

# Standard Terms and Conditions

These Standard Terms and Conditions for Card-Linked Offers (“CLO”s), Boar Standard 1.0 (“Terms”), when incorporated into a mutually accepted Insertion Order (“IO,” see Appendix for example), establish the terms and conditions upon which a CLO Service Provider will offer CLO enablement, publishing, redemption matching and/or settlement services to Advertisers (together with the IO, the “Agreement”)

## 1. Engagement; Insertion Orders:

- a. CLO Services. Advertiser hereby authorizes CLO Service Provider (and its Third Party Providers) to perform the CLO Services as contemplated by these Terms and the applicable IO in support of Campaigns described in said IO for the benefit of Advertiser. In consideration of the fees set forth in the IO, the CLO Services shall be performed on behalf of Advertiser in accordance with these Terms and otherwise as provided in the IO. If CLO Service Provider is to provide CLO distribution services under the IO, Advertiser hereby authorizes CLO Service Provider to accept, on its behalf, terms and conditions substantially similar to the Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less, Version 3.0 (or the then most current version), for third-party media buys in support of the Campaign.
- b. IO Details. The IO may specify: (i) the CLO Services to be performed by the CLO Service Provider, (ii) the pricing for such CLO Services, (iii) description of the Campaign, (iv) the start and end dates of the Campaign, (v) Offer terms and conditions, (vi) authorized Distribution Channels on which the CLOs are to be published and distributed (if any), (vii) Settlement funding arrangements, (viii) reporting requirements, and (ix) such other Campaign and CLO Services requirements as the Parties may mutually agree.
- c. Agency. The Parties acknowledge that if an Agency is the signatory under the IO, it hereby engages CLO Service Provider to perform the CLO Services on behalf of its principal, the named Advertiser on the IO. In such event, unless the context indicates otherwise, all references to “Advertiser” herein shall include Agency acting as authorized agent of such Advertiser; provided that Advertiser shall be ultimately responsible for the acts or omissions of Agency acting within the scope of its authority. In addition, if Advertiser or its agent engages a CLO Service Provider via a signed authorization then that authorization shall be deemed to apply to any additional CLO Service Providers that agent or Advertiser shall select at a later date, given that the agent agrees/consents to be bound by such authorization.
- d. Reseller. The Parties acknowledge that if a Reseller is the signatory under the IO, it is acting as an authorized Reseller of the CLO Services on behalf of the named CLO Service Provider on the IO. In such event, unless the context indicates otherwise, all references to “CLO Service Provider” herein shall refer to Reseller acting as authorized Reseller of such CLO Service Provider; provided that any and all rights of CLO Service Provider conferred on Reseller as the signatory of the IO (other than the right to receive compensation under the IO) are hereby assigned to CLO Service Provider, including, without limitation, those set forth in Sections 3, 6, 7, 8, 10, 11 and 12. For the avoidance of doubt, as between Advertiser and Agency (on the one hand) and Reseller (on the other), Reseller shall be responsible for the performance of the obligations of CLO Service Provider under this Agreement.

