

## **PUBLISHER AFFILIATE AGREEMENT**

### **LAST REVISED: JANUARY 1, 2020**

The following Publisher Affiliate Agreement (“Agreement”), sets forth the terms which shall govern the relationship between Discover Nimbus Media, LLC (“Company”), and You, a Publisher affiliate (“Affiliate or “Publisher” or “You”). Company and Publisher are each referred to herein as a “Party” and collectively as the “Parties”. The specific type of advertising media, traffic sources, campaigns, leads, pricing, quantity, rate, targeting, required field submission, and other specific terms for each purchase shall be set forth in an Insertion Order (“IO”). Any applicable IOs, together with these terms, shall constitute the entire agreement between the parties. In the event of a conflict between an IO and this Agreement, the terms of the IO shall control and govern. Publisher agrees to use site and Company’s services only in accordance with the Agreement and applicable law. Company reserves the right to make changes to this site, the Agreement, or any of its terms, at any time and without notice. The latest version of this Agreement will be posted on the site and Publisher’s continued use of the site and/or Company’s services after such modification thereof shall constitute express consent to such modification. Therefore, Publisher should regularly check the site for updates and/or modifications. If Publisher does not agree to the terms of this Agreement in its entirety, it shall not register as an affiliate, use Company’s services, and/or use this site in any manner. The Agreement shall commence upon Publisher’s acceptance of these terms and Company’s approval of Publisher as an affiliate and shall remain in effect until terminated as set forth herein.

**1. This Site and Services.** Through this site, Company enables Affiliates to apply for and have the opportunity to earn payable actions (as defined further below) through the participation of various advertising campaigns (“Offers”) offered by Company and/or Company’s third-party advertisers (“Advertisers”). The Offers and creatives made available on this site may have additional, campaign and/or offer specific terms which shall be posted on the site. Company may, at its sole discretion, refuse to provide access to any Affiliate and may terminate Affiliate access to this site and its Offers at any time and for any reason. Company posts these Offers and creatives on this site in connection with the advertising campaigns that an Affiliate may undertake after approval by Company. Approved Affiliates shall be permitted to download the Offers and creatives for:

- i. Publication on an Affiliate’s website and/or online properties owned, operated, or controlled by Affiliate (“Affiliate Website”)
- ii. Distribution in email messages and/or SMS text messages, if applicable, sent to those emails addresses/telephone numbers which were lawfully and compliantly collected in accordance with applicable Federal and State regulations, and listed in Affiliate’s database and/or any other database affiliated with, owned, operated, and/or controlled by Affiliate; and
- iii. All other approved marketing channels.

Unless set forth in an applicable Insertion Order or this Agreement, all information pertaining to payable actions, including the amounts to be paid for each action and the payment terms, shall be specified in the campaign and/or Offer specific terms. Payable actions are generated from specific transactions, as defined by Company, and may include leads, sales, registrations, clicks, and/or impressions. The applicable types of actions shall be set forth in the campaign and/or Offer specific terms. If an Affiliate accepts to run an Offer and/or advertising campaign, Affiliate shall utilize said Offer and the creatives associated with the Offer in accordance with the specific term and this Agreement. Company shall be solely responsible for the calculation and/or tracking

associated with payable actions. Numbers and calculations regarding payable actions will be generated by Company and shall be binding on the parties. Affiliate unequivocally understands and agrees that from time to time, the Services offered by Company, including this site, may be inaccessible, unavailable, malfunction, and/or inoperable due to: unforeseen malfunctions, periodic maintenance and repairs, and other causes beyond Company's control. Company will strive to provide services on a continuous basis, however, Affiliate acknowledges and agrees that Company has no control over the availability of this Site. Company's failure to deliver this Site and its Services because of technical difficulties shall under no circumstance represent a failure to meet its obligations under this Agreement, nor constitute a material breach of this Agreement. In the event of an unforeseen malfunction of the Site which effects tracking of payable actions, or leads to an uncharacteristic increase of payable actions, as determined by Affiliates previous history pertaining to payable actions, Affiliate acknowledges that Company shall not be held liable for said malfunction, but shall work diligently to resolve any issues which may arise.

