

## Affinity Advertising Terms and Conditions

These Terms and Conditions ("Terms") as agreed between you ("Advertiser") and Hostway Corporation d/b/a Affinity ("Affinity") govern your use of Affinity's services (as described hereunder) and Affinity's display and distribution of your advertisement(s). Advertiser and Affinity may be individually referred to hereunder as a "Party" or together the "Parties".

### 1. Definitions

For the purposes of these Terms, all capitalized words and phrases shall be defined as follows:

- (a) **"Ad Targeting Options"** means the set of parameters chosen by Advertiser to target the Services, including Keywords, Categories, Target Region, or TSID.
- (b) **"Advertisement(s)"** or **"Ad(s)"** means the advertisements, including URLs, created and/or provided by the Advertiser and must conform to the Advertisement Guidelines.
- (c) **"Advertisement Guidelines"** means the guidelines for the Advertisements created by Affinity and posted at [http://helpcenter.affinity.com/advertisers/Advertiser\\_Guidelines](http://helpcenter.affinity.com/advertisers/Advertiser_Guidelines), which may be updated from time to time at Affinity's discretion.
- (d) **"Advertiser Interface"** means Affinity's online user interface available at <http://ads.affinity.com/> (and any related Web pages) that allows Advertiser to manage Advertisements and Campaigns.
- (e) **"Advertising Content"** means all Ad Targeting Options, Advertisements, Advertiser information, and URLs provided by Advertisers.
- (f) **"Agreement"** means these Terms together with any executed Insertion Order between Advertiser and Affinity.
- (g) **"Budget"** means the specific sum of money that Advertiser allocates to be spent on a particular Campaign.
- (h) **"Campaign"** means a group of Advertisements with a common Budget, schedule, and set of Ad Targeting Options
- (i) **"Click"** means the act of an End User clicking on an Advertisement and accessing the Web page hyperlinked to that Advertisement.
- (j) **"Confidential Information"** includes any and all information or data of a Party that is disclosed to the other Party, either directly or indirectly, whether in writing, verbally, or by visual means, and which by the nature of the information makes it generally considered confidential commercially, which information includes information that relates to (a) trade secrets or know-how, (b) finance or accounting, (c) technology, research, or development, (d) internal processes or procedures, (e) algorithms, digital data, or designs, (f) business, operations, or planning thereof, and (g) sales or marketing strategies.
- (k) **"Distribution Network"** means the network of Publishers on whose Web sites, parked domains, and applications Affinity publishes Advertisements for publication.
- (l) **"End User"** means any bona fide Internet user using the Internet (which excludes use of spiders, Web crawlers, any type of robot or other mechanical, artificial or automated means) who visits or browses the Publisher Media or any component thereof in good

faith and in a legitimate manner that is (a) not fraudulent, (b) not motivated or solicited by expectations of monetary or other gain, and (c) done in a manner that is legal or in accordance with good faith business practices and public policy, as determined by Affinity at its sole commercially reasonable discretion.

- (m) **"Insertion Order"** means an order form that is available online via the Advertiser Interface or by some other means of communication from Affinity to Advertiser, and that is executed between Advertiser and Affinity detailing the specific Services ordered by Advertiser.
- (n) **"Intellectual Property"** means all rights, title, interest and benefit of a Party in and to intellectual property of every nature, whether registered or unregistered, including all copyrights, patents, trademarks, certification marks and industrial designs, applications for any of the foregoing, trade names, brand names, business names, trade secrets, proprietary manufacturing information and know-how, instruction manuals, inventions, inventor's notes, research data, blue prints, drawings and designs, formulae, calculations, processes, prototypes, source codes, digital files, technology and marketing rights, together with all rights under license agreements, sublicense agreements, strategic alliances, development agreements, technology transfer agreements and other agreements or instruments relating to any of the foregoing, that are owned by a Party hereto.
- (o) **"Publisher"** means a publisher in the Distribution Network who is authorized by Affinity to publish Advertisements.
- (p) **"Services"** means the advertising and distribution services provided by Affinity pursuant to the Agreement and further described in Section 2 below.
- (q) **"Traffic Source ID (TSID)"** means the traffic source identification number by which Affinity shall identify all Publisher who are members of the Distribution Network

Any capitalized word not included in this Section shall be defined as per Affinity's online glossary available at: <http://helpcenter.affinity.com/advertisers/Glossary> (or such other URL as Affinity may designate from time to time).

