

ReachCast™ Terms of Service
Last Modified: June 17, 2011

These ReachCast Terms of Service (“ReachCast Terms”) govern an advertiser’s (the “Advertiser”) use of the ReachCast digital presence services (the “ReachCast Services”) to be provided the applicable ReachCast distributor (the “Company”). The ReachCast Services provide users with a set of web-based tools and services to help them get online and establish and maintain a marketing presence on third party-sites, including search sites, social networks, and messaging services in order to better interact with customers and prospects and monitor their reputation. Some of the ReachCast Services will be provided for free and other ReachCast Services will be provided for fees that will be identified to you should you choose to purchase such fee-based ReachCast Services. Upon execution of a ReachCast order, you will be provided with the particular ReachCast Services that you sign up for during the registration process or have agreed to, in writing, with the Company. Unless explicitly stated otherwise, all features and services offered by us through the ReachCast Services shall be subject to these ReachCast Terms.

BY VIEWING OR USING ALL OR ANY PART OF THE REACHCAST OFFERINGS, YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE. IF YOU DO NOT AGREE TO THESE REACHCAST TERMS, THEN YOU MAY NOT ACCESS OR USE THE REACHCAST SERVICES. THE COMPANY RESERVES THE RIGHT TO MAKE CHANGES TO THESE REACHCAST TERMS AT ANY TIME. COMPANY SHALL PROVIDE NOTIFICATION OF CHANGES IN THESE TERMS BY UPDATING THE LAST MODIFIED DATE SET FORTH ABOVE.

1. **Eligibility Requirements for Use of ReachCast Services.** Advertiser and anyone who accesses or uses the ReachCast Services on Advertiser’s behalf must be at least 18 years old and have legal authority to agree to these ReachCast Terms on behalf of the Advertiser or the business associated with the account. The ReachCast Services may only be used to engage in and promote legitimate businesses and activities. Advertiser may not use or permit them to be used to engage in or promote any unlawful, offensive, or inappropriate business or activity.

2. **Use of the ReachCast Services.** In order to use the ReachCast Services, Advertiser is required to create a ReachCast account. Advertiser is responsible for its use of the ReachCast Services, and for any use of the ReachCast Services made using Advertiser’s account. Advertiser agrees to provide true, accurate, current, and complete information about Advertiser and its business as required during the sign-up process (“Registration Information”). Advertiser will maintain and promptly update the Registration Information to keep it true, accurate, current, and complete. If Advertiser provides any information that is untrue, inaccurate, outdated, or incomplete, or if Company has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, Company may suspend or terminate Advertiser’s account and refuse any and all current or future use of the ReachCast Service. Company makes no representations or warranties regarding the availability or the technical performance of the ReachCast Services.

3. **License to Platform.** Upon execution of these ReachCast Terms, Advertiser will be granted a revocable, non-transferable, non-exclusive, limited license to access the ReachCast platform (the “Platform”) solely for the purpose of managing the ReachCast Services. Access shall be password protected and Advertiser agrees that it shall not share its password with third parties or otherwise provide access to the Platform to third parties. If the security of username(s) or password(s) is compromised in any way, or if Advertiser or its agent suspects that it may be, Advertiser shall immediately contact Company. Company is not responsible for any loss or damage

suffered by the compromise of any password. Advertiser acknowledges and agrees that it does not have, nor will it claim any right, title or interest in the Platform, the Platform software, data, applications, methods of doing business or any elements thereof, or any content provided on the Platform for any purpose other than providing or servicing ReachCast. Advertiser may only access the Platform via a Web browser. Advertiser will not attempt to (and will not permit any third parties) in any way reverse engineer, alter, modify, eliminate, conceal, or otherwise render inoperable or ineffective the Platform. Advertiser further acknowledges that it shall keep confidential and not share with any third parties the terms of this Agreement or any confidential and proprietary information regarding Company. Company may terminate the foregoing license, at any time and for any reason.

