

For purposes of this Agreement, the amounts referred to above shall be "Media Fees". In the event Company X is unable to provide Media Services equal to the value of the Media Fees (taking into account the 30% discount) due to lack of availability, Buyer shall be entitled to carry over the unused portion of the Media Fees to the next available period until fully utilized, with the understanding that any Media Services are subject to continuing availability.

(c) Buyer and Company X shall determine no less than once every three months the type of Media Services to be provided during the following three months, with the understanding that (i) such program shall be documented in an insertion order, e-mail or other written communication with the general substance in the form attached hereto as Exhibit B to be signed or otherwise acknowledged by the parties hereto and (ii) any and all such Media Services are subject to change based on availability and Company X client demands.

(d) Buyer shall, in its sole discretion, subject to availability, have the option of applying the Media Fees to the purchase of non-remnant media, and Company X shall provide to Buyer any such non-remnant media elected to be purchased by Buyer, in which case such non-remnant media shall be billed at Company X's then rate card.

2. Term and Termination.

(a) This Agreement shall commence on the Effective Date and terminate on the three year anniversary of the Effective Date (the "Term"), unless insufficient remnant media was available during the Term in which case the Term shall be extended until all Media Fees have been depleted or unless terminated sooner in accordance with the terms and conditions set forth hereunder. This Agreement is non-terminable except:

costs incurred by Company X may not be offset against Media Fees.]
(d) Any balances outstanding more than 30 days beyond the date due shall accrue interest at the rate of one and one-half percent (1.50%) per month.

4. Relationship between the parties. Company X is and shall be an independent contractor, and neither party shall be deemed a joint venturer, partner, employee, associate, or agent with or of the other. Without limiting the generality of the foregoing, neither party shall have any right, power or authority to bind the other or to assume, create, or incur any expenses, liability or obligation, express or implied, on behalf of the other. Each party shall be solely and exclusively responsible for any and all state and taxes, withholding, FICA, FUTA, or other tax payments and other benefits payable on behalf of or related to the applicable party's employees. Company X may, at its sole cost and expense, employ such employees, agents and/or representatives and re-allocate any budget amounts as it, in its sole discretion, deems necessary, appropriate or convenient in order to perform the services hereunder.

5. Buyer Materials and Ownership.

(a) Buyer shall supply to Company X any artwork, logos, images or other written, graphic or pictorial materials (the "Buyer Materials") which Company X may reasonably require in connection with the performance of the Media Services, unless otherwise agreed to by the parties. Furthermore, Buyer hereby gives and grants to Company X a limited non-exclusive license and right to utilize, display, and reproduce any and all of the Buyer Materials solely in connection with the performance of services contemplated by this Agreement. Buyer covenants that the Buyer Materials supplied to and utilized by Company X will not infringe upon or violate any third party rights.

(b) Unless otherwise agreed to by the parties in writing, all materials prepared by Company X or any third party at the request of Company X exclusively for Buyer in connection with this Agreement, including, without limitation, domain names, URL's, artwork, logos, photographs, sound recordings, graphics, video, text, underlying computer program application, website application, data collection application, business technique and methodology shall be works for hire and the property of Buyer from inception. In the event any such item is ever deemed to not be a work for hire by any court or other body of competent jurisdiction, Company X hereby, and shall ensure that any third party which it engages hereunder also hereby, assigns all right, title and interest in and to such items to Buyer, and waives all

moral rights. [REDACTED]

6. Confidential Information. [REDACTED]

(a) During the Term of this Agreement, one party hereto (the "Disclosing Party") may disclose to the other party ("Recipient") confidential and proprietary information in connection with the performance of this Agreement, and Recipient may otherwise discover information about the Disclosing Party in connection with this Agreement. All such information about the Disclosing Party and its affiliates and subsidiaries, including but not limited to technical and business information relating to products, and marketing and future business plans, shall be deemed "Confidential Information." All Confidential Information shall remain the sole property of Disclosing Party and Recipient shall have no rights to or in the Confidential Information. Recipient shall hold the Confidential Information in strict confidence. Recipient shall not make any disclosure of the Confidential Information (including methods or concepts utilized in the Confidential Information) to anyone without the express written consent of Disclosing Party, except to employees, consultants or agents to whom disclosure is necessary to the performance of the parties' obligations under this Agreement and who shall be bound by the terms hereof, to governmental agencies in connection with regulatory disclosures or to the extent it is required to disclose such information in the context of any administrative or judicial proceeding, provided that prior written notice of such disclosure and an opportunity to oppose or limit disclosure is given to Disclosing Party. [REDACTED]

