

## Adperio Network, LLC's Terms & Conditions for Publishers

These Publisher Terms and Conditions (the "Agreement") set forth the agreement between Adperio Network, LLC, a Colorado limited liability company with offices at 2000 S. Colorado Blvd, Tower 1 Suite 7000, Denver, CO 80222 ("Adperio"), and its publishers. This Agreement replaces and supersedes any prior terms and conditions between Adperio and its publishers. You ("Publisher") shall be legally bound by this Agreement by executing a hard copy of this Agreement, electronically accepting this Agreement online, or by using Adperio's services.

This Agreement may be amended from time to time in Adperio's discretion and pursuant to applicable law. Amended versions of this Agreement will be effective upon posting at [www.adperio.com](http://www.adperio.com).

### 1. DEFINITIONS.

As used in this Agreement, the following terms shall have the meanings set out below or as defined elsewhere in this Agreement:

**Advertiser:** means an entity that submits Offers and Creatives for placement in Adperio's network for the purpose of marketing, advertising and lead generation.

**Agent:** means any publisher, affiliate, distribution partner or any other similar third-party with a business relationship with Publisher.

**Lead(s):** means any lead or activity specified by Adperio and its Advertisers and taken by a Consumer, for which Advertiser compensates Adperio and Adperio in turn compensates Publisher. The particular lead or activity for each Offer will be set forth with the Offer or in a separate insertion order signed by Adperio and Publisher.

**Consumer:** An individual to whom an Offer is directed or who responds to an Offer and who effects a Lead.

**Creative:** Means a graphic file(s) or creative work made available to Publisher for use in an Offer.

**Invalid Leads:** shall mean Leads that were generated in violation of the terms and conditions of this Agreement or applicable laws, Leads that do not meet all of the requirements of the Advertiser as set forth in the Offer terms, Leads that do not contain all information required by the Offer terms, Leads that contain false information (including a stolen or invalid credit or debit card), Leads generated through any misleading or fraudulent means, or Leads that are rejected by the Advertiser. .

**Offer:** An advertisement that contains a promotion or opportunity directed to Consumers that may be made available from time to time by Adperio for publishing by Publisher on the Internet or via any wireless mobile device.

**2. APPROVAL.** Publisher may only use Adperio's services after first being reviewed and approved as a Publisher by Adperio. Adperio reserves the right to withhold or refuse approval of any company or individual applying to become a Publisher of Adperio. Once approved, Publisher's account is not transferrable and may only be used by Publisher. Any attempt by Publisher to let others access its account or sell, trade or otherwise transfer its account is strictly forbidden and will result in an immediate termination of Publisher's account and forfeiture of all commissions.

### 3. WORKING WITH THIRD PARTIES.

**Approval for use of Agents:** Publisher shall not enter into a relationship with an Agent with respect to the use of Adperio's Offers without notifying Adperio, in writing, and obtaining Adperio's express, advance, written approval, of its intent to enter into such a relationship (which may be granted or denied in the sole discretion of Adperio) and providing Adperio with the identifying information of the Agent, which shall include:

(A) in the case of a natural person, the Agent's first and last name, physical address, country, telephone number, and email address; and

(B) in the case of corporations, partnerships, proprietorships, limited liability companies, organizations, associations, cooperatives, agencies, or other legal entities, the name and jurisdiction of organization for such entity and the first and last name, physical address, country, telephone number, and email address for the natural person or persons who own, manage, or control the Agent.

If Adperio grants approval for Publisher to use Agents in publishing and distributing Offers hereunder, Publisher agrees to comply with the following requirements on the use of Agents ("Agent Requirements"):

- a. Adperio's Offers may only be pulled from Publisher's network by Agents that are direct publishers and do not have a network of their own. Publisher shall prohibit the Agent from further brokering such Offers to other publishers through a network or any other means.
- b. Publisher shall not knowingly recruit any Agent that is already publishing an advertiser's offer to run that same advertiser's offer from Adperio.
- c. Publisher shall provide Adperio with a unique ID number for each Agent on each Lead generated for Adperio's Offers.
- d. If any Agent running Adperio's Offers is generating Invalid Leads, Publisher shall provide Adperio with the full name, address and other contact information for such Agent immediately upon request by Adperio (and Adperio shall have the right to disclose such information to its advertisers). Adperio will only use this information to create and maintain a blacklist for its Advertisers.
- e. Publisher shall comply with any terms and other requirements of the Advertiser with respect to the use of Agents to distributed Offers.
- f. Publisher shall prohibit any Agent that is blacklisted by Adperio and/or the Advertiser from publishing any of Adperio's Offers.
- g. Publisher shall not make Adperio's Offers available generally to all of Publisher's Agents; rather, Publisher shall screen and select each Agent that is allowed to publish Adperio's Offers to ensure that such Agent meets the requirements set forth herein.