## 2. AFFINITY ADVERTISING SERVICES

**2.1 Distribution Services.** Affinity shall display Advertisements, or cause Advertisements to be displayed, on various Web site(s) within the Distribution Network according to the particulars of the Campaign that shall be established by the Advertiser for those Advertisements. The breadth of distribution of the Advertisements may change during the term of the Agreement for any reason or no reason, including as a result of: (i) Advertiser modifying its chosen Ad Targeting Options; (ii) Affinity changing the members of the Distribution Network; and/or (iii) Affinity adopting or discontinuing one or more methods or modes of distribution and/or Advertisement delivery. Advertiser understands that the membership of the Distribution Network is subject to change at any time for any reason without notice to Advertiser. Affinity does not guarantee that the Advertisement(s) will appear in any particular type of placement, or position, or that it will be displayed in any particular context or in response to any particular behavior.

- 2.2 No Guarantee Regarding Search Listings.** Where Advertisements are to be displayed in response to End User searches conducted on Web sites in the Distribution Network, Affinity does not guarantee that Advertisements will be available or displayed in any particular order, in any particular placement, or at all on any such search results list generated by the Distribution Network. Affinity reserves the right not to place Advertisements within any such search results list. Affinity makes no representations as to the format of any search listings results pages or of the Advertisements as they appear on such results pages.
- 2.3 Advertiser Interface.** Affinity shall provide to Advertiser access to its own administration and reporting interface through which Advertiser can manage the Advertising Content and monitor Advertiser's activities hereunder. Advertiser understands and acknowledges that the Advertiser Interface, including all data and information contained therein, shall be the authoritative source of all such data and information.
- 2.4 Budgets.** Advertiser may set via the Advertiser Interface specific Budgets for each particular Campaign. If Advertiser has a Pre-paid Account (described below), the sum of the Budgets for all of Advertiser's Campaigns may not exceed the amount currently in Advertiser's account. For all Advertiser accounts, Affinity shall display the Advertisements in a particular Campaign (or cause such Advertisements to be displayed) until the Budget for that Campaign has been exhausted. Upon reaching the Budget limit, Affinity shall cease displaying the relevant Advertisements. Notwithstanding the foregoing, if the Budget has been reached, Advertiser acknowledges and agrees that due to the nature of the Internet and the automated process of the Services, it may take up to one (1) business day for the Advertisements to be completely removed from Affinity's rotation. Advertiser shall remain responsible for payment for Clicks on Advertisements during this transition period even if it exceeds the Budget.
- 2.5 Click Validity.** Affinity shall charge Advertiser for each Click recorded in Affinity's system and so reported in the Advertiser Interface. While Affinity shall take certain steps to reduce the incidence of invalid Clicks, it cannot and does not guarantee that all Clicks charged to Advertiser are caused by bona fide End Users. As a result, Affinity disclaims any representation or warranty as to the validity of Clicks for which Advertiser may be billed. Advertiser may access a report of all Clicks through the Advertiser Interface. If Advertiser disputes the validity of any reported Clicks, Advertiser may submit to [support@affinity.com](mailto:support@affinity.com) a written request to review the validity of those Clicks along with supporting documentation for their dispute. Affinity agrees to work together with Advertiser in good faith to investigate Advertiser's request. Advertiser agrees that the outcome of such review shall be final and binding.
- 2.6 Prohibited Uses.** Advertiser shall not, and shall not authorize any party to: (i) generate automated, fraudulent or otherwise invalid impressions, inquiries, conversions, Clicks or other actions; (ii) use any automated means or form of scraping or data extraction to access, query or otherwise collect Affinity advertising related information from any Distribution Network Web site or property except as expressly permitted by Affinity; or (iii) advertise anything that is illegal in its place of business or engage in business practice that is illegal or fraudulent in its place of business.