1.1 Creatives. Only Company reviewed and approved Affiliate websites, data distribution lists, and marketing channels may be used in connection with this Site and Affiliate's services. Affiliate shall not alter, modify, or otherwise materially change the Creatives made available on the Site without Company's prior express written consent. Unless otherwise specific in the offer specific terms, the positioning, placement, frequency, and other editorial, non-material decisions related to Creatives shall be made by Affiliate. Notwithstanding, Affiliate shall comply with any and all requests from Company to modify, alter, or remove or otherwise change the placement, frequency, and/or editorial decisions related to Creatives. The Creatives and/or Offers made available to Affiliate pursuant to this Agreement, whether modified or unmodified, shall remain the sole and exclusive property of Company and Affiliate acknowledges that it shall have no ownership rights to the Creatives and/or Offers. Additionally, any tracking pixels or tracking mechanisms included in the Creatives or otherwise incorporated may not be altered under any circumstance. Company periodically and frequently employs a testing system to ensure tracking mechanisms are unaltered. Altering, removing, or disabling tracking mechanisms in any deceitful or malicious manner may jeopardize the ability to calculate payable actions and shall serve as immediate grounds for termination of this Agreement.

**2. Insertion Orders.** From time to time, the Parties may, but are not obligated to, negotiate and execute IO(s) under which Publisher will provide services to Company or its clients in the form of promotion of campaigns, lead generation, passing information, or posting lead submissions. Each Insertion Order shall constitute an addendum and separate contract between the Parties, which shall be deemed to incorporate and include the terms and conditions set forth in this Agreement. Each IO shall further specify, if applicable: (i) the type(s) of inventory to be delivered (ex: Submissions, Qualified Leads, or Completed Actions); (ii) the price(s) for such inventory; (iii) the maximum amount of money to be spent pursuant to the IO (if any); (iv) the traffic sources allowed for said inventory; and (v) the start and end dates of the campaign (if any). Other items that may be included are: reporting requirements; scheduling, or designated fields for submissions. Either Party may cancel any IO on no less than twenty-four (24) hours prior notice to the other Party, unless a different cancellation period is expressly stated in the IO. Upon any termination or expiration of IO or this Agreement, all licenses granted to Publisher in connection with such IO or hereunder, as applicable, shall immediately terminate.

### **3. Publisher Services.**

#### **3.1 Submission of Consumer Information.**

- a. Section 2.2 applies only to Publisher services involving qualified submissions posted by Publisher which contain consumer generated information meeting certain designated fields to Company (collectively “Submission Campaigns”). Third party submissions are not allowed without written permission from Company.
- b. Definitions. A “Qualified Submission” is defined as an Internet user who registers certain required fields of information on or through Publisher’s owned and operated website or applicable landing page and as approved by Company. An “Invalid Submission” is defined as a submission which fails to satisfy the specifications or fields set forth in the IO or was generated through prohibited, incentivized or fraudulent means. Company shall not pay for an Invalid Submissions. Company’s determination regarding Qualified Submissions shall be final and binding on the parties.
- c. Sub-Affiliates. Publisher may desire to use its business partners and/or associates to fulfill its obligations under a particular campaign and/or the Agreement. Any of Publisher’s business partners or associates that participate in or perform any activities on behalf of Publisher under the Agreement shall be considered to be a “Sub-Affiliate.” Company reserves the right to review, approve, and reject any and all Sub-Affiliates and may revoke a prior approval of any Sub-Affiliate at any time and for any reason. Sub-Affiliates must meet the same compliance requirements and standards which Publisher maintains and must comply with all the terms herein. Publisher is responsible for and shall fully and unconditionally indemnify Company for any and all actions and/or inactions of any of its Sub-Affiliates at any time. Furthermore, Company may terminate Publisher at any time based on the actions of Publisher’s Sub-Affiliates. Company reserves the right to withhold or refuse payment to Publisher in the event that Publisher’s Sub-Affiliates breach this Agreement.
- d. Ownership. Upon acceptance of a Qualified Submission, Company shall be the sole and exclusive owner of such submission unless and until returned by Company. Unless returned or rejected, Publisher shall not use, share or remarket to any Qualified Submission or purchased lead, for any purposes internally or through a third party. Upon rejection of a Qualified Submission, or return of an Invalid Submission, ownership of such submission shall be returned to Publisher.
- e. Publisher agrees that at all times during the term of the Agreement, and for a period of twelve (12) months thereafter, it shall maintain accurate books and records relating to qualified submissions, non-qualified submissions and any payments made to or due to Publisher. Publisher agrees that Company or its designee that is legally bound to obligations of confidentiality and non-disclosure, shall have the right to examine, inspect, audit and review all such books, records and any source documents used in the preparation thereof during normal business hours upon written notice at least five (5) business days prior to the commencement of any such examination, inspection, review or audit.

