

## Merchant Agreement Terms and Conditions

**Media Garden, their successors and assigns (hereinafter "Media Garden"), located at 141 Waldorf St, Springfield, MA 01109 and the Applicant approved by Media Garden ("Merchant"), enter into this Merchant Agreement ("Agreement") and agree to be bound by the contractual provisions contained herein. In this Agreement, "you," "your" "registrant" "subscriber" or "customer" refer to "Merchant." In consideration of the mutual promises contained in this Agreement, Media Garden and Merchant agree as follows:**

**1. Acceptance:** Merchant has read and understands this Agreement. All terms and conditions proposed by Merchant which are different from or in addition to this Agreement are unacceptable to Media Garden, are expressly rejected by Media Garden and waived by Merchant, shall be of no force or effect, and shall not become a part of this Agreement absent an express written statement by Media Garden to the contrary. In the event of any conflict between these Terms and Conditions and the face of this form, the terms set forth on the Agreement shall govern. Media Garden reserves the right to update and change these Terms and Conditions from time to time upon written notice to Merchant, including, without limitation, the ability to raise monthly fees and renewal rates.

**2. Term:** If approved, this Agreement shall be effective from the date hereof and shall remain in full force and effect for a period of TWELVE (12) months as the initial term ("Initial Term"), unless sooner terminated as set forth herein. Upon the completion of the Initial Term, unless Merchant furnishes written notice of non-renewal at least THIRTY (30) days prior to completion of the then existing term, this Agreement shall renew automatically for successive additional TWELVE (12) month terms ("Renewal Terms") unless and until terminated in accordance with the provisions contained in this Agreement.

**3. Termination:** Merchant may terminate this Agreement at any time upon not less than THIRTY (30) days' prior written notice to Media Garden after the completion of the Initial Term of this Agreement. Media Garden may, at its option, terminate all or any part of this Agreement, at any time and for any reason or for no reason at all, effective immediately, by giving written notice to Merchant. Upon termination, Media Garden shall not be liable for and shall not be required to make payments to Merchant, directly or on account of claims by Merchant, Merchant's employees or affiliates, for loss of anticipated profit, interest on claims, product development and engineering costs, startup costs or other unrecovered investments, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges. Upon termination of this Agreement, the parties shall cooperate to wind down and/or transition Merchant's activities hereunder. If you terminate the Services, and you have selected Website Design Services through Media Garden, your domain will be pointed to a suspension page. This page may contain advertising. We shall retain all revenue associated with this advertising. In any event of early termination upon written notice by Merchant, all fees for the balance of the initial TWELVE (12) month term of the Agreement are immediately due and payable, and Merchant hereby authorizes Media Garden or its agent to collect said fees from any account owned by Merchant.

**4. Local Network Membership:** By signing this Agreement, Merchant becomes part of Media Garden's network ("Network"). Membership in the Network includes placement in Media Garden's Social Networks. Media Garden will use its best efforts to properly list Merchant's business on leading third-party Internet directories and search engines on the client's behalf, including syndication of Merchant information to up to 300 online directories and search engines. Media Garden will provide monthly Local Search Optimization efforts on client's behalf. Media Garden cannot guarantee location or placement for any search engine. Media Garden and its affiliates, successors and assigns may use your contact information including, but not limited to, email and mailing address to send you important small business news, information about products and services, discount offers, important events, announcements and changes to our Site or to our policies.

**5. Social:** By subscribing to these Services, Merchant authorizes Media Garden to be Merchant's Social Media advocate. In this role, Merchant authorizes Media Garden to create, monitor and post content on behalf of Merchant on any and all Social Media sites including, but not limited to Facebook, Twitter, Instagram, and Google+. If content creation and publishing are included in the Services, Merchant authorizes Media Garden to use the information Merchant provides, create original content where necessary, and use any publicly available information that Media Garden reasonably deems to be useful in providing the Services. As part of the Agreement, Media Garden will post on Social Media outlets such as Facebook a minimum of 12 times per month. Merchant recognizes that posting on Social Media may have unpredictable side-effects, including but not limited to negative responses from others. Merchant agrees to hold Media Garden harmless against such negative side-effects as set forth below in this Agreement. Merchant understands that content created on Third-party sites such as Facebook are non-transferable. Merchant acknowledges that there may be interruptions in service or events that are beyond our control on these third-party sites that will affect Merchant's use of the Service and may affect Media Garden's ability to monitor and post on these sites, and that these are beyond our control to prevent or correct. Interruptions in the Service that are beyond our control shall not serve as a basis to terminate Agreement or demand a full or partial refund of any prepaid fees. The Service may contain features that enable various Third-party Services (such as social media services like Facebook and Twitter) to be directly integrated into Merchant's Media Garden account ("Dashboard"). To take advantage of these features, Merchant will be required to register for or log into such Third-party Services on their respective websites and grant Media Garden access to these sites. By enabling third party access within the Dashboard or these sites, Merchant is granting Media Garden a license to create, monitor, post, and respond on Social Media on the Merchant's behalf.