- 2.7 Agency.** Advertiser represents and warrants that it has the full power and authority to grant, or otherwise permit, Affinity access to and use of its Intellectual Property and Confidential Information. Advertiser may submit Advertisements on behalf of a third party (a "Principal") provided that Advertiser has in place with each such Principal an agreement granting Advertiser authority to act as an agent for Principal for such advertising purposes and with terms that are substantially similar to those herein contained. Advertiser warrants that it shall not disclose Principal's intellectual property and/or confidential information to any other party, including Affinity, without Principal's consent. Notwithstanding any agency agreements between Advertiser and its Principals, Advertiser is at all times the sole owner of the Advertiser's account with Affinity, including all rights, obligations, and liabilities attached thereto. In the event of any dispute as to ownership of the Advertiser account, Affinity's records shall be the definitive authority.
- 2.8 Amendment and Cancellation of Services.** Affinity may modify or cancel any of the Services or the membership of its Distribution Network at any time without notice and without liability. Affinity also reserves the right to modify the provisions of these Terms at any time without notice or liability, and Advertiser's continued use of the Services after such modifications shall constitute Advertiser's acceptance of the new Terms.
- 2.9 Limited License.** Each Party grants to the other Party a limited license to use certain Intellectual Property of that Party pursuant to these Terms:
- 2.9.1 Granted by Affinity. Affinity hereby grants Advertiser a limited, non-exclusive, nontransferable license to use the Advertiser Interface for Advertiser's internal business purposes, and to participate in the Services with the intention of placing Advertisements. In no event may Advertiser modify or create derivative works based on the Advertiser Interface or the Services or any part thereof. All rights not specifically licensed to Advertiser hereunder are retained by Affinity.
- 2.9.2 Granted by Advertiser. Advertiser grants to Affinity and members of the Distribution Network a limited, non-exclusive license to: (i) host, cache, store, route, copy, modify, reformat, excerpt, analyze, display, perform, transmit and promote the Advertising Content pursuant to the Agreement; and (ii) any other right(s) necessary to perform the foregoing. Furthermore, Advertiser grants to the End Users of the Distribution Network, the right to access the Advertising Content and any content and/or services directly linked to the Advertising Content.
- 2.10 Proprietary Rights.** The Advertiser Interface, the Services, and everything incorporated or used in connection with the Advertiser Interface or the Services, including but not limited to software, designs, graphics, text, methods, processes, technology and other Intellectual Property, are owned, or authorized for use, by Affinity. By accessing the Advertiser Interface or using the Services, Advertiser acknowledges such rights. Except as expressly permitted in these Terms, Advertiser may not modify, copy, reproduce, republish, upload, post, transmit, or distribute in any way any part of the Advertiser Interface or the Services.

### 3 ADVERTISER OBLIGATIONS

**3.1 Insertion Order.** Advertiser shall order specific Services by executing an Insertion Order with Affinity either through the Advertiser Interface or by otherwise submitting the Insertion Order to Affinity by fax or email. The Insertion Order, together with these Terms, shall be referred to hereunder as the Agreement. If there are any discrepancies between the Insertion Order and these Terms, the provisions of the Insertion Order shall govern.

**3.2 Advertising Content.** Advertiser is solely responsible for all Advertising Content, including all: (a) Advertisements, (b) Ad Targeting Options, (c) Web sites, services and landing pages to which Advertisements link or direct viewers, and (d) advertised services and/or products.

3.2.1 Advertisements. Advertisements are created by or for Advertiser, and Advertiser warrants that all Advertisements shall conform to the Advertisement Guidelines.

3.2.2 Ad Targeting Options. Advertiser shall select Ad Targeting Options based on the product or service being advertised. Ad Targeting Options include:

- (a) “By **Keyword**”: Wherein Advertiser chooses specific Keywords for which Advertisements shall be displayed or not displayed according to an End User’s input of such a Keyword;
- (b) “By **Categories**”: Wherein Advertiser chooses specific Categories (genres or groups) of Keywords for which Advertisements shall be displayed or not displayed according to an End User’s input of a Keyword that is within such Category;
- (c) “By **Target Region**”: Wherein Advertiser chooses the specific geographic location (by Country or Region, and/or, when available, by State and City) where Advertisements shall be displayed or not displayed; and
- (d) “By **Traffic Source ID (TSID)**”: Wherein Advertiser chooses the specific TSID on which Advertisements shall be displayed or not displayed.