## 2. Conduct of CLO Campaigns:

- a. **Fulfillment and Conduct of Campaigns:** For the avoidance of doubt, as between the Parties, Advertiser (and not CLO Service Provider, Reseller or Agency, if any) shall be responsible for (i) fulfillment and support of the underlying products and services relating to the CLO Campaigns; (ii) ensuring that all CLO Campaigns and their fulfillment comply with applicable laws; and (iii) ensuring that no CLO or related Creative or Offer Listing shall: (x) infringe or violate any third party's intellectual property rights or other rights, be defamatory or obscene, or violate any law or regulation or the rights of privacy or personality of any third party; or (y) include transactions in the following restricted merchant category codes or "vice" categories: healthcare, financial products, legal services, political organizations, court/fines/bail bonds, gambling, firearms, funeral services, dating/escort, massage parlors, illegal activities, drugs, tobacco, alcohol, pornography, or adult-oriented offers, nor any offers indicating a religious orientation or bias or any other Offers detrimental to CLO Service Provider's (or its Third Party Providers') reputation or goodwill, as determined in CLO Service Provider's sole discretion ("Prohibited Listing"). Advertiser hereby authorizes CLO Service Provider to remove any Prohibited Listings from its Distribution Channels promptly upon discovery or written notice thereof. Advertiser acknowledges and agrees that CLO Service Provider shall have the right to block any Offer Listings from appearing on the CLO Platform in its sole discretion. Subject to the foregoing, Advertiser shall not, without CLO Service Provider's prior written consent, change, modify or discontinue any CLO Linked to a consumer's Payment Card but not yet Redeemed.
- b. **Offer Listing Information.** For each Campaign, Advertiser shall provide to CLO Service Provider the Offer Listing information and materials required by the IO (including applicable Offer terms and conditions to be presented to consumers), copy, photography, images, other descriptive materials, and links for all Offer Listings. Advertiser shall deliver such items to CLO Service Provider (including digital artifacts) via email or other means as provided in the IO or as otherwise mutually determined by the Parties. Advertiser shall be responsible for preparing and confirming legal compliance of Offer terms and conditions to be presented to consumers.
- c. **Purchase Methods.** Advertiser acknowledges that the Payment Cards at any given time supported by the CLO Service Provider shall be the only permitted means for Redeeming CLOs under the IO.
- d. **End User Terms of Service.** Advertiser acknowledges that CLO Services are available to track purchases of consumers who establish accounts on the CLO Platform and who accept and abide by the applicable end user terms of use/service and privacy policy ("End User Terms"). CLO Service Provider may ban the participation of individual consumers in the CLO Platform for any violation of the End User Terms or for any other reason determined in its sole discretion. Advertiser acknowledges that CLO Service Provider will collect, use, and disclose end user data in accordance with the End User Terms as in effect from time to time, the current versions of which will be made available to Advertiser upon request.
- e. **Merchant Authorization.** If Advertiser is to be the Participating Merchant, Advertiser hereby authorizes ("Merchant Authorization"): (i) CLO Service Provider to enroll Advertiser as a participating merchant in Campaigns enabled by the CLO Services and applicable Payment Card networks; (ii) CLO Service Provider's Financial Institutions and/or Payment Processors to monitor, collect, identify, and match Payment Card Data captured on behalf of Advertiser against Payment Card member card files and to forward such data to CLO Service Provider for purposes of enabling the CLO Services; and (iii) CLO Service Provider to monitor, collect, identify and match CLO Transaction Data (including Payment Card Data) collected from its Financial Institutions and/or Payment Processors for the purpose of performing the CLO Services.

### 3. Funding and Settlements:

- a. Settlement Funding. Except as otherwise provided in the IO, Advertiser agrees to fully and timely fund all Redemptions consummated in accordance with the applicable Offer terms and conditions, and remit Settlement Funds to CLO Service Provider (or its designee) in the manner provided in the applicable IO.
- b. Settlement Services. Except as otherwise provided in the IO, CLO Service Provider will be responsible for Redemption Matching and Settlement services, and shall arrange for the clearing of Redemption Value associated with a Redeemed Offer to consumers promptly after Advertiser makes available Settlement Funds in the manner provided in the IO. CLO Service Provider will not be liable for any delays in payment due to the acts or omissions of any other Parties or any Third Party Providers.

### 4. Payment and Payment Liability:

- a. Invoices. Invoices will be sent to the billing address as set forth on the IO and will include information reasonably specified by the IO, or as defined by applicable Standards including The Cardlinx Association Hummingbird Standard located at [www.cardlinx.org/standards-2](http://www.cardlinx.org/standards-2), for example the IO number, Advertiser name, brand name or Campaign name, and any number or other identifiable reference stated as required for invoicing on the IO. All invoices (other than corrections of previously provided invoices) pursuant to the IO will be sent within ninety (90) days of the conclusion of a given Campaign.
- b. Payment Terms. Advertiser will make payment seven (7) days from its receipt of invoice, or as otherwise stated in the IO. All payments under this Agreement shall be made in U.S. dollars by payment method set forth in the IO or as otherwise mutually agreeable to the Parties. Advertiser shall be responsible for all costs and expenses incurred by CLO Service Provider in collecting any overdue amounts. Except as set forth in the IO, any overdue balances and any costs of collection will be subject to an interest rate of 1.5% per month (or the maximum amount permitted by law, if lower). These Payment Terms shall apply except if there exist conflicting terms in the IO, in which case the IO terms shall control.
- c. Agency Invoices and Payment Terms. If Advertiser is acting through an Agency as signatory on the IO, the following provisions shall apply: CLO Service Provider acknowledges that failure by CLO Service Provider to send an invoice within such period may cause Agency to be contractually unable to collect payment from the Advertiser. If CLO Service Provider sends the invoice after the 90-day period and Agency either has not received the applicable funds from the Advertiser or does not have the Advertiser's consent to dispense such funds, Agency will use commercially reasonable efforts to assist CLO Service Provider in collecting payment from the Advertiser or obtaining Advertiser's consent to dispense funds. Upon request from the Agency, CLO Service Provider should provide proof of performance for the invoiced period, which may include access to online or electronic reporting, as addressed in these Terms. CLO Service Provider shall invoice Advertiser for the services provided on a calendar-month basis with the net cost (i.e., the cost after subtracting Agency commission) as specified on the IO. CLO Service Provider may notify Agency that it has not received payment when due and whether it intends to seek payment directly from Advertiser pursuant to Section 4(d) and CLO Service Provider may do so five (5) business days after providing such notice.

