

TERMS AND CONDITIONS FOR ADVERTISERS

Last updated: **January 14, 2011**

These Terms and Conditions for Advertisers, together with any associated "Insertion Order(s)" (defined herein) (collectively this "**Agreement**") govern use by "Advertiser" (defined herein) of the "Network" (defined herein) to place "Ads" (defined herein) from Advertiser on various "Publisher Websites" (defined herein).

1. **Definitions.** For purposes of this Agreement, in addition to the bold capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings given to them below. All capitalized terms not defined in these Terms and Conditions for Advertisers have the meanings given in the associated Insertion Order(s).

1.1 "**Adconion**" means the legal entity as identified in the Insertion Order under which Advertiser will serve Ads to Publisher Websites through the Network.

1.2 "**Adconion Company**" shall mean Adconion and other related entities.

1.3 "**Ad Impressions**" means each occurrence of an advertisement being displayed by Publisher Website resulting from an End-User accessing or using such Website.

1.4 "**Ad**" or "**Advertisement**" means text-based, graphical, interactive, rich media, video, or other online advertisements, including, without limitation, banners, buttons, towers, skyscrapers, pop-ups, pop-unders, and video advertisements.

1.5 "**Advertiser**" means the person or entity identified as "Advertiser" in the associated Insertion Order(s).

1.6 "**Campaign**" is the basic unit of business between an Advertiser and Adconion. Each Campaign may be categorized as a CPM Campaign, CPM-A Campaign, Performance Campaign and Creative Service Campaign.

1.7 "**Confidential Information**" has the meaning given in Section 12.

1.8 "**CPA Campaign**" shall mean a Campaign where a pricing model only charges an Advertiser on an action being conducted eg. a sale or a form being filled in.

1.9 "**CPC Campaign**" shall mean a Campaign where the amounts paid by an Advertiser is based on click on their sponsored search listing.

1.10 "**CPM-C Campaign**" shall mean a Campaign that has been optimized to obtain a higher rate of clicks.

1.11 **"CPM-A Campaign"** shall mean a Campaign that has been optimized to obtain a higher rate of acquisitions.

1.12 **"CPM Campaign"** shall mean a Campaign purchased on the basis of Ad Impressions.

1.13 **"Creative Service Campaign"** shall mean a Campaign for which Adconion has had to create and or design part or all of the Ad.

1.14 **"Data Aggregator"** shall mean any group, company, and or organization that collects and compiles information from Websites to sell to others.

1.15 **"End-Users"** means users of a Publisher Website.

1.16 **"Fees"** means those certain fees indicated in the associated Insertion Order(s).

1.17 **"Intellectual Property Rights"** means all works of authorship, registered copyrights, common law copyrights, trademarks, common law trademarks, trade dress, labels, designs, logos, patents, patent applications, know-how, trade secrets, database rights, rights in designs and all other intellectual property rights and associated goodwill (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

1.18 **"Network"** means Adconion Company's proprietary system and related tools that enable an Advertiser to purchase Ad inventory and distribute Ads through the Network and to manage and administer the foregoing.

1.19 **"Performance Campaign"** shall mean CPM-A Campaign, CPM-C Campaign, CPC or CPA Campaign.

1.20 **"Publisher Website"** means a Website of a publisher who elects to include such Website in the Network.

1.21 **"Targeting Criteria"** means the parameters made available to Advertiser within the Network against which Advertiser may target the display of Ads on Publisher Websites.

1.22 **"Term"** has the meaning given in Section 7.

2. **Insertion Orders.** From time to time, Adconion and Advertiser may negotiate insertion orders (each an **"Insertion Order"**) under which Advertiser will serve Ads to Publisher Websites through the Network, in respect of Campaign(s). Insertion Orders will be binding only if accepted and signed by Adconion and Advertiser. Each Insertion Order will specify: (a) the type(s) and amount(s) of Ad inventory to be delivered (e.g., impressions, clicks or other desired actions) (the **"Deliverables"**); (b) the price(s) for such Deliverables; (c) the maximum amount of money to be spent pursuant to the Insertion Order (if applicable);

(d) the start and end dates of the Campaign; (e) in respect of Performance Campaigns, all pixel and success metrics and (f) the identity of and contact information for any third party Ad server (if applicable). Other items that may be included are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected.

