

## Terms and Conditions

"You" and "your" refer to you, the advertiser. "We," "us," and "our" refers to: (i) in the context of print related services, HYP Media Finance LLC, and The Berry Company LLC ("Berry"); and (ii) in the context of Internet and other digital advertising services, Berry. "Advertising" means all content you provide to us ("Customer Content"), direct us to create or publish, or that we develop or procure for you, in any form or media, including in each case all tangible and intangible works of any kind (including, without limitation, text, graphics, artwork, maps, photographs, layouts, fonts, recordings, source code, object code, web sites, e-mail, links, video, audio, metadata, keywords or other materials). "Service" means any service which we may provide to you, including without limitation any services related to the publication and distribution of print or Internet Advertising, any website development service or any Internet related service. These Terms and Conditions, the applicable service schedules relating to the Advertising or Service described in the Order ("Service Schedules"), your advertising order ("Order") and any other forms authorized by us which by their terms are intended to be incorporated into these Terms and Conditions, constitute the entire agreement ("Agreement") between you and us concerning all matters relating hereto, and supersede any prior discussions, agreements, course of dealing or understandings between you and us relating to the Advertising or Service. This Agreement may be referred to in other documentation as a "Directory Advertising Order," "Internet Advertising Order" or such other term as we may use to refer to the terms and conditions governing the provision of the Advertising or Service. **All Service Schedules applicable to the Advertising or Service described in the Order are incorporated herein by reference. Copies of such Service Schedules are available at [www.BerryCustomerService.com](http://www.BerryCustomerService.com). You are responsible for reviewing all terms contained in this Agreement, including the relevant Service Schedules.**

**1. Your Order.** If (i) you sign the Order (physically, electronically or otherwise) or provide a recorded verbal authorization to place the Order or (ii) you otherwise receive these Terms and Conditions in confirmation of an unsigned Order and do not cancel the Order in writing within 7 days of our mailing of such confirmation (but in no case later than any applicable directory close date), you make a firm offer to us in which (a) the individual signing the Order represents and warrants that he or she is authorized to bind you to this Agreement; and (b) you agree to pay for the Advertising and Service as described in the Order. Rates quoted for the Advertising and Service are only for the specific items or directory(ies) shown in the Order and rates for any other item or directory (including any renewal) will be those in effect at the time of its publication.

**2. No Obligation To Publish or Provide Service.** We may choose not to publish any Advertising or provide any Service. We may also choose not to publish any directory or other listing. We will be bound by the Order only if and when we publish the Advertising or provide the Service (but only as to the Advertising published or Service provided, and not as to any Advertising or Service listed on the Order but not published or provided). Publication of Advertising in one issue of a directory does not obligate us to publish the Advertising in any subsequent issue of that directory. If we reject any Order, in whole or in part, we will refund any money you paid for rejected portions of the Order and will have no further obligation to you.

**3. Term.** Subject to automatic renewal as described in Section 4, the "Term" of each individual Advertising or Service shall be as follows: (i) For publication of Advertising in a print directory, and for publication of any other Advertising (including Internet Advertising) or provision of any other Service to any advertiser to whom we provide publication of Advertising in a print directory, the Term shall begin on the date of first publication of the Advertising or provision of Service and end upon the publication of the relevant replacement directory (or other discontinuance of the relevant directory). **The publication cycle of any directory or replacement directory, and consequently the relevant Term and your payment obligations, may be longer or less than 12 months without our providing any notice to you.** (ii) Except as otherwise expressly set forth in subsection (i) of this Section or the Order: (a) for publication of other Advertising on the Internet, the Term shall begin on the date of first publication of the Advertising on the Internet and continue for a period of one year and (b) for any other Service, the Term shall begin on the date we first provide the Service and continue for a period of one year (unless otherwise agreed in writing by you and us).