- d. Payment Liability in Agency Engagement. If Advertiser is acting through an Agency as signatory on the IO, unless otherwise provided in the IO, Agency and Advertiser shall be jointly and severally liable for payments due under the IO without regard to whether proceeds have cleared from Advertiser to Agency for Campaigns run under the IO. Under no circumstances may payment to CLO Service Provider be withheld or delayed due to Advertiser's failure to make timely payment to Agency.
- e. Expenses; Taxes. Each Party shall bear its own costs and expenses that may be incurred as a result of its performance of this Agreement. All fees payable hereunder are exclusive of taxes. If any governmental authority levies any taxes with respect to the services performed by CLO Service Provider hereunder (excluding taxes on its properties or income), it shall invoice the Advertiser for the amount of such and Advertiser shall pay such amount within thirty (30) days after receipt of invoice therefor.
- f. Records. During the Term and for three (3) years after the expiration or termination of this Agreement, Advertiser or its Agent shall maintain records so as to allow the CLO Service Provider to confirm compliance with the terms and conditions of this Agreement, including the computation of fees payable hereunder, collection and disbursement of Settlement Funds, and compliance with confidentiality, data rights, and security obligations. Such review may be conducted not more than once per calendar year and on not less than thirty (30) days' prior written notice.

## 5. Reporting:

- a. Campaign Reporting. Unless otherwise provided in the IO, CLO Service Provider shall provide to Advertiser, and if applicable its Agent, on a monthly basis, a Campaign performance report, the form and content of which shall be mutually determined by the Parties but which may include those elements specified in The CardLinx Hummingbird Standard, located at [www.cardlinx.org/standards-2](http://www.cardlinx.org/standards-2); provided that such data shall be provided on a Campaign-by-Campaign basis in an anonymous and aggregated form.

## 6. Trademark and Creative Licenses:

- a. Advertiser hereby grants to CLO Service Provider and its Third Party Providers, during the term of the applicable Campaigns serviced by CLO Service Provider hereunder, a non-exclusive, non-transferable, revocable, royalty-free, right and license to use, copy, display, modify for formatting purposes, distribute, and perform any content, creative works, advertisements, or marketing materials made available to CLO Service Provider hereunder for use in the Campaigns (the "Creative") and Advertiser's (or its third party licensors) trademarks, service marks, trade names, logos, iconography, and/or product names (in both text and stylized forms) made available to CLO Service Provider for use in connection with any such Campaigns ("Advertiser Marks") intended for the territory of the United States (or other territory specified in the IO) solely to the extent necessary to conduct the Campaigns as contemplated in the applicable IO (including the right to display, promote, advertise, and access the Advertiser Marks, the Offer, and the Creative on the CLO Platform and authorized Distribution Channels). The foregoing rights may be sublicensed by CLO Service Provider to its Third Party Providers to the extent necessary for the performance of its obligations hereunder. Notwithstanding any provision herein to the contrary, as between the Parties, all rights, title, and interest in the Creative and Advertiser Marks shall remain the sole and exclusive property of Advertiser. CLO Service Provider will comply with Advertiser's trademark usage standards made available to it with respect to such use. All goodwill arising from use of Advertiser Marks will inure to Advertiser.