**6. Website Design Services:** Once an Application is accepted by Media Garden, only if Website is selected, shall the following apply: Media Garden will use Dreamweaver, an close source solution, and in some cases "in house" solutions, to provide you with Design services. Media Garden will build you a website (also referred to as "Design" or "Web Design") consisting of up to Three (3) pages made with a customized CSS, PHP, and HTML theme to suit modern web browsers. The Web Design will be "mobile-friendly" and allow for up to ONE THOUSAND (1,000) words on any given page with up to TWENTY FOUR (15) photos or graphics per page. Media Garden and the Merchant must work together to complete the Web Design in a timely manner. Media Garden agrees to work expeditiously to complete the Web Design as quickly as possible upon receipt of your text and graphic materials. Typically, it requires up to FOUR (4) weeks to publish the Design. Media Garden is not liable for delay in the completion of your Design caused by your failure to: (i) Respond promptly to requests, queries, and questions; (ii) Provide images including your logo; (iii) Provide your website goals and objectives and review them with Media Garden; or (iv) Provide any additional information, materials, and documents requested by Media Garden. Within ten (10) days of receiving notice that your website is ready for review, you must either (i) provide Media Garden with your revisions, or (ii) notify Media Garden that you have no revisions. If you fail to take either such action within ten (10) days, your website will be published on your behalf without further review. Publication of your Design is acknowledgment of your satisfaction with the Design provided to date and releases Media Garden from any obligation for further revisions or alterations at that time or until the next month of maintenance. You also acknowledge and agree that once the Design is published, you will not be entitled to any credits or refunds for any reason including, but not limited to, dissatisfaction with your Design. This Agreement allows for minor website maintenance to pages of your website, at the rate of 30 minutes of maintenance per week or 2 hours a month per successful billing cycle, including: updating links, digital photos, graphics, making changes to text. This service is available from the date the Merchant's website is available to be published to Media Garden's hosting service. The Agreement does not include major page reconstruction, guest-books, navigation structure changes, or repairs of attempted updates by Merchant. Media Garden does not guarantee that the website will display properly on all platforms, operating systems, browsers, or other applicable software or hardware. Major page code and/or graphics changes and additions that are not included will be charged at the hourly rate of Ninety dollars (\$90.00) per hour with no minimum billing for any billing cycle, whereas Merchant pays only for work done. The content of the website will be provided by the Merchant and edited and modified where necessary by Media Garden. Any "stock" images are provided through a service license from Media Garden's licensors. The licenses for these images are valid on Media Garden hosting plans only. The use of these images outside of Media Garden's hosting plans is strictly prohibited. Merchant unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Media Garden for inclusion in the Web Design are owned by the Merchant, or that the Merchant has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify and defend Media Garden and its officers, employees and subcontractors from any liability (including attorney's fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by the Merchant. Media Garden will occasionally perform maintenance services which Merchant acknowledges may require Services downtime, and in the event of scheduled maintenance outside of established maintenance windows, Media Garden will attempt to provide prior notice of such downtime. Buyout option available at any time: Four Hundered dollars (\$400) per page created, minus total of successful monthly website payments. Media Garden shall have no liability for any interruption or deficiency in the Services resulting from (a) tampering or alteration by persons not authorized, or in a manner not explicitly required, by Media Garden or (b) the function or malfunction of hardware or software not supplied by Media Garden.