Publisher shall not be entitled to payment for any Leads generated in violation of the Agent Requirements. In addition, Adperio, may, at its sole option, exercise any of the following remedies for any breach of the Agent Requirements by Publisher or its Agents:

- i. Prohibit any Agent that violate the Agent Requirements from running any Adperio Offers;
- ii. Revoke the right of Publisher to use Agents to publish Adperio's Offers;
- iii. Terminate this Agreement and prohibit Publisher from continued participation as a Publisher for Adperio; or,
- iv.. Exercise any other rights and remedies under this Agreement or pursuant to applicable laws and regulations.

**Publisher's Relationship with Agents.** Publisher will not make any commitments or representations on behalf of Adperio with regard to any relationship it enters into with its Agents in connection with its promotion of any Adperio Offers or otherwise. Publisher will provide all Agents with a copy of this Agreement and, upon request by Adperio, provide Adperio with a signed acknowledgement by the Agent of its agreement to this Agreement. Publisher shall ensure and contractually require that all Agents comply with all of the terms and conditions in this Agreement (and Publisher shall be fully responsible for any breach of such terms and conditions by its Agents). Publisher is limited to a single tier of Agent relationships. Publisher will include in its

terms and conditions with its Agents a clause prohibiting them from entering into any additional tier of agent relationship with respect to Adperio's services.

**Reporting and Complaint Mechanism.** Publisher will establish and maintain a functioning email address or other Internet-based mechanism for consumers to report complaints regarding the practices of any Agent and make best efforts to associate each complaint with the Agent that is the subject of the complaint. Publisher will promptly report all such complaints to Adperio and shall investigate any complaint received through this mechanism and immediately terminate any Agent that it reasonably determines has engaged, or is engaging, in violations of applicable law or this Agreement. Adperio reserves the right to require that Publisher not use any particular Agent for Adperio's Offers, and any such determination shall be made in Adperio's sole discretion.

**4. TERM AND TERMINATION.** Either party may terminate this Agreement without cause or reason on two business days' advance notice to the other party. If Publisher violates applicable law or any term of this Agreement, Publisher will be subject to immediate termination, including the forfeiture of any fees earned but not yet paid, as well as possible legal action, including, but not limited to reporting to the proper authorities.

**5. PAYMENT.** Unless otherwise mutually agreed in writing by Publisher and Adperio (which may include an exchange of emails), Adperio will pay Publisher any commissions earned during a calendar month within 30 days after the end of the month (provided, however, that any account with a total balance less than \$50 will be carried over and paid only when the balance exceeds \$50). Adperio is not required to pay Publisher if the Advertiser does not pay Adperio. Delinquent Advertiser payments received by Adperio will be credited to the Publisher in the month that they are received. All commissions are based upon the number of Leads reported by Adperio and as recorded in Adperio's systems. Publisher shall not earn commissions on Invalid Leads, as determined by Adperio in its sole discretion. Adperio may also withhold payment to Publisher, offset against other payments owed Publisher or recover directly from Publisher in the event that Adperio determines in its sole discretion that Publisher has engaged in unauthorized activity, including the generation of Invalid Leads, or breached its obligations under this Agreement. In addition, if an Advertiser withholds payment to Adperio or charges back previous payments because of actions of Publisher, Adperio may also withhold payment to Publisher or offset such charge backs against other payments due Publisher (or if no other payments are due Publisher, Publisher shall remit payment to Adperio upon demand by Adperio) . If Publisher's account is inactive for a period of sixty consecutive days (meaning Publisher has not generated any Leads during such period), Publisher shall lose its right to continue to receive commissions from its referrals, if applicable, of other Publishers to Adperio. If Publisher's account is inactive for a period of six consecutive months, Publisher's account shall be closed and Publisher shall forfeit any remaining balance in its account to compensate Adperio for the administrative costs of maintaining and closing an inactive account.

