



These terms and conditions are entered into by and between you (“Client”) and RED171 (“RED171”, “we”, or “us”)(alternatively referred to herein as a “Party,” or jointly as the “Parties”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, these “Terms”), govern your access to and use of RED171’s Services (as defined below), including any content or functionality offered through the Services.

Please read these Terms carefully. By using the Services or by executing an Insertion Order that expressly incorporates these Terms by reference (an “IO”), you accept and agree to be bound and abide by these Terms and our Privacy Policy, found at www.red171online.com (the “Privacy Policy”), which is hereby incorporated by reference. If you do not agree to these Terms or the Privacy Policy, you must not access or use the Services or execute a media campaign with RED171.

1. RED171 Services and Responsibilities.

1. RED171. RED171 will provide to Client the online advertising services (the “Services”) set forth in the campaign ordered by the Client.
2. RED171 Contract Manager and Personnel.
 1. RED171 will: (i) appoint an employee to serve as the primary contact with respect to these Terms who will have the authority to act on behalf of RED171 in connection with matters pertaining to these Terms (the “RED171 Contract Manager”); and (ii) hire, supervise, direct, and discharge all employees, consultants and independent contractors (collectively, the “RED171 Personnel”) necessary to perform the Services.
 2. RED171 will be responsible for the payment of all compensation owed to RED171 Personnel, including, if applicable, the payment and withholding of social security and other payroll taxes, withholding of income taxes, unemployment insurance, workers’ compensation insurance payments, and disability benefits.

3. All persons employed by RED171 in connection with the Services will either be employees of RED171 or consultants or independent contractors retained by RED171.
3. No Exclusivity. RED171 retains the right to perform the same or similar type of services for third parties during the Term of these Terms.
4. Insertion Order Requirements. Each IO will specify the types and volume of actions to be generated there under (e.g., impressions, clicks, or other desired actions, referred to herein as the “Deliverables”), the pricing for such Deliverables, the maximum budget (if applicable), and the campaign start and end date (if applicable). The parties may modify by email any non-financial terms of an advertising campaign (e.g., changes to the placement description, creative unit, start/end dates, or number of ad requests) previously agreed to in a fully executed IO; provided, however, that such email modification must be expressly acknowledged and agreed to by the RED171 Contract Manager. Any putative email modification that is not expressly acknowledged and agreed to in writing (including by email) by the RED171 Contract Manager will be deemed void and unenforceable.

2. Client Obligations and Responsibilities.

1. Client will:

1. Appoint a Client representative to serve as the primary contact with respect to these Terms, which representative will have the authority to act on behalf of Client with respect to matters pertaining to these Terms (the “Client Contract Manager”).
2. Provide copies of or access to Client’s information, documents, samples, products, or other material (collectively, “Client Materials”) as RED171 may reasonably request in order to carry out the Services. Client and its licensors are, and will remain, the sole and exclusive owner of all right, title, and interest in and to all Client Materials, including any and all trade secrets, trademarks, domain names, original works of authorship and related copyrights, and any other intangible property in which any person holds proprietary rights, title, interests, or protections, however arising, pursuant to the laws of the United States (collectively “Intellectual Property”) therein. This will include all applications, registrations, renewals, issues, reissues, extensions, divisions, and continuations in connection with any of the foregoing and the goodwill connected with the use of and symbolized by any of

the foregoing. RED171 reserves the right to reject any Client Materials, as determined in RED171's sole discretion.

3. Respond promptly to RED171's requests to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for RED171 to perform the Services in accordance with these Terms.
4. At all times relevant to these Terms, conspicuously disclose to its customers a privacy policy governing Client's use of personally identifiable information, and ensure that such Client privacy policy will comply with all applicable law.
5. Comply with all applicable law, including without limitation, the CAN-SPAM Act of 2003, the Telephone Consumer Protection Act, and Section 5 of the FTC Act.

3. Intellectual Property Rights; Ownership.

1. License to Certain Client Intellectual Property.

1. Subject to and in accordance with the terms and conditions of these Terms, Client grants RED171 and Permitted Third Party RED171 Subcontractors a limited, non-exclusive, royalty-free, non-transferable, and non-sublicensable, worldwide license during the Term to use Client's Intellectual Property solely to the extent necessary to provide the Services to Client.
2. Client grants no other right or license to any Client Intellectual Property to RED171 by implication, estoppel, or otherwise. MM acknowledges that Client owns all right, title, and interest in, to and under the Client's Intellectual Property and that RED171 will not acquire any proprietary rights therein. Any use by RED171 or any affiliate, employee, officer, director, partner, shareholder, agent, attorney, third-party adviser, successor or permitted assign (collectively "Representatives") of RED171 of any of Client's Intellectual Property and all goodwill and other rights associated therewith will inure to the benefit of Client.