**8. DNR Services:** Once an Application is accepted by Media Garden, only if Website is selected, shall the following apply: Media Garden has selected the following third party accredited registrars to provide domain name registration services ("DNR Services") to Merchants: GoDaddy.com ("GoDaddy") and Register.com ("Register.com") and, collectively, these are "Third-Party Registrars". EZlocal will select, at its sole discretion, which Third-Party Registrar to use at the time of purchase. In addition, Media Garden will select, at its sole discretion, which Third-Party Registrar to use at the time of any renewal. This means that your Third-Party Registrar may change from renewal period to renewal period. Merchant agrees that the following terms relating to domain name registration services constitute an agreement not only between Merchant and Media Garden, but also directly between Merchant and GoDaddy or Register.com as applicable. The term "register" or "registration," as used in this Agreement shall be read to include any initial registration, renewal or transfer of a domain name. Merchant agrees to be bound by the Third-Party Registrars' Terms and Conditions as selected by Media Garden. Links to the Third-Party Registrar Terms and Conditions are available online at GoDaddy.com and Register.com. Merchant can ascertain which Third-Party Registrar's Terms apply to them by searching for their domain on <http://www.whois.net> after purchase. Media Garden and the Third-Party Registrars reserve the right to reject any domain name registration application for any reason. Merchant agrees that neither Media Garden nor the Third-Party Registrars shall be liable for any loss or damage that may result from such rejection. Merchant represents and warrants that (i) neither the registration of the domain name nor the manner in which it is directly or indirectly used shall not infringe the legal rights of any third party; (ii) all information provided in connection with any domain name registration is and shall remain accurate; and (iii) that Merchant's registration and use of domain names will at all times be consistent with all applicable laws. Merchant agrees and acknowledges that the Third-Party Registrars and Media Garden will share Required Information with each other, with the Internet Corporation for Assigned Names and Numbers ("ICANN"), with registry administrator(s), and with other third parties as ICANN and applicable laws and/or policies may require or permit. Merchant further agrees and acknowledges that Media Garden and/or the Third-Party Registrars shall be permitted (and in some cases may be required) to make the Required Information publicly available, or directly available to third party vendors, for purposes of inspection (such as through WHOIS service), targeted marketing or other purposes as required or permitted by ICANN and applicable laws and/or policies. Media Garden endeavors to make the domain name availability search process reliable; however, Media Garden does not guarantee availability of domain names or the accuracy or security of the WHOIS system. The registration process is not complete until the domain name requested by Merchant has been registered with the appropriate registry. Because there are delays in the actual registration of a domain name with the appropriate registry, Media Garden is not responsible if domain names requested by Merchant are actually registered to third parties. Merchant acknowledges and agrees that registration of the domain name is not complete until Merchant receives the final confirmation from Media Garden. Media Garden may use a shared web hosting service, which means a number of Merchants' websites are hosted from the same server. Media Garden hosting service is offered as a platform to host and serve web pages and websites and may rely on third party licensor. You may be bound by additional terms and conditions imposed by our licensor's. These terms and conditions are also incorporated by reference. Media Garden is happy to provide you with these additional terms and conditions upon request.

**9. Email Service:** Once an Application is accepted by Media Garden, only if Website Design is selected, shall the following apply: Media Garden will provide to Merchant up to THREE (3) business email addresses connected to the business website URL. Merchant agrees to use Email Services in a responsible manner. We do not tolerate the transmission of spam. We monitor all traffic to and from our web servers for indications of spamming and maintain a spam abuse complaint center to register allegations of spam abuse. Merchants suspected to be using our products and services for the purpose of sending spam are fully investigated. If we determine there is a problem with spam, we will take the appropriate action to resolve the situation. Our spam abuse complaint center can be reached by email at [info@mediagarden.co](mailto:info@mediagarden.co). We define spam as the sending of Unsolicited Commercial Email (UCE), Unsolicited Bulk Email (UBE) or (text), which is email or text message sent to recipients as an advertisement or otherwise, without first obtaining prior confirmed consent to receive these communications from the sender. This can include, but is not limited to email messages, newsgroup postings, Windows system messages, pop-up messages (aka "adware" or "spyware" messages), instant messages (using AOL, MSN, Yahoo or other instant messenger programs), online chat room advertisements or guestbook or website forum postings. We will not allow our servers and services to be used for the purposes described above. In order to use our products and services, you must not only abide by all applicable laws and regulations, which include the Can-Spam Act of 2003 and the Telephone Consumer Protection Act, but you must also abide by this no spam policy. Commercial advertising and/or bulk emails or faxes may only be sent to recipients who have "opted-in" to receive messages from the sender specifically. They must include a legitimate return address and reply-to address, the sender's physical address, and an opt-out method in the footer of the email. Upon request by us, conclusive proof of opt-in may be required for an email address. If we determine the services in question are being used in association with spam, we will re-direct, suspend, or cancel any website hosting, domain registration, email boxes or other applicable services for a period of no less than TWO (2) days. The registrant or customer will be required to respond by email to Media Garden stating that they will cease to send spam and/or have spam sent on their behalf. We will require a non-refundable reactivation fee of TWO HUNDRED FIFTY dollars (\$250.00) to be paid before the site, email boxes and/or services are reactivated. In the event we determine the abuse has not stopped after services have been restored the first time, we may terminate the hosting and email boxes associated with the domain name in question.