**6. LIMITED LICENSE TO USE OFFERS.** Adperio hereby grants to Publisher a nonexclusive, revocable license to display Offers in accordance with the terms of this Agreement and any additional terms posted in connection with each Offer. To the extent, if any, that an Offer contains an Advertiser's trademarks, service marks or trade names, Publisher shall not use such marks in a manner that might be deemed to create a unitary composite mark. Publisher agrees not to use an Offer in a manner that is disparaging of Adperio or any Advertiser. The Advertisers reserve all proprietary rights in and to the Offer not expressly granted herein. Publisher acknowledges that all use of the Offer by it inures solely to the benefit of the Advertiser. Publisher will cease using any Offer immediately upon the request of Adperio. Upon termination of this Agreement or written notice from Adperio, Publisher will immediately cease using all Offers, and the license granted herein shall terminate.

#### **7. GENERAL PUBLISHER OBLIGATIONS.**

Publisher represents and warrants that all information submitted by it in its application is complete and accurate.

Publisher agrees that it is responsible for providing complete and accurate registration information to Adperio and maintaining current registration information with Adperio including, but not limited to, its contact information.

Publisher understands and agrees that it is solely responsible for all of its marketing activities, and it is individually liable for any damages or losses incurred by its violation of any applicable laws or regulations or this Agreement.

Solely Publisher is responsible for, and Adperio hereby disclaims all liability for, the development, operation and maintenance of, and all costs associated with, Publisher's website(s) and any content thereon. Publisher agrees that its website(s) shall not, in any way, copy or resemble the look and feel of, or create the impression that it is part of Adperio's or its Advertisers' websites.

Publisher shall not modify or alter any Offer or Creative in any manner. Publisher will only run approved banners and text in its advertising of Offers and will not create its own banners or advertising text based on the Creative or Offer, unless expressly approved in writing from Adperio. Any other use of Offers or Creative will result in immediate termination of this Agreement and the loss of payment of Leads.

Publisher warrants that Publisher is not currently under order or investigation by any federal, state, local, or international regulatory or law enforcement organization. Publisher will notify Adperio immediately in writing of any investigation, litigation, arbitrated matter or other dispute relating to Publisher's advertising, marketing or information security or privacy practices, even if any such investigation is nonpublic in nature.

Publisher represents and warrants that it will at all times comply with all applicable laws, rules and regulations, and, without limiting the foregoing, the following requirements, in promoting, disseminating or otherwise distributing an Offer:

(A) Publisher shall not place an Offer on a website or in any other context with inappropriate content, which includes, but is not limited to, content that (i) contains or promotes the use of alcohol, tobacco or illegal substances, pornography, phone sex or escort services, expletives or other inappropriate language; (ii) promotes gratuitous violence, abuses or threatens physical harm; (iii) promotes illegal or unethical activity, racism, hate, "spam," mail fraud, gambling, sweepstakes, pyramid schemes, investment and money-making opportunities or illegal advice; (iv) promotes the use of illegal activities, such as how to build a bomb, counterfeiting money and software pirating (e.g., Warez, Hotline); (v) is libelous, defamatory, infringing, false, misleading or contrary to public policy; (vi) is otherwise prohibited by federal or state law; (vii) may bring Adperio and/or its associated Advertisers negative publicity; (viii) introduces viruses, worms, harmful code and/or Trojan horses on the Internet; or (ix) is otherwise objectionable to Adperio, in its sole discretion.

(B) Any spoofing or redirecting or trafficking from adult-related websites in an effort to gain traffic is prohibited.

(C) Any trafficking from websites that are point, lottery or rewards based and encourage users to click on Offers or use Offers to generate revenue for users to win points, get rewards, or other incentives are prohibited, unless expressly approved in writing from Adperio or as part of the terms of the particular Offer.

(D) Publisher shall not disseminate, promote or otherwise distribute any Offer through the use of contextual media, adware, pop-up/pop-under technologies, plug-ins, or similar technologies (provided, however, that certain pop-up or pop-under technology may be permitted with the prior written consent of Adperio).