3. **Use of Network.**

3.1 **Use of Network.** Advertiser agrees to use, and Adconion agrees to make available, the Network during the Term in order to place Ads from Advertiser on Publisher Websites according to the terms and conditions of this Agreement. As between Advertiser and Adconion, Advertiser shall be solely responsible for soliciting all Ads, placing Ads through the Network and responding to inquiries in connection therewith.

3.2 **License Grant.** Adconion hereby grants to Advertiser the non-exclusive, non-transferable, non-sublicensable right and license during the Term to access and use the Network solely in accordance with Adconion's usage requirements, as such usage requirements may be specified by Adconion from time to time, and the terms and conditions of this Agreement.

3.3 **Restrictions.** Except as set forth in this Agreement, Advertiser agrees not to (a) reproduce or distribute the Network, or any portion thereof; (b) use or authorize use of the Network for any purpose not specified in this Agreement; (c) copy, transfer, sell, lease, syndicate, sub-syndicate, lend, or use for co-branding, timesharing, service bureau, arbitrage or other unauthorized purposes the Network or access thereto; or (d) modify, prepare derivative works of, translate, reverse engineer, reverse compile, disassemble the Network or any portion thereof, or attempt to do any of the foregoing.

3.4 **No Implied Licenses.** Except to the extent set forth herein, (a) Adconion does not grant to Advertiser any other license, express or implied, to Adconion's Intellectual Property Rights and (b) nothing in this Agreement or the performance thereof, or that might otherwise be implied by law, will operate to grant either party any right, title or interest, implied or otherwise, in or to the Intellectual Property Rights of the other party. Adconion expressly reserves all Intellectual Property Rights not expressly granted hereunder.

3.5 **Availability of Network.** Advertiser understands and agrees that from time to time the Network may be inaccessible, unavailable or inoperable for any reason, including, without limitation: (a) equipment malfunctions; (b) periodic maintenance procedures or repairs which Adconion may undertake from time to time; or (c) causes beyond the control of Adconion or which are not reasonably foreseeable by Adconion, including, without limitation, interruption or failure of telecommunication transmission links, hostile network attacks, the unavailability, operation, or inaccessibility of one or more Publisher Websites, Network congestion or other failures.

4. **Ad Specifications.** Advertiser acknowledges and agrees that Ads placed by it through the Network will meet the specifications set out in <http://www.adconion.com/ca/advertisers/audience-targeting/ad-specifications.html> and as otherwise specified by Adconion from time to time ("**Ad Specifications**").

5. **Fees; Calculations.**

5.1 **Fees.** On a monthly basis, Adconion will invoice Advertiser and Advertiser will pay Adconion the Fees set forth in the associated Insertion Order(s). Advertiser will pay all Fees within thirty (30) days of the date of invoice. On receipt of invoice the Advertiser shall have seven days to query or dispute such invoice after which time the invoice shall be deemed to be accepted by the Advertiser and no further query or dispute may be raised by the Advertiser.

5.2 **Cancellation Fees.** Adconion reserves the right to charge any and all costs incurred by Adconion in connection with a Creative Service Campaign where the Advertiser terminates the Insertion Order.

5.3 **Suspension Fees.** Adconion reserves the right to charge a Suspension Fee. The Suspension Fee shall be equal to fifty percent (50%) of the remainder of the fees payable under the Insertion Order where the Advertiser requests a suspension of any Campaign for two weeks or more of duration of such Insertion Order.

5.4 **Changes.** Subject to Advertiser's termination right in Section 7.4, Adconion may increase or decrease the Fees, or the type and structure of Fees, charged to Advertiser in its sole discretion upon thirty (30) days notice to Advertiser.