3.2 Monitoring. Company may, but is not required to, monitor Publisher Services, on its own or with the assistance of third parties for compliance with this Agreement. Without limiting the generality of the foregoing, Company or its agent may monitor for: (a) assurance of compliance with applicable legal requirements; (b) applicable campaign requirements; and (c) if applicable, honoring of unsubscribe requests in the case of email marketing campaigns.

#### 4. Payment.

4.1. Payment. Company shall pay for each Qualified Submission or Payable Action pursuant to this Agreement or as set forth on any applicable IO. Company shall compile, calculate, and electronically deliver information, data, and/or statistics required to determine Publisher's billing and compensation. Where available, Company shall provide Publisher with online access, via a Company site, to such reporting. Publisher will be paid the set amount per payable action as defined and set forth in the IO, the Offer and/or campaign specific terms, or as agreed upon by the parties. If the IO or Offer specific and/or campaign specific terms are silent as to the date of payments or their frequency, then Company will pay amounts due thirty (30) days after the end of each month. Company reserves the right to reduce any payments owed to Publisher at any time, for invalid actions, Publisher technical errors, tracking discrepancies, and the like. All payments will be paid in US dollars (\$US). All payments shall be exclusive of any applicable taxes and each Publisher acknowledges that they shall be responsible for all applicable taxes. Notwithstanding anything contained herein to the contrary, no payments will be issued for any amounts otherwise due to Publisher that total less than one-hundred (\$100) ("Payment Threshold"). Upon termination of the Agreement, all undisputed sums owed to Publisher, even amounts below the Payment Threshold, will be paid within thirty (30) days. Company will not pay for any action that occurs before a campaign is initiated, or after a campaign terminates or which exceeds any preset campaign spend set forth in the IO. Company will not pay for any payable event derived from fraud, artificial means or utilizing practices which are in violation of this Agreement (*see Section 3.3*). Invoices submitted to Company shall be based on Company reported calculations solely. Company will not be required to compensate Publisher for actions that are not recorded due to Publisher's error. Company requires a W-9 as a condition of payment.

4.2 Fraud. Company actively monitors traffic, actions, and other campaign-related activities for potential fraud. If Company suspects that Publisher is engaged in fraud or has engaged in fraud, Company will immediately terminate the Agreement and Publisher's Account, pending investigation. If Publisher generates Submissions through the use of fraudulent means, as determined solely by Company, Publisher shall immediately forfeit all payments owed to Publisher by Company. Company reserves the sole judgment in determining fraud and Publisher agrees to be bound by any and all such determinations. If Publisher seeks to dispute any determination of fraud, it must provide satisfactory, documented evidence rebutting such fraud to Company within fourteen (14) days of notice of fraud. Company will hold all payments in pending-status for fourteen (14) days following notice of fraud from Company. If Publisher is unable to provide satisfactory evidence within this period, Company reserves the right to terminate the Agreement and cancel payments owed to Publisher, without any further obligations to Publisher.

4.3 Disputed Tracking or Payment. In the event Publisher disputes the tracking or payment determinations by Company, then: (a) Publisher shall notify Company of the dispute within seven (7) business days of receipt of the final tracking count for the month from Company; and (b) the Parties will facilitate a reconciliation effort between two sets of tracking data with each Party presenting the basis of its tracking count in good faith to resolve the dispute within fourteen (14) days from the date notice of dispute is presented by Publisher. Company may withhold payment of the disputed amount(s) of the invoice, and remit to Publisher the undisputed amount(s) in a timely manner. If the discrepancy cannot be resolved by a good faith effort to facilitate the reconciliation effort, within a reasonable period, thirty (30) days, then Company's tracking count shall be final.

**5. Proprietary Rights.** Company grants to Publisher a revocable, non-transferable, royalty free, license to use Company's Site, the Offers and/or Creatives made available on the Site, and any and all associated trademarks, service marks, tradenames, and/or copyrighted material ("Intellectual Property Content") that Company may provide or make available to Publisher. The use, redistribution, and/or publication of any Intellectual Property Content not expressly permitted hereunder, are strictly prohibited. Publisher does not acquire any ownership rights to Company's site, services, and/or Intellectual Property Content and Publisher shall under no circumstance, use, copy, rent clone, lease, sell, decompile, disassemble, reverse engineer or transfer Company's site and/or Intellectual Property Content.