4. **Creation of Advertiser Cast page.** Advertiser authorizes Company to create and host a Web site using the ReachCast Services (“Advertiser Cast Page”). Unless Advertiser purchases the [Custom Domain](#) service, Company will host Advertiser’s Cast Page on a domain or subdomain provided by Company. If Advertiser purchases the Custom Domain services, Advertiser will be responsible for the payment of all applicable fees. If Company hosts Advertiser’s Cast Page under a domain provided by Advertiser, Advertiser will be solely responsible for maintaining such domain name and paying all applicable registration and maintenance fees. If Company hosts Advertiser’s Cast Page under a domain provided by Advertiser, Advertiser represents and warrants that Advertiser own all rights to such domain name or, alternatively, that Advertiser has the right to use the domain name in connection with Advertiser’s Cast Page.

Company will use commercially reasonable efforts to make Advertiser’s Cast Page available to the public; however, Company reserves the right to take down Advertiser’s Cast Page in its discretion, including, for example:

- to maintain and upgrade servers and networks;
- if Company believe that Advertiser or anyone using Advertiser’s account has violated these ReachCast Terms or otherwise engaged in any activity that could

result in harm or legal liability to Company or to any third party; or

- if Advertiser fails to pay any applicable fees.

5. *Web Presence Management Services.*

(a) **Authorization.** In connection with the purchase of the ReachCast Services, Advertiser will be authorizing Company to do the following (the “Management Services”) (a) establish or assume control of relationships on Advertiser’s behalf with third-party Web sites and services, such as search sites, social networks, and messaging services, such as Facebook, Twitter, and others (“Third-Party Sites”) and (b) submit and manage Advertiser’s Content (defined below) on or through Third-Party Sites.

Such actions may include, for example, registering Advertiser or Advertiser’s business with such Third-Party Sites using information Advertiser provides to Company (including Advertiser’s Registration Information), generating a proxy e-mail address that links to the e-mail address Advertiser provides to Company upon registration and dynamically generating and storing passwords for such Third-Party Sites so that Company may administer and update Advertiser’s presence and post and manage Advertiser’s Content on such Third-Party Sites. In addition, Company will be authorized to use the functionality of such Third-Party Sites on Advertiser’s behalf, in any manner Company sees fit, for the purposes of performing the ReachCast Services that Advertiser elect to receive. For instance, if Advertiser’s Cast Page is linked to Twitter, Company will be authorized to decide who can “follow” Advertiser and who Advertiser’s account will “follow.” Similarly, if Advertiser has, for instance, a Yelp listing, Company will be authorized to access and manage that listing (so that they may validate, and enhance the listing and monitor it) or if Advertiser does not have a Yelp listing, Company will be authorized create one for Advertiser. Advertiser agrees to provide all such assistance and information necessary to enable Company to do the foregoing and understands that Advertiser’s failure to do so will impact Company’s ability to fully provide such Services.

(b) **Other Acknowledgments.** In connection with the foregoing, Advertiser agrees as follows:

- By authorizing Company to establish relationships on Advertiser’s behalf with Third-Party Sites, Advertiser agrees to be bound by the terms and conditions applicable to such Third-Party Sites. Any activity that Advertiser engages in on such Third-Party Sites or that Company engages in on Advertiser’s behalf, together with any information that Advertiser submits or that Company submits on Advertiser’s behalf to such Third-Party Sites will be subject to the terms and conditions, including the privacy policies, governing such Third-Party Sites. It is Advertiser’s responsibility to read and comply with the terms and conditions of Third-Party Sites. Advertiser will also only link to accounts that are Advertiser’s. Company assumes no responsibility for complying with such terms and conditions; nor will Company be responsible or liable to Advertiser for any actions taken by such Third-Party

Sites, whether or not such actions are taken by them in accordance with their applicable terms and conditions.

- Because of the interconnected nature of Third-Party Sites with other Web sites and services, Advertiser’s Content posted to Third-Party Sites may be difficult to remove. For example, Advertiser’s Content that is removed from a Third-Party Site may persist on other Web sites (including end-user Web pages) or may be cached in search engine indexes. Accordingly, although Company will use commercially reasonable efforts to remove Advertiser’s Content from Third-Party Sites when directed by Advertiser to do so through the ReachCast Services, Company cannot guarantee that Advertiser’s Content will be completely removed from the Third-Party Sites or other Web sites or services.

