

FNP Op.ti.mize Marketing Services Terms & Conditions

Randall Family, LLC d/b/a FNP Op.ti.mize ("FNP Op.ti.mize") provides a range of marketing products and services for small- and medium-sized businesses (the "Marketing Services"). The Insertion Order (the "IO"), which can be provided as a printed document or an electronic quote, sets forth: (a) which Marketing Services are being purchased by "Advertiser"; (b) the costs for the Marketing Services; and (c) other relevant details of the proposed marketing campaign, (collectively referred to as, the "Campaign"). Advertiser's execution of the IO constitutes its agreement to be bound by these Marketing Services Terms and Conditions (this "Agreement").

This Agreement shall be incorporated by reference into and made a part of any IO submitted to FNP Op.ti.mize and govern the relationship between FNP Op.ti.mize and Advertiser. All IOs are subject to acceptance by FNP Op.ti.mize, in its sole discretion. An IO will be accepted by FNP Op.ti.mize upon its confirmation that all information provided by Advertiser is complete, accurate and in compliance with FNP Op.ti.mize's policies.

FNP Op.ti.mize reserves the right to amend, modify or restate this Agreement (the "Amendments") from time to time at its sole discretion. FNP Op.ti.mize shall provide notification of the Amendments to this Agreement by updating the "Date Last Modified" set forth above. It is Advertiser's responsibility to periodically review this Agreement for the Amendments, which shall be binding once posted The FNP website (www.fredericknewspost.com). Advertiser's continued use of the Marketing Services after the posting of the amendments will be deemed acceptance of this Agreement and the Amendments thereof.

For purposes of this Agreement, all references to "days" will be measured in "calendar days", unless otherwise noted.

1. Marketing Services. The Marketing Services include, but are not limited to, the following:

- (a) Search. This service is FNP Op.ti.mize's standard search engine marketing product, where FNP Op.ti.mize promotes Advertiser through various search engines.
- (b) Display. This service is FNP Op.ti.mize's standard online display advertising product, where FNP Op.ti.mize promotes Advertiser through online display advertisements disseminated through FNP Op.ti.mize's network of online publishers. This service is also called On Target Display Advertising.
- (c) Retargeting Display. This service is FNP Op.ti.mize's behavioral targeting product that enables FNP Op.ti.mize to display an ad to consumers who have previously evidenced interest in Advertiser's products or services or similar products or services.
- (d) Web. This service is FNP Op.ti.mize's web service product, where FNP Op.ti.mize creates, designs and hosts websites for the Advertiser.
- (e) Responsive. This service is FNP Op.ti.mize's website creation service, where FNP Op.ti.mize creates, designs, hosts and provides access to a content management system for the website.
- (f) Social. This service is FNP Op.ti.mize's suite of digital presence and social media creation and management products and services.

- (g) Mobile. This service is FNP Op.ti.mize's mobile optimization product, where FNP Op.ti.mize creates, designs and hosts mobile companion sites for the Advertiser.
- (h) Optimize. This service is FNP Op.ti.mize's Search Engine Optimization product, where FNP Op.ti.mize will work with the client to improve their website placement on search engines.
- (i) Local. This service is FNP Op.ti.mize's local business presence service, where FNP Op.ti.mize will create and claim available business presence listings on select websites. This service is also called Local Profiles.
- (j) List. This service is FNP Op.ti.mize's local listing cleansing service, where FNP Op.ti.mize will distribute updated business contact information to multiple data sources. This service is also called List Optimization.
- (k) Rep. This service is FNP Op.ti.mize's reputation monitoring service, where FNP Op.ti.mize will provide access to an online reputation monitoring system.
- (l) Tracking Services. This service tracks data and statistics concerning the performance of the Campaigns. As part of the Marketing Services, Advertiser will be provided Tracking Services.
- (m) Track. This is a phone call tracking service where FNP Op.ti.mize has added a call tracking phone number on behalf of Advertiser that is forwarded to a number provided by Advertiser.
- (n) Bundled Packages. FNP Op.ti.mize offers combinations of the Marketing Services in bundled packages for a single, monthly price.
- Search, Display, Retargeting Display, Web, Responsive, Social, Optimize, Local, List and Rep may be collectively referred to herein as the "Standard Marketing Services".
 - As FNP Op.ti.mize adds other products and services to its portfolio, such products and services will be referenced on the IO and any special terms and conditions will be posted online at The FNP website (www.fredericknewspost.com) and incorporated by reference into and made part of this Agreement.
 - Advertiser acknowledges and agrees that FNP Op.ti.mize reserves the right to use third party service providers to support and/or supply some or all of the technology, platforms, content and/or other products/services for use in connection with the services provided in this Agreement.