## 7. Confidentiality; Data Rights; Privacy and Security:

- a. Confidential Information.
  - i. "Confidential Information" will include (A) all information marked as "Confidential," "Proprietary," or similar legend by the disclosing Party ("Discloser") when given to the receiving Party ("Recipient"); and (B) information and data provided by the Discloser, which under the circumstances surrounding the disclosure should be reasonably deemed confidential or proprietary. Without limiting the foregoing, Discloser and Recipient agree that each Discloser's contribution to IO Details (as defined below) shall be considered such Discloser's Confidential Information. Recipient will protect Confidential Information in the same manner that it protects its own information of a similar nature, but in no event with less than reasonable care. Recipient shall not disclose Confidential Information to anyone except an employee, agent, Affiliate, or third party who has a need to know same, and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this Section. The term "Recipient" may include an Agency and Agent acting for an Advertiser and a Reseller acting for a CLO Service Provider. Recipient will not use Discloser's Confidential Information other than as provided for in this Agreement, including the IO.
  - ii. Exceptions. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" will not include information which: (A) was previously known to Recipient; (B) was or becomes generally available to the public through no fault of Recipient; (C) was rightfully in Recipient's possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser; (D) was developed by employees or agents of Recipient independently of, and without reference to, Confidential Information; or (E) was communicated by Discloser to an unaffiliated third party free of any obligation of confidentiality. Notwithstanding the foregoing, the Recipient may disclose Confidential Information of the Discloser in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange, or as necessary to establish the rights of either Party under these Terms; provided, however, that both Discloser and Recipient will stipulate to any orders necessary to protect such information from public disclosure.
- b. Data Rights. Except as otherwise provided in the IO and other generally accepted industry standards including The CardLinX Association Hummingbird Standard, as between the Parties, nonpublic information pertaining to the CLO Platform, CLO Platform user account information, CLO Transaction Data and Payment Card Data shall be deemed Confidential Information of CLO Service Provider; and nonpublic information pertaining to the Campaign (other than CLO Transaction Data and Payment Card Data) shall be deemed Confidential Information of Advertiser. The Parties hereby agree to abide by the data rights and use restrictions provisions set forth in the IO.
- c. Third Parties. Each Party will require any third party or Affiliate used by such Party in performance of the IO on behalf of such Party to be bound by confidentiality, non-disclosure, and non-use obligations at least as restrictive as those on such Party hereunder, unless otherwise set forth in the IO.
- d. Privacy Policies. Each Party will post on their respective Web sites their privacy policies and adhere to their privacy policies, which will abide by applicable laws. Failure by a Party to continue to post a privacy policy, or non-adherence to such privacy policy, is grounds for immediate cancellation of the IO by the other Party.

- e. Data Security. Each Party represents and warrants that if and to the extent it retains, as applicable, any information relating to an identified or identifiable individual (personally identifiable information, "PII"), Payment Card Data or CLO Transaction Data collected from the performance of this Agreement (collectively, "Protected Data"), it has, and will continue to have, adequate administrative, technical, and physical safeguards (a) to maintain the security and confidentiality of such Protected Data, (b) to protect against any anticipated threats or hazards to the security or integrity of such Protected Data and (c) to protect against unauthorized access to or use of such Protected Data, which could result in substantial harm or inconvenience to the owner of such data. Each Party agrees that it shall immediately notify the other Party upon discovering that there has been a material breach in its security safeguards required by this Section 7(i) or if the security of Protected Data has been compromised for any reason. If applicable, each Party with PII collected from the performance of this Agreement shall comply with (i) all applicable international, federal, state, provincial, and local laws, rules, regulations, directives, and governmental requirements relating in any way to the privacy, confidentiality or security of PII, which may include: Directive 95/46/EC; the Gramm-Leach-Bliley Act; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain PII; and all other similar international, federal, state, provincial, and local requirements; (ii) the PCI Standards (including, but not limited to, maintaining an annual certification of compliance with the PCI Standards); and (iii) all applicable provisions of written information security requirements that the Parties have mutually agreed are applicable to the performance of its obligations under this Agreement.

## 8. Intellectual Property Ownership:

- a. CLO Service Provider (and not Reseller or any other Party) owns all right, title and interest in the CLO Platform and in any other technology or materials developed by CLO Service Provider in the performance of the CLO Services, including any and all intellectual property rights therein.
- b. Reservation of Rights. Except as otherwise expressly stated in these Terms or the IO: (i) nothing in this Agreement is intended to transfer from either Party to the other Party any right, title or interest in or to any Confidential Information or other intellectual property of such Party and each Party hereby reserves all rights in its Confidential Information and intellectual property; and (ii) to the extent that either Party provides or makes available any Confidential Information or other intellectual property to the other Party pursuant to this Agreement, such other Party and its Affiliates and their respective employees, contractors, agents, and other related parties shall have a limited, personal, non-exclusive, non-transferable license to use such Confidential Information and intellectual property solely for the purpose of performing such Party's obligations or exercising its rights under this Agreement; and (iii) no other license is granted to either Party under this Agreement, by implication or otherwise, with respect to any Confidential Information or other intellectual property that may be provided or made available by the other Party to such Party under this Agreement.