**4. Cancellation and Automatic Renewal.** You hereby request and authorize us to renew your Order for successive Terms (as defined in Section 3 above) unless you notify us in writing of your intent not to renew, at least 30 days prior to (i) for any print Advertising, the subsequent issue's close date or (ii) for any other Service or Advertising, the expiration of the then-current Term. **If we do not receive the written notice contemplated by the preceding sentence and we elect to renew, in our sole discretion, such renewal will be at our then-prevailing monthly rates and charges for a new Term.** We may send you notice of renewal containing any change in rates, but are not required to do so. We reserve the right: (i) not to renew your Order or any portion thereof (including for reasons described in Section 2 above) or (ii) upon written notice to you prior to commencement of any renewal Term, to eliminate or modify any terms, conditions, standards, specifications, products, headings, or policies (including, without limitation, priority placement of Advertising) relating to the Advertising or Service.

**5. Payment.** You agree to pay all charges due, plus any applicable taxes, fees or surcharges, in accordance with our billing terms. Unless otherwise stated, payment obligations commence upon publication of Advertising or delivery of Service. Publication of electronic Advertising may occur prior to the publication of a print Advertising. A late payment charge of 1.5% (\$2.00 minimum) per month may be applied to any unpaid balance and included on your bill for the subsequent month. Any check returned by your bank for whatever reason may be subject to a service charge in accordance with our then-current policies. You also agree to pay any reasonable costs of collection, attorneys' fees and expenses that we may incur in collecting any unpaid amount. If more than one party places the Order, all will be jointly and severally liable for all charges. We reserve the right to require partial or full payment in advance as a condition of publication or delivery of Service and to charge a reasonable fee for requests that exceed our customary services, including, for example, excessive content changes, protracted design development, premise visits or non-standard billing requests such as paper invoicing. If you do not pay charges owed by the due date, fail to meet any other obligation in this Agreement or make any representation or warranty that is or becomes untrue, we may, at our option and in addition to other rights and remedies, suspend, terminate or discontinue any Advertising or Service and declare the entire amount due for the Term payable in full. At our option, we may disclose information concerning you or your account to third parties, such as credit reporting agencies, and may request and act upon information received from them. You hereby authorize those third parties to provide such information to us.

**6. Publication.** We reserve the continuing right, but shall not be obligated, to reject, revise or discontinue publishing any Advertising and to require you to edit or modify the

same, for any reason, including but not limited to, your failure to conform to our editorial standards and specifications. Our editorial standards and specifications include but are not limited to all civil and criminal laws, rules and regulations, and public interest standards, as determined in our sole discretion. **We also reserve the right to make changes to Advertising or advertising media (including without limitation changes to content, layout, format, medium, scope, coverage area, publishing cycle or number of copies printed), and to determine all categories or locations that it will appear in respecting any electronic directories or listings, all without any notice to you.** We do not guarantee (i) any specific display advertising heading specifications or the position of Advertising under any heading, category, link or other location; (ii) the position or rank of any Advertising; (iii) that any Advertising or listing will appear at any particular URL or within any particular search engine; or (iv) that a specific number of people will access or view any Advertising. Failure to publish Advertising in a particular position shall not be the basis for claim or adjustment to the amount owed by you. We make no guarantee that the color in any Advertising can be exactly duplicated from a photograph, logo, or other material provided. You acknowledge that your published Advertising may be of a lower quality than, or otherwise differ from, the original Advertising copy or from any copy, proof or layout sheet supplied by us, in clarity, color, focus, size or other features. **It is your responsibility to review all Advertising prior to our publication deadlines.**

**7. Service Providers.** You agree that we may use third parties to provision any Order ("Service Providers"). Any terms and conditions between you and the Service Provider are not enforceable by you against us. We do not guarantee the identity of the Service Providers used to fulfill your Order. Other firms, which may be unaffiliated with us, are responsible for your telephone service and the accuracy of any directory listing.

**8. ARBITRATION.** ANY DISPUTE ARISING OUT OF OR RELATING TO THE ADVERTISING OR SERVICE (OTHER THAN CLAIMS WE MAY HAVE TO COLLECT AMOUNTS YOU OWE US) SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS THEN-PREVAILING COMMERCIAL RULES. EACH PARTY WILL BEAR THE COST OF PREPARING AND PROSECUTING ITS CASE. THE ARBITRATOR SHALL HAVE NO POWER OR AUTHORITY TO ALTER OR MODIFY THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE LIMITATIONS OF LIABILITY SET FORTH HEREIN. ALL CLAIMS MUST BE ARBITRATED INDIVIDUALLY, AND THERE WILL BE NO CONSOLIDATION OR CLASS TREATMENT OF ANY CLAIMS. THIS PARAGRAPH IS SUBJECT TO THE UNITED STATES ARBITRATION ACT. THE ARBITRATOR SHALL APPLY THE SUBSTANTIVE LAW OF OHIO AND SHALL LIMIT ANY REMEDIES TO THOSE PROVIDED IN THIS AGREEMENT.