(c) **Third-Party Sites.** The Third-Party Sites that Company supports may change over time and Company may decide to no longer support a Third-Party Site or may add [Third-Party Sites](#), both in Company’s sole discretion. In the event that Company determines to no longer support a Third-Party Site, Company will use commercially reasonable efforts to notify Advertiser of such determination and, with respect to such Third-Party Site, will provide Advertiser with transition assistance.

(d) **The Management Services.** The Management Services shall initially include the following:

- [Search Engine Optimization Services.](#) In order to provide the [Search Engine Optimization Services](#), Advertiser agrees to permit Company to publish or cause to be published on the Web content related to Advertiser’s business and industry.

- [Content Creation Services.](#) In connection with the [Content Creation Services](#), Company will create and disseminate marketing/promotional content for Advertiser’s business (the “Generated Content”). Provided that the Generated Content complies with the [Content Guidelines](#), Company will be permitted to disseminate the Generated Content without Advertiser’s further approval.

- [Reputation Management Services.](#) In order to provide the [Reputation Management Services](#), Advertiser hereby gives Company the right to monitor the Internet for mentions of Advertiser. However, Advertiser acknowledges and agrees that Company cannot and does not guarantee the accuracy or completeness of their monitoring services. In addition, Advertiser acknowledges and agrees that Company may, for technical reasons, decide to reduce the volume of information provided to Advertiser through the monitoring services.

- [eCommerce Services.](#) If Advertiser chooses to utilize the [ecommerce services](#), Advertiser agrees to conduct such commerce in compliance with all applicable laws. Without limiting the generality of the foregoing, Advertiser agrees to fully and clearly disclose to Advertiser’s consumers all amounts that they are being charged and what the refund and return policy is for Advertiser’s products and services. Advertiser acknowledges and understands that the payment processing functionality is being provided and hosted by a third-party and Company does not guarantee that such functionality will be available at all times, without interruption.

Advertiser agrees that Advertiser's sole recourse for any problems associated with the ecommerce services shall be against the third-party provider of such services. Advertiser further understands and acknowledges that ReachCast is, at no time, collecting any credit card information in connection with purchases by Advertiser's consumers and is not responsible for ensuring the successful completion of any ecommerce transaction. Advertiser further represents and warrants that any information Advertiser collects in connection with such ecommerce will be stored, maintained and utilized in accordance with applicable law.

Advertiser understands and acknowledges that Company reserves the right to modify the Management Services, in its reasonable discretion.

7. **Advertiser's Conduct.** Company's goal is to create a positive and safe community experience. Accordingly, Advertiser may not use the ReachCast Services to:

- violate any law or regulation;
- violate or infringe other people's intellectual property, privacy, publicity, or other legal rights;
- promote, post, or transmit anything that is illegal, abusive, harassing, pornographic, indecent, profane, obscene, hateful, racist, or otherwise objectionable;
- send unsolicited or unauthorized advertising or commercial communications, such as spam;
- sell, license or otherwise disseminate consumer information, collected through use of the ReachCast Services, to third parties for the purposes of third-party marketing;
- transmit any malicious or unsolicited software;
- upload, post, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- stalk, harass, or harm another individual or business;
- impersonate any person or entity, or misrepresent Advertiser's affiliation with a person or entity;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the ReachCast Services or develop restricted or password-only access pages, or hidden pages or images (those not linked to from another accessible page);
- use any means to "harvest," "scrape," "crawl," "reverse engineer" or "spider" any Web pages or content contained in the ReachCast Services (although ReachCast does allow operators of public search engines to use spiders to index some materials from the Site for the sole purpose of creating publicly available searchable indices of the materials, and ReachCast reserves the right to revoke these exceptions either generally or in specific cases);
- use automated methods to use the ReachCast Services in a manner that sends more requests to the ReachCast servers in a given period of time than a human can reasonably produce in the same period by using a conventional Web browser;
- provide any false or misleading information via

the ReachCast Services, or create an account for anyone other than Itself;

- make any offers via ReachCast Services which Advertiser cannot or will not honor per the terms of such offer; or
- interfere with or disrupt the ReachCast Services.