2. RED171 Intellectual Property.

1. In the course of providing the Services, RED171 will use certain pre-existing materials consisting of documents, data, know-how, methodologies, software, and other materials, including computer programs, reports, and specifications, in each case developed or acquired by RED171 prior to the commencement or independently of these Terms (collectively, the "Pre-Existing Materials"). RED171 and its licensors are, and will remain, the sole and exclusive owners of all right,

title, and interest in and to the Pre-Existing Materials, including all Intellectual Property therein. RED171 hereby grants Client a revocable, limited, royalty-free, non-transferable, non-sublicensable, worldwide license to use, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, and otherwise exploit any Pre-Existing Materials solely to the extent reasonably required in connection with Client's receipt or use of the Services. All other rights in and to the Pre-Existing Materials are expressly reserved by RED171.

2. In the course of providing the Services, RED171 may use certain third-party materials consisting of documents, data, content, or specifications of third parties, and components or software including open source software that are not proprietary to RED171 (collectively, the "Third-Party Materials"), Client will have a limited, royalty-free, non-transferable, non-sublicensable, worldwide license to use the Third-Party Materials solely to the extent reasonably required in connection with Client's receipt or use of the Services. Except for the limited rights and licenses expressly granted under these Terms, nothing in these Terms grants to Client or any third party, any Intellectual Property rights in the Third-Party Materials, by implication, waiver, estoppel, or otherwise. RED171 provides all Third-Party Materials to Client on a strictly "as-is" basis.
3. In the course of providing the Services, RED171 may use or create accounts with various third-party marketing platforms ("Marketing Platform Accounts") in order to provide the Services to Client. Client acknowledges and agrees that all such Marketing Platform Accounts are, and will remain, RED171 Intellectual Property.

4. Fees and Payment.

1. Fees. In consideration of the provision of the Services and the rights granted to Client under these Terms, Client will pay RED171 as set forth in an applicable IO.
2. Payment. Client will pay for the Services in advance, unless otherwise set forth in an applicable IO.
3. Taxes. All fees payable by Client under these Terms are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind. RED171 will be responsible for any taxes imposed on, or with respect to, RED171's income, revenues, gross

receipts, personnel, or real or personal property, or other assets. Client will be solely responsible for the payment of any sales and use taxes assessed against the sale of Client's goods and services.

4. Reporting; Invoice Disputes. Except as otherwise set forth in this Section 4.4, RED171 reporting of completed Deliverables will be deemed conclusive. Client will notify MM in writing of any dispute with an invoice (along with substantiating documentation) within 10 days from the date of such invoice. Client will be deemed to have accepted all invoices for which RED171 does not receive timely notification of dispute. The parties will seek to resolve all such disputes expeditiously and in good faith.
5. Late Payments. Except for invoiced payments that Client is disputing under Section 4.4, Client will pay interest on all late payments, calculated daily and compounded monthly at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Client will also reimburse RED171 for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

5. Representations and Warranties; Performance Disclaimer.

1. Each Party represents and warrants to the other that: (a) it is a legal entity duly organized, validly existing, and in good standing in the jurisdiction of its incorporation; (b) it has the full right, power, and authority to enter into this agreement, to grant the rights and licenses granted under this agreement and to perform its obligations under this agreement; (c) it is now and throughout the Term will remain in compliance with all laws applicable to the performance of its obligations under this agreement.
2. RED171 MAKES NO WARRANTIES EXCEPT FOR THOSE PROVIDED IN SECTION 5.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.
RED171 FURTHER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THE PERFORMANCE OF THE SERVICES, REGARDLESS OF ANY ESTIMATES OR PROJECTIONS MADE TO CLIENT (ORALLY OR IN WRITING) BY RED171.

6. Indemnification. Client will defend, indemnify, and hold harmless RED171, and its officers, directors, employees, agents, Affiliates, successors, and permitted assigns, from and against any and all Losses arising out of or resulting from any third-party Claim or direct Claim alleging: (a) breach by Client or its personnel of any representation, warranty, covenant, or other

obligations set forth in these Terms; (b) negligence or more culpable act or omission of Client or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under these Terms; and (c) that any Client Materials or Client Intellectual Property or RED171's receipt or use thereof in accordance with the terms of these Terms infringes any Intellectual Property of a third party.

7. Limitation of Liability.

1. NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. IN NO EVENT WILL MM BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT, BUSINESS INTERRUPTION, AND LOSS OF INFORMATION), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
2. MAXIMUM LIABILITY. RED171'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, WILL NOT EXCEED THE LESSER OF: (A) THE TOTAL PAID TO MM PURSUANT TO THIS AGREEMENT IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (B) \$10,000.00.