(E) Publisher shall not violate any third-party terms and conditions, including, without limitation, applicable website terms and conditions, including those that prohibit: (i) unauthorized use of a third party web site for commercial gain; or (ii) posting bulletins to non-owned accounts.

(F) Publisher shall not use deceptive or misleading practices, such as the use of spyware, adware, devices, programs, robots, hidden pictures, redirects, spiders, computer scripts or other automated, artificial or fraudulent methods designed to appear as if a Consumer is generating a Lead (provided, however, that certain adware technology may be permitted with the prior written consent of Adperio).

(G) Publisher shall not engage in any deceptive or misleading form of advertising or marketing, which includes, but is not limited to, phishing (the practice of sending an email to an individual, falsely claiming to be an established legitimate enterprise in an attempt to scam or defraud the user into surrendering private and personal information that can be used for identity theft, or for any other purpose), cybersquatting, typosquatting or combosquatting.

(H) In order to receive payment each month, Publisher must log into its account and confirm Publisher's agreement to the data on Leads generated by Publisher and amounts owed to Publisher for such Leads. After confirming its agreement to the data, Publisher may not thereafter challenge the data set forth in its account (however, Publisher acknowledges that Adperio may still make adjustments to such data for Invalid Leads or other reasons).

(I) Publisher shall operate in compliance with all applicable laws, regulations, decisions and industry best practices, including but not limited to: (i) Section 5 of the Federal Trade Commission Act and any current or future interpretation by the Federal Trade Commission ("FTC") of Section 5, including as it relates to Publisher programs, incentive programs, or advertising, privacy and information security generally, and (ii) the Direct Marketing Association's Best Practices for Online Advertising and Publisher Marketing.

(J) If Publisher engages in any keyword search marketing hereunder, Publisher shall (1) comply with all rules, requirements and terms of the particular search engine being used, (2) not infringe upon any trademark or other intellectual property rights of any third parties, and (3) comply with all terms and requirements of the Advertisers with respect to search marketing.

(K) If Publisher is distributing an Offer outside the United States, Publisher represents and warrants that (1) it is familiar with the particular laws, regulations and industry customs in those countries in which is distributing the Offer, (2) it has previous experience distributing offers in such countries, and (3) it will comply with all such laws, regulations and industry customs.

(L) All tracking and other types of cookies installed by Publisher on any User's computer or other device will comply with Publisher's posted privacy policy and all applicable laws and regulations.

(M) For an Offers to be distributed on wireless devices, such as cell phones and tablets, Publisher agrees to: (i) comply with all applicable laws and regulations regarding marketing to wireless devices; (ii) comply with all rules, terms and policies of the wireless service provider and the maker(s) of the wireless device and operating system running on such device, (iii) not install any software, cookies or application to the device without the express affirmative consent of the User; and (iv) provide such data regarding the Leads as may be required by Adperio or its Advertiser from time to time, including, UDID numbers for each Lead and geo and time/date of the Lead generation.

**8. PUBLISHER OBLIGATIONS FOR EMAIL MARKETING.** Publisher represents and warrants that, with respect to email campaigns transmitted by Publisher for Adperio in connection with any Offer, Publisher shall at all times maintain strict compliance with the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act"), all rules and official guidance promulgated by the FTC pursuant to the CAN-SPAM Act, the Federal Communications Commission's ("FCC") rules and orders regulating the transmission of commercial email to wireless devices, and all other applicable federal, state, local and international laws and regulations. In addition, without limiting the foregoing, Publisher agrees that it will comply with the following requirements. If Publisher uses a third party to transmit email on its behalf, then that third party and Publisher will be treated as one and the same for purposes of this Agreement.

(A) Address List.

(i) Publisher shall ensure that the addresses on its email address list (the "List") are entirely "opt-in." This means that the email recipient has consented to receiving advertisements of the type sent by Publisher via a clear and conspicuous affirmative "opt-in" process (and has not subsequently revoked such consent), subject to a posted, clear, conspicuous and accurate privacy policy that allows such use. If Publisher uses the list of a third party to distribute such emails, such third parties, or "List Owners," will be considered one and the same as Publisher for purposes of this Agreement. If any Consumer makes a spam or similar complaint with respect to any emails sent hereunder, Publisher shall immediately notify Adperio of such complaint and shall provide documentary evidence of such Consumer's opt in information, including IP address, date, time and other relevant information.

