

CONTRACT INFORMATION SHEET

DATE: 8/5/21

Contract No.: <u>P-21-291</u>	Vendor Number: <u>279863</u>
Contract Title: <u>Fentanyl Awareness Ad Campaign</u>	Name/Address: <u>OutFront Media</u>
Contract Period: <u>8/5/21 - 3/5/22</u>	Representative: <u>Stephanie Delong</u>
Using Agencies: <u>DA</u>	Phone No.: <u>(559) 905-2625</u>
Terms: <u>Net 45 days</u>	Email: <u>Stephanie.Delong@Outfront.com</u>

Total Contract Amt.: \$194,520.00

Buyer Name: Debbie Scharnick

Requisition No: 8602200027 **Org:** 2860

Supersedes: _____

NEW
 RENEWAL
 AMENDMENT

TICK DATE _____
 REFERENCE (RFQ# / RFP#) _____
 Suspension _____

DESCRIPTION: Provide Flyers, Ads, etc. promoting teenage awareness of Fentanyl

SPECIAL INSTRUCTIONS: _____

DISTRIBUTION:	Completed By:	Date:	Completed By:	Date:
DEPARTMENT: <u>DA</u>	_____	_____	_____	_____
REQUISITIONER: <u>Ruth Falcon</u>	_____	_____	_____	_____
<u>Steve Rusconi</u>	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ADVERTISER AGREEMENT



OUTFRONT Media
5678 East Shields
Fresno, CA 93727-9984
(559) 292-8300
(559) 292-8434

CONTRACT NO.: **3319251**

DATE: 07/27/21

ADVERTISER: Fentanyl Campaign

CLIENT SUPPLIES PRODUCTION: Yes

BRAND:

ACCOUNT EXECUTIVE: Stephanie DeLong (N18)

CAMPAIGN:

Copy must meet Production specifications and be received 10 working days prior to each advertising period.

THIS AGREEMENT AND THE COPY TO BE DISPLAYED HEREUNDER IS SUBJECT TO THE APPROVAL OF OUTFRONT MEDIA'S MARKET GENERAL MANAGER AND THE OWNER OF THE LOCATION AS APPLICABLE

Advertiser Bill-To# 1144996
Fresno County Administrative Office
2281 Tulare Street, Room 304
Fresno, CA 93721
559-600-1224
Attn: Sonja Dosti

Subject to the terms of the Production Information Addendum Page and the OUTFRONT Media Terms and Conditions of Advertising Service each attached hereto and made a part hereof, "ADVERTISER/AGENCY" hereby contracts with OUTFRONT Media ("Company") for the display of advertising Copy ("Copy") on the outdoor advertising display(s) described below, commencing approximately on the commencement date of the Advertising Period listed below. Advertiser/Agency shall provide the Copy in the form and type specified by Company. See Production Information Addendum page for shipping quantities and addresses.

Market	Media/Location(s)	Size	GRP/IMP 18+	Units	Advertising Period	No. of Periods	*	Period Cost
Fresno, CA Posters	Posters/Fresno County	10'5"H x 22'8"W	UNIT	5	08/30/21-02/13/22	6.00	4W	\$2,500.00
Fresno, CA Posters	Posters/Metro General Market	10'5"H x 22'8"W	UNIT	10	08/30/21-02/13/22	6.00	4W	\$5,000.00
Fresno, CA	Mobile Ads		PACKAGE	1	08/16/21-01/30/22	6.00	4W	\$8,200.00
Fresno, CA	Bulletins	14'H X 48"W	UNIT	2	08/16/21-01/30/22	6.00	4W	\$5,000.00
Fresno, CA S/A Bonus	Bulletins	14'H X 48"W	UNIT	2	08/23/21-02/06/22	6.00	4W	\$0.00

Special Instructions:

Net Space Total: \$183,900.00
Net Non-Space Total: \$10,620.00
Net Agreement Total: \$194,520.00

