

XM Satellite Radio, Inc. ADVERTISING TERMS & CONDITIONS

NOTICE: Either of (i) execution of the Advertising Proposal ("Proposal") and/or Letter Agreement (the "Letter Agreement") by a client seeking to buy media elements for its commercial message(s) ("Client") or by Client's representative or agent, or (ii) the first broadcast pursuant to the Proposal, constitutes acceptance by both Client and/or its agent of the foregoing Terms and Conditions ("T&Cs");

1. **The Parties.** The parties to these T&Cs are XM Satellite Radio Inc. ("XM") and either a Client, directly, or an advertising agency, media buying service and/or other client representative (collectively, "Agency") on a Client's behalf (Client and Agency shall be collectively referred to as "Advertiser"). Any Agency signing on behalf of a Client represents and warrants to XM that it is authorized by such Client to do so.

2. **Invoicing and Payment.** Following broadcasts of advertisements, programming and or other media (collectively, the "Client Content"), XM shall use commercially reasonable efforts to note the date and time of broadcast on the invoice. XM will bill Advertiser for Client Content and Advertiser will pay XM within 30 days of the invoice date. Agency and Client shall be jointly and severally obligated to pay XM the amount due.

3. **Media Cancellation.** Unless otherwise specified in a Proposal or Letter Agreement, either XM or Advertiser may cancel some or all of the Client Content upon two (2) weeks written notice to the other party. If the Client Content covers broadcast of programs or sponsorship or partial sponsorship of programs, such cancellation shall be upon at least 4 (four) weeks written notice. If Advertiser cancels all or part of the Client Content, any and all discounts awarded on the basis of the Client Content will be reversed.

4. Provision, Acceptance and Clearance of Client Content

(a) Advertiser shall be responsible for payment of any third-party talent, announcer, music or production costs in connection with its Client Content as well as obtaining all necessary licenses for use of any material included in the Client Content.

(b) Advertiser shall provide XM, at Advertiser's cost, with all Client Content, in a format as mutually agreed, at least six (6) business days

prior to the date of its first scheduled broadcast. XM shall have no obligation to return to Advertiser any Client Content. In the event Advertiser fails to provide the Client Content to XM at least six (6) business days prior to the date of its scheduled broadcast and XM must substitute content, Advertiser will remain financially responsible to XM as if the Client Content was broadcast in accordance with the Proposal or Letter Agreement.

(c) XM may, in its sole discretion and at any time, choose to reject any and all Client Content. Should XM choose to exercise such right, it shall so notify Advertiser and, unless Advertiser is able to resubmit Client Content satisfactory to XM within two (2) days prior to the scheduled broadcast, XM shall have the right to substitute its own program or commercial material with no liability to Advertiser.

(d) All Client Content shall conform to XM's Ad Sales Guidelines as updated from time

(e) XM reserves the right to reference advertiser name, company marks/logos, program descriptions and to include XM produced sponsorship-related audio in sales support materials, such as case studies, but will refrain from inclusion of any proprietary campaign details or results.

5. Omissions, Rescheduling or Pre-Emption of Client Content.

XM may, in its sole discretion, cancel, reschedule or pre-empt any scheduled broadcast of Client Content in order to substitute any programming which it deems of public interest or importance. XM shall endeavor to so notify Advertiser with as much notice as reasonably possible, whether in advance of or shortly after cancellation of such scheduled broadcast. XM shall work with Advertiser to agree on an appropriate substitute schedule; however, if the parties are unable to agree, the affected Proposal and/or Letter Agreement shall

be deemed canceled and Advertiser shall be credited with associated fees.

6. Warranties and Representations.

Advertiser represents that: (i) it has all requisite rights, power, and authority to provide the Client Content to XM and for XM to transmit, distribute and perform the Media as contemplated hereunder and (ii) that XM's transmission, performance and promotion of such Client Content will not give rise to any claim by any third party, including without limitation, claims arising from or relating to any intellectual property right, including but not limited to copyright, trademark, or rights of publicity, defamation, libel, trade libel, slander, false advertising or of any other right of any third party.

7. Indemnification. Each party shall defend, indemnify and hold harmless the other, its parent, subsidiaries and affiliates and their respective employees, officers, and directors from and against any and all claims, damages, costs, liabilities and expenses (including attorneys fees) arising out of such party's breach of any of its warranties and representations.

8. Notices. All notices and other communications hereunder shall be in writing, to the address set forth on the Proposal or Letter Agreement, and shall be delivered either by hand, prepaid overnight courier, by certified or registered U.S. mail, return receipt requested, or by fax with confirmation of receipt. Such notice shall be deemed to have been given as of the date delivered in person, five (5) days after being sent certified or registered mail, or the day after being sent by prepaid overnight courier.

9. Termination.

a. Either party shall have the right to terminate the Letter Agreement or Proposal for material breach, including breach of any warranty or representation made hereunder, which breach is not cured within ten (10) days of written notification thereof. Upon any such termination, all outstanding fees for broadcast of Client Content shall become immediately due and payable.

b. Either party shall have the right immediately to terminate the Letter Agreement or Proposal in the event: (i) a party becomes insolvent or is subject to the direct control of a temporary or permanent liquidator, receiver, trustee or custodian for all or a substantial part of its

assets or business; (ii) a party makes an assignment for the benefit of creditors; or (iii) a party files a bankruptcy petition or a petition to take advantage of any insolvency laws.

10. Limitation of Liability.

ADVERTISERS' SOLE AND EXCLUSIVE REMEDY FOR BROADCAST OF CLIENT CONTENT OTHER THAN AS SCHEDULED, OR WITH MATERIAL ERRORS OR OMISSIONS, WHETHER OR NOT DUE TO THE FAULT OF XM, IS SUCH BROADCAST OR REBROADCAST OF THE AFFECTED CLIENT CONTENT AT OTHER AVAILABLE TIMES DURING OTHER AVAILABLE PROGRAMMING.

IN NO CASE SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY PARTY, PERSON OR ENTITY, WHETHER OR NOT FORESEEABLE, REGARDLESS OF WHETHER EITHER PARTY HAD NOTICE OF SUCH POTENTIAL LIABILITY

11. Force Majeure. Neither party shall be liable for any loss, damage, cost, delay or failure to perform, in whole or in part, resulting from causes beyond such party's reasonable control, including, without limitation, restrictions of law or regulations, terrorism, threat of terrorism, labor disputes, acts of God, telecommunications, network or power failures or interruptions, or mechanical or electronic breakdowns.

12. Assignment. Neither the Letter Agreement or Proposal may be assigned by Advertiser without the prior written consent of XM.

13. Waiver. No waiver of any provision or of any breach shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.

14. Governing Law and Jurisdiction. The Letter Agreement, T&Cs and Proposal shall be governed by, and construed in accordance with, the laws of New York, applicable to agreements wholly negotiated and to be performed in that jurisdiction, and without reference to that jurisdiction's conflicts of laws principles.

15. Severability. In the event that any provision hereunder shall be illegal or otherwise

unenforceable, such provision shall be severed, and the balance of shall continue in full force and effect.

16. **Entire Agreement.** These T&Cs constitute the parties' entire understanding of the matters set forth herein and supersedes any prior understanding or agreement. The T&Cs may only be modified in a writing signed by the parties hereto. If there is a disagreement between the T&Cs and either the Proposal or Letter Agreement, the terms of the Proposal or Letter Agreement, as applicable, shall control.