In addition, Advertiser agrees not to use the ReachCast Services in connection with any business that:

- is primarily in the business of collecting, and then selling, licensing or otherwise disseminating consumer information for the purposes of third-party marketing; or
- promotes or involves pornography or explicit sexual images or merchandise.

8. **Advertiser's Content.** Advertiser owns all of the content, including any text, images, logos, trademarks, service marks, promotional materials, product or service information, comments, reviews, photos, audio and video clips and other information, that Advertiser post or share using the ReachCast Services, including any content from Advertiser's existing web site (referred to as "Advertiser's Content"). Advertiser grants to Company and its affiliates and third-party suppliers a perpetual, irrevocable, license to use, reproduce, display, perform, adapt, modify, distribute, make derivative works of and otherwise exploit Advertiser's Content in connection with the ReachCast Services. During the term of this agreement Company may use Advertiser's Content to advertise and promote ReachCast, the ReachCast Services and list and otherwise refer to Advertiser and Advertiser's business as users of the ReachCast Services. The license to Advertiser's Content is non-exclusive, meaning Advertiser may use Advertiser's Content for Advertiser's own purposes or let others use Advertiser's Content for their purposes. The license to Advertiser's Content is fully-paid and royalty free meaning Company and its affiliates and third-party suppliers do not owe Advertiser anything else in connection with their use of Advertiser's Content. Company and its affiliates and third-party suppliers may exercise their rights anywhere in the world.

Advertiser represents and warrants that:

- Advertiser owns all rights to Advertiser's Content or, alternatively, that Advertiser has the right to give Company and its affiliates and third-party suppliers the rights described above, including the right to distribute Advertiser's Content on or through Third-Party Sites (as described herein);
- Advertiser has paid and will pay in full any fees or other payments that may be related to the use of Advertiser's Content; and
- Advertiser's Content does not infringe the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party.

Company may refuse to accept or transmit Advertiser's Content. Company may, but is not obligated to, remove Advertiser's Content from the ReachCast Services for any reason.

Advertiser acknowledges and agrees that Advertiser is

solely responsible for inserting any content on Advertiser's Cast Page that Advertiser may be legally obligated to include in Advertiser's Cast Page by law or regulation. For instance, if Advertiser is a lawyer and Advertiser's state bar rules require Advertiser to include certain disclaimers on Web sites for lawyers, it is Advertiser's responsibility to insert such disclaimers.

9. **Content Guidelines.** If Company creates content for Advertiser, such content will be created consistent with the [Content Guidelines](#). Please review such guidelines carefully. Please note that Company may, from time to time, change the Content Guidelines, so Advertiser should periodically review the Content Guidelines. Company disclaims all liability for any content Company creates on Advertiser's behalf. If Company creates content that materially departs from the Content Guidelines, Company will provide Advertiser with notification before it goes live and Advertiser may accept, reject, or modify such content, in Advertiser's discretion.

10. **Copyright and Intellectual Property.** Company respects the intellectual property rights of others. Company administers Cast pages in compliance with the Digital Millennium Copyright Act, as more fully described in the [Cast Page Use Terms](#). Company may remove Advertiser's Content or other applicable content available on Cast pages including content that has been disseminated through the ReachCast Services for any reason, including, without limitation, upon proper notice that such content violates copyright or other intellectual property rights.

11. **Advertiser's Interactions with Others.** Company is not responsible or liable for any damage or loss related to Advertiser's interactions with end-users, end-user's interactions with Advertiser or interactions between end-users that may occur on Advertiser's Cast Page or in connection with Advertiser's presence on any Third-Party Site. Company is not a party to any transaction between Advertiser and any third-party and has no obligation to monitor or enforce any such transactions. Advertiser is responsible for complying with all applicable laws, rules, and regulations. For example, Advertiser is responsible for complying with all applicable laws, rules, and regulations that may apply to Advertiser's communications with end-users and other people such as the CAN-SPAM Act of 2003. Advertiser is responsible for complying with all applicable privacy laws, rules, and regulations with respect to any information Advertiser obtains from others whether directly in the operation of Advertiser's business, Advertiser's Cast Page, or through the ReachCast Services. Advertiser is also responsible for complying with all laws, rules, and regulations that may be applicable to any sweepstakes, contests, or promotions that Advertiser makes available or publicize through Advertiser's Cast Page or the ReachCast Services.