**6. Publisher Compliance Responsibilities.**

6.1 Legal Compliance. Publisher's websites, databases, emails, data collection practices, and services, and shall remain at all times during the terms of this Agreement, in compliance with all applicable foreign, federal and state laws, including, but not limited to, the Federal Trade Commission Act, as amended, the Federal Communications Act, as amended, Telephone Consumer Protection Act; COPPA, as amended, the CAN-SPAM Act of 2003, as amended, applicable Federal Trade Commission implementing regulations and any and all foreign, federal and state deceptive trade practices statutes, as amended. Publisher further represents and warrants that Publisher's sites and Publisher's Affiliates sites, if applicable, contain distinct and comprehensible content and feature, at a minimum, a privacy policy clearly and conspicuously disclosed, linked from the site's homepage, which discloses the types of data collected while explaining the Publishers and Publisher's Affiliates data collection and sharing practices and security safeguards.

6.2 Prohibited Actions. Publisher (a) shall not permit any of its systems, employees, agents, sub-affiliates, or affiliates to generate actions through the use of artificial means or incentivization; (b) represents and warrants that it has safeguards in place to prevent its systems, employees, agents and contractors from so generating artificial clicks, fraudulent leads, and/or form filing; and (c) shall immediately notify Company if it has any reason to believe that artificial clicks might be occurring. Publisher's violation of Section 5 shall give Company the right to suspend or immediately terminate this Agreement and pursue all other remedies available to it at law or in equity. This prohibition applies equally to Publisher and any of its Sub-Publishers.

**7. Confidentiality.**

7.1 Confidential Information. Each Party shall keep confidential and shall not disclose confidential information of the other Party, and shall not use such information except as required to perform its obligations under this Agreement. For the purposes of this Agreement, "Confidential Information" means all business or technical information of a Party, whether it is received, accessed or viewed by the other party in writing, visually, electronically or orally. Confidential Information shall include, without limitation, technical information, marketing and business plans, databases, specifications, formulations, tooling, prototypes, specifications, procurement requirements, engineering information, computer software (source and object codes), forecasts, identity of or details about actual or potential customers or projects, techniques, inventions, discoveries, know-how and trade secrets. Confidential Information need not be designated as "Confidential" or "Proprietary" if the same is reasonably regarded in the industry as being of a confidential nature, or if provided orally or visually, is identified as confidential at the time of disclosure, or would reasonably be regarded as being of a confidential

nature. Each party will observe in respect of the confidential information of the other the same standards and practices as it observes for its own confidential information of similar character and importance but in any event not less than commercially reasonable standards and practices. Each Party acknowledges that a breach of this Section 5 may cause the other Party irreparable harm and that the harmed Party shall be entitled to appropriate injunctive relief in the event such breach is threatened or occurs. For the purposes of Section 6, the following shall not constitute “confidential information”: (a) information in the public domain; (b) information already known to the receiving Party; (c) information acquired by the receiving Party from another source without violation of any confidentiality obligation; and (d) information developed by a Party independently of information received from the disclosing Party.

7.2 Campaign Information and Customer Data. In addition to and without limiting the foregoing, Publisher shall keep confidential and not use or disclose any data pertaining to any campaign to any third party, nor permit such third party to use such data to target any offer or communication to end-users or otherwise to solicit end-users. All such data shall be the property of Company.

7.3 Enforcement. Publisher acknowledges that disclosure of Confidential Information by Publisher may result in no adequate remedy at law for Company and agrees that the Company shall be entitled to enforce its rights under this Agreement by obtaining appropriate equitable injunctive relief in addition to any other legal remedies available to Company. Such remedy may be sought without the requirement of a posting of a bond or undertaking.