THIS AGREEMENT IS NON-CANCELABLE BY ADVERTISER/AGENCY EXCEPT AS SET FORTH IN THE TERMS AND CONDITIONS ATTACHED HERETO WITH RESPECT TO TRANSIT DISPLAYS ONLY. THIS AGREEMENT CONSISTS OF THIS PAGE, THE PRODUCTION INFORMATION ADDENDUM PAGE, THE ADVERTISING NON-SPACE AGREEMENT (IF APPLICABLE) AND THE OUTFRONT MEDIA TERMS AND CONDITIONS OF ADVERTISING SERVICE INCORPORATED HEREIN ALL OF WHICH ADVERTISER/AGENCY HEREBY ACKNOWLEDGES RECEIVING AND APPROVING. ANY MISSING PAGES OF THIS AGREEMENT MAY BE OBTAINED OR REQUESTED THROUGH ANY OUTFRONT MEDIA OFFICE OR REPRESENTATIVE IF LOST OR NOT RECEIVED BY ADVERTISER/AGENCY. FACSIMILE SIGNATURES SHALL HAVE THE SAME FORCE AND EFFECT AS ORIGINAL SIGNATURES. THIS AGREEMENT MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL CONSTITUTE ONE AND THE SAME COPY. AGENCY AND/OR THE SIGNATORY HERETOREPRESENTS AND WARRANTS THAT THEY ARE AUTHORIZED TO EXECUTE THE SAME ON BEHALF OF AND BIND THE ADVERTISER AND THAT THE ADVERTISER APPROVES SAME.

ACCEPTED AND AGREED TO BY - OUTFRONT MEDIA

ADVERTISER/AGENCY _____
AUTHORIZED SIGNATURE - TITLE

BY Steve Kern DATE 8/5/21

PLEASE PRINT _____ DATE _____
NAME - TITLE

* Period Codes: M=Monthly; W=Weekly; 4W=4 Weeks; D=Daily; OT=One Time TF=Till Forbid

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See Production Information Addendum page for shipping quantities and addresses.

Market	Media/Location(s)	Size	GRP/ IMP 18+	Units	Advertising Period	No. of Periods	*	Period Cost
Fresno, CA	Digital Posters/Unit# 100-D Blackstone & Shaw NEC F/S	12'x24'		1	09/20/21-03/06/22	6.00	4W	\$2,950.00
Fresno, CA	Digital Displays/Unit# 400-F Hwy 168 .25 mi. N/O Dakota Ave W/S F/N	14'x48'		1	10/04/21-03/20/22	6.00	4W	\$3,500.00
Fresno, CA	Digital Displays/Unit# 500-E Hwy 168 .25 mi S/O Dakota Ave. W/S F/S	14'x48'		1	09/06/21-02/20/22	6.00	4W	\$3,500.00

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BRAND:

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Market/Media	Specifications	#Units	Copy Size	Total Sq. Ft.	Date(s)	No. of Periods	*	Period Cost T=Tax Value B=Barter Value	Period Total
Fresno, CA Posters Production Costs		90			08/23/21	1.00	D	\$9,000.00	\$9,000.00
Fresno, CA Posters Production Costs		2			08/23/21	1.00	D	\$1,620.00	\$1,620.00

Ref. Space Contract#
Customer Ref#
Special Instructions:

Total Net Amount: \$10,620.00
Total Shipping Cost: \$0.00
Total Sales Tax: \$0.00
Net Non-Space Total: \$10,620.00

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ADVERTISER AGREEMENT - PRODUCTION INFORMATION ADDENDUM



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BRAND:

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Market	Media/Location(s)	Size	Copy Due Date	Shipping Quantity	Shipping Address	Service AE	Ext. Fab Per Sq Ft
Fresno, CA Posters	Posters/Fresno County	10'5"H x 22'8"W	08/16/21	5	OUTFRONT Media 5678 East Shields Ave. Fresno, CA 93727 (559) 292-8300 Attn Outdoor Operations		
Fresno, CA Posters	Posters/Metro General Market	10'5"H x 22'8"W	08/16/21	10	OUTFRONT Media 5678 East Shields Ave. Fresno, CA 93727 (559) 292-8300 Attn Outdoor Operations		
Fresno, CA	Mobile Ads		08/02/21	1			
Fresno, CA	Bulletins	14'H X 48'W	08/02/21	3	OUTFRONT Media 5678 East Shields Ave. Fresno, CA 93727 (559) 292-8300 Attn Outdoor Operations		
Fresno, CA S/A Bonus	Bulletins	14'H X 48'W	08/09/21	2	OUTFRONT Media 5678 East Shields Ave. Fresno, CA 93727 (559) 292-8300 Attn Outdoor Operations		

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Fresno, CA	Digital Posters/Unit# 100-D Blackstone & Shaw NEC F/S	12'x24'	09/03/21	1	@Fresno Digital Outdoor Contact your OUTFRONT AE Fresno,CA		
Fresno, CA	Digital Displays/Unit# 400-F Hwy 168 .25 mi. N/O Dakota Ave W/S F/N	14'x48'	09/20/21	1	@Fresno Digital Outdoor Contact your OUTFRONT AE Fresno,CA		
Fresno, CA	Digital Displays/Unit# 500-E Hwy 168 .25 mi S/O Dakota Ave. W/S F/S	14'x48'	08/23/21	1	@Fresno Digital Outdoor Contact your OUTFRONT AE Fresno,CA		