5.5 **Payment Method.** Advertiser will pay all Fees in Canadian Dollars by check or by wire transfer to an account specified by Adconion on written notice to Advertiser, or by other means expressly agreed to in writing by Adconion. Advertiser shall also be responsible for and shall pay any and all applicable sales, use or other taxes or duties, tariffs or the like applicable to the provision or use of the Network (except for taxes on Adconion's income). Late payments will be subject to late fees at the rate of one per cent. (1%) per month, or, if lower, the maximum rate allowed by applicable law/eight per cent. (8%) over the effective base lending rate of the European Central Bank, as amended from time to time. Advertiser agrees to pay any attorney fees and collection costs incurred by Adconion in collecting any past due amounts from Advertiser.

5.6 **Calculations.** Adconion will be the sole arbiter in determining the number of impressions, clicks, actions, or other applicable metric, delivered, shown, produced, clicked on, or viewed. Adconion will be solely responsible for determining charges to Advertiser hereunder.

6. **Use of Network Data.**

6.1 **By Advertiser.** Advertiser acknowledges that, in the course of using the Network, it may have access to data and information, including the Targeting Criteria, regarding Publisher Websites and End-Users ("**Network Data**"). Advertiser agrees that all Network Data will be used solely in connection with Advertiser's use of the Network and will be treated as the Confidential Information of Adconion.

6.2 **By Adconion.** Adconion may use and disclose data derived from Advertiser's use of the Network (a) as part of Adconion's business operations, on an aggregate basis (absent Advertiser's prior consent) such that any use or disclosure does not permit a third party to associate any particular data with Advertiser; and (b) if required by court order, law, or governmental agency. In addition, Adconion may use data derived from Advertiser's use of the Network to operate, manage, maintain, and improve the Network. Adconion shall provide to the Advertiser upon request a list of Data Aggregators that may be used for a given Advertiser's Campaign.

7. **Term; Termination.**

7.1 **Term.** Unless terminated earlier or extended in accordance with this Section 7, this Agreement shall begin on the Effective Date set forth in the associated Insertion Order(s) and continue for a period of equal to the longer of a) one (1) year hereafter or b) the term set out in the Insertion Order (the "**Term**").

7.2 **Suspension by Adconion.** Adconion may suspend this Agreement and Advertiser's access to and use of the Network without notice (a) if Advertiser fails to pay Fees invoiced by Adconion within forty-five (45) days following the payment due date; or (b) upon Adconion's reasonable belief that Advertiser has breached any of its representations, warranties or covenants in Section 8.

7.3 **Termination By Adconion.** Adconion may terminate this Agreement (a) in the event of Advertiser's material breach of this Agreement upon ten (10) days notice to Advertiser if such breach remains uncured after the expiration of such ten (10) day notice period; (b) for convenience, on thirty (30) days prior written notice to Advertiser; or (c) immediately upon Adconion's notice to Advertiser of Adconion's reasonable determination that Advertiser is using or is likely to use the Network in such a manner that could damage or cause injury to the Network or otherwise reflect unfavorably on the reputation of Adconion. If this Agreement is terminated by Adconion due to Advertiser's breach, Advertiser is required to pay Adconion all Fees due under this Agreement within ten (10) days of the effective date of such termination.

7.4 **Termination By Advertiser.** Advertiser may terminate this Agreement: (a) in the event of Adconion's material breach of this Agreement, upon twenty-four (24) hours notice to Adconion if such breach remains uncured after the expiration of such twenty-four (24) hour; or (b) upon fifteen (15) days notice to Adconion, upon receipt of notice from Adconion of its intention to raise Fees pursuant to Section 5 and before the new Fees go into effect.

7.5 **Survival.** Sections 1, 3.3, 3.4, 5.3, 5.4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 shall survive termination or expiration of this Agreement for any reason.

7.6 **Cancellation of Insertion Orders.** Advertiser agrees that it has no right to cancel (a) a CPM Campaign solely on performance grounds and/or (b) a Performance Campaign on performance grounds if Adconion has not received the third party reports requested prior to the commencement of the respective Campaign.