2. Online Advertising and Listing Services.

- (a) Placement. FNP Op.ti.mize shall determine, in its sole discretion, on which online properties (the "Publisher") the marketing content ("Ads") will run during the course of the Campaign involving Search, Display and Retargeting Display. Advertiser acknowledges that FNP Op.ti.mize does not operate or control the Publisher – with the exception of properties owned or operated by FNP Op.ti.mize or its affiliates (the "FNP Op.ti.mize Properties"). Advertiser further acknowledges that at any time during the Campaign, the Publisher mix may change. FNP Op.ti.mize makes no guarantees about when or where the Ads will be displayed by the Publisher or by FNP Op.ti.mize.
- (b) Geotargeting. FNP Op.ti.mize will use commercially reasonable efforts to place Ads such that they will be seen by consumers in the target locales identified during the Campaign

initiation process, but FNP Op.ti.mize does not guarantee that Advertiser's Ads will only be displayed in the target locales.

- (c) FNP Op.ti.mize Properties and Third Party Directories. FNP Op.ti.mize may create and post online in the directories of third parties, profile page(s) for Advertiser, which may include the following information regarding Advertiser: name, phone number, email address, physical address and information regarding the products or services of Advertiser (the "Local Profile").

3. Campaign Logistics.

(a) Set-Up Period.

(i) Campaign Set-Up Period. Advertiser acknowledges and agrees that, with respect to the Marketing Services, FNP Op.ti.mize may take up to ten (10) business days or longer to review and prepare the Campaign (or longer, if FNP Op.ti.mize has been asked to provide creative services or if FNP Op.ti.mize experiences technical difficulties with Advertiser's Campaign or in the event of Force Majeure, as set forth in Subsection 18(g) below) and may require further input from Advertiser before the Campaign is distributed to the Publisher. The Publisher may then take additional time to commence dissemination of the Campaign (the "Set-Up Period"). Advertiser further acknowledges and agrees that the Set-Up Period will commence upon FNP Op.ti.mize's receipt of an IO signed by Advertiser and acceptance of the same by FNP Op.ti.mize.

(ii) Notice Period. During the Set-Up Period, FNP Op.ti.mize may send certain deliverables in draft form (the "Proof") via email to Advertiser for its review and approval. Advertiser agrees to provide written notice to FNP Op.ti.mize either approving or rejecting the Proof (in whole or in part) within five (5) business days from the date of receipt of the Proof (the "Notice Period"). FNP Op.ti.mize may send a gallery of templates via email to Advertiser for its review and selection. Advertiser agrees to provide written template selection within the Notice Period, which is five (5) business days from the date of receipt of the Gallery. Advertiser acknowledges and agrees that TIME IS OF THE ESSENCE with respect to approving or rejecting the Proof, or selecting a template from the gallery, within the Notice Period. If Advertiser fails to provide written response within the Notice Period, the Proof will be deemed "approved" by Advertiser and/or FNP Op.ti.mize will use its best judgment to select an appropriate template for the Advertiser

- (b) Campaign Cycles. The Campaign Period (as defined below and as set forth on the IO) for certain Marketing Services, including, but not limited to, Search, Display and Retargeting Display, will consist of one or more "Campaign Cycles". The Campaign Cycle for these Marketing Services is the period of time from FNP Op.ti.mize's commencement of applying the Budget (as defined below) until such time as no less than 98% of the Budget has been utilized. While, on average, this is approximately a thirty (30) day period, FNP Op.ti.mize makes no guarantees with respect to the time it takes to fully utilize the Budget. Advertiser acknowledges that all statistics provided by FNP Op.ti.mize evidencing such utilization shall be conclusive and binding on Advertiser for all purposes of this Agreement.

(c) Go-Live Period. Once the set-up period is done, and the product is completed and ready to "go-live," certain log-in information or domain name information may be requested from The Advertiser and is required to "go-live". If the information has been requested, and a written response is not received in five (5) business days from the request, the product will be deemed fulfilled. If at a future date, the log-in information or domain name information is received from The Advertiser, the fulfilled product will be made live. For mobile website design, redirect code will be forwarded to the client with the instructions on how the Advertiser can implement the product themselves, and product will be deemed fulfilled.

