

THIS IS AN AGREEMENT between Direct Action Media LLC (hereinafter referred to as "Direct Action Media") and \_\_\_\_\_ (hereinafter referred to as "CLIENT"), and the parties agree to the terms as set forth herein. At all times, Direct Action Media acts as agent for the Publication ("Publisher" or "Pub") set forth herein. All orders are subject to Pub approval. All requests for credit must be approved by Pub and Direct Action Media.

### **Section 1: Description of Work.**

The work to be performed by DIRECT ACTION MEDIA may include, but not be limited to, the following: market research and analysis, ad production, rate negotiation; ad placement; lead tracking and analysis; reporting. All production work and ad placement performed by DIRECT ACTION MEDIA will be initiated with a purchase order, including rates to be applied and written authorization from CLIENT. DIRECT ACTION MEDIA will strive to achieve the desired look and feel that CLIENT agrees upon for ad production. All production work will be sent to CLIENT for final approval prior to ad placement. Production work must be approved within 24 hours from the time of transmission to CLIENT to avoid delays in the proposed ad placement. No prior approval of artwork is extended to material delivered to DIRECT ACTION MEDIA/Pub production after closing date. After close date, DIRECT ACTION MEDIA/Pub may use Advertiser's prior artwork on hand. Positioning of advertisement is at the discretion of DIRECT ACTION MEDIA/Pub unless otherwise guaranteed in writing by DIRECT ACTION MEDIA/Pub. Notwithstanding any terms to the contrary, Artwork received after close date forfeit's position and any premium paid therefore. Key numbers, reader service section, advertisers' index, product index and ad copy typeset are not appurtenant to this agreement and do not form a part of this agreement or the services rendered hereunder. No counterclaim, set-off or deduction shall be maintained for errors or omissions with regard thereto.

### **Section 2: Time Devoted To Work**

In the performance of the services to be rendered by DIRECT ACTION MEDIA, CLIENT will rely upon DIRECT ACTION MEDIA to devote such number of hours as is reasonably necessary to fulfill the spirit and purpose of this agreement.

### **Section 3: Compensation**

Compensation shall be determined by the ad size, color, position and publication. Each ad placement shall be initiated with a purchase order which shall be signed by CLIENT. All purchase orders signed by CLIENT shall be governed by the terms and conditions of this contract. The total price of each ad placement will be quoted in the purchase order. CLIENT agrees to make payment for ad placement no later than 15 days from invoice date. CLIENT also agrees to pay the difference between any frequency discount price and the rate card price if CLIENT fails to participate in the contracted number of ad placements.

### **Section 4: Cancellations and Short Rates**

CLIENT cancellation of purchase orders or changes to purchase orders must be made in writing and received by DIRECT ACTION MEDIA on or before closing date. No changes or cancellations can be accepted after the closing date. Failure to fulfill a purchase order will result in short rating. In the event of an early termination, the cost of all space used from the effective date of the purchase order shall revert to the standard rate for the terms actually fulfilled. For example, if CLIENT buys twelve issues based on a twelve time rate, and runs only six issues before cancellation, the six time ad rate will apply for each ad run.

CLIENT agrees that Pub or DIRECT ACTION MEDIA may refuse, reject or cancel at any time any advertisement, insertion order, space reservation or position commitment for any reason whatsoever including if in their sole judgment it believes is an invasion of privacy, is degrading, libelous, unlawful, profane, obscene, pornographic, tends to ridicule or embarrass or is in bad taste, or which in its sole judgment is an infringement on a trade mark, trade name or copyright belonging to others.

### **Section 5: Ownership Rights**

DIRECT ACTION MEDIA shall retain all right, title and interest in and to all information (“Content”) posted on all advertising materials, except for the Content CLIENT provides to DIRECT ACTION MEDIA for posting on said materials, to which CLIENT retains all right, title and interest. Subject to the terms and conditions contained herein, CLIENT hereby grants to DIRECT ACTION MEDIA a non-exclusive, worldwide license to use, reproduce, distribute, transmit and publicly display the Content CLIENT provides to DIRECT ACTION MEDIA. Both DIRECT ACTION MEDIA and CLIENT shall retain all right, title and interest in and to their respective trademarks, service marks and trade names, worldwide, subject to the limited license CLIENT grants to DIRECT ACTION MEDIA as stated herein.