12. **Ownership; Restrictions.** Other than Advertiser's Content, Company owns or licenses the content on the ReachCast Services, including all software, text, and visual and audio content (collectively, "ReachCast Content") and ReachCast's trademarks, logos, and brand elements

("ReachCast Marks"). ReachCast Content and ReachCast Marks are protected under U.S. and international laws. Advertiser will not (and will not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code, or sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in Supplier's Content. Advertiser agrees not to modify ReachCast Content in any manner or form, or to use modified versions of ReachCast Content, including, without limitation, for the purpose of obtaining unauthorized access to the ReachCast Services. Advertiser agrees not to access the ReachCast Services by any means other than through the interface that is provided by Company for use in accessing the ReachCast Services.

13. **Privacy.** Advertiser acknowledges and agrees that a link to this [Privacy Policy](#) will be placed in the footer of each page of Advertiser's Cast Page. Therefore, Advertiser understands and agrees that Advertiser's privacy practices with respect to information provided by visitors to Advertiser's Cast Page must comply with the terms of such Privacy Policy.

14. **Links.** The ReachCast Services may contain links to other Web sites, or allow others to send Advertiser such links. A link to a third party's Web site does not mean that Company endorses it or that Company is affiliated with it. Company is not responsible or liable for any damage or loss related to the use of any third-party Web site. Advertiser should always read the terms and conditions and privacy policy of a third-party Web site before using it.

15. **Changes to the ReachCast Services.** Company may change or discontinue the ReachCast Services at any time, for any reason, with or without notice to Advertiser. Company also reserves the right, in the future, to charge for ReachCast Services that are currently offered at no charge or to adjust the charges for ReachCast Services that are currently offered for a fee.

16. **Termination; Transition Assistance.**

(a) **Effect of Termination of Management Services.** If Advertiser is no longer a purchaser of the Management Services, Company may, in its sole discretion, permit Advertiser to maintain its Cast page. If Company so permits Advertiser, in order to provide Advertiser with the full functionality of its Cast page and to enable Advertiser to manage its connections on its own, Advertiser shall continue to authorize Company to (a) control the Advertiser's relationships with the Third-Party Sites so that Advertiser can continue to use the Cast page to communicate with such Third-Party Sites and (b) submit and manage Advertiser's Content on or through Third-Party Sites, which Advertiser elects to disseminate. Company may terminate, at any time for any reason, Advertiser's use of its Cast page once Advertiser is no longer paying for the Management Services. All of these ReachCast Terms (other than those specifically related to the Management Services) will remain in full force and effect.

(b) **Supplier's Termination Right.** Company reserves the right to cease providing the ReachCast Services to any Advertiser at any time. Company may also terminate Advertiser's account and Advertiser's use of the ReachCast Services (and, therefore, access to the Advertiser's Cast Page) at any time, for any reason, including, for, among other reasons, serious or numerous complaints from others. If Advertiser violates any of these ReachCast Terms, Advertiser's permission to use the ReachCast Services automatically terminates and Company shall have the right, but not the obligation, to delete all of Advertiser's Content. Under no circumstances will ReachCast have any obligation to refund any amounts paid by Advertiser for any of the ReachCast Services.

(c) **Advertiser's Termination Right.** After completing a minimum of at least six (6) campaign cycles, Advertiser may terminate its account and Advertiser's use of the ReachCast Services, provided, however, Advertiser shall remain obligated to pay all amounts due under all applicable contracts and Advertiser provides at least thirty (30) days prior written notice of its intent to terminate.