4. Fees. Advertiser acknowledges and agrees to pay the following fees (actual dollar amounts are set forth on the IO) in accordance with Section 5 below:

(a) Descriptions of Fees.

(i) Monthly Fee. "Monthly Fee", as set forth on the IO, refers to the fee associated with each of the Standard Marketing Services.

(ii) Budget. "Budget", as set forth on the IO, refers to the monthly dollar spend designated for each of the Campaign Cycles during the Campaign Period. Advertiser acknowledges and agrees that the Budget is measured by the total number of clicks and/or the total number of impressions used.

(iii) Cycle Payment. "Cycle Payment" refers to the aggregate recurring fees for each of the Campaign Cycles, such as the Budget and the CMT Fees (as defined below).

(iv) Campaign Set-Up Fee. "Campaign Set-Up Fee" refers to a one-time fee for the set-up of a Campaign, which can include, but is not limited to, the Publisher set up, keyword generation, proxy creation, creative services and other similar set-up requirements. With respect to Search, the Campaign Set-Up Fee also includes a review of the Campaign within the first sixty (60) days of the Campaign.

- FNP Op.ti.mize reserves the right to change any of the foregoing fees at any time, provided that, such changes will not take effect until: (i) a new IO has been executed and delivered by Advertiser to FNP Op.ti.mize; or (ii) the renewal of an IO.

(b) No Pass-Through Obligations. Advertiser is not entitled to any credits, discounts, rebates, refunds provided to FNP Op.ti.mize by the Publisher or any third party vendor.

(c) Discount Credits. If FNP Op.ti.mize offers any special promotions which provide Advertiser with discounts, credits or any other fee reduction incentives in connection with any IO (the "Discount Credits") and: (i) Advertiser terminates such IO (other than For Cause under Subsection 6(d) below); or (ii) FNP Op.ti.mize terminates such IO For Cause under Subsection 6(d) below, then Advertiser will be required to repay to FNP Op.ti.mize, within ten (10) days of such termination, the full amount of the Discount Credits used by Advertiser.

5. Payment Terms.

(a) General. Subject to Section 6 below, once an IO has been accepted by FNP Op.ti.mize, Advertiser will be responsible for payment of all fees set forth therein, except as may otherwise be provided in Section 6(c) hereof. All payments due hereunder are in U.S. dollars and are exclusive of any sales, use or similar applicable taxes, which shall be the sole responsibility of Advertiser.

(b) Method and Timing of Payment.

(i) Method of Payment. Advertiser may pay for all amounts payable under this Agreement by: (A) credit card (the "Advertiser's Card"); (or (B) receiving an invoice, at FNP Op.ti.mize's sole discretion. If paying by credit card, Advertiser will be required to sign and comply with the applicable payment authorization forms. In the event Advertiser receives an invoice, all amounts will be due upon Advertiser's receipt of the invoice.

(ii) Timing of Payment.

(A) Timing. Advertiser acknowledges and agrees that all amounts owed must be paid in advance of each Campaign Cycle and that, in addition to being in breach of its contractual obligations, Advertiser's Campaign may be paused or terminated if timely payment is not made. If Advertiser has authorized payment by Credit Card, such authorization permits FNP Op.ti.mize to recover any Discount Credits (as set forth above) in the authorized manner.

(B) Initial Payment. Advertiser shall pay: (I) the Cycle Payment for the initial Campaign Cycle; and (II) if applicable, the Campaign Set-Up Fees, on or before the commencement of the Set-Up Period.

(C) Subsequent Payments. All subsequent Cycle Payments will be made no later than three (3) days prior to the start of the applicable Campaign Cycle.

(D) On-going Payments. In order to avoid any pauses in the Campaign associated with the Standard Marketing Services, FNP Op.ti.mize may cause payment to be made, via Advertiser's chosen method of payment, for the upcoming Campaign Period when seventy-five percent (75%) of the Budget for the current Campaign Period has been exhausted.

(E) Payments for Other Products and Services. For all other products and services, FNP Op.ti.mize may cause payments to be made, via Advertiser's chosen method of payment, within seven (7) days prior to the expiration of the applicable Campaign Cycle.

(c) Late Charge. Any amounts not paid by Advertiser when due shall be subject to a late charge equal to one and one-half percent (1.5%) per month (or the highest rate permitted by law, if less). Advertiser agrees to pay all costs of collection (including attorneys' fees and costs and all other legal and collection expenses) incurred by FNP Op.ti.mize in collecting payments under the IO and/or this Agreement.