1. Scope of the Contract. As used in these terms and conditions, "Company" means OUTFRONT Media and "Advertiser" means, jointly and severally, the advertiser named on the facing page to which this terms and conditions are attached, together with the advertising agency or other agent(s) or licensee(s) of the advertiser, if any ("Agency"). The "Contract" consists of these terms and conditions, the facing page, the Production Information Addendum, any attached addenda applicable to other products and services (such as mobile advertising or attribution services), if any, and Company's Specifications for Inventory and Packages located at <https://www.outfrontmedia.com/resources/posting-standards> (the "Inventory Specifications"), which are incorporated by reference herein. Agency represents that it has the authority to act and is acting as agent for the advertiser named on the facing page.
2. Delivery of Copy. At least ten working days before the estimated start date (unless otherwise agreed in writing by Company or set forth in the Inventory Specifications), Advertiser, at its sole expense, shall furnish and deliver to Company or to service points designated by Company sufficient supply of advertising copy ("Copy"), in the form and type specified by Company, with all necessary posting instructions. If Copy is not timely received in accordance with the Contract, a loss of service may occur and additional costs may be charged by Company, although commercially reasonable efforts will be used to post Copy as promptly as practicable after receipt from Advertiser. If Advertiser requests expedited installation within five working days of Company's receipt of late Copy, a fee of not less than \$650 per location will be payable. If Copy is not received in a timely manner, Company may use the inventory in any manner prior to posting the late received Copy without limiting Advertiser's liability to pay for such inventory.
3. Copy Approval and Responsibility for Content. The character, design, text and illustrations on Copy and the material used are subject to approval by Company and by the location owner, transit company/authority or third party controlling the location ("Owner"). Nudity, pornographic, profane or obscene Copy is prohibited. If Copy is rejected, Advertiser shall provide acceptable replacement Copy within ten days of notification of rejection. If Advertiser fails to provide acceptable replacement Copy within such ten-day period, Company shall have the right to use the location(s) involved in any manner, without releasing Advertiser from its obligation to pay for such location(s). If after installation or posting, the Owner of a display disapproves any advertisement or if adverse publicity results from any display, Company shall have the right to remove the advertisement and, at its option, either terminate this Contract or request new acceptable Copy in accordance with this paragraph. Advertiser shall indemnify, defend and save harmless Company and Owner against all claims and liabilities (including reasonable attorneys' fees and expenses) arising out of the advertising material displayed under this Contract, including, but not limited to, any claim for defamation, any claim for infringement of any copyright, trademark, or other intellectual property right, or any claim for violation of any right of privacy, common law right or any other right of any person or entity.
4. Publicity for Certain Copy. If the Copy concerns a political, religious or social issue, Advertiser (including Agency) shall not make any press release or other public announcement or media outreach regarding this Contract or the related Copy that refers to Company without Company's express prior written consent (which consent may be granted or denied in Company's sole discretion), except as required under applicable law, in which case Advertiser shall obtain the approval of Company as to the form, nature and extent of the press release, public announcement or media outreach prior to issuing the press release or making the public announcement.
5. Inspection of Displays. Advertiser shall inspect each display within three days after installation or posting. Unless Advertiser gives written notice to Company specifying any defect within such three-day period, the display shall be conclusively presumed to have been inspected and approved by Advertiser for all purposes whatsoever, including the content and location of displays.
6. Maintenance and Damage. Company will use commercially reasonable efforts to maintain static displays in good condition to the extent of matters reasonably within Company's control. Should Advertiser's static Copy be lost, stolen, damaged, defaced, or deteriorated for any reason whatsoever, including ordinary wear and tear, Advertiser shall furnish replacement Copy, upon Company's request, without liability or expense to Company. If Advertiser fails to provide such replacement Copy, Company may use the location in any manner, without releasing Advertiser from its obligation to pay for such location. Any repainting or reposting requested by Advertiser in addition to that specified herein shall be paid by Advertiser in advance per Company's current quoted prices.
7. Inability to Post Copy. If for any reason whatsoever (i) Company is unable to secure any specified location or loses the right to use any location, or (ii) Company posts fewer locations than specified, or (iii) any location becomes obstructed, destroyed or defaced, or (iv) Company fails to display digital Copy in accordance with the minimum display standard for digital displays as set forth in the Inventory Specifications, or (v) Company otherwise fails to meet its obligations hereunder, such failure shall not be deemed a breach or termination of this Contract and shall not render Company liable for any damages or offsets of any kind other than as set forth in this paragraph. As Advertiser's sole remedy and Company's sole obligation for any such failure (except where a more specific remedy is expressly provided for in this Contract), Company shall, at its sole option, either (A) extend the Advertising Period to provide an equivalent amount of advertising service at the contracted location or a replacement location of equal value (per Company's prices and/or classifications), (B) provide a pro-rated credit for advertising services equivalent to the amounts paid for services not rendered, or (C) terminate the Contract in whole or in part and receive payment in full for services rendered through the termination date, with all other remedies at law or equity being expressly waived by Advertiser.
8. Illumination of Static Displays. Where illuminated static displays are provided, illumination will be from dusk to midnight unless otherwise specified by Company for a specific display. If illumination is halted or reduced for any reason, including, but not limited to, compliance with law or malfunction of equipment, and such period of halted or reduced illumination continues for more than five days after Company's receipt of notice from Advertiser, as Advertiser's sole remedy for such illumination failure, Advertiser shall receive a credit for the period of reduced or non-illumination at the rate of 15% of the contract price for the impacted period.
9. Invoicing and Payment. Invoicing will be rendered monthly in advance dating from the commencement date of the first Advertising Period. Invoices rendered to Advertiser shall be conclusive as to the correctness of the items stated unless Company receives written objection within 15 days of the invoice date. Non-receipt of invoices or lack of invoicing shall not impact Advertiser's liability hereunder. All rates and adjustments are computed on the basis of 30 days to the month, unless a different period is specified on the facing page of this Contract. Invoices shall be due 30 days after the date of invoice and failure to pay within such timeframe shall result in a default hereunder and shall further be deemed a default under any other agreements with Company. Invoices not paid when due shall accrue interest at the rate of 1.5% per month (18% annually), or such lesser rate permitted by law. Additionally, any discounts given shall be forfeited/reversed for invoices not

paid within 60 days from the date thereof. Notwithstanding the foregoing, in the event that Company accepts payment by ACH or credit card, Company shall have the right, at Company's option, to either (i) require Advertiser to pay all amounts due or coming due under the Contract on the date of the ACH or credit card payment or (ii) require Advertiser to set up recurring payments whereby Advertiser's ACH or credit card is charged on each invoice date for the full invoice amount.