Advertiser warrants that it shall only select Ad Targeting Options with a direct relevance to the services and/or products being advertised. If Advertiser makes changes to any such services and/or products, the Ad Targeting Options must be updated to be both current and accurate. All chosen Ad Targeting Options are subject to relevancy review by Affinity, and are subject to removal or rejection.

3.2.3 Maintenance of All Advertising Content. It is Advertiser’s sole responsibility to ensure the proper maintenance and availability of all Advertising Content, including Advertisement text, URLs, links, Web sites, and products and/or services advertised. Advertiser understands that Affinity shall in no way be responsible for the contents of any Advertisements or for any broken links, wrong URLs, or the contents of any Web sites to which the Advertisements direct viewers. The Parties acknowledge that any changes to the Advertising Content may take up to one (1) business day to take effect, and Advertiser shall remain responsible for the original Advertising Content until any such changes take effect.

3.2.4 Right of Refusal. Affinity reserves the right to edit, reject, suspend, cancel or remove any Advertisements, links, URLs, and/or Ad Targeting Options at any time for any reason whatsoever, including upon request by a member of the Distribution Network.

**3.3 Illegal Content.** Affinity may but is not obligated to, and does not in the ordinary course of its business, review or scan the Advertising Content submitted by Advertiser for the inclusion of illegal content. However, Affinity respects the intellectual property rights of others, and Affinity shall not permit materials known to be infringing of such rights to remain available through the Services. Affinity abides by the terms of the Digital Millennium Copyright Act ("DMCA"). Upon receipt of a proper notice of claimed infringement under the DMCA, Affinity will respond expeditiously to follow the procedures specified in the DMCA to resolve the claim between the complainant and the Advertiser who provided the content at issue. Advertiser understands and agrees that Affinity may need to, where applicable and technically possible, remove or disable access to the content at issue. If Advertiser believes in good faith that the complaint is a mistake or the result of misidentification and that Advertiser has the right to use the content at issue, Advertiser must submit formal counter-notification to Affinity's designated agent at: Affinity, 20 N Wacker Drive, 12th Floor, Chicago, IL 60606. The format for a formal counter-notice is described in the DMCA at: <http://www.copyright.gov/title17/92chap5.html#512>

**3.4 Advertiser Responsibility to End Users.** Advertiser is solely responsible for all transactions consummated through any Web sites to which End Users are directed via the Advertisements. If Affinity receives any complaints regarding such transactions, Affinity shall forward those complaints directly to Advertiser and shall have no further obligation with respect to those complaints.

## **4 PAYMENT**

**4.1 Cost-Per-Click.** Advertiser may set a maximum bid amount for each Click on an Advertisement within a Campaign. The cost of each Click shall be calculated as the actual cost at the moment at which the Click occurs ("Actual CPC"). Advertiser may access daily reporting through the Advertiser Interface, and such reporting will include the number of Clicks and the average Actual CPC charged. Advertiser understands and agrees that Advertiser will be charged for all Clicks on the Advertisements recorded and reported on the Advertiser Interface. Advertiser further understands and agrees that Advertiser Interface shall be the sole authority on the calculation of Clicks.

**4.2 Account Types.** Advertiser's account type is determined by the payment method. In the Advertiser Interface, Advertiser may choose either the Pre-paid Account type or the Post-paid Account type. Advertiser agrees to pay all applicable charges to its account in accordance with the billing terms of the chosen account type. Notwithstanding the foregoing, Affinity reserves the right to specify at its sole discretion an account type for Advertiser.

4.2.1 Pre-paid Account. With a Pre-paid account, Advertiser shall deposit funds with Affinity to be held on Advertiser's account as a credit from which payment is

deducted for each Click on an Advertisement. Or, Advertiser may pre-authorize Affinity to charge Advertiser for Clicks up to a specified amount on Advertiser's credit card. Advertiser shall be solely responsible for paying all associated taxes, assessments, and other governmental fees. In the event that full payment cannot be fulfilled by the funds on account or by the pre-authorized limit on Advertiser's designated credit card, Affinity shall cease all distribution of the Advertisements and the outstanding amount on Advertiser's account (if any) shall become due and payable immediately. Advertiser acknowledges and agrees that due to the nature of the Internet and the automated process of the Services, it may take up to one (1) business day for the Advertisements to be completely removed from Affinity's rotation. Advertiser shall remain responsible for payment for Clicks on Advertisements during this transition period.