6. Term/Termination.

(a) Term. Subject to Section 3 above and Subsection 6(i) below, the term of this Agreement shall be the Campaign Period set forth on the IO (the "Initial Campaign Period"), unless terminated sooner as provided herein.

(b) Termination by FNP Op.ti.mize. FNP Op.ti.mize may terminate any Campaign, with or without cause, upon written notice.

(c) Termination by Advertiser. Subject to Subsections 4(c) and 6(h), Advertiser may terminate the Campaign during the Initial Campaign Period upon sixty (60) days prior written notice to FNP Op.ti.mize. Cancellations must be received in writing at 351 Ballenger Center Drive, Frederick, MD 21703. If the cancellation is received during the Initial

Campaign Period, the Advertiser may still be subject to the Early Termination Payment outlined in section 6(h).

- (d) Termination For Cause. Either party may terminate the IO on thirty (30) days prior written notice (the "Notice Period") if the other party is in material breach of its obligations under the IO and/or this Agreement and such breach has not been substantially cured by the conclusion of the Notice Period. Cancellations must be received in writing at 351 Ballenger Center Drive, Frederick, MD 21703. The Advertiser acknowledges and agrees that it will be responsible for any obligations accrued through the effective termination date.
- (e) Campaign Pauses. Advertiser may request a pause in a Campaign. However, it shall be in FNP Op.ti.mize's sole discretion to determine if a Campaign pause is appropriate. If a Campaign is paused for more than thirty (30) consecutive days, Advertiser will have to pay an additional Campaign Set-Up Fee to restart the Campaign.
- (f) No Refunds. Advertiser acknowledges and agrees that it will not be entitled to any refunds of amounts already paid to FNP Op.ti.mize, unless: (i) Advertiser terminates under Subsection 6(d); or (ii) FNP Op.ti.mize terminates under Subsection 6(b) above, in which case Advertiser shall only be entitled to a refund for the unearned portion of the then applicable Cycle Payment.
- (g) Effect of Termination; Survival. Advertiser acknowledges and agrees that due to the nature of the internet, certain information regarding Advertiser that will be posted on the internet as part of the Standard Marketing Services, including, for instance, the Local Profile posted on third party directories, may continue to be available from the internet following termination of any of the Standard Marketing Services and/or the IO. All provisions of this Agreement that by their sense or nature should survive termination of the IO (including, without limitation, all limits of liability, indemnity obligations, and confidentiality obligations) shall so survive. Without limiting the generality of the foregoing, in the event of any termination, Advertiser shall remain liable for any amounts due to FNP Op.ti.mize as of the effective date of termination.
- (h) Early Termination Payment. In the event Advertiser terminates the IO and/or this Agreement, without cause, prior to the expiration of the Initial Campaign Period, any unpaid portion of the monthly fees set forth on the IO, shall become immediately due and payable (the "Early Termination Payment"). The Early Termination Payment will not apply: (i) if this Agreement is terminated under Subsections 6(b) or 6(d); (ii) during any Renewal Campaign Period (as defined below); or (iii) for non-renewing products that are not part of a bundled package, such as on-target display advertising, retargeting, search engine marketing, search engine optimization, reputation monitoring, social media optimization-conversations, and Social Suite (DIY)
- (i) Renewal.
 - (i) Campaign Periods. As indicated on the IO, certain Marketing Services and Bundled Packages will automatically renew ("Renewal Campaign Period"). The Initial Campaign Period for such Marketing Services and Bundled Packages shall automatically renew for additional periods of the same duration as the Initial Campaign Period, unless Advertiser provides sixty (60) days prior signed, written notice. Cancellations must be received in writing at 351 Ballenger Center Drive, Frederick, MD 21703. If the cancellation is received during the Initial Campaign

Period, the Advertiser may still be subject to the Early Termination Payment outlined in section 6(h). The Initial Campaign Period and the Renewal Campaign Period shall be collectively referred to herein as the "Campaign Period".