## 9. Termination:

- a. Term. This Agreement shall be effective as of the effective date of the IO (or if none is so indicated then upon mutual execution of the IO) and shall continue for the duration of the applicable Campaign or other term stated in the IO.
- b. Termination for Cause. Either Party may terminate this Agreement: (i) upon thirty (30) business days prior written notice (or such other notice period stated in the IO) if the other Party commits any material breach of this Agreement and fails to cure the breach during such notice period; or (ii) immediately upon written notice if (A) the other Party ceases doing business as a going concern, is dissolved or otherwise terminates its business operations, (B) the other Party files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors, or (C) the other Party seeks or consents to the appointment of an administrator, receiver, custodian, or similar official for the winding down of its business.
- c. Termination for Convenience. Advertiser may terminate for its convenience the IO or Campaign supported thereunder with three (3) business days notice upon written notice to CLO Service Provider; provided that the Parties shall continue to perform its obligations under this Agreement in respect of pending Redemptions under CLOs that have been previously Linked to a Payment Card in accordance with the applicable Offer terms and conditions. CLO Service Provider may terminate for its convenience the IO or Campaign supported thereunder, and/or suspend supportive CLO Services, immediately upon written notice to Advertiser.
- d. Wind-Down. Upon any termination or expiration of this Agreement, Parties shall collaborate as reasonably necessary to effectuate an orderly wind-down of any live Campaigns and related CLO Services, and all provisions of this Agreement shall survive termination to the extent necessary to govern and enforce such wind-down.

## 10. Representations and Warranties:

- a. Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party that: (a) it has the necessary authority to enter into and perform this Agreement and is not subject to any agreement or other constraint that would prohibit or restrict its right or ability to enter into, or carry out, its obligations hereunder; and (b) it shall comply with and shall not violate any applicable laws in connection with its performance of this Agreement or the conduct of its business as it pertains to this Agreement.
- b. Advertiser Representations and Warranties. Advertiser hereby represents and warrants to CLO Service Provider that: (a) it is authorized and has the necessary third party consents to grant the licenses for the Creative and Advertiser Marks associated with each Campaign; (b) no Creative, Advertiser Marks, or Offer Listing associated with such Campaign shall: (i) infringe or violate any third party's intellectual property rights or other rights, be defamatory or obscene, or violate any law or regulation or the rights of privacy or personality of any third party; or (ii) include any Prohibited Listings; and (c) such Campaign(s) and related CLOs shall comply with all applicable laws.
- c. Agency Representations and Warranties. If Agency is the signatory on the IO, such Agency represents and warrants to CLO Service Provider that it has the authority as the disclosed Advertiser's agent to bind Advertiser, as its principal, to this Agreement, and that all of Agency's actions related to this Agreement will be within the scope of such agency. Agency further represents and warrants that CLO Service Provider shall be deemed a third-party beneficiary under such agency relationship so that CLO Service Provider may seek recourse against Advertiser for any breach by Advertiser or Agency of this Agreement, including, without limitation, for failure to pay fees due to CLO Service Provider or failure to adequately and timely remit Settlement Funds to clear Redemptions as provided herein. Upon request, Agency will make available to CLO Service Provider written confirmation of the relationship between Agency and Advertiser. This confirmation should include, for example, Advertiser's acknowledgement that Agency is its agent and is authorized to act on its behalf in connection with the IO and these Terms. In addition, upon the request of CLO Service Provider, Agency will confirm whether Advertiser has paid to Agency in advance funds sufficient to make payments and satisfy Settlement funding obligations pursuant to the IO. If Agency's or Advertiser's credit is or becomes impaired, CLO Service Provider may require payment in advance.
- d. Reseller Representations and Warranties. If Reseller is the signatory on the IO, such Reseller represents and warrants to Advertiser that it is authorized to resell the CLO Services on behalf of the named CLO Service Provider as provided in this Agreement.