4.2.2 Post-paid Account. With a Post-paid account, Affinity shall issue an invoice to Advertiser on the last day of each calendar month for the amount owed for the Clicks that occurred in that month. Invoices are payable within thirty (30) days of receipt. Or, Advertiser may authorize Affinity to charge directly Advertiser's credit card for all Clicks that occurred in a particular month on the last day of that calendar month. Advertiser shall be solely responsible for paying all associated taxes, assessments, and other governmental fees.

**4.3 For All Accounts.** The following provisions shall apply to all Advertiser accounts regardless of payment method:

4.3.1 Late Payments. If at any time, Advertiser fails to make timely payment in accordance with the billing terms for Advertiser's account type, Advertiser agrees that any outstanding amounts may be subject to the maximum interest charge available at law and that such interest shall be calculated from the date on which the payment was originally due. Affinity may at any time upon an Advertiser's account falling into arrears: (a) suspend the display of any or all Advertisements or Campaigns; (b) remove completely any or all Advertisements or Campaigns from the Services; (c) terminate Advertiser's Account in its entirety; or (d) do any combination of the above.

4.3.2 Costs of Collections. Advertiser shall be responsible for all reasonable expenses including but not limited to collection, court costs and attorneys' fees, that Affinity incurs for collecting late payments.

4.3.3 Chargebacks. Affinity has a zero tolerance policy for chargebacks of any type. If Advertiser disputes a credit card payment or PayPal payment, and such dispute is found to be invalid, Advertiser shall be subject to a fine (as described herein), a suspension of any Campaign, and/or the termination of Advertiser's account at Affinity's sole discretion. The fine for an unfounded chargeback shall be \$25.00 USD. Advertiser acknowledges and agrees that Affinity shall conduct its own investigation in good faith into any payment disputes, independent of any credit card or payment institution, and that the results of such investigation shall be final and binding on both Parties.

- 4.3.4 Refunds. If applicable, refunds or service credits will be applied as a credit on Advertiser's account. Such refunds or service credits have no cash value. Nothing in these Terms shall obligate Affinity to extend any refund or credit to any party.
- 4.3.5 Taxes and Tariffs. All charges are exclusive of taxes. Advertiser shall be responsible for paying all taxes, tariffs, and/or government charges.
- 4.3.6 Currency. All payments are due in U.S. Dollars unless the Parties agree otherwise in an Insertion Order.
- 4.3.7 Credit Card. For payment by credit card, Affinity accepts MasterCard, American Express, or VISA credit card.

## 5. **SUSPENSION AND TERMINATION**

The term of the Agreement as between the Parties will expire when terminated by either Party in accordance with the provisions contained herein. All notices of termination from Advertiser must be received by Affinity at [support@affinity.com](mailto:support@affinity.com).

- 5.1 **Termination by Either Party**. Either Party may terminate the Agreement in whole or in part upon provision of written notification under the following circumstances:
- (a) If a Party breaches the Agreement and such breach is not cured within 30 calendar days of the breaching Party receiving from the non-breaching Party written notice to cure such breach;
  - (b) If a Party materially breaches the Agreement and such material breach is not cured within 10 calendar days of the breaching Party receiving from the non-breaching Party written notice to cure such material breach; or
  - (c) If a Party, for any reason or no reason whatsoever, provides to the other Party thirty (30) days' advance written notice of termination.
- 5.2 **Automatic Termination**. The Agreement shall automatically terminate in whole if either Party:
- (a) Makes a general assignment for the benefit of its creditors;
  - (b) Appoints or has appointed a receiver, trustee in bankruptcy or similar officer to take charge of all or part of its assets;
  - (c) Files or has a petition filed against it in any bankruptcy; or
  - (d) Is adjudicated insolvent or bankrupt.
- 5.3 **Suspension**.
- 5.3.1 By Affinity. Affinity may immediately suspend the Services for any of the following reasons:

- (i) Advertiser uses the Services in a manner that contravenes any applicable Laws;
- (ii) Advertiser's use of the Services creates a legal or other material risk or harm to Affinity, its Affiliates, any member of the Distribution Network, any End User, or any of Affinity's networks and systems;
- (iii) Advertiser uses the Services in a manner that is a material abuse of the Services or otherwise generally considered materially objectionable in the Internet community; or
- (iv) For any other reason at Affinity's sole reasonable discretion.