(ii) Publisher shall not promote an Offer in emails sent to persons whose email addresses were gathered in any automated process, harvesting or screen scraping, or as the result of randomly generated combinations of characters.

(iii) Publisher agrees that, prior to transmitting any email to the List, it will scrub the List against its own do-not-

email list and, if required by the terms of the Offers, the do-not-mail list of the Advertisers for such Offers (collectively, the "Suppression List"). Publisher will conduct such purges at the last possible, commercially reasonable moment, but not more than twenty-four (24) hours before the List is sent an email promoting an Offer. Publisher will not transmit any email promoting an Offer to any address or domains on the Suppression List. Publisher also agrees that it will download and remove the domains located on the FCC's wireless domain names list (<http://www.fcc.gov/cgb/policy/DomainNameDownload.html>) from all current data used in all mailings. Publisher further warrants that any new data that it acquires, regardless of its source, will be run against the FCC's wireless domain names list and that domain names contained therein will be removed before sending any mailings.

(iv) Publisher will not (and will not allow others to) sell, remarket, disclose or use the Suppression List or the email address of any person who has opted out of receiving email promoting an Offer for any reason other than to comply with this Agreement and the law.

(v) For each List (including, without limitation, lists provided by a List Owner), Publisher will promptly provide Adperio, upon Adperio's request, a written explanation of: (a) the source of the email addresses and the method by which the email recipients opted into receiving email such as messages promoting an Offer; and (b) the opt-in and/or opt-out process such recipients had and have, and the attendant privacy policy, as well as what made such process and policy clear and conspicuous to the consumer.

(B) Transmission.

(i) Publisher shall not promote an Offer in emails sent through open proxies, from email or Internet Protocol ("IP") addresses registered through fraud or false pretenses, or through any means in violation of an Internet Service Provider's ("ISP") policies.

(ii) Upon Adperio's request, Publisher shall promptly provide a full list of domain names, routing information and IP addresses that will be, are being or were used to send emails promoting an Offer. In addition, upon Adperio's request, Publisher shall promptly provide an explanation of the transparency of the return domain names, the List Owners' contact information and all other information that permits email recipients to identify email senders. If at any time any of Publisher's and/or List Owners' IP addresses or domain names are mass-blocked or blacklisted, Publisher will inform Adperio immediately.

(C) Content.

Publisher shall be the "sender" of the email containing Offers as defined by the CAN-SPAM Act, its rules and official guidance, and shall comply with all requirements of a "sender" under the CAN-SPAM Act, its rules and official guidance, including but not limited to 16 CFR 316.2(m). Any email from Publisher (and any party delivering emails on its behalf) shall: (i) Have valid and traceable email header information identifying the Publisher as the sending party; (ii) Within the body of the email, include a valid physical street address of Publisher; (iii) Include a clear and conspicuous identification that such email message is an advertisement or solicitation when the email is sent to an address in which there is no prior business relationship; (iv) Within the body of the email, include the following language in a separate, stand-alone, paragraph, apart from the footer or any opt-out language, in the same color, size and font as the text used by other advertisers in the Offer: "This offer has been brought to you by [insert Publisher or list owner Name], a marketing company that promotes products, goods, or services to consumers by email or via the internet. This email is being sent to you because you have opted to receive such messages." ."; (v) Include a "subject line" which accurately reflects the contents of the message and that is not misleading with respect to the contents or subject matter of the message; (vi) Include a "from line" which accurately identifies only the Publisher as the sending party; (vii) Use only email addresses containing the name of the Publisher as the sending party, and not use the non-sending party's name in any mail-from or reply-to email addresses (e.g. "from" lines need to accurately identify Publisher as the sender of the email); (viii) use reply-to address that are functioning email addresses where Publisher can be contacted; and (ix) not contain false or misleading header or transmission information,

Publisher warrants and represents that any message content not supplied by Adperio will not infringe upon or violate any copyrights, trademarks or any rights of privacy or publicity or other proprietary rights of, and will not violate applicable laws or regulations or cause injury to, any third party.