(d) **Transition Assistance.** Except in the event that Advertiser's account is terminated because of Advertiser's violation of these ReachCast Terms, upon termination of Advertiser's account and for a period of 30 days thereafter (the "Transition Period"), Company will use commercially reasonable efforts to provide certain assistance to Advertiser, including:

- transferring ownership of any domain that Company may have obtained on Advertiser's behalf;
- working with Advertiser to enable Advertiser to have continued access to Advertiser's presence on Third-Party Sites (for example, by providing Advertiser with instruction on how to transfer the accounts; provided, Company will not be providing or transferring to Advertiser the proxy e-mail addresses or passwords);
- providing information on how to save copies of and locally storing Advertiser's Content; and
- providing such other assistance as Company may choose to provide in Company's sole discretion.

After the Transition Period, Company will have no further obligation to provide assistance to Advertiser and Company will have the right, but not the obligation, to delete all of Advertiser's Content on Advertiser's Cast Page. However, Advertiser acknowledges and agrees that Company is under no obligation to remove any content that has been disseminated to Third-Party Sites.

17. **Disclaimer.** COMPANY PROVIDES THE PLATFORM, ADVERTISING SERVICES AND REACHCAST SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTY OF ANY KIND AND WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED DISPLAY OR DISTRIBUTION OF ANY REACHCAST SERVICES. IN THE EVENT OF INTERRUPTION OF THE REACHCAST SERVICES, COMPANY'S SOLE OBLIGATION WILL BE TO RESTORE SERVICE AS SOON AS PRACTICABLE. COMPANY DISCLAIMS

ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. COMPANY WILL HAVE NO LIABILITY FOR ANY: (i) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT OR INFORMATION; (ii) CLAIMS RELATING TO BREACH OF INTELLECTUAL PROPERTY LAWS OR DEFAMATION; (iii) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ADVERTISER'S ACCESS TO OR USE OF THE REACHCAST SERVICES; (iv) UNAUTHORIZED ACCESS TO OR USE OF COMPANY'S SERVERS OR OF ANY PERSONAL OR FINANCIAL INFORMATION; (v) INTERRUPTION OF TRANSMISSION TO OR FROM THE REACHCAST SERVICES; (vi) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE REACHCAST SERVICES BY ANY THIRD PARTY; (vii) LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, E-MAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE ON OR THROUGH THE REACHCAST SERVICES; OR (viii) MATTERS BEYOND ITS OR THEIR REASONABLE CONTROL. COMPANY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY ON OR THROUGH THE REACHCAST SERVICES OR ANY LINKED WEB SITE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY ADVERTISER FROM COMPANY OR THROUGH THE REACHCAST SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THESE REACHCAST TERMS. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO ADVERTISER BY OR ON BEHALF OF COMPANY (INCLUDING ANY REPORTING, ANALYTICS AND SIMILAR INFORMATION) OR ANY CONTENT AVAILABLE ON OR THROUGH THE REACHCAST SERVICES (INCLUDING ANY CONTENT SUBMITTED BY AN END-USER), OR THE CONTENT OF ANY WEB SITES OR RESOURCES LINKED TO THE REACHCAST SERVICES.

ADVERTISER UNDERSTANDS AND AGREES THAT ANY MATERIAL OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE REACHCAST SERVICES IS DONE AT ADVERTISER'S OWN RISK AND THAT ADVERTISER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE ARISING FROM DOING SO.

COMPANY'S (INCLUDING ANY THIRD-PARTY SUPPLIER'S) AGGREGATE LIABILITY TO

ADVERTISER ARISING FROM OR RELATING TO ADVERTISER'S USE OF THE REACHCAST SERVICES WILL NOT EXCEED THE GREATER OF \$100.00 OR THE AMOUNT ADVERTISER HAS PAID COMPANY IN THE PAST TWELVE (12) MONTHS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY MAKES NO GUARANTEES WITH RESPECT TO THE PERFORMANCE OF THE REACHCAST SERVICES.