(b) Notwithstanding the foregoing, Recipient shall have no obligation under this Agreement with respect to any Confidential Information disclosed to it which (i) Recipient can demonstrate was already known to it at the time of its receipt hereunder; (ii) is or becomes generally available to the public other than by means of Recipient's breach of its obligations under this Agreement; (iii) is independently obtained from a third party whose disclosure violates no duty of confidentiality; or (iv) is independently developed by or on behalf of Recipient without use of or reliance on any Confidential Information furnished to it under this Agreement. [REDACTED]

(c) The Buyer recognizes that Company X has developed and may develop certain unique and proprietary promotional ideas and programs and Company X Applications (together "Company X Programs") which may be disclosed to the Buyer or implemented by Company X for the benefit of the Buyer during the course of this project and, accordingly, all such Company X Programs shall be deemed Confidential Information. [REDACTED]

(d) Each party acknowledges that its breach of this Section 6 will cause irreparable damage that cannot be calculated or that cannot be adequately compensated for by money damages and,

accordingly, the other party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

(e) The foregoing restrictions shall continue to apply for a period of two (2) years after the expiration or termination of this Agreement, other than with respect to Company X Programs, which shall survive indefinitely.

7. Representations and Warranties.

(a) Company X represents and warrants that:

i) it has the full power and authority to enter into this Agreement and fully perform all of its obligations and grant all necessary rights hereunder without violating the legal or equitable rights of any third party;

ii) other than with respect to any Buyer Materials provided to Company X by Buyer or any Buyer agent, for the purposes contemplated by this Agreement, none of the (A) Media Services, (B) non-remnant media covered by Section 1(d), or (C) material covered by Section 3(c) or Section 5(b) does or will violate or infringe upon the rights of any third party, or contain any material that is obscene, defamatory, libelous, slanderous or injurious to the user; and

iii) the services provided by Company X pursuant to this Agreement shall be in compliance with all applicable Laws, state and local Laws, rules and regulations.

b) Buyer represents and warrants that:

i) it has the full power and authority to enter into this Agreement and fully perform all of its obligations and grant all necessary rights hereunder without violating the legal or equitable rights of any third party;

ii) none of the Buyer Material delivered by Buyer to Company X pursuant to this Agreement during the Term, or any permitted use thereof by Company X or its grantees, licensees or assigns pursuant to this Agreement, will or does violate or infringe upon the rights of any third party, or contain any material that is obscene, defamatory, libelous, slanderous or injurious to the user.

iii) the services and products (if any) provided by Buyer pursuant to this Agreement, shall be in compliance with all applicable federal, state and local laws, rules and regulations.

c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES MAKE NO OTHER WARRANTIES HEREUNDER AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Indemnity.

(a) Each party agrees to indemnify, defend, protect, and hold harmless the other party and its parent, subsidiaries and affiliates and its and their respective directors, officers, employees, agents, subcontractors, and representatives of each of the foregoing (collectively, the "Representatives") from and against any and all claims, actions, causes of action, damages, losses, charges, costs, liabilities (including, but not limited to, reasonable attorney's fees), and expenses including judgments, fines, penalties, amounts paid in settlement (collectively "Damages") which may be made or brought against the other party or its Representatives or which the other party or its Representatives may suffer or incur directly or indirectly as a result of, in respect of, in connection with, arising out of or in any way related to any non-fulfillment of any term, covenant, agreement or breach of any representation, warranty or covenant of the indemnifying party under this Agreement. The parties' indemnification obligations shall survive termination or expiration of this Agreement.

(b) Each party's rights as the indemnified party ("Indemnitee") require that (i) the indemnifying party (the "Indemnitor") be promptly notified in writing of any relevant claim or suit, (ii) the Indemnitor have the sole control of the defense and/or settlement thereof provided it selects counsel reasonably acceptable to Indemnitee, (iii) the Indemnitee furnishes to the Indemnitor, on request, information available to the Indemnitee for such defense, and (iv) the Indemnitee cooperates in any defense and/or settlement thereof as long as the Indemnitor pays all of the Indemnitee's reasonable out of pocket expenses and attorneys' fees. The Indemnitee shall not admit or settle any such claim without prior consent of the Indemnitor. The Indemnitee shall have the right to participate in the defense of any proceeding with counsel of its own choice at its own expense.