**10. Ad Manager:** Collectively, the "Agreement, Selected Plan or Plans, and Network," when applicable, shall be referred to as your "Campaign." Your Campaign will include Media Garden's, Google's, Facebook's, Bing's and/or other web-based advertising mediums as selected by Media Garden. With respect to the Ad Campaign Package selected, Media Garden shall have discretion to select the individual words or phrases ("Keywords") to be used in connection with the Campaign. Merchant may also request the use of certain Keywords. While Media Garden will use reasonable efforts to use these Keywords, Media Garden makes no guarantee that all such Keywords will be used. To the extent that Media Garden uses Keywords of its choosing, it shall be under no obligation to disclose such Keywords to Merchant. To the extent that Merchant elects to use Keywords that include the names of its competitors or trademarked terms ("Competitor Keywords"), Merchant does so at its own risk and acknowledges and agrees that it bears all liability associated with such action.

**11. SEO:** Once an Application is accepted by Media Garden, only if SEO is selected, shall the following apply: Merchant authorizes Media Garden to initiate a monthly website optimization program including but not limited to creating, monitoring, and publishing monthly website optimization content on Merchant's website. With respect to the SEO Campaign Package selected, Media Garden shall have discretion to select the individual Keywords to be used in connection with the SEO Campaign. Merchant may also request the use of certain Keywords. Merchant warrants that any search terms provided to Media Garden will not infringe on any third parties' rights and/or intellectual property, including (but not limited to) trademarks or logos. In addition, Merchant agrees to allow Media Garden to create links to and from Merchant's website as part of Media Garden's SEO Network. Merchant understands that Media Garden may not be held responsible for any major search engine algorithm changes to Google, Yahoo, or Bing.

**12. Video:** Once an Application is accepted by Media Garden, only if Video is selected, shall the following apply: As agreed by Media Garden and Merchant, Media Garden will create a professionally shot and edited Thirty (30) - Ninety (90) second High Definition Web Video ("HD Video"). Media Garden will deliver up to EIGHT (8) HD photos to Merchant from the HD Video shoot. An experienced videographer will spend an 1-2 per quarter per subscription or 1-2 hours per video / photo shoot, on location shooting at a time and date mutually agreed upon by both parties. Shoot date must be scheduled no less than ONE (1) week in advance. Prior to scheduling HD Video shoot, Merchant agrees to sign Video Release Form located at MediaGarden.co. If videographer cannot perform this Agreement in whole or in part due to casualty, acts of God or nature or terror, or other cause beyond the control of the parties or due to videographer's illness or injury, Media Garden will reschedule with the Merchant, but shall have no further liability with respect to this Agreement. This limitation on liability shall also apply in the event that photographic or video materials are lost or stolen. If the video or photo materials are damaged, Media Garden will at its expense, reshoot all necessary HD Video to complete the project on behalf of the Merchant. Merchant shall have the right, after each SIX (6) month anniversary of this contract, to request minor edits or changes to the HD Video so long as a reshoot of the project is not necessary. In the event of a reshoot, Merchant will receive a THIRTY percent (30%) discount of then current published prices. Unless otherwise specified, it is understood that any and all rights to HD Video shall remain the property of Media Garden and Media Garden Subcontractors and may be used for advertising, display, websites or any other purpose thought proper by Media Garden. It is understood by the parties that videographer performs as an independent contractor with respect to Media Garden and not an employee. Any copyright-able works, ideas, discoveries, inventions, patents, products, or other information developed in whole or in part by Media Garden or Media Garden Subcontractors in connection with the services shall be the exclusive property of Media Garden. Media Garden reserves the right to use reproductions for advertising, display, publication, or other purposes. All photos, samples, digital recordings, and proofs remain the exclusive property of Media Garden unless waived by amendment to this Agreement. Copying or reproducing Media Garden video productions is prohibited by Federal Law and violators will be subject to its civil and criminal penalties. Buyout option available at any time: either ONE THOUSAND FIVE HUNDRED dollars (\$1,500) minus total of successful monthly payments or one-time payment of TWO HUNDRED FIFTY dollars (\$250) after two years of successful billing, whichever is greater. Media Garden video services are outlined in this Agreement and any verbal agreement is null and void. Any changes to this Agreement must be presented in writing by either party and approved by Media Garden and Merchant.

