

## Digital Media Insertion Order Terms and Conditions

These Terms and Conditions (the “**Terms**”) and the Insertion Order (the “**IO**”) together constitute this “**Agreement**”. Advertiser and Tapfeed, Inc. (“**Tapfeed**”) agree that in exchange for fees due for Media as calculated on the IO, Tapfeed shall perform the services of reserving space and producing and/or uploading slides, video, or other Advertising Materials to the Media more fully described in the IO.

YOU MUST READ AND AGREE TO THE FOLLOWING TERMS AND CONDITIONS BEFORE SUBMITTING THE IO. BY SUBMITTING AN IO TO TAPFEED, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE AGREEING ON BEHALF OF ANOTHER PARTY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO DO SO.

- **Definitions.**

- “**Ad**” means any Advertising Materials provided to Tapfeed by or on behalf of Advertiser for use in an Ad Placement.
- “**Advertising Materials**” means artwork, copy, or active URLs for Ads.
- “**Ad Placement**” means a one-month period of onscreen advertising time in Media as provided in this Agreement.
- “**Affiliate**” means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with, such entity.
- “**Campaign**” means an aggregate of Ad Placements amounting to greater than one month of Media, beginning on a start date and continuing through an end date as set forth in the IO.
- “**Deliverable**” or “**Deliverables**” means the display of Ads by Tapfeed in Media under this Agreement.
- “**Media**” means Tapfeed’s digital media stream as delivered electronically to a single television monitor at a single Media Site. Unless otherwise agreed in writing by Tapfeed, as used in the Terms all references to the Media are singular.
- “**Media Site**” means a third party location having one or more television monitors displaying Media thereon.
- “**Policies**” means advertising criteria or specifications made conspicuously available, including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with Tapfeed’s public image, community standards regarding obscenity or indecency, 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.
- “**Third Party**” means an entity or person that is not a party to the IO, including Media Sites; for purposes of clarity, Tapfeed, Advertiser, its agency, if there be one, and any Affiliates or Representatives of the foregoing are not Third Parties.

- **Advertising Production, Placement, and Ownership.**
  - **Advertising Material Submission.** Advertiser is responsible for supplying Tapfeed with all necessary Advertising Materials conforming to Tapfeed's Policies within seven days after either: (a) the date of this Agreement; or (b) the date of a request for replacement Advertising Materials. Any failure by Advertiser to supply Advertising Materials will not terminate this Agreement nor in any way limit Advertiser's liability to pay the fees due for Media ordered under the IO.
  - **Placement Availability; Acceptance.** Advertiser acknowledges that Tapfeed or one or more Media Sites may, in their sole discretion, refuse to accept any Advertising Materials or may withdraw any previously accepted Ad from display at any time and for any reason. In such event, Tapfeed has the right but is not required to ask Advertiser to submit new Advertising Materials, and Advertiser shall submit new Advertising Materials within a reasonable time. If Advertiser fails to submit new Advertising Materials in a timely manner, such event will be treated as if Advertiser failed to supply Material in the first instance.
  - **Changes.** If Advertiser requires or requests a change in an Ad during Campaign, additional handling charges will apply.
  - **Ownership.**
    - **Ads.** All Ads prepared by Tapfeed are the sole property of Tapfeed. Advertiser will have no right to obtain either originals or copies of such Ads, and Tapfeed will not be required to grant any rights in or to such Ads to Advertiser.
    - **Copyrights and Trademarks.** Tapfeed makes no claim of ownership hereunder to any trademarks or copyrights in Advertising Materials provided by Advertiser. Advertiser hereby grants to Tapfeed and its Affiliates a limited, non-exclusive, royalty-free, fully paid license to modify, create derivative works of, reproduce, publicly perform, publicly present, display, distribute, edit, exhibit, broadcast, and otherwise transmit Advertising Materials solely for the purpose of preparing and/or displaying the Advertising Materials and/or Ads prepared therefrom in the Media. In addition, Advertiser hereby grants to Tapfeed and its Affiliates the perpetual right to utilize the Advertising Materials and/or the Ads, together with Advertiser's company name, trademarks, logos, service names and slogans as adopted by Advertiser from time to time and provided to Tapfeed, in any media now known or hereinafter devised, but solely for the purposes of publicity, promotion. and advertising of Tapfeed's and/or Tapfeed's Affiliates' products and services. Advertiser is not granted any rights in Tapfeed's copyrights or trademarks.
- **Costs.** Advertiser will be solely responsible for all costs it incurs in connection with this Agreement, including expenses associated with creating and delivering Advertising Materials and Ads to Tapfeed, and for all out-of-pocket expenses of

Tapfeed (as invoiced).