9. Limitation of Liability. Neither party shall be liable to the other for any incidental, consequential, special, or punitive damages or lost or imputed profits or royalties arising out of this Agreement or its termination, whether for breach of warranty or any obligation arising therefrom or otherwise, whether liability is asserted in contract or tort (including negligence and strict product liability) and irrespective of whether a party has advised or has been advised of the possibility of any such loss or damage, except with respect to claims for which indemnification is sought. Each party hereby waives any claims that these exclusions deprive it of an adequate remedy.

10. Dispute Resolution. In connection with any dispute arising under this Agreement, the parties agree to first attempt to settle such dispute through good-faith negotiation prior to initiating litigation.

11. Notices. Any notice required or permitted hereunder shall be in writing and shall be delivered personally, sent by certified or registered mail or through overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed by certified or registered mail, three (3) days after the date of deposit in the (Country) mail, or, if deliverable by overnight courier, one (1) day after the date of deposit with a reputable overnight mail service. Each such notice shall be sent to the address of the party set forth below (or such other address as shall have been specified by notice hereunder):

(a) if to Buyer:
with a copy to:

Attention: Steven Wolosky, Esq.

(b) if to Company X:

Company X, Inc.

Attention: CEO

with a copy to:

Company X, Inc.

Notwithstanding the foregoing, routine requests for approvals and replies, and other routine communications between the parties in connection with this Agreement may be made by electronic mail.

12. Entire Agreement; Amendment; Counterpart; Waiver; Severability; Survival. This Agreement (a) constitutes the entire agreement between the parties with respect to its subject matter and supercedes all prior written or oral understandings with respect thereto; (b) may not be amended or modified in any respect except in writing by both parties; and (c) may be executed in counterparts and/or with facsimile signatures and transmitted in digital form (e.g. .pdf), each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument. A waiver of performance or breach of any provision of this Agreement must be in writing and shall not constitute a waiver of any subsequent performance or breach of the same or any other provision. If any provision of the Agreement shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by law. The provisions of sections 2, 5(b), 6, 8, 9, 11, 12, 13, 14 and 17 as well as any provisions of the Agreement or its attached schedules and exhibits (if any) reasonably intended to survive such termination or expiration, shall survive the termination or expiration of this Agreement.

13. Governing Law and Jurisdiction. This Agreement shall be governed and interpreted in accordance with the laws of, without regard to the conflict-of-law rules thereof. The parties hereby consent to the exclusive jurisdiction of the courts of the State of ...for resolutions of all claims, difference and disputes which the parties may have regarding this Agreement. In the event of a dispute between the parties not otherwise resolved by good-

faith negotiations, the prevailing party in such a dispute shall be entitled to attorneys' fees and reimbursement for expenses incurred in connection therewith. [REDACTED]

14. Assignment. Neither party may assign this Agreement, and its rights, licenses and obligations hereunder without the prior written approval of the other, which approval shall not be unreasonably withheld or delayed, except that (i) a party may assign this Agreement without consent of the other to any affiliate or acquirer of all or of substantially all of its equity securities, assets or business relating to the subject matter of this Agreement and (ii) Company X may delegate its obligations under this Agreement to one or more affiliates or third parties, subject to the prior approval of Buyer, not to be unreasonably withheld or delayed; provided that no such delegation shall relieve Company X of any of its obligations or liabilities hereunder. [REDACTED]

15. Force Majeure. No delay or failure by the parties hereto in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor shall it create a liability, if the same shall arise by reason of any cause beyond the reasonable control of the affected party, including, but not limited to, labor disputes, strikes, wars, riots, terrorism, insurrection, accident, utility failures, government regulations, fire, flood, storm, or any other acts of God, provided that the party so affected shall use its best efforts to avoid or remove such cause of nonperformance and shall continue performance hereunder as soon as practicable. In the event such cause occurs and exceeds thirty (30) calendar days, the party so affected may cancel this Agreement upon written notice and without further liability, with the exception that the Buyer shall pay to Company X all amounts due up and through the date of cancellation pursuant to the terms and conditions of this Agreement. [REDACTED]

16. Conflict of Forms. In the event the terms and conditions of the Agreement (including Schedules/Exhibits) are inconsistent with the terms of an insertion order, then the terms of the Agreement shall prevail. [REDACTED]

17. Publicity. No public statements concerning the terms of this Agreement shall be made or released to any medium except with the prior approval of each party, which shall not be unreasonably withheld, or except as such disclosure is required by law. Notwithstanding anything to the contrary herein, Buyer agrees that Company X may identify Buyer as a client and describe the Media Services and the related promotion programs in any marketing materials and presentations prepared by Company X. [REDACTED]