18. **Indemnification.** Advertiser will indemnify, defend (with counsel reasonably acceptable to Company) and hold harmless Company, its third-party suppliers, the publishers, their subsidiaries, affiliates and parent companies, and their respective directors, officers, agents and employees and each of their successors and assigns (collectively, the "Company Parties") from and against any and all claims, liabilities, damages, losses, costs, expenses, fees of any kind (including without limitation reasonable attorneys' fees and expenses) incurred in connection with any claim, action or proceeding arising from or relating to: (i) any information (including Advertiser's Content, the Generated Content, feedback, or any other content) Advertiser or anyone using Advertiser's account submit, post, or transmit through the ReachCast Services; (ii) violation of the terms and conditions of any Third-Party Site by Advertiser or anyone using Advertiser's account; or (iii) any other act, omission or misrepresentation by Advertiser. The Company Parties reserve the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Advertiser. If a Company Party assumes the defense of such a matter, Advertiser will reasonably cooperate with such Company Party in such defense. Advertiser will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to, or any admission of wrongdoing by, any Company Party, without such Company Party's prior written consent.

19. **LIMITATIONS OF LIABILITY.**

(a) **NO CONSEQUENTIAL DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY PARTIES AND ADVERTISER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR STRICT LIABILITY), OR FOR INTERRUPTED COMMUNICATIONS, LOSS OF USE, LOST BUSINESS, LOST DATA OR LOST PROFITS (EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE FOREGOING EXCLUSION OF LIABILITY WILL NOT APPLY TO (I) ADVERTISER'S INDEMNIFICATION OBLIGATIONS, INCLUDING ANY AMOUNTS PAYABLE IN CONNECTION THEREWITH; (II) TO ADVERTISER'S CONFIDENTIALITY OBLIGATIONS AND (III) ADVERTISER'S GROSS NEGLIGENCE OR

WILLFUL MISCONDUCT.

(b) **LIMITATION ON DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL THE COMPANY PARTIES' CUMULATIVE, AGGREGATE LIABILITY TO ADVERTISER OR ANY THIRD PARTY EXCEED THE AMOUNTS RECEIVED BY THE COMPANY PARTIES, HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY. IN LIEU OF REFUND, COMPANY SHALL BE PERMITTED, IN ITS SOLE DISCRETION, TO CAUSE THE PLACEMENT OF "MAKE-GOOD" ADVERTISING, PROVIDED SUCH "MAKE-GOOD" ADVERTISING IS PROVIDED WITHIN A REASONABLE PERIOD OF TIME AFTER THE LIABILITY HAS ACCRUED.

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations and disclaimers may not apply to Advertiser. To the extent neither Company or any other Company Party may, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of the Company Parties' liability will be the minimum permitted under such law.

(c) **Timing of Claims.** Advertiser agrees that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to these ReachCast Terms must be filed within one year after such claim or cause of action arose or be forever barred; provided that this section shall not in any way limit the time in which claims for infringement or misappropriation of intellectual property rights may be brought.

(d) **Acknowledgement.** Each party acknowledges that the other party has entered into these ReachCast Terms in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

20. **Miscellaneous.**

(a) **Governing Law/Venue.** This Agreement will be governed and construed in accordance with the laws of the State of California without giving effect to conflict of laws principles. The parties agree to submit to jurisdiction in California and further agrees that any cause of action arising under these ReachCast Terms must be brought exclusively in a court in Los Angeles County, California.

(b) **Entire Agreement/Amendment.** This Agreement sets forth the entire agreement of the parties and supersedes any and all prior oral or written agreements or understandings between the parties as to the subject matter hereof. It may be changed only by a writing signed by both parties.

(c) **Severability.** If any provision of these ReachCast Terms is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.

(d) **Assignment.** Advertiser may not assign these ReachCast Terms without the prior written consent of Company. The parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and joint administrators and permitted assigns.

(e) **Independent Contractors.** The parties to these ReachCast Terms are independent contractors, and no

agency, partnership, joint venture or employee-employer relationship is intended or created by these ReachCast Terms.

(f) **Force Majeure.** Neither party shall have any liability for any failure or delay (other than with respect to payment obligations) resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown or any other condition affecting production or delivery in any manner beyond the reasonable control of such party.