Any suspension of the Services shall be limited, to the extent possible, to the specific Advertisement that is the source of the suspension, but Affinity reserves the right to suspend Advertiser's entire account if it deems necessary. Upon suspension of any of the Services, Affinity shall endeavour but is not obligated to notify Advertiser and provide detailed information regarding the suspension. A suspension based on the above may be implemented until the issue has been remedied to Affinity's sole reasonable satisfaction. If the issue continues for a period exceeding 30 calendar days, Affinity may terminate the Agreement in whole.

5.3.2 By Advertiser. Advertiser may at any time suspend use of the Services in whole or in part via the Advertiser Interface. If Advertiser suspends a particular Advertisement, Advertiser acknowledges and agrees that such suspension may take up to one (1) business day to take effect, and Advertiser shall still remain responsible for any Clicks on that Advertisement up to the date on which that Advertisement is actually suspended.

#### 5.4 **Post Termination / Expiration.** Upon termination or expiration of the Agreement:

- 5.4.1 Each Party shall have two (2) days from the date of termination or expiration as a transition period to cease, and cause all its Affiliates, agents, employees, and representatives to cease, all activities related in any way to the Agreement, including the display, advertisement, and use of the other Party's Intellectual Property.
- 5.4.2 Affinity shall have no further obligation to provide Services to Advertiser or any End User.
- 5.4.3 Advertiser shall immediately pay to Affinity all amounts due and payable hereunder for the Services rendered up to and including the last date on which any Advertisements were published via the Services (which may, pursuant to Section 5.4.1 above, be up to two (2) days past the termination or expiration date).
- 5.4.4 For Pre-paid Accounts, any unused credit remaining on the account may be refunded to Advertiser only if Advertiser submits a request for a refund directly to Affinity at [support@affinity.com](mailto:support@affinity.com). If Advertiser does not make such a request, the

unused credit shall expire after three (3) months from the effective date of expiration/termination, and no refund shall be provided to Advertiser thereafter.

- 5.4.5 The provisions of these Terms that by their nature continue beyond the expiration or termination of the Agreement shall survive such expiration or termination (including, but not limited to, the provisions relating to Intellectual Property, representations and warranties, limitation of liability, disclaimer, indemnification, Confidential Information, governing law and jurisdiction).

## **6. INTELLECTUAL PROPERTY**

Neither Party shall, at any time during or after the expiration or termination of the Agreement, assert or claim any interest in, or do anything that may adversely affect the validity of, the Intellectual Property of the other Party (including registering or attempting to register any trademark of the other Party or a mark confusingly similar thereto). Advertiser shall at all times retain sole and exclusive right, title and ownership in and to all of its Intellectual Property.

## **7. CONFIDENTIALITY**

Each Party (the "Recipient") shall protect the confidentiality of any Confidential Information disclosed by the other Party (the "Discloser") and shall not use such Confidential Information except in strict accordance with the Agreement. Confidential Information as defined herein does not include information that:

- (a) Is generally available to the public through no fault of the Recipient and without breach of the Agreement;
- (b) Was already in the possession of the Recipient prior to disclosure by the Discloser and without any confidentiality obligation attached thereto, as evidenced by the Recipient's records existing prior to the time of disclosure;
- (c) Was disclosed to the Recipient by a third party without a breach of such third party's confidentiality obligations thereto;
- (d) Was independently developed by the Recipient without a breach of the Agreement or reliance on any Confidential Information;
- (e) Is disclosed by the Recipient after obtaining the Discloser's prior written approval; or
- (f) Is required to be disclosed by law, provided that the Recipient promptly notifies the Discloser of the legal obligation and provides the Discloser with a reasonable opportunity to seek a protective court order, or the equivalent.