8. **Representation, Warranties, and Covenants.**

8.1 **Mutual Representations, Warranties and Covenants.** Each party hereto represents, warrants and covenants to the other party that: (a) such party has the full right, power and authority to enter into this Agreement on behalf of itself and to undertake to perform the acts required of it hereunder; (b) the execution of this Agreement by such party, and the performance by such party of its binding obligations and duties to the extent set forth hereunder, do not and will not violate any agreement to which it is a party or by which it is otherwise bound; and (c) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its representations, warranties, terms and conditions.

8.2 **Advertiser's Representations, Warranties and Covenants.** Advertiser further represents, warrants and covenants that (a) Advertiser has and will have any and all necessary rights to allow Adconion to permit their Ads to be delivered via the Network to Publisher Websites; (b) no Ads placed by Advertiser will (i) infringe or misappropriate any third party's Intellectual Property Rights; (ii) breach any duty toward, or rights of, any third party, including rights of publicity or privacy; or (iii) be false, deceptive, misleading, unethical, defamatory, libelous, or threatening unlawful, harmful, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, hateful, or racially, ethnically or otherwise objectionable; (c) Advertiser has read and will comply with Adconion's privacy policy that can be found on the Adconion Website; (d) Advertiser's use of the Network and will comply with all applicable laws (including that Advertiser's collection, use and storage of data in connection with or resulting from its use of the Network shall comply with all applicable privacy laws); and (e) it will not use the Network in a manner that reasonably could be expected to damage or cause injury to the Network or otherwise reflect unfavorably on the reputation of Adconion.

9. **Disclaimer.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY THE PARTIES IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY HERETO MAKES ANY REPRESENTATIONS OR WARRANTIES. THE NETWORK IS MADE AVAILABLE TO ADVERTISER "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, TITLE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY THE ADVERTISER FROM ADCONION OR THROUGH OR FROM THIS AGREEMENT SHALL CREATE ANY WARRANTY OR OTHER OBLIGATION NOT EXPRESSLY STATED IN THIS AGREEMENT.

10. **Limitations of Liability.**

10.1 **No Consequential Damages.** SUBJECT TO SECTION 10.3, TO THE MAXIMUM EXTENT A LIMITATION OF DAMAGES OR LIABILITY IS PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE INDIRECT LOSS OF PROFIT OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 **Liability Cap.** SUBJECT TO SECTION 10.3, IN NO EVENT SHALL ADCONION'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (WHEN AGGREGATED WITH ADCONION'S LIABILITY FOR ALL OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT) EXCEED THE TOTAL AMOUNT PAID BY ADVERTISER TO ADCONION UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRIOR TO THE DATE THE LIABILITY FIRST AROSE. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION OR BE FOREVER BARRED.

10.3 **Exceptions from Exclusions and Limitations.** Nothing in this Agreement shall exclude or limit either party's liability for: (a) breaches of Section 12; (b) with regard to Advertiser, amounts owed under Section 5; (c) breaches of a party's indemnification obligations under Section 11 or any amounts paid or payable to third parties in connection with such obligations; or (d) such party's gross negligence or willful misconduct.

10.4 **Allocation of Risk.** The parties agree that (a) the mutual agreements made in this Section 10 reflect a reasonable allocation of risk; and (b) that each party would not enter into this Agreement without these exclusions and limitations on liability and the exceptions set forth above.