**8. Publisher Representations and Warranties.** Publisher represents and warrants that:

- a. It shall comply, and cause its Sub-Publishers to comply with all applicable international, federal, state and local laws, rules and regulations in the performance of its Services under this Agreement;
- b. Publisher’s websites, databases, emails, and all linked content are, and shall remain at all times during the terms of this Agreement, in compliance with all applicable foreign, federal and state laws, including, but not limited to, the Federal Trade Commission Act, as amended, the Federal Communications Act, as amended, Telephone Consumer Protection Act; COPPA, as amended, the CAN-SPAM Act of 2003, as amended, applicable Federal Trade Commission implementing regulations and any and all applicable foreign, federal and state deceptive trade practices legislation, as amended;
- c. Publisher’s websites, databases, emails and all linked content do not: (1) promote racism, hate mongering or other objectionable content; (2) contain any investment or money making opportunities or advice not permitted by applicable laws, rules and regulations; (3) contain any gratuitous violence or profanity or other explicit vulgar or obscene language; (4) contain or post to any sexually explicit images or other offensive content or adult Services; (5) promote illegal substances, alcohol or tobacco; or (6) promote software piracy or otherwise violate any intellectual property rights of third Parties;
- d. Publisher will not: (1) use deceptive or misleading practices such as the use of spyware, adware, devices, Programs, robots, iframes, hidden pictures, redirects, spiders, computer scripts or other automated, artificial or fraudulent methods designed to appear as if a consumer is generating a lead; (2) intentionally disable tracking links associated with any Offers made available; and (3) use any deceptive form of advertising which includes, but is not limited to, phishing, sending an email to an individual falsely claiming to be an established legitimate enterprise in an attempt to scam or defraud the

user into surrendering private and personal information that can be used for identify theft or other activity;

e. Publisher maintains and posts in a conspicuous manner on all its websites involved in the Programs, a privacy policy that clearly and adequately describes what information is collected about the end user, how such information is collected, used and/or leased or sold to any third Party;

**9. Termination.** This Agreement may be terminated by either Party upon twenty-four (24) hours' prior written notice to the other. In addition, Company reserves the right, in its sole and absolute discretion, to terminate the Agreement at any time upon breach of the Agreement by Publisher. All payment obligations accruing prior to the date of termination shall survive until fully fulfilled or forfeited pursuant to the terms of the Agreement.

**10. LIMITATION OF WARRANTIES.** DUE TO THE NATURE OF INTERNET AVAILABILITY AND ACCESSIBILITY, COMPANY CANNOT GUARANTEE THAT THERE WILL BE NO DOWNTIME OR OTHER INTERRUPTIONS IN SERVICES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL SERVICES PROVIDED BY COMPANY HEREIN ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, AND COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, AND: (i) MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (ii) THAT THERE ARE NO VIRUSES OR OTHER HARMFUL COMPONENTS THEREIN; (iii) THAT COMPANY'S SECURITY METHODS EMPLOYED WILL BE SUFFICIENT IN ALL CIRCUMSTANCES OR IN THE FACE OF ALL ATTACKS; (iv) REGARDING CORRECTNESS, ACCURACY, OR RELIABILITY OF ANY INFORMATION SET FORTH THEREIN OR THEREON; OR (v) AGAINST INTERFERENCE WITH ENJOYMENT OF COMPANY'S "INFORMATION" (WEBSITE).

**11. LIMITATION OF LIABILITY.** IN NO EVENT SHALL COMPANY BE RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST OPPORTUNITIES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND REGARDLESS OF THE CAUSE OF ACTION UPON WHICH ANY SUCH CLAIM IS BASED. IN NO EVENT SHALL COMPANY' LIABILITY EXCEED THE FEES PAID TO PUBLISHER IN THE THREE (3) MONTHS PRIOR TO THE CLAIM ARISING.

**12. INDEMNIFICATION.** PUBLISHER SHALL DEFEND, INDEMNIFY AND HOLD COMPANY AND ITS AFFILIATES AND EACH OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, CONTRACTORS AND AGENTS HARMLESS FROM ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, CLAIM, OR CAUSE OF ACTION, INCLUDING, WITHOUT LIMITATION REASONABLE LEGAL FEES AND EXPENSES, ARISING OUT OF OR RELATED TO: (A) PUBLISHER'S PRODUCTS OR SERVICES; (B) ANY PRODUCTS OR SERVICES PROVIDED BY PUBLISHER'S AFFILIATES OR THIRD PARTIES ACTING ON ITS BEHALF OR UNDER ITS AUTHORITY OR CONTROL; (C) ANY MATERIAL BREACH BY PUBLISHER OF ANY OF PUBLISHER'S REPRESENTATIONS, WARRANTIES OR AGREEMENTS