**14. Customer Information:** Merchant hereby grants to Media Garden for use and distribution through Media Garden's website and Network during the Campaign Period specified, the non-exclusive and non-transferable, worldwide, fully paid limited license to use any information provided by Merchant for the purpose of promoting the business of the Merchant and the Network through the relationship with Media Garden created by this Agreement. As part of the registration process, you will be required to provide certain information, including without limitation contact information, such as your full name, postal address, email address, telephone number and fax number, if available ("Personal Information"). You agree to update your Personal Information promptly as needed to keep it current, complete and accurate, and to add such additional information as Media Garden may reasonably require from time to time.

**15. Reports:** Media Garden shall make available to Merchant a regular report detailing Campaign delivery and performance metrics.

**16. Invoicing:** The weekly or monthly fee specified shall be debited from the Merchant's account on or about the 1st day of each month for monthly plan and each Monday for weekly plan for activity in the current calendar month.

**17. Creative License:** Merchant hereby grants to Media Garden a world-wide non-exclusive, royalty-free license to use, reproduce, copy, display, distribute, syndicate, reformat and update (for example, to improve accuracy and/or standardize formats) any and all listing content, and all materials Merchant provides to Media Garden for disseminating the advertisement and delivering the Services including, but not limited to, all content in the Agreement, brochures, special offer content, website content, logos, videos, including those created by third party vendors, trademarks and brand features contained therein ("Creative"). Media Garden shall position the Creative within the Network at Media Garden's sole discretion within the Services and Campaign parameters specified. Media Garden may reject any information submitted by Merchant if, in Media Garden's reasonable belief, such information is inappropriate or misleading. Media Garden shall not be liable for any delays resulting from Merchant's failure to provide conforming Creative. Media Garden may sub license this right to any Directory Listings and other online partners. This license will survive any termination or expiration of this Agreement.

**18. Merchant's Intellectual Property:** Merchant grants permission to Media Garden to use, post, display and transform for marketing purposes during the term of this Agreement all trademark, copyrights and other intellectual property rights owned by Merchant.