11. **Indemnification.**

11.1 **By Advertiser.** Advertiser shall indemnify, defend and hold harmless Adconion and its directors, officers, employees and agents and its and their respective successors, heirs and assigns (collectively, the "**Adconion Parties**") against any liability, damage, loss or expense (including reasonable attorneys' fees and expenses of litigation) (collectively, "**Losses**") incurred by or imposed upon the Adconion Parties or any one of them in connection with any third-party claim, suit, action, demand or judgment ("**Claims**") (a) alleging any fact, which, if true, would constitute a breach by Advertiser of Section 8 or (b) Advertiser's use of the Network other than as permitted herein; provided, however, that in any such case Adconion will (i) provide Advertiser with prompt notice of any such claim (provided that the failure to provide

prompt notice shall only relieve Advertiser of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (ii) permit Advertiser to assume and control the defense of such action upon Advertiser's written notice to Adconion of Advertiser's intention to indemnify; and (iii) upon Advertiser's written request, and at no expense to Adconion or its affiliates, provide to Advertiser all available information and assistance reasonably necessary for Advertiser to defend such claim. Advertiser will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to any Adconion Party, without Adconion's prior written consent, which will not unreasonably be withheld or delayed.

11.2 **By Adconion.** Adconion shall indemnify, defend and hold harmless Advertiser and its directors, officers, employees and agents and its and their respective successors, heirs and assigns (collectively, the "**Advertiser Parties**") against any Losses incurred by or imposed upon the Advertiser Parties or any one of them in connection with any Claim alleging (a) any fact, which, if true, would constitute a breach by Adconion of Section 8 or (b) that the Network infringes any Intellectual Property Rights ; provided, however, that in any such case Advertiser will, (i) provide Adconion with prompt notice of any such claim (provided that the failure to provide prompt notice shall only relieve Adconion of its obligation to the extent it is materially prejudiced by such failure and can demonstrate such prejudice); (ii) permit Adconion to assume and control the defense of such action upon Adconion's written notice to Advertiser of Adconion's intention to indemnify; and (iii) upon Adconion's written request, and at no expense to Advertiser, provide to Adconion all available information and assistance reasonably necessary for Adconion to defend such claim. Adconion will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to any Advertiser Party, without Advertiser's prior written consent, which will not unreasonably be withheld or delayed.

12. **Confidentiality.** Each party (a "**Receiving Party**") understands that the other party (a "**Disclosing Party**") may disclose information of a confidential nature including, without limitation, product information, data, pricing, financial information, end user information, software, specifications, research and development and proprietary algorithms or other materials that is (a) clearly and conspicuously marked as "confidential" or with a similar designation; or (b) is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used ("**Confidential Information**"). The Receiving Party agrees, for itself and its agents and employees, that it will not publish, disclose or otherwise divulge or use for its own purposes any Confidential Information of the Disclosing Party furnished to it by such Disclosing Party without the prior written approval of the Disclosing Party in each instance. The Parties agree that if disclosure is made to their professional advisors, auditors or bankers this shall be done subject to each party procuring each such recipient's agreement to keep such information confidential to the same extent as if such recipient were party to this agreement. The foregoing obligations shall not extend to any information to the extent that the Receiving Party can demonstrate that such information (i) was at the time of disclosure or, to the extent that such information thereafter becomes through no fault of the Receiving Party, a part of the public domain by

publication or otherwise; (ii) was already properly and lawfully in the Receiving Party's possession at the time it was received by the Receiving Party free from any obligation of confidentiality, (iii) was or is lawfully received by the Receiving Party from a third party who was under no obligation of confidentiality to the Disclosing Party with respect thereto, or (iv) is independently developed by the Receiving Party or its independent contractors who did not have access to the Disclosing Party's Confidential Information. In the event that the Receiving Party is required to disclose Confidential Information in accordance with judicial or regulatory or governmental order or requirement or any tax authority to which that party is subject or submits, wherever situated, whether or not the requirement for information has the force of law, the Receiving Party shall promptly notify the Disclosing Party in order to allow such party to contest the order or requirement or seek confidential treatment for such information. Upon termination or expiration of this Agreement, upon the request of a Disclosing Party, the Receiving Party agrees to return to the other all of such other party's Confidential Information that is reduced to one or more writing, drawing, schematic, tape, disk or other form of documentation, or to certify to the Disclosing Party in writing that all such material has been destroyed.

13. **Proprietary Rights**

13.1 Subject to express permission from Adconion, nothing in this Agreement gives the Advertiser a right to use any of Adconion's trade names, trade marks, service marks, logos, domain names, and other distinctive brand features.