e. Disclaimer of Warranties. Each of Advertiser and Agency acknowledges that CLO Service Provider and its third-party providers provide their respective services “as is.” Except as expressly set forth herein, CLO Service Provider and its third-party providers disclaim any and all representations and warranties of any kind, express, statutory, implied, or otherwise, including without limitation warranties of merchantability or fitness for a particular purpose and warranties arising from course of dealing or course of performance. Neither CLO Service Provider nor any of its third-party providers warrant that its platform or site, any internet connections, or third-party connectivity, will operate uninterrupted or error-free. CLO Service Providers and its third-party providers disclaim any and all liability arising from the transmission of information over the internet, or any impairment or disruption of the internet. No oral or written information or advice given by any employee or representative of CLO Service Provider or reseller shall create a warranty for the CLO services, and the other party may not rely on any such information or advice. If and to the extent the CLO services provided hereunder are delayed, suspended or terminated for reasons beyond CLO Service Provider’s reasonable control, including the inability or unwillingness of the third parties to provide supportive services, CLO Service Provider and its third-party providers hereby disclaim any and all liabilities associated therewith. Advertiser and Agency hereby acknowledge that the CLO transaction data and payment card data supplied by CLO Service Provider and its financial institutions and payment processors and related services are provided on an “as is” and “as available” basis, and that such parties disclaim accuracy of such data.

## 11. Indemnification:

- a. Indemnification. Advertiser and Agency (the “Indemnitor”) shall, jointly and severally, defend, indemnify and hold harmless CLO Service Provider, Reseller, Financial Institutions, Payment Processors, and third-party publishers, and their respective directors, officers, employees, and agents, and their respective successors, heirs, and assigns (collectively, the “Indemnitees”), from and against any and all losses, costs, liabilities, damages, fines, injuries, interest, or expenses (including reasonable attorneys’ fees and costs of investigation and defense) suffered or incurred by any Indemnitee (collectively, “Losses”) to the extent such Losses are attributable to any third-party claims, actions, or proceedings (collectively, “Claims”) arising from, based upon, or related to: (a) the Indemnitor’s gross negligence or willful misconduct in connection with its performance under this Agreement (including any Scope of Work); (b) the content, data, creative, marks or other materials provided or made available for use by the Indemnitor under this Agreement infringes or otherwise violates any third party intellectual property or other proprietary rights or privacy rights or otherwise violates law (“Infringement Indemnity”); or (c) the Indemnitor’s conduct of the Campaigns, Indemnitor’s CLOs, Indemnitor’s products and services, and any violation of law, or breach of any covenant, representation, or warranty under this Agreement by the Indemnitor (including payment or Settlement funding defaults). The Indemnitor shall pay any judgments, settlement amounts, reasonable attorney’s fees, and other costs and expenses of litigation of such Claims. In the event that a Party becomes aware of an actual or potential Infringement Indemnity, it may terminate this Agreement upon written notice to the other Party so as to avoid continuing infringement. A Party’s obligation to provide indemnification hereunder shall survive any termination or expiration of this Agreement. In the event that Indemnitor misuses Payment Card Data or other CLO Transaction Data in breach of Section 8, CLO Service Provider’s Financial Institutions and Payment Processors shall be deemed third-party beneficiaries of the foregoing right of indemnification.
- b. By Agency. Agency shall defend, indemnify, and hold harmless CLO Service Provider and Advertiser (and each of their respective related Indemnitees) from Losses resulting from (i) its alleged breach of its representations and warranties, or (ii) Claims brought by a third party alleging that it has breached its express, Agency-specific covenants, representations, and warranties under Sections 7 and 10.
- c. Procedure. The indemnified party(s) will promptly notify the indemnifying party of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying party’s obligations except to the extent such party is prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to the indemnifying party at the indemnifying party’s expense in connection with the defense or settlement of all Claims; and (ii) be entitled to participate at its own expense in the defense of all Claims. The indemnified party(s) agrees that the indemnifying party will have sole and exclusive control over the defense and settlement of all Claims; provided, however, the indemnifying party will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on an indemnified party(s) without its prior written consent.

## 12. Limitation of Liability:

- a. Except for indemnification obligations arising under Section 11 and damages arising from a breach of Sections 7 or 8, in no event shall either party be liable for any incidental, indirect, special, or consequential damages or loss of profit, data, or goodwill for any claim arising under this agreement, regardless of the cause of action (whether in contract, tort, negligence, strict liability, or otherwise) and even if a party has been advised of the possibility of such damages, such as, but not limited to, loss or revenue, profits or business, business interruption, costs of delay, or costs of lost or damaged data. In no event shall either party be liable for any punitive damages, regardless of the cause of action (whether in contract, tort, negligence, strict liability, or otherwise).
- b. In no event shall CLO Service Provider's or reseller's aggregate liability to Advertiser, Agency (if any) or others arising under or related to any campaign under the applicable IO and/or Advertiser's use of the services with respect to such campaign exceed the amount of fees actually paid to such party (excluding settlement funds) for such campaign.