CONTAINED IN THIS AGREEMENT; OR (D) ANY MATERIAL BREACH BY ANY EMAIL LIST PROVIDER, BROKER OR OTHER THIRD PARTY SELECTED BY PUBLISHER TO ADMINISTER MARKETING CAMPAIGNS OF ANY OBLIGATION IMPOSED ON PUBLISHER OR ANY SUCH THIRD-PARTY, REGARDLESS OF WHETHER OR NOT COMPANY SHALL HAVE CONSENTED TO ANY SUCH RELATIONSHIP, BY THIS AGREEMENT. PUBLISHER SHALL PROMPTLY NOTIFY COMPANY IN WRITING OF ANY SUCH CLAIM AND SHALL HAVE THE RIGHT TO CONTROL THE DEFENSE OF SUCH CLAIM WITH COUNSEL OF ITS CHOICE, BUT NO SETTLEMENT MAY BE CONSUMMATED WITHOUT THE EXPRESS WRITTEN CONSENT OF COMPANY; PROVIDED THAT FAILURE TO GIVE PROMPT NOTICE WILL NOT RELIEVE PUBLISHER FROM ITS INDEMNIFICATION OBLIGATION. NOTWITHSTANDING, COMPANY RESERVES THE RIGHT TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY PUBLISHER AND PUBLISHER SHALL BEAR THE BURDEN OF ANY AND ALL LEGAL COSTS AND FEES INCURRED BY COMPANY. COMPANY SHALL COOPERATE WITH PUBLISHER, AT PUBLISHER'S EXPENSE, IN DEFENDING OR SETTLING SUCH CLAIM.

**13. General Terms.** All notices, requests, consents, demands or other communications given under this Agreement shall be in writing and shall be deemed duly given and received (a) upon personal delivery to Company; (b) three (3) business days after being sent by certified or registered mail return receipt requested, to Company, postage and charges pre-paid; (c) one business day after being sent by express overnight delivery by a national carrier to Company; or (d) upon actual delivery followed by the sending of an acknowledgment of receipt if sent by electronic mail or any other electronic means (electronic mail or any other electronic means shall constitute a writing for purposes of this Agreement). All notices, requests, consents, demands and other communications shall be addressed at the addresses set forth on the most current Insertion Order which addresses may be changed from time to time by Company by providing notice to the other in the manner set forth above.

**13.1 Assignment.** Company may assign the Agreement, or any portion thereof, at its sole discretion and at any time. Publisher may not assign, transfer or delegate, any of Publisher's right under the Agreement without the prior written consent of Company, which may be withheld for any reason, and any attempts to do so shall be null and void.

**13.2 Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

**13.3 Waiver.** The failure of a Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with that provision or any other provision of this Agreement.

**13.4 Applicable Law and Binding Arbitration.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Wyoming. The Parties agree and consent to have all disputes regarding this Agreement resolved by final and binding arbitration before the American Arbitration Association, Commercial Division pursuant to the commercial arbitration rules and procedures. The Parties agree to conduct the arbitration in county and state of Company's primary office at the time the dispute arose and each Party shall bear the costs of such arbitration. The parties specifically waive any international treaties or other international law which may govern the court or location of

resolution of any dispute between them. This provision was a bargained for relinquishment of both parties' rights to jurisdiction in their respective states or countries. The Parties waive the personal service of any process upon them and agree that service may be completed by overnight mail (using a commercially recognized service) or by U.S. Mail with delivery receipt to the address stated in this Agreement. The prevailing Party in any arbitration shall be entitled to an award of attorney fees and costs for such arbitration, not to exceed fifty thousand dollars (\$50,000.00).

13.5 Relationship. The parties agree that they are independent contractors in performing the Services hereunder and that their relationship shall not constitute a partnership, joint venture or agency. Under no circumstance shall Publisher be considered (i) an employee, agent or legal representative of Company, or (ii) shall have any authority to represent Company or to enter into any contracts or assume any liabilities on behalf of Company.

13.6 Entire Agreement. This Agreement and the applicable IO's, contain the entire agreement between the parties with respect to the subject matter of this Agreement, and this Agreement and the applicable IO's supersede any prior written or oral discussions, prior agreements, contemporaneous sign-up terms and conditions which Company may have been prompted to sign electronically, and/or undertakings of any kind and nature between the parties with respect to the subject matter of this Agreement.