8. Confidentiality. From time to time during the Term, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs and services, confidential information and materials comprising or relating to Intellectual Property, trade secrets, third-party confidential information, and other sensitive or proprietary information, as well as the terms of these Terms, whether orally or in written, electronic or other form or media, and, whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that at the time of disclosure and as established by documentary evidence: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 9 by the Receiving Party or any of its Representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source,

provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed pursuant to applicable law. The Receiving Party will: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under these Terms; and (iii) not disclose any such Confidential Information to any person, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under these Terms. The Receiving Party will be responsible for any breach of this Section 8 caused by any of its Representatives. At any time during or after the Term, at the Disclosing Party's written request, the Receiving Party and its Representatives will, pursuant to Section 9.4, promptly destroy all Confidential Information and copies thereof that it has received under these Terms.

9. Term; Termination.

1. Term. The term will commence upon the earlier of a Client's use of the Services or the execution of an IO in compliance with these Terms and will continue until the end date of all applicable IOs or until otherwise terminated in accordance with these Terms (the "Term").
2. Termination for Cause.
 1. Either party may terminate these Terms, effective upon written Notice, to the other Party (the "Defaulting Party") if the Defaulting Party: (i) materially breaches these Terms, and such breach is incapable of cure, or with respect to a material breach capable of cure (other than a failure by Client to make timely payments (a "Payment Failure"), which is separately addressed in Section 9.2(b)), the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or

insolvency law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; (v) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (vi) is dissolved or liquidated.

2. RED171 may terminate these Terms and any applicable IO, effective upon Notice to Client if: (i) a Payment Failure by Client continues for ten (10) days after Client's receipt of written notice of nonpayment; or (ii) within any two-month period, two or more Payment Failures occur.
3. IO Cancellation. Either Party may cancel an IO upon twenty (20) days' Notice. If either Party cancels an IO, Client's sole remedy with respect to such canceled IO will be to receive a refund of any pre-paid fees in excess of the fees earned by RED171 under such IO.
4. Effect of Expiration or Termination.
 1. Expiration or termination of these Terms will not affect any rights or obligations that: (i) are to survive the expiration or earlier termination of these Terms; and (ii) were incurred by the Parties prior to such expiration or earlier termination.
 2. Upon the expiration or termination of these Terms for any reason, each Party will promptly: (i) destroy all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information; (ii) permanently erase all of the other Party's Confidential Information from its computer systems; and (iii) certify in writing to the other Party that it has complied with the requirements of this clause.
 3. Subject to Section 9.4(a), the Party terminating these Terms, or in the case of the expiration of these Terms, each Party, will not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of these Terms. Termination of these Terms will not constitute a waiver of any of either Party's rights, remedies, or defenses under these Terms, at law, in equity or otherwise.

10. Miscellaneous.

1. Entire Agreement. These Terms, including any IOs that incorporate these Terms by reference and any IO modifications complying with Section 1.6, constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein and

supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

2. Survival. All provisions of these Terms that, in order to give proper effect to their intent, should survive such expiration or termination, will survive the expiration or earlier termination of these Terms for a period of twelve (12) months after such expiration or termination.
3. Notices. All notices, requests, consents, claims, demands, waivers, and other communications here under (each, a "Notice") will be in writing and addressed to the parties at the addresses set forth on an applicable IO (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All Notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email to the RED171 Contract Manager or Client Contract Manager (as applicable), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 3.
4. Severability. If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.
5. Amendment and Modification. With the exception of changes made pursuant to Section 1.6, no amendment to or modification of these Terms is effective unless it is in writing and signed by each party.
6. Publicity. Client hereby grants RED171 permission to publicly disclose Client's status as a client of RED171.
7. Waiver. No waiver by either Party of any of the provisions hereof will be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party will operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege here under preclude any other or further

exercise thereof or the exercise of any other right, remedy, power, or privilege.

8. **Cumulative Remedies.** All rights and remedies provided in these Terms are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.
9. **Equitable Remedies.** Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under Section 8 would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party will, in addition to any and all other rights and remedies that may be available to such Party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that such Party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 10.9.
10. **Assignment.** Neither Party may assign, transfer, or delegate any or all of its rights or obligations under these Terms, without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed; provided, however, that either Party may assign these Terms to a successor-in-interest by consolidation, merger, or operation of law or to a purchaser of all or substantially all of the Party's assets. No assignment will relieve the assigning party of any of its obligations here under. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. These Terms will be binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
11. **No Third-Party Beneficiaries.** These Terms benefits solely the Parties to these Terms and their respective permitted successors and assigns and nothing in these Terms, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

12. Choice of Law. These Terms and all related documents, and all matters arising out of or relating to these Terms, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Georgia, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia.
13. Choice of Forum. Neither Party will commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to these Terms, including all exhibits, schedules, attachments, and appendices attached to these Terms and thereto, and all contemplated transactions, in any forum other than the U.S. District Court for the State of Georgia or, if such court does not have subject matter jurisdiction, the courts of the State of Georgia, and any appellate court thereof. A final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
14. Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
15. Relationship of Parties. Nothing in these Terms creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. RED171 is an independent contractor pursuant to these Terms. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.