- (ii) Budget. The Budget will automatically renew for the same Budget set forth on the IO. The Budget will not automatically renew after the expiration of the Campaign Period. In the event there is an unused portion of the Budget after the expiration of the Campaign Period, the Campaign Period will be extended until such Budget is consumed

7. FNP Op.ti.mize Platform.

- (a) Advertiser Data. As part of the Campaign initiation process and from time to time during the Campaign, Advertiser will provide certain information to FNP Op.ti.mize (the "Advertiser Data"), which FNP Op.ti.mize will input into a third party web-based marketing platform (the "Platform"). Accordingly, Advertiser hereby permits FNP Op.ti.mize to input Advertiser Data, including, without limitation, Advertiser contact information, credit card or ACH information and Campaign information, into the Platform. FNP Op.ti.mize will only use such information in connection with the fulfillment of the Standard Marketing Services and as otherwise permitted by the IO and this Agreement. In addition, FNP Op.ti.mize may, from time to time, send Advertiser emails regarding Platform updates, Campaign updates, payment reminders, and marketing opportunities relating to FNP Op.ti.mize and its commercial partners. Advertiser agrees to receive such emails.
- (b) License to Platform. Upon execution of the IO, Advertiser will be granted a revocable, non-transferable, non-exclusive, limited license to use the Platform solely for the purpose of accessing the Tracking Services. Advertiser's access shall be password protected and Advertiser agrees that it shall not share its password with third parties or otherwise provide access to the Platform to third parties. If the security of Advertiser's username(s) or password(s) is compromised in any way, or if Advertiser or its agent suspects that it may be, Advertiser shall immediately contact FNP Op.ti.mize. FNP Op.ti.mize is not responsible for any loss or damage suffered by the compromise of any password. Advertiser acknowledges and agrees that it does not have, nor will it claim any right, title or interest in the Platform, the Platform software, data, applications, methods of doing business or any elements thereof, or any content provided on the Platform. Advertiser may only access the Platform via a Web browser or in a manner otherwise approved by FNP Op.ti.mize. Advertiser will not attempt in any way to reverse engineer, alter, modify, eliminate, conceal, or otherwise render inoperable or ineffective the Platform. FNP Op.ti.mize may terminate the foregoing license, at any time and for any reason.

8. Privacy Considerations. Advertiser shall, at all times, post a privacy policy on its native website (the "Existing Site") and comply with such privacy policy. The privacy policy shall comply with all applicable laws and shall not contain any terms that are inconsistent with, or would otherwise restrict FNP Op.ti.mize from performing its obligations hereunder. In addition, to the extent that the Existing Site collects personally identifiable information, Advertiser's privacy policy must permit the transmission of such information through the Proxy Site. If Advertiser is purchasing FNP Op.ti.mize's Retargeting Display service, Advertiser is obligated to

ensure that its privacy policy permits the behavioral targeting contemplated by such service. Advertiser acknowledges and agrees that its failure to ensure that its privacy policy complies with the foregoing requirements may expose FNP Op.ti.mize to liability which shall be fully indemnified by Advertiser. Without limiting Advertiser's obligations hereunder, FNP Op.ti.mize may, but is under no obligation, to require Advertiser to modify its privacy policy at any time. In the event that FNP Op.ti.mize requires Advertiser to modify its privacy policy, Advertiser shall do so within three (3) days of notice.

9. Standard Marketing Services Content/Keywords.

(a) Standard Marketing Services Content.

- (i) General Content. Advertiser will deliver all content required for Standard Marketing Services to FNP Op.ti.mize within five (5) days from the execution of the IO. If such content does not conform to FNP Op.ti.mize's or any Publisher's specifications, then FNP Op.ti.mize or the Publisher may, in its sole discretion, modify or reject such content to meet the Publisher's or other technical requirements or to address Campaign performance issues. If rejected, FNP Op.ti.mize will then refund any applicable amounts paid in advance. Advertiser acknowledges and agrees that FNP Op.ti.mize shall not be liable for typographical errors, incorrect insertions or omissions in any of the content provided under this Subsection 9(a).
 - (ii) Ad Content. Advertiser will deliver all content required for any Ad to FNP Op.ti.mize within five (5) days from the execution of the IO. If such content does not conform to FNP Op.ti.mize's or any Publisher's specifications, then FNP Op.ti.mize or the Publisher may, in its sole discretion, modify or reject such content to meet the Publisher's or other technical requirements or to address Campaign performance issues. If rejected, FNP Op.ti.mize will then refund any applicable amounts paid in advance. Advertiser acknowledges that it may be limited in its ability to make further modifications to its Ads after they have been delivered to FNP Op.ti.mize. The acceptance of an Ad does not constitute approval or endorsement of the Ad by FNP Op.ti.mize or by the Publisher, for purposes of this Agreement or otherwise. Advertiser acknowledges and agrees that FNP Op.ti.mize shall not be liable for typographical errors, incorrect insertions or omissions in the published Ad or in the failure to publish an Ad ("Error"), except as expressly provided in the next sentence. In the event of an Error, FNP Op.ti.mize will, in its sole discretion, either: (A) run a corrective Ad; or (B) credit Advertiser for that Ad which may have been rendered valueless by such the Error, provided that, such an Error is not the fault of the Advertiser. The foregoing shall be the Advertiser's sole right and remedy (and FNP Op.ti.mize's sole liability) in the event of an Error.
- (b) FNP Op.ti.mize Creative Services. If Advertiser requests that FNP Op.ti.mize create an Ad or provide other creative services (the "Creative Product or Service"), Advertiser will remain fully responsible for ensuring that the content is complete, accurate, is non-infringing and complies with applicable law. With respect to an Ad created by FNP Op.ti.mize, as between Advertiser and FNP Op.ti.mize, FNP Op.ti.mize shall retain ownership of the design elements of the Ad, excluding any trade name, trademark, service mark or logo of Advertiser or other proprietary elements of Advertiser that may be included within the Ad, that predate the creation of the Ad. FNP Op.ti.mize hereby