### **Section 6: Relationship of Parties**

Nothing contained in this agreement shall be construed as creating any partnership, joint venture, trust, or employment between the parties hereto. The parties intend that an independent contractor relationship will be created by this agreement. CLIENT is interested in the results of the work and the control of the work will lie solely with DIRECT ACTION MEDIA.

### **Section 7: Confidential Information**

The parties understand that they may have access to or receive confidential information from or concerning the other party during the term of this agreement, and the parties agree that they will not disclose or use such confidential information, except in the performance of this agreement. Confidential information shall include the following: Any business, technical or financial information from or concerning the parties.

### **Section 8: Indemnity**

Each party agrees to indemnify, release, discharge and hold the other party, its successors and assigns and affiliated corporations, harmless, and agrees to defend the other party from and against any and all liabilities, losses, damages, claims (including workers’ compensation claims), lawsuits, causes of action, and expenses associated herewith (including reasonable attorney’s fees in defending against any such claim or lawsuit) caused or asserted to have been caused, directly or indirectly, by the negligence or willful misconduct of the party, its officers, employees, or agents, in its performance under this agreement.

### **Section 9: Warranties**

DIRECT ACTION MEDIA/Pub make no warranties (including the implied warranties of merchantability, fitness for a particular purpose and non-infringement), guaranties, representations, promises, statements, estimates, conditions or other inducements, expressed, implied, oral, written or otherwise except as expressly set forth herein. DIRECT ACTION MEDIA/Pub does not warrant or guaranty the profile or demographics of any media. DIRECT ACTION MEDIA does not guarantee to match colors, quality of paper or ink, match test or typography, printing, position, placement or order within the media. All orders are contingent upon DIRECT ACTION MEDIA’s ability to procure necessary materials and upon delays caused by accidents, war, act of God, embargoes, or any other circumstances beyond its control. DIRECT ACTION MEDIA/Pub will make every effort to meet scheduled delivery and mailing dates, but makes no guarantee and accepts no liability for failure to meet said dates.

**Section 10: Governing Law and Liability**

This agreement and the rights of the parties hereunder shall be governed by and enforced in accordance with the laws of the State of New York. All disputes between the parties shall be resolved by litigation exclusively in the state or federal courts located in the State of New York. In no event will DIRECT ACTION MEDIA be liable to CLIENT for any indirect, special, incidental, consequential or punitive damages, including lost profits, whether based on breach of contract, tort (including negligence), or otherwise, even if DIRECT ACTION MEDIA shall have been advised of the possibility of such damages. Any claims in this respect are expressly waived. DIRECT ACTION MEDIA's liability for any other act, error or omission, regardless of whether the claim is based on contract or tort, shall not exceed the amount paid by advertiser under the applicable order.

**Section 11: Duration and Termination**

Either party may terminate this agreement upon thirty days written notice; otherwise, the terms and conditions of this agreement will remain in force on an on-going basis. Upon termination, CLIENT shall be responsible to pay DIRECT ACTION MEDIA for all unavoidable costs incurred from all open purchase orders as detailed in Section 4.

**Section 12: Entire Agreement**

This agreement shall constitute the entire agreement between the parties and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between CLIENT and DIRECT ACTION MEDIA with respect to this service. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement. Any modification of this agreement or additional obligation assumed by either party in connection with the agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. All future ad placements, approved by CLIENT in writing with a purchase order, shall be subject to the terms and conditions of this agreement unless otherwise stated in writing.

**Section 13: Effect of Partial Invalidity**

The invalidity of any portion of this agreement shall not be deemed to affect the validity of any other provision. In the event that any other provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force as if they had been executed by both parties subsequent to the expungement of the invalid provision.