## 13. Miscellaneous:

- a. Force Majeure.
  - i. Generally. Excluding payment obligations, neither Advertiser nor CLO Service Provider will be liable for delay or default in the performance of its respective obligations under these Terms if such delay or default is caused by conditions beyond its reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes ("Force Majeure Event").
  - ii. Related to Payment. If a Party's ability to transfer funds to third parties has been materially negatively impacted by an event beyond its reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then it will make every reasonable effort to make payments on a timely basis, but any delays caused by such condition will be excused for the duration of such condition. Subject to the foregoing, such excuse for delay will not in any way relieve Advertiser from any of its obligations as to the amount of money that would have been due and paid without such condition.
  - iii. Cancellation. If a Force Majeure Event has continued for five (5) business days, either Party has the right to cancel the remainder of the IO without penalty. A Force Majeure Event shall not release party from obligation to pay fees including prior to the Force Majeure Event.
- b. Assignment. This Agreement may not be assigned or delegated by either Party without the prior written consent of the other Party; provided, however, that CLO Service Provider may assign this Agreement (in whole) to any successor or assign of its business, whether by reorganization, merger, change of control, or sale of all or substantially all of its assets. Any assignment in contravention of this provision shall be null and void. This Agreement shall be binding on all permitted assignees and successors-in-interest.

- c. Entire Agreement. Each IO (together with these Terms) will constitute the entire agreement of the Parties with respect to the subject matter thereof and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which will be an original, and all of which together will constitute one and the same document.
- d. Conflicts; Governing Law; Amendment. In the event of any inconsistency between the terms of an IO and these Terms, the IO will prevail unless otherwise expressly amended or overridden in such IO with specific reference to the conflicting Terms. This Agreement will be governed by the laws of the State of Delaware. CLO Service Provider and Advertiser (or Agency on behalf of Advertiser) agree that any claims, legal proceedings, or litigation arising in connection with the IO (including these Terms) will be brought exclusively in the venue set forth in the IO and the Parties consent to the jurisdiction of such courts. No modification of these Terms will be binding unless in writing and signed by both Parties. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative.
- e. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement is entered into solely for the respective benefit of the Parties and their permitted successors and assigns, and nothing in this Agreement will be construed as giving any right, remedy, or claim under this Agreement to any third parties. Notwithstanding the foregoing, CLO Service Provider (if Reseller is the signatory) and Financial Institutions, Payment Processors, and third-party publishers shall have the right to seek indemnity as against Advertiser as Indemnitees under Section 11 above. In addition, Advertiser agrees that it will not assert a defense based upon lack of privity against CLO Service Provider or any of its Financial Institutions, Payment Processors, and third-party publishers seeking to enforce Advertiser's obligations hereunder.
- f. Notice. Any notice required to be delivered hereunder will be deemed delivered three days after deposit, postage paid, in U.S. mail, return receipt requested, one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices will be sent to the address indicated on the IO (with a copy to the Legal Department if so required).
- g. Survival. Sections 1, 2(a), 3(a), and 7 through 13 (inclusively) shall survive termination or expiration of this Agreement, and Sections 4 and 5 will survive with respect to obligations pertaining to prior periods. In addition, each Party will promptly return or destroy the other Party's Confidential Information upon written request and cease distribution and public display of the terminated CLOs upon termination of this Agreement except that Advertiser may retain confidential information for a limited period of time solely in connection with validating/confirming processed transactions. Any accrued rights and remedies shall survive termination or expiration of this Agreement.
- h. Headings. Section or paragraph headings used in these Terms are for reference purposes only and should not be used in the interpretation hereof.

# Defined Terms

**“Advertiser”** means the manufacturer, service provider, promoter, merchant, or other commercial entity or person identified on the applicable IO as the Sponsor of the CLOs.

**“Affiliate”** means, as to an entity, any other entity directly or indirectly controlling, controlled by, or under common control with such entity.

**“Agency or Agent”** means, if a signatory on the IO, an advertising agency acting as agent for the Advertiser named on the IO.

**“Campaign”** means advertising, promotional, or marketing campaigns featuring CLOs enabled by the CLO Services so as to allow consumers to Link CLOs to a registered Payment Card in order to have the Redemption Value automatically credited to such Payment Card or other rewards account or applied as a purchase price reduction at the point of sale, as may be provided in the IO.