(D) Opt-Out Mechanism and Compliance. Publisher must include in each email message a clear and conspicuous explanation of how the recipient may opt-out of receiving future commercial emails from it, including a valid email address monitored by Publisher or a hyperlink that the recipient may use to do so. If Publisher uses a hyperlink, it must allow recipients to opt-out by clicking to a single web page and providing only the recipient's email address. Publisher shall in no circumstances require any personally-identifiable

information other than a recipient's email address to effectuate the recipient's request to opt-out. The email address or hyperlink must remain capable of receiving opt-out requests for at least thirty (30) days after the email is sent. Publisher must process opt-out requests within ten (10) days of receipt (or any other timeframe established in the future by the FTC); notwithstanding Section 8(A)(3), Publisher shall not send any commercial electronic email, including one promoting an Offer, to any recipient who has opted out 10 days or more before transmission of an email.

(E) The email addresses to be used in connection with any Adperio email campaign shall be: (i) Collected and maintained in compliance with all federal and state laws, regulations and rules and applicable international laws and regulations; (ii) Collected from websites and other online venues in compliance with the applicable websites' and or other online venues' privacy policies, and such privacy policies specifically allow for Publisher to use such email addresses as contemplated hereunder; and (iii) Obtained and collected without employing email address harvesting, dictionary attacks and/or any other deceptive or illegal act and/or practice.

**9. Compliance and Monitoring.** Publisher agrees that Adperio and our service providers may monitor or audit Publisher's sites and activities under this Agreement, as well as those of Publisher's Agents. Publisher will not block or otherwise interfere with such monitoring, and we may use technical means to overcome any methods that Publisher may use to block or interfere with such monitoring. Audits may include requests for documents and information and visits to Publisher's facilities and those of its Agents. Publisher's failure to promptly and reasonably comply with Adperio's efforts to audit its or its Agent's compliance with this Agreement shall constitute a material breach of this Agreement.

**10. MUTUAL REPRESENTATIONS AND WARRANTIES.** Each party represents and warrants to the other party that (i) such party has the full corporate or organizational right, power, and authority to enter into the Agreement and to perform the acts required of it, (ii) the execution of or electronic agreement to this Agreement by such party, and the performance by such party of its obligations and duties, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound, or any applicable federal, state or municipal law or regulation to which it is subject, (iii) each party shall render all services to the other party in a professional and commercially reasonable manner, in accordance with generally accepted industry standards; and (iv) each party owns or has the authority and valid license to use all intellectual property and content on its website(s).

Each party also represents and warrants that it is fully compliant with applicable privacy and information security laws. Each party shall provide clear and conspicuous notice for, and fully disclose, its respective privacy policy and practices to visitors to its website(s).

**11. LIMITATION OF LIABILITY; NO ADDITIONAL WARRANTIES; INDEMNIFICATION.** THE ADPERIO WEBSITES (INCLUDING ANY REPORTING SITE) AND THE OFFERS ARE PROVIDED "AS IS" AND "AS AVAILABLE." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ADPERIO BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING LOST PROFITS OR REVENUES, OR HARM TO BUSINESS) EVEN IF IT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ADPERIO'S LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY, BE GREATER THAN THE TOTAL AMOUNT PAID WITHIN THE PRIOR SIX MONTHS BY ADPERIO TO PUBLISHER HEREUNDER.

**Indemnification.** Each party agrees to indemnify, defend and hold harmless the other, its subsidiaries, advertisers, vendors and suppliers, and each of their respective agents, partners, officers, directors and employees from and against any third party loss, cost, claim, injury or damage (including reasonable attorneys' fees) arising out of or related to a breach of such party's representations or warranties made in this Agreement or a breach of the terms and conditions of this Agreement.

**Indemnification Procedures.** Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such claim and the indemnitor shall defend

and/or settle the claim at its own expense and with counsel of its own selection. Indemnitee shall at all times have the right to fully participate in the defense of any claim and in any settlement which it reasonably believes would have an adverse effect on its business. The indemnitee shall make available to the indemnitor all books and records relating to the claim, and the parties to this Agreement agree to render to each other such assistance as may reasonably be requested in order to ensure a proper and adequate defense. An indemnitee shall not make any settlement of any claims which might give rise to liability of an indemnitor hereunder without the prior written consent of the indemnitor. An indemnitor shall not make any settlement of any claims which give rise to or impose any liability or obligations on the indemnitee without the prior written consent of the indemnitee, such consent not to be unreasonably withheld. Nothing in this Agreement shall be construed to prevent indemnitee from retaining counsel of its choice, at the expense of the indemnitee, to represent indemnitee's interests and participate in the defense of any such claims covered under this section.