## **8. REPRESENTATIONS AND WARRANTIES**

Advertiser represents and warrants that: (i) Advertiser has the right to enter into the Agreement as a whole; (ii) Advertiser is the owner of, or has all authorizations, approvals, consents, licenses, permits, certificates or other rights/permissions necessary to disclose its Confidential Information and display the Advertisements; (iii) all information provided by Advertiser is accurate, complete, and up-to-date; and (iv) Advertiser's execution of the Agreement, and its performance of obligations and duties hereunder, will not violate any agreement to which Advertiser is a party or is otherwise bound. Advertiser further represents and warrants that the Advertising Content (V) does not violate any law or regulation; (vi) does not infringe in any manner any copyright, patent, trademark, trade secret or other intellectual property right of any third party; (vii) does not breach any duty toward or rights of any person or entity including, without limitation, rights of publicity or privacy, or had not otherwise resulted in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity; (viii) is not false or misleading; and/or (ix) is neither defamatory, libelous, slanderous or threatening. Violation of the foregoing may result in immediate termination of the Agreement in its entirety.

## **9. DISCLAIMER**

The Services are provided on an "as is", "as available" basis. Advertiser acknowledges that Affinity does not and cannot guarantee that the operation of the Services will be uninterrupted, error free or that the Services and the information it stores will be entirely free from viruses, hackers, intrusions, unscheduled downtime or other failures. To the fullest extent permitted by law, Affinity disclaims all warranties, express or implied, including for non-infringement, satisfactory quality, merchantability and/or fitness for any particular purpose. Affinity also disclaims all guarantees regarding positioning, levels, quality, and/or timing of: (i) costs per Click; (ii) Click-through rates; (iii) availability and delivery of any impressions or Advertisements on the Distribution Network; (iv) Clicks; (v) conversions or other results for any Advertisements; (vi) the accuracy of Publisher data (e.g. reach, size of audience, demographics or other purported characteristics of audience); and (vii) the adjacency or placement of Advertisements on the Distribution Network. Advertiser understands that the delivery of Advertisements is an automated process and, consequently, Advertisements may be displayed on the same page as, or in close proximity to, certain materials on the Distribution Network that may be objectionable to Advertiser (for example trademarked or adult material). Advertiser also understands that third parties may generate impressions or Clicks on the Advertisements for prohibited or improper purposes, and Advertiser accepts the risk of any such impressions and Clicks.

## **10. INDEMNIFICATION**

Advertiser agrees to indemnify and hold harmless Affinity, its subsidiaries, affiliates, partners, officers, directors, agents, and employees, from and against all claims, actions, liabilities, losses, expenses, damages, and costs (including reasonable attorney fees) due to third party claims or causes of actions (including from members of the Distribution Network) arising out of or in connection with (i) Advertiser's participation in the Services, (ii) the Advertisements, Advertiser's Web sites or any links from Advertiser's Web sites (iii) any libel, defamation, violation of right of privacy or publicity, copyright infringement, trademark infringement or other infringement of any third party right, fraud, false advertising, misrepresentation, product liability or violation of any law,

statute, ordinance, rule, or regulation throughout the world in connection with the Advertisements and/or Advertiser's Web sites (iv) any breach by Advertiser of any duty, representation, warranty under any agreement with Affinity, (v) any fraudulent or otherwise invalid chargeback initiated by Advertiser, or (vi) relating to a contaminated file, virus, worm, or Trojan horse emanating from Advertiser's Web sites.

## **11. LIMITATION OF LIABILITY**

Neither party will be liable for any consequential, special, indirect, exemplary, or punitive damages (including loss of profits, revenue, interest, goodwill, loss or corruption of data or for any loss or interruption to Advertiser's business) whether in contract, tort (including negligence), or any other legal theory, even if advised of the possibility of such damages and notwithstanding any failure of essential purpose of any limited remedy; and (b) each party's aggregate liability to the other is limited to the aggregate amount paid or payable to Affinity by Advertiser for the Advertisement giving rise to the claim. Except for payment obligations, neither party is liable for failure or delay resulting from a condition beyond the reasonable control of the party, including without limitation to acts of God, government, terrorism, natural disaster, labor conditions and power failures.