**9. LIMITATION OF LIABILITY.** UNLESS OTHERWISE AGREED IN WRITING, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH YOU ACKNOWLEDGE, YOU AGREE THAT ANY LIABILITY WHICH WE MAY HAVE DUE TO ERRORS OR OMISSIONS IN THE ADVERTISING, THE DELIVERY OF SERVICE OR OTHER CLAIMS RELATING TO YOUR ORDER SHALL NOT EXCEED THE AMOUNT OF CHARGES INCURRED FOR THE AFFECTED ADVERTISING OR SERVICE FROM THE TIME WE ARE NOTIFIED OF THE ERROR OR OMISSION UNTIL ITS CORRECTION. ANY SUCH LIABILITY SHALL BE DISCHARGED BY ABATEMENT OF ALL CHARGES INCURRED FOR ANY COMPLETE OMISSION, OR BY REDUCTION OF THE APPLICABLE CHARGES IN PROPORTION TO ANY REDUCTION OF THE VALUE OF THE ADVERTISING OR SERVICE (AS DETERMINED SOLELY BY US) DUE TO ERROR OR OMISSION. ONCE A PRINT PUBLICATION IS PUBLISHED, IT IS PROHIBITIVELY EXPENSIVE TO CORRECT AN ERROR IN THAT ISSUE OF THE PUBLICATION; YOU EXPRESSLY WAIVE ANY RIGHT TO SUCH RE-PUBLICATION. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT OR ANY ORDER. THIS LIMITATION OF LIABILITY APPLIES TO US, ANY AUTHORIZED SALES AGENT(S) OR OTHER REPRESENTATIVES, ANY SERVICE PROVIDERS, ANY INVOLVED TELEPHONE COMPANY AND ANY AFFILIATES, DIRECTORS OFFICERS AND EMPLOYEES OF SUCH PARTY(IES). ANY LIABILITY DUE TO ERRORS, OMISSIONS, OR OTHER CLAIMS RELATING TO ANY FREE ADVERTISING OR SERVICE IS LIMITED TO, AND OUR OBLIGATIONS WILL BE DISCHARGED BY, CORRECTION OF THE ERROR OR OMISSION.

**10. Advertising Content and Intellectual Property Rights.** All Advertising will be our sole and exclusive property, except for: (i) Customer Content and (ii) "Third-Party Content," which means content we license from a third party. You grant us a perpetual, royalty-free, worldwide, unrestricted, sub-licensable, non-exclusive right and license to (i) use, copy, record, modify, display, publish and distribute Customer Content in any form or media, in connection with any Service or Advertising and (ii) grant third parties

the right, sublicense and authority to exercise all or any of the rights afforded to us under this Agreement, all on such terms as we deem appropriate. Use of Third-Party Content is subject to all terms and conditions imposed by the provider of such content. Except as expressly set forth in this Agreement, you agree that (i) you will have no rights in any Advertising; (ii) you have no right to use any Advertising except in connection with the Order; and (iii) you do not have the right to allow others to use any Advertising. You are solely responsible for all Advertising and will produce and deliver all Advertising in accordance with our then-current guidelines, procedures, and technical requirements, which we may change from time to time. If you fail to comply, we may cancel or suspend any Advertising or Service. Because of the massive volume of Internet data, we expressly disclaim any obligation to monitor web site content. You are solely responsible to register and protect any copyrights or other intellectual property rights you have in any Customer Content. As to any Advertising that we create for you, whether in whole or in part, or any derivative work that we create from the Advertising, you acknowledge that we are the author and sole owner thereof and irrevocably assign to us any independently copyrightable contribution which you might have made to such Advertising. You further acknowledge that we retain all right, title and interest, including the copyright, in such Advertising and that the Advertising does not constitute a joint work. You must obtain our prior written consent in order to reproduce the Advertising, to have it reproduced by others, or to otherwise use our name, marks or the Advertising in any way. You (i) grant us permission to collect information related to the usage and/or effectiveness of any Advertising or Service, including without limitation call counts, search engine clicks, web site visits, and email counts; we own all such information and (ii) agree that we may use the foregoing for any legal purpose. If the Advertising contains links, you hereby grant us and our sublicensees a perpetual, royalty-free, worldwide, unrestricted, sub-licensable, non-exclusive right and license to establish such links and to link users of the Advertising to the website(s) designated in any Advertising and to cause such links to open new browser windows and publish the websites designated by such links within such window.