**12. CONFIDENTIAL INFORMATION.** Each party agrees to use the other party's Confidential Information solely for the purposes contemplated by this Agreement, and to refrain from disclosing the other party's Confidential Information to any third-party, unless (a) any disclosure is necessary and permitted in connection with the receiving party's performance of its obligations or exercise of its rights under this Agreement or any other agreement between the parties; (b) any disclosure is required by applicable law; provided, that the receiving party uses reasonable efforts to give the disclosing party reasonable advance notice thereof so as to afford the disclosing party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure; or (c) any disclosure is made with the prior written consent of the disclosing party. For the purposes of this Agreement "Confidential Information" includes, without limitation, the terms of this Agreement (including pricing) and information regarding existing or contemplated service, products, Advertisers, processes, techniques, or know-how, or any information or data developed pursuant to the performance of the services. Notwithstanding the foregoing, Publisher agrees that Adperio may divulge its personal and/or otherwise Confidential Information to an Advertiser upon request or to an enforcement agency, legal or regulatory authority, person or entity relating to investigations, claims or actions that Publisher has violated this Agreement or pursuant to any applicable law or regulation.

### **13. GENERAL.**

**Governing Law.** The rights and obligations of the parties under or arising out of this Agreement shall be governed by and construed under the laws of the State of Colorado without reference to its conflict of laws principles.

**Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Internet outage, act of God, fire, natural disaster, accident, terrorism, riots, acts of government, shortage of materials or supplies, or any other cause beyond the reasonable control of such party.

**Relationship.** The relationship of Publisher and Adperio established by this Agreement is that of independent contractors, and neither party is an employee, agent, partner or joint venturer of the other.

**Notice.** Any notice, communication or statement relating to this Agreement shall be in writing and deemed effective: (i) upon delivery when delivered in person; (ii) upon transmission when delivered by facsimile or email; or (iii) when delivered by registered or certified mail, postage prepaid, return receipt requested or by nationally-recognized overnight courier service to the address of the respective party as indicated herein. In the event of material changes to this Agreement, notice shall be deemed effective upon posting at [www.adperio.com](http://www.adperio.com). Notices to Adperio shall be sent to Adperio at 2000 S. Colorado Blvd, Tower 1 Suite 7000, Denver, CO 80222. Notices to Publisher shall be sent to Publisher at its most recent email address set forth in its account information on [www.adperio.com](http://www.adperio.com). Publisher agrees to receive electronic communications from Adperio, at the email address provided by Publisher. Publisher further agrees that any notice or other communication that Adperio sends it electronically will satisfy any legal communication requirements, including that such communications be in writing.

**Successors and Assigns.** Publisher may not assign or otherwise transfer this Agreement or any rights or obligations herein without the prior written consent of Adperio. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

**Waiver.** The failure of either party to insist upon or enforce strict performance by the other or to exercise any

right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance, and the same shall be and remain in full force and effect.

**Amendment.** Changes, amendments or modifications of any provision of this Agreement shall be valid upon posting at [www.adperio.com](http://www.adperio.com).

**Entire Agreement; Severability.** This Agreement and any related IO's set forth the entire agreement and understanding of the parties relating to the subject matter hereof, and merges all prior discussions and writings between them with respect to the contents of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction as part of a final non-appealable ruling, government action or binding arbitration, to be invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms.

**Dispute Resolution.** In the event of disputes between the parties arising from or concerning in any manner the subject matter of this Agreement, the parties shall first attempt to resolve the dispute(s) through good faith negotiation. In the event of a dispute resulting in litigation, each party consents to the exclusive jurisdiction of the federal and state courts in Denver, Colorado, USA and any such litigation will be brought within such courts. The prevailing party in any action shall be entitled to recover its reasonable attorneys' fees and costs incurred.

**Survival.** Any obligation of the parties relating to limitations on liability, confidentiality and indemnification shall survive termination or expiration of this Agreement.

**Interpretation.** Each party acknowledges and agrees that it has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and conditions of this Agreement. This Agreement shall not be construed against either party by reason of its drafting.