10. **Credit Approval.** Acceptance of this Contract is subject to credit check and approval by Company. Company, in its sole discretion, may extend or reject credit, or at any time during the term withdraw credit, and Company may thereupon require partial or full payment of the remaining contract amount in advance.

11. **Advertiser Default.** In the event of default or material breach by Advertiser, in addition to other remedies available at law, Company may: (i) cancel this Contract without prior notice and demand payments of all amounts remaining due and owing; (ii) without terminating this Contract, declare the entire balance of payments to be made hereunder immediately due and payable; (iii) remove all of Advertiser's Copy without limiting Advertiser's liability hereunder; and/or (iv) declare Advertiser in default under any other agreement with Company. Waiver by Company of any breach by Advertiser hereunder shall not prejudice the rights of Company with respect to any breach not specifically waived by Company.

12. **Unused Copy.** Company shall not be held responsible for unused posters, displays or other Copy provided by Advertiser and Company may dispose of any such materials in its discretion. Company may promote Company's own business through the use of Advertiser's posters or displays in any manner whatsoever.

13. **General.** This Contract contains the full agreement of the parties, and no prior representation or assurance, verbal or written not contained herein, shall affect or alter the obligations of either party hereto. Company and Advertiser accept this Contract subject to all federal, state and municipal laws and regulations. In the event any advertisement becomes illegal, Company reserves the right to terminate same upon notice to Advertiser. This Contract is not cancelable or assignable by Advertiser, nor may the subject of the advertising be changed without the consent of Company. All parties comprising Advertiser hereunder, including Agency, shall be jointly and severally liable under this Contract. This Contract and all related claims shall be construed according to the laws of the State of New York and New York County, New York shall be the proper and exclusive legal jurisdiction and venue for any resulting legal action. Company is an Equal Opportunity Employer.

14. **Counterpart Signatures.** This Contract may be executed in numerous counterparts, all of which shall be considered one and the same agreement. For purposes of this Contract, facsimile or electronic signatures shall be considered original signatures.

End of Terms and Conditions

MOBILE RIDER TO OUTFRONT MEDIA TERMS AND CONDITIONS OF ADVERTISING SERVICE

This Mobile Rider ("Mobile Rider") governs the purchase by Advertiser and provision by OUTFRONT Media ("Company") of Mobile Advertising (as defined herein). This Mobile Rider supplements and where applicable amends the OUTFRONT Media Terms and Conditions of Advertising Service attached to the Advertising Agreement entered into by Advertiser and Company and, if applicable, any other agreement entered into and/or terms and conditions agreed to by Advertiser and Company with respect to advertising service (as applicable, the "Terms and Conditions"). As used in this herein, Company shall mean OUTFRONT Media and Advertiser shall mean and be deemed to include the advertiser identified in the applicable Terms and Conditions, in addition to such advertiser, any advertising agency or any other agent or licensee of such advertiser.

WHEREAS, Advertiser desires to purchase, and Company desires to provide location-based mobile advertising placement services utilizing the mobile advertising platform(s) owned and operated by Company or by third party service provider xAd ("xAd"), through which digital mobile advertisements ("Ads" or "advertisements") are distributed through mobile applications (the "Mobile Network") (such services, "Mobile Advertising");

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby recognized, the parties agree as follows:

1. At least ten (10) working days before the estimated start date of a Mobile Advertising campaign, Advertiser, at its sole expense, shall furnish and deliver to Company or to service points designated by Company, a campaign request including (i) complete and sufficient digital mobile advertising copy for applicable Ads, in form and type specified by Company ("Copy") and (ii) parameters for the display of Ads in the Mobile Network, in form and type specified by Company (collectively, the "Campaign Request"), each of which shall be subject to Company's review and approval. If Copy and/or appropriate parameters are not so received, the Mobile Advertising campaign may not begin on the estimated start date set forth in the Campaign Request and additional costs may be charged by Company in connection with the eventual display of the Ads, although commercially reasonable efforts will be used to deliver approved Ads as promptly as practicable after receipt from Advertiser. Nudity, pornographic, profane or obscene copy shall not be permitted. The character, design, text and illustrations on advertising Copy and the material used, as well as the parameters for the display of Ads, shall be subject to approval by Company and by xAd and, where applicable, xAd's mobile application partners. If Copy or any parameters are rejected, Advertiser shall continue to be liable for the full term of this Contract, including all impressions requested in the Campaign Request, and Advertiser shall be responsible for providing an acceptable replacement Copy or parameters, as applicable, within two (2) days of notification that previous Copy or parameters were rejected or as otherwise specified by Company. If replacement Copy or parameters are received after the date specified by Company or otherwise not received, Company shall be entitled to full payment for the contract period even if partial or no display results. Company shall ensure the initial display of the approved Copy within a forty-eight (48) hour time period after final approval of such Copy and corresponding parameters, excluding weekends and holidays, provided that in the event that Copy and corresponding parameters are approved more than forty-eight (48) hours, excluding weekends and holidays, before the requested start date of the Mobile Advertising campaign set forth in the Campaign Request, Company shall ensure the initial display of the approved Copy on such requested start date. Unless

otherwise specified on the face of the Advertising Agreement, (i) in the event that the advertising period is more than thirty (30) days, Advertiser shall be permitted to request a change in Copy after the initial thirty (30) days and once after every thirty (30) day period thereafter, provided that the parameters set forth in the Campaign Request will not be altered and the display of such Copy is subject to the requirements set forth in Section 1, including, without limitation, the obligation to furnish and deliver Copy at least ten (10) working days before the anticipated date of the display of the new Copy; and (ii) all other changes in Copy will be subject to the approval of Company and there will be a service charge for any approved additional changes in Copy.

2. Company is not and shall not be responsible for any aspect of Advertiser's or third-party website(s) or application(s), or for any other content with which the Ads may be associated. Advertiser shall indemnify, defend and save harmless Company and xAd against all claims and liabilities arising out of the Ads (including products and services referenced therein) displayed under this Contract and any materials associated therewith, including but not limited to any claim for defamation, or infringement of any copyright, trademark, or other intellectual property or privacy right and any claim related to the website(s) to which any Ads or related content link and all emails, newsletters, and other items and technology in connection therewith, and reasonable attorneys' fees and expenses incurred in defending any such claims.

3. Advertiser acknowledges and agrees that there is limited advertising space in the format of mobile marketing in which the Ads will be displayed and that Company and/or xAd may make reasonable modifications to the format of any approved Copy, including conversions reasonably deemed necessary to display the Ads on the Mobile Network.

4. Company does not guarantee the end user activity or engagement that any Ads will receive, including, without limitation, the click through rate (CTR) or secondary action rate (SAR). Company cannot control how clicks are generated