**11. Warranties.** You represent and warrant that: (i) you have all required rights and authorizations, and are prepared, to sell all products and/or services in any Advertising; (ii) you have the right to use all copyrights, trademarks, service marks, trade names, logos, artwork, likenesses and other intellectual property rights in your Customer Content and to use and/or direct us to use all links and URLs in any Advertising, and in turn hereby authorize us to do the same; (iii) you are the author of all Customer Content and have the sole responsibility to register and protect the same, or you are authorized by the author of all Customer Content to reproduce, to prepare derivative works of, and to distribute copies of such content, and in turn hereby authorize us to do the same; (iv) the Advertising, publication of the Advertising and your use of the Service will not infringe any trademark, trade name, service mark, copyright, right to publicity, right of privacy, patent or other intellectual property right of a third party, nor will it constitute false, deceptive or unfair advertising or disparagement under applicable law; (v) the Advertising complies with all federal, state and local laws, rules and regulations, including without limitation licensing requirements, contest rules, and administrative and professional rules and regulations; (vi) you have all professional licenses, degrees or specialties appearing in the Advertising and the Advertising complies with the regulations of your business or profession; (vii) all statements contained in any Advertising are truthful and not misleading; (viii) any Advertising published pursuant to the Order is for your own account, is intended for your own business use, and is not for resale or any other use; and (ix) you will not use any Service to send mass, unsolicited email or spam to third parties or engage in any illegal, tortuous or abusive activity. You acknowledge and agree that you have sole responsibility for the content of the Advertising and that you will comply with all applicable laws, rules, and regulations in accepting and fulfilling orders, honoring any special offers and conducting any contest or drawing.

**12. Indemnification.** You agree to indemnify, defend and hold us, our authorized sales agents or other representatives, any telephone company on whose behalf we publish directories, any Service Provider and any affiliates, directors, officers and employees of such party(ies) harmless from any liability or costs, including, without limitation, attorney's fees and expenses, relating to (i) any breach of your representations, warranties and covenants; (ii) any act, omission or fault of you or your employees, agents or contractors in connection with the Order; (iii) any claim that the Advertising or other information provided by you, or your use of any Service violates any applicable law (including, without limitation, false advertising or defamation) or infringes upon a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) your collection or use of any information obtained through any Advertising or Service; (v) any viruses or other harmful code contained in the Advertising or otherwise included by you in connection with any Order; or (vi) any violation of this Agreement.

**13. Disconnects.** If you terminate the telephone service associated with any Advertising, you shall remain liable for all charges hereunder and we reserve the right to require immediate payment of all sums due for such Advertising for the remainder of the Term. Disconnection, modification or transfer of telephone numbers or service activity initiated by you and associated with any Advertising, may result in the omission or cancellation of the Advertising. You assume the risk of such result.

**14. Proofs.** If you are provided with a proof of any Advertising, we reserve the right to require you to return the proof to us, signed with your approval or corrections. Failure to return any proof may, at our option, result in cancellation of any Advertising or Service. We will not be responsible for errors resulting from any modified proof returned to us after our deadline. You understand that a proof is not a condition of sale.

**15. DISCLAIMERS. EXCEPT AS EXPRESSLY STATED HEREIN, ALL SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR**

**USE. WE DO NOT WARRANT THAT THE FUNCTION OF ANY COMMUNICATIONS NETWORK WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THERE WILL BE NO DEFECTS IN THE NETWORK(S) OF OUR SERVICE PROVIDERS, WHICH MAY CHANGE FROM TIME TO TIME WITHOUT NOTICE TO YOU.**

**16. Assignment.** You may not assign any of your rights or obligations without our prior written consent; provided, however, that such consent shall not be required in connection with the sale of all your assets or shares of capital stock or other ownership interests so long as you provide written notice of such sale to us. In the event of any assignment allowed by the preceding sentence: (i) this Agreement shall be binding upon your assignee and (ii) both you and your assignee shall be jointly and severally liable for the timely performance of your obligations. We shall have the right, in our sole discretion, to assign our rights and obligations under this Agreement.