## **12. DISPUTE RESOLUTION**

Any and all claims or disputes arising out of or relating in any way to the Agreement, the relationship of the parties under the Agreement, or the Services provided under the Agreement (including but not limited to requests for specific performance) shall be submitted to mandatory binding arbitration. The arbitration shall be administered by the American Arbitration Association ("AAA") and conducted pursuant to the AAA's then current Commercial Arbitration Rule (the "Rules"). The arbitration hearing shall be conducted in the English language and shall take place in Chicago, Illinois before a single arbitrator selected in accordance with the Rules. The parties shall each bear the costs of the arbitration in equal shares. The parties shall also bear their own legal fees (including but not limited to attorneys' fees) in connection with the arbitration, and the arbitrator(s) may not reallocate the legal fees in conjunction with their award. Any award rendered by the arbitrator shall be confirmed in a state or federal court of competent jurisdiction in Chicago, Illinois and each party hereby irrevocably submits and consents to, and waives any objection to, personal jurisdiction and venue in such court.

## **13. JURISDICTION**

The Agreement, including these Terms, will be governed and construed in accordance with the laws of the State of Illinois without giving effect to any rule of conflicts of law. The Agreement will not be governed by or construed in accordance with the United Nations Convention on Contracts for the International Sale of Goods. If any portion of the Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability will not affect the validity of the remainder of the Agreement.

#### **14. AMENDMENTS**

Affinity may, at its sole discretion, add, delete or make modifications to any provision of these Terms from time to time. Affinity may, but is not obligated to, provide Advertiser with notice of such changes. The new modifications shall take effect 5 Calendar Days from the date that Affinity publishes the latest version of the Terms online at the following URL: <http://www.affinity.com/advertisers/AffinityAdvertiserTermsofService.pdf> (or at such other URL as Affinity may designate from time to time). If Advertiser does not agree to the modified Terms, Advertiser acknowledges and agrees that Advertiser's sole remedy is to terminate the Agreement in its entirety in accordance herewith. By continuing to allow Affinity to display and distribute your advertisements after such modified Terms have been published, Advertiser thus agrees to the Terms, as modified.

#### **15. RELATIONSHIP OF THE PARTIES**

Nothing in the Agreement shall be construed as creating a relationship of employer and employee, principal and agent, partnership or joint venture between the Parties. Each Party shall be deemed an independent contractor at all times and shall have no right or authority to assume or create any obligation on behalf of the other Party except as may be expressly provided herein.

#### **16. ASSIGNMENT**

Advertiser shall not assign or otherwise transfer its respective rights or obligations under the Agreement without the prior written consent of Affinity, which shall not be unreasonably withheld. Any assignment or transfer in violation of this section shall be null. The Agreement shall be binding and have effect upon the Parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under the Agreement. Affinity may assign the Agreement, in whole or in part, at its sole discretion to any of its Affiliates or as part of a merger or acquisition of all or substantially all of Affinity's shares or assets.

#### **17. WAIVER**

No waiver by a Party of a breach of any provision hereof shall take effect or be binding upon that Party unless expressly waived in writing, and such waiver shall extend and apply only to the particular breach so waived and shall not limit or affect the rights of the waiving Party in respect of any future breach or in respect of any breach of any other provision hereof.

## 18 CONSTRUCTION AND INTERPRETATION

- 18.1 **References.** All references in these Terms to particular sections, titles, and Schedules will be references to the sections, titles, and Schedules of the Agreement (which includes these Terms) only unless specific reference is made otherwise. The words “herein”, “hereof”, “hereto”, and “hereunder” and words of similar meaning will refer to the Agreement in its entirety and not to any particular provision or portion of the Agreement. Wherever in the Agreement that the masculine, feminine or neutral gender is used, it will be construed as including all genders, and wherever the singular is used, it will be deemed to include the plural and vice versa, where the context so requires. When used for listing purposes, the term “including” or “includes” shall be deemed to mean “including, but not limited to” or “includes, but is not limited to,” as applicable.
- 18.2 **Translations.** The Agreement has been executed in the English language. If there is any discrepancy or conflict between the English version and a version in any other language, then the English version will control in all respects.
- 18.3 **Contra Proferentum.** Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be applicable in the interpretation of these Terms.

## 19. EXECUTION

Advertiser warrants and agrees that clicking the “SUBMIT” button below confirms its clear understanding of and agreement to all the terms and conditions herein. The individual clicking “SUBMIT” represents that: (a) s/he has the full authority, and is duly authorized and empowered, to execute these Terms on behalf of Advertiser, and (b) to the best knowledge of such individual, all representations made in these Terms by Advertiser are true and correct.