and terms used in this Agreement or in the Rate Card shall have the meanings normally used in the advertising industry, which meanings Advertiser hereby acknowledges awareness and understanding of. In the event of conflict or ambiguity between this Agreement and any earlier agreement, including without limitation, the Rate Card, the terms of this Agreement shall control. It is expressly agreed that neither Advertiser nor Publisher, nor their respective agents and representatives, shall disclose in any manner the terms and conditions of this Agreement to anyone not a party to it. Neither party will be responsible for delays or failures of performance resulting from acts beyond the reasonable control of such party.