grants to Advertiser a non-exclusive, royalty-free, worldwide license to use the Creative Product or Service during the Campaign Period.

(c) **Keywords.** With respect to Search, FNP Op.ti.mize shall have discretion to select the individual words or phrases ("Keywords") to be used in connection with the Campaign. Advertiser may also request the use of certain Keywords. While FNP Op.ti.mize will use reasonable efforts to use these Keywords, FNP Op.ti.mize makes no guarantees that all such Keywords will be used. To the extent that FNP Op.ti.mize uses Keywords of its choosing, it shall be under no obligation to disclose such Keywords to Advertiser. **TO THE EXTENT THAT ADVERTISER ELECTS TO USE KEYWORDS THAT INCLUDE THE NAMES OF ITS COMPETITORS OR TRADEMARKED TERMS ("COMPETITOR KEYWORDS"), ADVERTISER DOES SO AT ITS OWN RISK AND ACKNOWLEDGES AND AGREES THAT IT BEARS ALL LIABILITY ASSOCIATED WITH SUCH ACTION. WITHOUT LIMITING THE FOREGOING, ADVERTISER FURTHER ACKNOWLEDGES THAT FNP OP.TI.MIZE MAY, AT ANY TIME AND IN ITS SOLE DISCRETION, REMOVE COMPETITOR KEYWORDS, BUT WILL NOT HAVE THE OBLIGATION TO DO SO.**

10. Licenses. During the Campaign Period, Advertiser hereby grants to FNP Op.ti.mize and the Publisher a non-exclusive, royalty-free, worldwide license to use, copy, modify (as permitted herein), publicly perform, display, broadcast and transmit: (a) any Ad delivered hereunder in accordance with the terms of this Agreement; and (b) the Existing Site, including, but not limited to, any trademarks, to the extent necessary for FNP Op.ti.mize to perform the services contemplated by the IO. Except as set forth in Subsection 9(b) above, title to and ownership of all intellectual property rights of all Ads and associated Advertiser intellectual property shall remain with Advertiser or its third party licensors and upon termination, FNP Op.ti.mize shall promptly return such property to Advertiser. In addition, Advertiser agrees that FNP Op.ti.mize may, during the Campaign Period and thereafter, include Advertiser's name (including any trade name, trademark, service mark and logo) and any Ad provided hereunder in Advertiser's Local Profile, on FNP Op.ti.mize's customer list, and in its marketing materials, sales presentations and the FNP Op.ti.mize Properties.

11. Advertiser Representations; Warranties and Covenants. Advertiser is solely responsible for any liability arising out of or relating to the Existing Site, any Ad or any content provided by Advertiser hereunder and any material to which users can link through such Ad ("Linked Content"). Advertiser represents, warrants and covenants that the Existing Site, the Ads and Linked Content, and any portion thereof, do not and will not: (a) infringe on any third party's copyright, patent, trademark, trade secret, moral right or other proprietary rights or right of publicity or privacy; (b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing export control, false advertising or unfair competition; (c) be defamatory or libelous; (d) be pornographic or obscene; or (e) contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines. Advertiser further represents, warrants and covenants that the product or service that is being (or will be) promoted through the Campaign, including any Ad and Linked Content, is: (x) lawful and (y) not the subject of any ongoing investigation by any local, state or federal regulatory or quasi-regulatory authorities.