**19. Indemnification:** Merchant agrees to indemnify and hold harmless Media Garden and Media Garden's directors, officers, employees, agents, managers, members, representatives, affiliates, successors and assigns (collectively, the "Media Garden Indemnified Parties") from and against any and all actions claims, demands, suits, liabilities, losses, damages, obligations, judgments, settlements, costs, and other expenses (including attorneys' fees, paralegals' fees and court costs) incurred or suffered by any of the Media Garden Indemnified Parties which relate to or arise out of any actual or alleged: (a) breach by Merchant of any of the representations, warranties or covenants of Merchant set forth herein; (b) violation by Merchant of any applicable law, ordinance, rule or regulation; (c) direct or contributory infringements of, or inducement to infringe, any state, federal or foreign patent, trademark, copyright or other proprietary right by reason of the manufacture, use or sale of the Materials, goods or services provided hereunder (other than infringement of proprietary marks arising from intellectual property supplied by Media Garden or a third party at Media Garden's direction), or for actual or alleged misuse or misappropriation of a trade secret resulting from Merchant's actions; (d) the failure of Merchant to comply with and observe any federal, state or local laws, agreements, codes, regulations and ordinances which may be applicable to Merchant, Merchant's business; or (e) any product liability or tort claims relating to the Materials or services provided hereunder to the extent caused by Merchant. Media Garden agrees to indemnify and hold harmless Merchant and Merchant's directors, officers, employees, agents, managers, members, representatives, affiliates, successors and assigns (collectively, the "Merchant Indemnified Parties") from and against any and all actions, claims, demands, suits, liabilities, losses, damages, obligations, judgments, settlements, costs, and other expenses (including attorneys' fees, paralegals' fees and court costs) incurred or suffered by any of the Merchant Indemnified Parties which relate to or arise out of any: (a) breach by Media Garden of any of the representations, warranties or covenants of Media Garden set forth herein; or (b) direct or contributory infringement of, or inducement to infringe, any state, federal or foreign patent, trademark, copyright or other proprietary right by reason of membership in the Network hereunder to the extent that such infringement of propriety marks arises from intellectual property supplied by Media Garden to Merchant or a third party to Merchant at Media Garden's direction or for actual or alleged misuse or misappropriation of a trade secret resulting from Media Garden's actions.

**20. Limitation Of Liability:** A. Media Garden shall not be liable to Merchant or any Merchant Indemnified Party for (i) any incidental or consequential damages of any kind (including, without limitation, lost profits); (ii) any punitive damages arising by virtue of any dealing between the parties; or (iii) any claims or demands against Media Garden by a third party arising out of, or connected with the Materials, goods or services provided hereunder. Media Garden's entire liability to Merchant for damages in connection with this Agreement shall not exceed in the aggregate the total contract price paid to Media Garden under this Agreement. Media Garden shall not be liable for messages posted on the Media Garden website by any third party. B. 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.

**21. No Implied Waiver:** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of that party to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision. Any waiver of the terms or conditions of this Agreement must be in writing.

**22. Non-Assignment:** Merchant may not assign or delegate its obligations under this Agreement without Media Garden's prior written consent. Media Garden may assign this Agreement to any party.

**23. Relationship of Parties:** Merchant and Media Garden are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**24. Governing Law and Dispute Resolution:** This Agreement shall be governed, construed and interpreted under the laws of the State of Massachusetts, without giving effect to its conflict of law rules. Media Garden and Merchant irrevocably agree that all actions or proceedings in any way, manner or respect arising out of or from or related to this Agreement shall be resolved by final and binding arbitration conducted under the Commercial Arbitration Rules of the American Arbitration Association by one arbitrator, with such arbitration being conducted in Hampton County, Massachusetts. Notwithstanding the foregoing, Media Garden reserves the right to seek temporary or permanent injunctive or other relief to protect its intellectual property in any court of competent jurisdiction. Each party hereby consents and submits to the jurisdiction of any local, state or federal court located within Hampton County, Massachusetts for the sole purpose of executing any final determination of such arbitration and waives any right it may have to transfer the venue of any such execution action. The prevailing party in any dispute concerning this Agreement shall be entitled to recover from the non-prevailing party all costs and expenses, including without limitation, attorneys' and paralegals' fees and costs incurred by such party in connection with any such dispute resolution.

**25. Severability:** If any term or condition of this Agreement is held invalid or unenforceable to any extent or in any application, then such term or condition shall automatically, and without any further action, be reformed so as to retain the fullest extent of any restriction therein permitted by law and the remainder of the Agreement, except to such extent or in such application, shall not be affected thereby, and each and every remaining term and condition of this Agreement shall be valid and enforced to the fullest extent and in the broadest application permitted by law.

**26. Entire Agreement/Amendment:** This Agreement (including these Terms and Conditions), together with any specifications, instructions, drawings, samples, descriptions and designs delivered to Merchant by Media Garden, constitute the entire agreement between Merchant and Media Garden with respect to the subject matter contained herein and supersede all prior oral or written representations and agreements. Except as otherwise expressly set forth herein, this Agreement may only be amended or modified by a writing signed by both parties. This Agreement may not be amended by custom, usage of trade, or course of performance or dealing. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns.

**27. Notices:** Notices may be personally delivered, or sent by certified mail, overnight courier or email to the parties' addresses on the face side of this form, or to such other address as a party may direct in writing.