- **Payment.**
  - **Single Ad Placement.** If the duration of Advertiser's initial Ad Placement does not exceed one month of Media, full payment for such Media must be made upon Advertiser's submission of its IO. Tapfeed will invoice Advertiser for any applicable out-of-pocket expenses.
  - **Campaign.** If Advertiser's initial Ad Placement consists of a Campaign, Advertiser shall pay for the first month of Media upon submission of its IO, and thereafter Advertiser's authorized credit card will be charged, or authorized electronic funds transfer will be made, every month until the end of the Campaign for each month of Media following the first month multiplied by the total number of Media included in such Campaign for such month, plus costs, as applicable. Any failure or inability of Tapfeed to obtain payment via an authorized credit card, or an authorized electronic funds transfer, will not affect Advertiser's obligation to make payments in accordance with the provisions set forth in this section. In the event of any breach of the terms of payment, Tapfeed may, at its option, withdraw Advertiser's ability to pay by installments, resulting in the balance of the fees and costs to be due and payable immediately.
  - **Interest.** Interest will be payable by Advertiser on any payment which is past due, calculated at the rate of 1.5% compounded monthly for any past due amounts until the amount is paid, including periods after a judgment is rendered, but in no event greater than the amount allowed by law. Any accrued interest will be payable to Tapfeed as a separate debt and be recoverable accordingly.
  - **Taxes.** Tapfeed's fees, costs, and rates are exclusive of federal, state, local, or other governmental taxes, and Advertiser shall pay all such taxes related to its IOs and/or Advertising Services provided hereunder.
- **Representations and Warranties.**
  - **By Advertiser.**
    - **Authority and Enforceability.** Advertiser has the requisite power and authority to enter into this Agreement and the capacity to enter into this Agreement. This Agreement constitutes a legal, valid, and binding obligation, enforceable against Advertiser.
    - **Ownership.** Advertiser owns or has the right to permit the use of the Advertising Materials and Ads as set forth herein, and and distribution, broadcast, public presentation, and public performance thereof will not: (i) infringe the rights of any third party (including copyright, trademark, and other intellectual property rights or rights of privacy or publicity); (ii) defame any person; (iii) contain anything indecent or obscene; (iv) constitute or contain a statement that is misleading or deceptive or likely to mislead; or (v) violate any foreign or domestic federal, state, or local law or regulation.

- **Credit Card.** Any credit card information provided by or on behalf of Advertiser in a credit card authorization related hereto is accurate, the use of such credit card is authorized, and Tapfeed is authorized to make periodic charges against such credit card to cover the fees and charges associated with the IO.
  - **Electronic Funds Transfer.** Any electronic funds transfer authorization information provided by or on behalf of Advertiser is accurate, the use of the account identified for debit of funds is duly authorized, Advertiser will not terminate the authorized payments without prior notice to Tapfeed, and transfers from such account will be used to make periodic payments to cover the fees and charges associated with the IO.
- **By Tapfeed.** Tapfeed does not guarantee any business generation or response for Advertiser from such on-screen advertising.
- **Credit Checks.** The Advertiser consents to Tapfeed's conducting, obtaining and exchanging credit inquiries, credit checks, or inquiries with commercial credit reporting agencies ("**Credit Checks**") initially, throughout the term of this Agreement, and upon termination so long as amounts are claimed due to Tapfeed. Based on information obtained through such Credit Checks, Tapfeed retains the right to terminate this Agreement or require additional advance payments.
- **Reporting.**
  - **Ad Placement Confirmation.** Tapfeed will, within two business days of the start date on the IO, provide confirmation to Advertiser, either electronically or in writing, stating whether the components of the IO have begun delivery.
  - **Ad Placement Reporting.** Tapfeed will make reporting available at least as often as weekly, either electronically or in writing, unless otherwise specified on the IO. Reports will be broken out by day and summarized by Ad, Media, and other variables as the parties may agree in writing.
  - **Makegoods for Reporting Failure.** If Tapfeed fails to deliver an accurate and complete report by the time specified, Advertiser may initiate makegood discussions under Section 8. If Advertiser informs Tapfeed that Tapfeed has delivered an incomplete or inaccurate report, or no report at all, Tapfeed may cure such failure within five business days of receipt of such notice. Failure to cure may result in nonpayment for all activity for which data is incomplete or missing until Tapfeed delivers reasonable evidence of performance; such report will be delivered within 30 days of Tapfeed's knowledge of such failure or, absent such knowledge, within 180 days of delivery of all Deliverables.
  - **Failure to Exhibit.** If for any reason Tapfeed is unable to provide an Ad Placement at a particular Media Site, Tapfeed may provide an Ad Placement at another Media Site in the same area (which Media Site(s) will thereafter replace such unavailable Media Site(s) under this Agreement for the period of substitution) or, at Tapfeed's option, Tapfeed may terminate this Agreement in part as it pertains to exhibition at that specific Media Site without any further liability. In the case of Tapfeed's