12. Indemnification. Advertiser will indemnify, defend and hold harmless FNP Op.ti.mize and the Publisher and their respective subsidiaries, affiliates and parent companies and each of their respective directors, officers, agents and employees and each of their successors and assigns from and against any and all claims, liabilities, damages, losses, costs, expenses, fees of any kind (including without limitation reasonable attorneys' fees and expenses) incurred in connection with any claim, action or proceeding arising from or relating to: (a) any breach by Advertiser of any representation, warranty, covenant or other obligation contained in this Agreement; (b) the violation of any rights of any third party, including intellectual property, privacy, publicity or other proprietary rights by Advertiser or anyone using Advertiser's account; (c) the sale, license or provision of Advertiser's goods or services; (d) Advertiser's use of Competitor Keywords; (e) FNP Op.ti.mize's provision of the Tracking Services, including, without limitation, alleged violations of HIPAA or other federal or state privacy and related laws and regulations; or (f) any other willful, intentional or negligent act, omission or misrepresentation by Advertiser. FNP Op.ti.mize reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Advertiser. If FNP Op.ti.mize does assume the defense of such a matter, Advertiser will reasonably cooperate with FNP Op.ti.mize in such defense. Advertiser will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to, or any admission of wrongdoing by, any indemnified person or entity, without FNP Op.ti.mize's prior written consent.

13. Agency. Advertiser represents and warrants that, in the event it is purchasing advertising on behalf of another company, it has been authorized by such company to act as its agent in all respects relating to this Agreement, including, without limitation, the making of any elections or giving of any consents (the "Authorizing Company"). Without limiting the generality of the foregoing, Advertiser agrees on behalf of the Authorizing Company, that the Authorizing Company has been made aware of, and agrees to be bound by, this Agreement. Advertiser and the Authorizing Company shall be jointly and severally liable for fulfillment of Advertiser's obligations under this Agreement, including all payment obligations. Prior to the purchasing of any advertising on behalf of the Authorizing Company, Advertiser will provide FNP Op.ti.mize with any elections and/or consents, executed by a duly authorized representative of the Authorizing Company, relating to the advertising.

14. Confidentiality. Except as may be required by applicable law, Advertiser shall not disclose the contents of this Agreement to any third party (other than its employees and representatives who are made aware of and agree to this restriction) without FNP Op.ti.mize's prior written consent. Except as otherwise expressly herein permitted, no party may issue a press release concerning the existence or terms of this Agreement without the prior written consent of the other party. "Confidential Information" means information about FNP Op.ti.mize's (or its suppliers') business, products, technologies (including the Platform), strategies, financial information, operations or activities that is proprietary and confidential, including, without limitation, all business, financial, technical and any other information which, from all the relevant circumstances, should reasonably be assumed to be confidential and proprietary. Confidential Information will not include information that is: (a) in the possession of Advertiser free of any obligation of confidentiality at the time of its disclosure; (b) or becomes publicly

known other than by a breach of this provision; (c) received without restriction from a non-party free to disclose it; and/or (d) developed independently by Advertiser without reference to the Confidential Information. In addition, information, whether or not Confidential Information, may be disclosed by Advertiser as may be required by applicable law, rule, regulation, or lawful process, provided that, Advertiser, to the extent permitted by applicable law, rule, regulation, or lawful process, first notifies FNP Op.ti.mize in order to permit FNP Op.ti.mize to seek reasonable protective arrangements.

15. DISCLAIMER OF WARRANTIES.

- (a) FNP OP.TI.MIZE PROVIDES THE PLATFORM AND ALL MARKETING SERVICES PERFORMED HEREUNDER ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTY OF ANY KIND AND WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED DISPLAY OR DISTRIBUTION OF ANY AD OR OTHER ADVERTISING PRODUCTS OR SERVICES. IN THE EVENT OF INTERRUPTION OF DISPLAY OR DISTRIBUTION OF ANY AD OR OTHER ADVERTISING PRODUCTS OR SERVICES, FNP OP.TI.MIZE'S SOLE OBLIGATION WILL BE TO RESTORE SERVICE AS SOON AS PRACTICABLE. FNP OP.TI.MIZE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. FNP OP.TI.MIZE WILL HAVE NO LIABILITY FOR ANY: (i) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT OR INFORMATION; (ii) CLAIMS RELATING TO BREACH OF INTELLECTUAL PROPERTY LAWS OR DEFAMATION; (iii) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ADVERTISER'S ACCESS TO OR USE OF THE MARKETING SERVICES; (iv) UNAUTHORIZED ACCESS TO OR USE OF FNP OP.TI.MIZE'S SERVERS OR OF ANY PERSONAL OR FINANCIAL INFORMATION; (v) INTERRUPTION OF TRANSMISSION TO OR FROM THE MARKETING SERVICES; (vi) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE MARKETING SERVICES BY ANY THIRD PARTY; (vii) LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, E-MAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE ON OR THROUGH THE MARKETING SERVICES; OR (viii) MATTERS BEYOND ITS OR THEIR REASONABLE CONTROL. FNP OP.TI.MIZE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY ON OR THROUGH THE MARKETING SERVICES OR ANY LINKED WEBSITE.
- (b) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY ADVERTISER FROM FNP OP.TI.MIZE OR THROUGH THE ADVERTISING SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THIS AGREEMENT.