13.2 If the Advertiser has been given express permission to use any of these brand features in a separate written agreement with Adconion, the use of such features shall be in accordance with that agreement and any applicable provisions.

13.3 Subject to express authorization in writing by Adconion, the Advertiser agrees it will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.

14. **Miscellaneous.**

14.1 **Publicity.** Any public announcement relating to the Agreement must fairly and accurately represent the parties' business relationship, must not conflict with this Agreement and must be approved by the other party prior to its release.

14.2 **Independent Contractors.** It is the intention of Adconion and Advertiser that Adconion and Advertiser are, and will be deemed to be, independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement will be deemed or construed in any manner whatsoever as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship between Adconion and Advertiser.

14.3 **Entire Agreement.** This Agreement, together with the Insertion Order represents the entire agreement between the parties with respect to the subject matter hereof and will supersede all prior

agreements and communications of the parties, oral or written. Except in the case of fraud, no party shall have any right of action against any party to this Agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Agreement. For the purposes of this clause “pre-contractual statement” means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement made or given by any person at any time prior to the date of this Agreement.

14.4 **Amendment; Waiver.** No amendment to, or waiver of, any provision of this Agreement will be effective unless in writing and signed by both parties. The waiver by any party of any breach or default will not constitute a waiver of any different or subsequent breach or default.

14.5 **Governing Law and Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the Laws of Canada without regard to any conflict of laws principles or rules. All disputes between the Parties shall be solved amicably, however, in case there is no amicable solution to the dispute, the Courts of Canada shall be exclusively competent.

14.6 **Arbitration.** In the event of any dispute concerning the validity, interpretation, enforcement or breach of this Agreement, the parties unconditionally and irrevocably agree that the dispute will be resolved by arbitration (and accordingly they hereby consent to personal jurisdiction over them) in the applicable venue as directed by the International Case Management Offices of the American Arbitration Association, in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association and, in the event either party seeks injunctive or provisional relief, the Optional Rules for Emergency Measures of Protection. The arbitration will be heard and determined by a single arbitrator. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The prevailing party will be entitled to recover its attorneys' fees and arbitration costs. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration panel, except as may lawfully be required in judicial proceedings relating to the arbitration or by disclosure rules and regulations of securities regulatory authorities or other governmental agencies.

14.7 **Successors and Assigns.** This Agreement may not be assigned, transferred, delegated, sold or otherwise disposed of, including, without limitation, by operation of law, without the prior written consent of the non-assigning party; provided that either party may assign this Agreement without consent in connection with the sale of all or substantially all its assets or other change of control transaction. This Agreement will be binding upon and will inure to the benefit of a party's permitted successors and assigns. Any purported assignment, transfer, delegation, sale or other disposition in contravention of this Section 14.7, including, without limitation, by operation of law, is void.

14.8 **Force Majeure.** No party will be liable for failure to perform or delay in performing any obligation (other than the payment of money) under this Agreement if such failure or delay is due to fire, flood, earthquake, strike, war (declared or undeclared), embargo, blockade, legal prohibition, governmental action, riot, insurrection, damage, destruction or any other similar cause beyond the control of such party.

14.9 **Notices.** All notices, requests, consents, and other communications under this Agreement will be in writing, and will be delivered by hand or sent by reputable overnight courier service or electronic facsimile transmission (with a copy sent by first class mail, postage prepaid) or mailed by first class certified or registered mail, return receipt requested, postage prepaid, if to Adconion or to Advertiser, at the "Primary Contact" address indicated in the associated Insertion Order(s), or such other addresses as each party specifies to the other party in writing by notice given in accordance with this Section 14.9. Notices provided in accordance with this Section 14.9 will be deemed delivered: (a) immediately if personally delivered or sent by electronic facsimile transmission; or (b) if sent by overnight courier service, 24 hours after deposit with such courier service; or (c) if sent by certified or registered mail, return receipt requested, 48 hours after deposit in the mail.

14.10 **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.