on any Ad and Company will not be responsible for click fraud, technological issues or other potentially invalid click activity. The distribution of Ads may be subject to inventory availability and Company does not guarantee that any Ad(s) will be placed in, or available through, any specific mobile application within the Mobile Network, nor does Company guarantee that any Ad(s) will appear in a particular position within a mobile application. Company does not make any representations, warranties or guarantees regarding the mobile applications within the Mobile Network, or any content displayed or contained therein, and hereby disclaims any and all liability for the foregoing. If for any reason whatsoever during the term hereof (i) Ads cannot be distributed to any part of the Mobile Network or (ii) any mobile application within the Mobile Network cannot, for whatever reason, display Ads to end users, or (iii) Company fails to timely meet its requirement to deliver the requested number of impressions during the Advertising Period, any resulting loss of advertising shall not be deemed a breach or termination of this Contract. Company's measurements in connection with performance of an applicable Ad delivered in the Mobile Network, including the calculated number of impressions delivered, are the definitive measurements. Any failure to deliver the impressions requested in the applicable Campaign Request shall not render Company liable for any damages or offsets of any kind and shall be remedied solely by extending the Advertising Period of this Contract to provide any requested impressions not provided during the Advertising Period, or at Company's option, result in a pro-rated credit proportional to any impressions required by the Insertion Order but not delivered, with all other remedies at law or equity being expressly waived by Advertiser. Notwithstanding anything contained herein to the contrary, if the ability to provide Mobile Advertising services through xAd is lost for any reason whatsoever, Company shall also have the option to terminate this Contract and receive payment in full for Mobile Advertising through the termination date.

5. If after initial approval of Copy, Company or xAd, on its own or on behalf of any of its mobile application partners, disapproves any Ad, or if adverse publicity results from any delivery or display of any Ad, Company shall have the right to remove and/or cease delivering the Ad for display on the Mobile Network or any component thereof, and, at its option, either terminate this Contract or request a new acceptable advertisement copy pursuant to paragraph 2 above.

6. Notwithstanding anything to the contrary herein, all data and information gathered or received by Company and/or xAd in connection with providing Mobile Advertising may be freely used by Company and xAd. Company shall use commercially reasonable efforts to provide Advertiser with a summary of available performance metrics for Ads delivered and displayed under this Agreement on a weekly basis. If for any reason whatsoever during the term hereof (i) performance data is unavailable, in whole or in part; (ii) Outfront does not have the right to provide performance data to Advertiser; or (iii) there is a delay in the provision of performance data to Advertiser, the foregoing shall not be deemed a breach or termination of this Contract, shall not render Company liable

for any damages or offsets of any kind and shall be remedied solely by the provision of performance data when and if and to the extent made available to Company for delivery to Advertiser, with all other remedies at law or equity being expressly waived by Advertiser. Company may, at its discretion, provide Advertiser with additional data regarding the delivery of the Ads and/or the audience for the Ads as delivered and displayed under this Agreement. Advertiser shall use all performance data and any other data provided by Company in accordance with any additional terms concurrently provided to Advertiser and in compliance with all applicable laws, rules and regulations and generally accepted industry standards and/or guidelines relating to the use of such data as contemplated herein. All data provided by Company is not provided on an "AS-IS" basis and Company is not and shall not be responsible for Advertiser's use of such data. Advertiser shall indemnify, defend and save harmless Company and xAd against all claims and liabilities arising out of the Advertiser's use of performance and other data provided by Company under this Agreement, and reasonable attorneys' fees and expenses incurred in defending any such claims.

7. Advertiser acknowledges and agrees that all claims by Advertiser related to the Mobile Advertising services provided hereunder shall be directed at Company and that Company does not make, and Advertiser hereby disclaims, any representations, warranties and liabilities on behalf of xAd. Company shall not be held responsible for retention of Copy, including digital files or data, provided by Advertiser and Company may dispose of any such materials. Company may promote Company's own business through the use of Advertiser's approved Copy and corresponding parameters in any manner whatsoever.

8. Capitalized terms used in this Rider and not otherwise defined shall have the meanings ascribed to them in the Terms and Conditions. This Rider is made as an addition to and not in derogation of the Contract and the Terms and Conditions thereof and shall be read to the greatest extent possible as consistent therewith. In the event of any inconsistency between the terms of this Rider and the terms set forth in the Terms and Conditions, the terms of this Rider shall control. The provision of Mobile Advertising, including Company's acceptance of Advertiser's order therefor, is expressly limited to, and made expressly conditional on, Advertiser's acceptance of this Mobile Rider. Company objects to any different or additional terms.