**“Card-Linked Offer,” “CLO,” or “Offer”** means an advertising, marketing, or promotional offer pursuant to which an Advertiser agrees to credit a Payment Card or other rewards account to which it is Linked with the applicable Redemption Value for consumers who make an eligible Redemption with such Payment Card.

**“CLO Platform”** means the technology and platform (including software, servers, website(s), and associated user interface) through which CLO Service Provider performs the CLO Services.

**“CLO Service Provider”** means the service provider identified on the applicable IO that will be performing the CLO Services.

**“CLO Services”** means the Link enablement of CLOs, distribution of CLOs, Redemption Matching, and Settlement, reporting, and notification services to be performed by CLO Service Provider on behalf of Advertiser.

**“CLO Transaction Data”** means all transaction data relating to Linking, Redemption, and Settlement of CLOs collected, directly or indirectly, by CLO Service Provider, including Payment Card Data.

**“Distribution Channel”** means any consumer facing media owned or controlled by CLO Service Provider or to which it has access under third-party arrangements through which it publishes and distributes CLOs in the manner indicated on the IO.

**“Financial Institutions”** means those financial services institutions that have arrangements with CLO Service Provider to facilitate the Redemption Matching and Settlement services, including, without limitation, correspondent banks or financial intermediaries, Payment Card networks, Payment Card issuers, or payment processing services.

**“IO”** means a mutually agreed insertion order or other written instrument that incorporates these Terms, under which CLO Service Provider will perform the CLO Services specified therein.

**“IO Details”** means the parameters of and information relating to a Campaign on the basis of which the CLO Services are to be provided thereunder and related details set forth on the IO.

# Defined Terms

**“Link”** (and variations thereof) means the act of connecting a CLO to a Payment Card registered with the CLO Platform so as to allow Redemption Matching and Settlement of corresponding Redemptions and related CLO Services.

**“Offer Listing”** means a web page, links, or other information about a CLO that the Advertiser makes available for presentation to consumers from the CLO Platform, including related Offer fulfillment pages, Offer detail pages, purchase confirmation and reminder emails, and related notifications or communications for such Offer.

**“Participating Merchants”** means those online or offline merchants from which CLOs for products or services will be made available and Payment Card Data will be collected by CLO Service Provider and its Financial Institutions for a given Campaign.

**“Party”** refers to the Advertiser and Agency (if any), on the one hand, and CLO Service Provider and Reseller (if any), on the other, as the context requires; and **“Parties”** refers collectively to all of the Parties.

**“Payment Card”** means any registered payment card, debit card, or credit card issued by Financial Institutions and supported by the CLO Services as indicated on the IO.

**“Payment Processor”** means the company or companies authorized by a merchant to collect, process, or settle payment card transactions.

**“Payment Card Data”** means non-aggregated CLO Transaction Data relating to the use of Payment Cards (such as, for example, purchase amount, purchase date, and merchant ID).

**“Redemption”** (and variations thereof) means the act of consummating a purchase of goods or services as advertised in, and in accordance with the terms and conditions of, a CLO with the use of a Payment Card to which it is Linked.

**“Redemption Matching”** means the act of validating the occurrence of a Redemption by matching Payment Card Data received from the Financial Institutions with the terms and conditions of the Offer as defined by the Advertiser in the IO.

**“Redemption Value”** means the value of the discount, rebate, or other benefit (whether in monetary or virtual form) available to a consumer upon Redemption of a CLO.

**“Reseller”** means, if a signatory on the IO, an authorized reseller of the CLO Services to be performed by the CLO Service Provider named on the IO.

**“Settlement”** (and variations thereof) means the act of transmitting relevant CLO Transaction Data resulting from the completion of the Redemption Matching function to Financial Institutions or other rewards program processors to complete the process for delivery of the Redemption Value or corresponding rewards points.

**“Settlement Funds”** means cash funds collected from Advertiser (or other Sponsor of CLOs specified on the IO) to be credited to Payment Card accounts for the Settlement of validated Redemptions.

**“Sponsor”** means the entity that shall be responsible for funding Settlements under the IO.

**“Third-Party Providers”** means third-party service providers, publishers, resellers, merchants, data providers, contractors, agents, and Financial Institutions enabling the provisioning of the CLO Services to be performed by CLO Service Provider hereunder.