partial termination under this section, the total fees due under the IO will be reduced by a percentage of the portion of such fees for exhibition of the Ads at such Media Site, based upon the number of days of exhibition at such Media Site cancelled by Tapfeed as compared with the total number of days of exhibition at such Media Site as specified in this Agreement.

- **Makegoods.** If Tapfeed is unable to provide at least 90% of the advertising contemplated herein for any reason, Tapfeed may provide extensions or additions to the Ad Placement (the amount of which will be determined by Tapfeed in its reasonable discretion) at no further cost to Advertiser in lieu of any other remedy (“**Makegoods**”). If an Ad contains material errors or misspellings which are the fault of Tapfeed, Tapfeed may in its absolute discretion, as Advertiser’s sole remedy therefore, grant Advertiser a time credit for a period which Tapfeed considers sufficient taking into account the nature and degree of the errors or misspellings. Advertiser will not have any right to an extension of the Ad Placement for material errors or misspellings in any Ad approved by Advertiser prior to display or based on Advertising Materials provided by Advertiser.
- **Certificate of Placement.** Promptly following Advertiser’s request, Tapfeed shall provide written certification which will be conclusive evidence that the Ad Placement was provided at the Media Site on the dates shown on that certificate. Advertiser will have no right to contact any Media Site regarding Ad Placements directly without Tapfeed’s prior written consent.
- **No Exclusivity or Discounts.** Unless otherwise agreed by Tapfeed in writing, this Agreement does not entitle Advertiser to exclusivity at any Media Site, whether on a category exclusivity basis or otherwise, or to any free or discounted goods or services at any Media Site.
- **Ad Placement Limitations.** Advertiser acknowledges that the availability for viewing Ads at Media Sites is limited to such days and times on which the Media covered hereby are open to the public. Media Sites may hasten, delay, or otherwise alter the such days and times without notice. Such scheduling adjustments are considered normal and necessary, are accepted by Advertiser, will not constitute a breach of this Agreement by Tapfeed, and will not affect the fees payable hereunder.
- **Default.** If Advertiser is in default of any of its obligations under this Agreement, including payment obligations, Tapfeed may in its sole and absolute discretion and without prejudice to any rights Tapfeed may have against Advertiser: (a) suspend provision of Deliverables without notice to Advertiser; and/or (b) terminate this Agreement upon notice to Advertiser. In the event Tapfeed suspends provision of Deliverables and/or terminates this Agreement due to Advertiser’s default, Advertiser will remain liable for the fees which would have to be paid to Tapfeed through the expiration date of this Agreement, to the extent not yet paid. Advertiser will be liable for legal or other fees and costs incurred by Tapfeed (including those related to any legal action by Tapfeed, such as collection or attorneys’ fees) to collect the balance due or any past due amount.
- **Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TAPFEED WILL NOT BE LIABLE FOR THE CONTENT OF ANY AD HEREUNDER AND/OR ANY THIRD- PARTY AD NOR FOR ANY LOSS, COST, DAMAGE, OR EXPENSE (INCLUDING ATTORNEY FEES) INCURRED BY ADVERTISER IN CONNECTION WITH ANY AD PLACEMENT, INCLUDING FOR ANY TECHNICAL MALFUNCTION, COMPUTER OR OTHER ERROR, FAILURE OR REFUSAL OF A MEDIA SITE TO EXHIBIT THE AD, OR OTHER INJURY, DAMAGE, OR DISRUPTION INCLUDING ANY COSTS INCURRED BY ADVERTISER AS A RESULT OF REFUSED ADVERTISING MATERIAL OR WITHDRAWN ADS UNDER SECTION 2 OF THIS AGREEMENT, OR FOR SCHEDULING ADJUSTMENTS OR CHANGES. IN NO EVENT WILL TAPFEED BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL TAPFEED LIABILITY EXCEED THE TOTAL AMOUNT PAID TO TAPFEED BY ADVERTISER HEREUNDER.