- (c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FNP OP.TI.MIZE MAKES NO GUARANTEES WITH RESPECT TO THE PERFORMANCE OR PLACEMENT OF ANY AD OR CAMPAIGN.

16. LIMITATIONS OF LIABILITY.

- (a) NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR STRICT LIABILITY), OR FOR INTERRUPTED COMMUNICATIONS, LOSS OF USE, LOST BUSINESS, LOST DATA OR LOST PROFITS (EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE FOREGOING EXCLUSION OF LIABILITY WILL NOT APPLY TO (I) ADVERTISER'S INDEMNIFICATION OBLIGATIONS, INCLUDING ANY AMOUNTS PAYABLE IN CONNECTION THEREWITH; (II) TO ADVERTISER'S CONFIDENTIALITY OBLIGATIONS AND (III) ADVERTISER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (b) LIMITATION ON DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL FNP OP.TI.MIZE'S CUMULATIVE, AGGREGATE LIABILITY TO ADVERTISER OR ANY THIRD PARTY EXCEED THE NET AMOUNTS RECEIVED BY FNP OP.TI.MIZE HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY. IN LIEU OF REFUND, FNP OP.TI.MIZE SHALL BE PERMITTED, IN ITS SOLE DISCRETION, TO CAUSE THE PLACEMENT OF "MAKE-GOOD" ADVERTISING, PROVIDED THAT, SUCH "MAKE-GOOD" ADVERTISING IS PROVIDED WITHIN A REASONABLE PERIOD OF TIME AFTER THE LIABILITY HAS ACCRUED.
- (c) Prohibition on Certain Exclusions. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations and disclaimers may not apply to Advertiser. To the extent FNP Op.ti.mize may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of FNP Op.ti.mize's liability will be the minimum permitted under such law.
- (d) Timing of Claims. Advertiser agrees that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be filed within one year after such claim or cause of action arose or be forever barred, provided that, this section shall not in any way limit the time in which claims for infringement or misappropriation of intellectual property rights may be brought.
- (e) Acknowledgement. Each party acknowledges that the other party has entered into this Agreement in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

17. Third Party Beneficiaries. Advertiser acknowledges and agrees that the Publisher is an intended third party beneficiary of Sections 9, 10, 11, 12 and 16.

18. Miscellaneous.

- (a) **Governing Law/Venue.** This Agreement will be governed and construed in accordance with the laws of the State of Maryland without giving effect to conflict of law rules or principles. In the event that a dispute arises with respect to the terms of this Agreement, Advertiser agrees that the exclusive and sole venue for the resolution shall be a court of competent jurisdiction within the State of Maryland and further agrees to submit to the jurisdiction of the same.
- (b) **Entire Agreement/Amendment.** This Agreement (which includes the IO and any payment authorization forms) sets forth the entire agreement of the parties and supersedes any and all prior oral or written agreements or understandings between the parties as to the subject matter hereof. It may be changed only by a writing signed by both parties.
- (c) **Notices.** Any written notices to FNP Op.ti.mize required under this Agreement shall be provided by registered mail with proof of delivery to FNP Op.ti.mize's then current address at 351 Ballenger Center Drive, Frederick, MD 21703. Notices shall be deemed delivered 72 hours after posted in the mail.
- (d) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.
- (e) **Assignment.** Advertiser may not assign this Agreement without the prior written consent of FNP Op.ti.mize. The parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and joint administrators and permitted assigns.
- (f) **Independent Contractors.** The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement.
- (g) **Force Majeure.** Neither party shall have any liability for any failure or delay (other than with respect to payment obligations) resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown or any other condition affecting production or delivery in any manner beyond the reasonable control of such party.

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