**17. Notices.** Any writing or notice required by this Agreement shall be in writing and transmitted by certified mail, overnight courier, facsimile or electronic mail (in the later two instances, proof of transmission and receipt shall be required) as follows: if to you, to the street address, facsimile number or e-mail address shown on the Order; and if to us, to The Berry Company LLC, Attn: Customer Service, 3170 Kettering Blvd., Dayton, Ohio 45439-1924.

**18. Limitation Period.** Any claim you may have relating to any Order must be made in writing within 60 days of the date the claim arose (the date of publication for claims relating to print Advertising). Otherwise the claim shall be deemed waived by you.

**19. Severability.** If any provision of this Agreement shall be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected by such invalid or unenforceable provision; (ii) this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions; (iii) in lieu of such invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar to such invalid or unenforceable provision as may be valid, legal and enforceable; and (iv) our rights shall be construed and enforced accordingly.

**20. Force Majeure.** We shall not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, terrorist act, civil or military authority, act of God, or other similar causes beyond our control ("Condition(s)"). If any Condition occurs, we shall give notice to you and we may elect to: (i) terminate this Agreement or part thereof as to Service not already received or (ii) suspend this Agreement or part thereof for the duration of the Condition and resume performance once the Condition ceases with an option to extend the relevant Term up to the length of time the Condition endured. Option (ii) above shall be deemed selected unless we inform you otherwise in writing within 30 days following the occurrence of the Condition.

**21. No Approval or Endorsement.** You agree that: (i) we do not approve or endorse any product or service by publishing any Advertising; (ii) we do not to make any representation that we approve or endorse any product or service; (iii) we may publish any advertising of any other person or entity; and (iv) we do not approve or endorse any person or company we have referred you to for creative, design, or other services.

**22. No Limiting Endorsements.** You agree not to include any limiting endorsement on a check or other form of payment. We may cash a check containing a limiting endorsement without affecting your obligations or our rights.

**23. Electronic Signature.** When and where available, you consent to conducting business with us electronically in accordance with our approved format. You are solely responsible for maintaining and ensuring the security of any and all passwords obtained. All hosting environments and network connections are unsecured unless otherwise indicated by us in writing.

**24. Copyright Complaints.** To report an alleged copyright violation, you may send a notice that complies with the Digital Millennium Copyright Act ("DMCA") to the notice address above. For more information about the DMCA please visit <http://copyright.gov>. If we learn of a violation we may, in our sole discretion, take any of the following actions: (i) issue a warning; (ii) suspend or terminate Service; (iii) impose additional fees or charges; (iv) remove the offending content; or (v) take any other action we deem reasonable and allowed by law. We reserve the right to cooperate with any third-party investigations of alleged illegal or improper activity related to the Service or any Advertising and to monitor any Advertising or Service using network facilities, including efforts to prevent the introduction of viruses or other hostile code or to ensure compliance with laws and our guidelines, procedures and technical requirements.

**25. Advertising Including Information on Pricing and Promotions.** You agree that you will honor the prices or discount percentages quoted in any Advertising. You are encouraged to include expiration dates as circulation periods can change.

**26. Miscellaneous.** Our sales representatives are not authorized to modify or amend this Agreement. This Order does not create any partnership, joint venture, employee, franchisee, agency or other similar relationship. We will not lose any of our rights under this Agreement even if we do not enforce a right or delay in enforcing a right. The rights, obligations and remedies of you and us as specified under this Agreement shall be governed and enforced in all respects in accordance with the laws of the State of Ohio. You agree that your telephone conversations with us may be monitored or recorded.

**27. Customer Service Questions.** Please visit our website at [www.BerryCustomerService.com](http://www.BerryCustomerService.com) for Customer Service contact information and other information relating to your Order, including copies of the Terms and Conditions, any applicable Service Schedules, our Privacy Policy and our Acceptable Use Policy.