- **General Terms.**
  - **Cancellation and Termination.**
    - **Without Breach.** Advertiser may cancel an IO, or any portion thereof, as follows:
      - **Single Ad Placement.** Advertiser may cancel an IO for a total Ad Placement of one month of Media without penalty on 14 days' notice to Tapfeed before any Ad ordered by such IO is streamed at a Media Site. For clarity and by way of example, if Advertiser cancels such IO eight days prior to the first streaming of the Ad, Advertiser will be responsible only for the first six days of the Ad Placement.
      - **Campaign Ad Placement.** Advertiser may cancel an IO for an Ad Placement exceeding one month of Media without penalty on 30 days' notice to Tapfeed.
      - Advertiser will remain liable to Tapfeed for amounts due for any custom content or development ("**Custom Material**") provided to Advertiser or completed by Tapfeed or its third-party vendor prior to the effective date of termination. Advertiser shall pay for such Custom Material within 30 days from receiving an invoice therefore.
    - **Termination for Material Breach.** Either party may terminate an IO with immediate effect by delivering notice of the termination to the other party, if the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or breach continues for a period of

ten days after the injured party delivers notice to the breaching party reasonably detailing the breach.

- **Termination for Insolvency.** If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate an IO with immediate effect.
- **Confidentiality.** Advertiser acknowledges that the Media, including the technology, know-how, details, designs, and specifications thereof, and Tapfeed's marketing and operational strategies, services, and customers are confidential and/or proprietary to Tapfeed. Advertiser shall hold such information in confidence and may use such information only according to the terms of this Agreement. Advertiser may not disclose such information to any third party, except to the extent permitted by this Agreement, Tapfeed consents in writing, or required by law. Without limiting the generality of the foregoing, Advertiser shall not contact any Media Site directly regarding Ads, the Media, or this Agreement without Tapfeed's prior written consent.
- **Assignment.** Advertiser may not assign this Agreement or any of its rights or obligations hereunder without Tapfeed's prior written consent. Without limiting the generality of the foregoing, Ad Placements purchased hereunder are non-transferable. Tapfeed may assign this Agreement or any of its rights and obligations hereunder, effective upon Notice to Advertiser, to any subsidiary or affiliate, or in connection with any sale, transfer, or other disposition of all or substantially all of its business or assets but only if the assignee assumes all of Tapfeed's obligations.
- **No Relationship.** The parties to this Agreement are independent contractors. No agency, fiduciary duties, partnership, joint venture, or employment relationship is created between the parties by this Agreement, and neither party has the right or authority to bind the other party in any way.
- **Indemnification.** Advertiser will be solely responsible for any liability arising out of the Advertising Materials and Ads and the distribution, broadcast, public performance, public presentation, and use thereof under this Agreement. Notwithstanding Tapfeed's review or approval of any Advertising Materials or Ads, Advertiser will indemnify and defend Tapfeed, its parents, subsidiaries, related entities, directors, members, employees, agents, subcontractors, and independent contractors, and the Media Sites against any losses, costs, damages, or expenses (including reasonable attorneys' fees and expenses) resulting from claims or actions arising out of or in connection with the Advertising Materials or Ads (including claims arising from the sale of goods or services by Advertiser) or Advertiser's breach of any agreement, representation, or warranty hereunder (including claims for infringement of copyright, trademark, or other intellectual property rights, or violation of rights of privacy or publicity).
- **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except

for payment obligations.

- **Waiver.** A party's failure to exercise or delay in exercising any right, power, or privilege under this Agreement will not operate as a waiver; nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof.
- **Entire Agreement.** This Agreement contains all the terms agreed to by the parties relating to its subject matter. It replaces all previous discussions, understandings, and agreements.
- **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same Agreement.
- **Severability.** If any part of this Agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- **Interpretation.**
  - **“Including”.** As used in this Agreement, the word “including” means “including without limitation.”
  - **Number and Gender.** Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.
  - **Headings.** The headings used in this Agreement and its division into sections and other subdivisions do not affect its interpretation.
- **Governing Law.** This Agreement will be governed, construed, and enforced in accordance with the laws of the State of Oregon, without regard to its conflict of laws rules.
- **Jurisdiction and Venue.** The parties hereby agree that any litigation arising under this Agreement will be brought and venued exclusively in Multnomah County, Oregon, consent to the personal jurisdiction of these courts, and waive any objection that such venue is inconvenient or improper.

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