

# Advertising Terms and Conditions

These Advertising Terms and Conditions are hereby made part of the attached Advertising Contract (the "Advertising Contract") by and between the Radisson Community Association, Inc. (the "Publisher") and the advertiser named therein and party thereto ("Advertiser"). Each such party acknowledged that the following additional terms and conditions are incorporated in and made a part of the Advertising Contract.

## 1. Advertising Acceptance; Publisher's Right to Reject or Alter.

(a) From time to time, the parties may negotiate orders for inclusion of advertising into the Radisson Community Directory, Reflections Newsletter or other similar publication. Submission of an advertisement to Publisher does not constitute a commitment by Publisher to publish the advertisement. Publisher expressly reserves the right to review and inspect the proposed advertisement prior to acceptance. Publisher accepts advertising only by accepting payment and publishing such advertisement. Upon such acceptance, Advertiser acknowledges that (i) the terms and conditions set forth in this Agreement shall apply to all advertising orders unless such terms and conditions are modified, superseded or otherwise altered by a written instrument signed by an authorized representative of Publisher and (ii) the terms and conditions set forth in this Agreement shall prevail over any inconsistent terms and conditions set forth in any order or contract form of any Advertiser.

(b) Publisher has the right, in its sole and absolute discretion, to reject any advertisement or any portion thereof. Publisher's publication of an advertisement shall not affect its right to reject such advertisement thereafter.

(c) Publisher reserves the right to alter any advertising material in order for the material to conform to its current mechanical specifications. The rates stated in the Advertising Contract shall remain the same upon a reduction in the size of any advertisement as long as the advertisement maintains the same proportion of the entire page.

## 2. Lawful Advertising; Indemnification.

Advertiser represents and warrants that (a) any and all material submitted to Publisher (i) is accurate and original, (ii) does not violate any law or contract or infringe the copyrights, trademarks, trade names, patents or other intellectual property rights of any person, (iii) does not constitute unfair competition, and (iv) contains no matter which is libelous, an invasion of privacy or publicity, an unlawful appropriation of any name or likeness or is otherwise injurious to the rights of any person; and (b) Advertiser has obtained all necessary consents for publication prior to submission to Publisher.

Advertiser agrees to defend, indemnify and hold Publisher and its affiliates and their respective directors, officers, principals, managers, members, partners, shareholders, employees, and controlling persons and their affiliates (Publisher and each such person being an "Indemnified Party"), harmless from and against all damages to and liabilities resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, interest and penalties thereon and attorneys' fees, legal fees and any other expenses in respect thereof or in enforcing their rights hereunder, by reason of or resulting from or attributable to its breach of this Agreement, the publication of any advertisement by Publisher or the acts or omissions of Advertiser, its contractors, agents and employees.

## 3. Materials; Copyrights and Trademarks.

(a) Publisher has no obligation to return any material submitted to Publisher by or on behalf of Advertiser by any other party, and Publisher shall have no liability for its loss or destruction.

(b) Publisher shall have the right to use any advertising published in Publisher's publication for the purpose of promoting any of the products and services of Publisher. Advertiser grants Publisher a non-exclusive, perpetual, irrevocable and worldwide license to publish any and all advertising content created by Advertiser or its agents or Publisher, including but not limited to photographs, artwork, text and graphics, in any media, presently known or unknown, including but not limited to Publisher's electronic publications on the Internet, if any, and in any archival retrieval system whether that information is digitally stored or stored on any other media.

## 4. Position Requests.

Publisher shall not be deemed in breach of this Agreement in the event that it does not honor a specific position agreement due to conflicting editorial needs, in Publisher's sole discretion. In the event Advertiser has paid a premium for a particular position, reimbursement for failure to publish in a particular position shall be limited to the refund of such premium to Advertiser.

## 5. Limitation of Liability.

(a) Publisher's liability for errors or omissions in advertisements shall be limited to the cost of advertising space in an amount equal to the erroneous advertisement. Publisher's liability for failure to publish any advertisement or distribute any advertising insert shall be limited to a refund of any amount paid to Publisher for such advertisement or insert. Notwithstanding the foregoing, Publisher shall have no liability for, and no credit shall be issued to Advertiser for, errors that do not materially affect the

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value of the advertisement or advertising insert or where Advertiser is responsible for the error or omission.

(b) Notwithstanding anything to the contrary herein, in no event shall Publisher be liable to Advertiser or to any other parties for any further damages of any kind arising from any breach of this Agreement or any other advertising contract, written or oral, or act or omission of Publisher with respect to an advertisement or advertising insert or sponsorship, including but not limited to, direct, indirect, special, consequential or punitive damages.

(c) Publisher is not responsible for errors involving orders, cancellations or corrections given orally. Written or facsimile confirmation of orders, cancellations or corrections must be received prior to Publisher's cancellation deadline. Publisher will publish advertisements and Advertiser will not receive a refund or credit for any advertising orders that were not canceled prior to the deadline. Advertiser may be subject to a cancellation charge when such cancellation results in production delays.

**6. Payments.** Payments are due in advance of publication and must be made no later than the submission deadline identified in the Advertising Contract. Only cash or checks payable to Radisson Community Association will be accepted. Publisher may impose a returned check fee and processing charge for any payment that is unpaid by the bank upon which it is drawn.

**7. Integration.** Advertiser agrees that no representations of any kind have been made to Advertiser by Publisher or by any of its agents and that no understanding has been made or agreement entered into other than as set forth herein.

**8. Force Majeure.** Publisher shall not be liable for failure to publish or distribute any advertisement because of strikes, labor disputes, government action, war, fire, breakdown of equipment, terrorist act, or any other cause beyond its reasonable control.

**9. Taxes.** Any and all taxes levied against advertising shall be added to the advertising charges, including but not limited to any sales taxes.

**10. Assignment.** This Agreement and the rights and obligations hereunder are personal to Advertiser and may not be assigned by any act of Advertiser or by operation of law, change of control of Advertiser or otherwise without the prior written consent of Publisher, to be granted or not granted in Publisher's sole and absolute discretion. Advertiser may not assign to, nor utilize for the benefit of another person or entity, any of the lineage required to be purchased by Advertiser without Publisher's prior written consent, to be granted or not granted in Publisher's sole and absolute discretion.

**11. Severability.** If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement. To the full extent, however, that the provisions of any applicable law may be waived, they are hereby waived to the end that this Agreement be deemed a valid and binding agreement enforceable in accordance with its terms.

### **12. Representations and Warranties.**

Advertiser hereby represents and warrants to Publisher:

(a) It is duly incorporated or formed, as the case may be, validly existing and in good standing under the laws of the state of its incorporation or formation, as the case may be, and has all requisite power to conduct business in the State of New York.

(b) All action on the part of such party necessary for the authorization, execution and delivery of, and the performance of all of its obligations under, this Agreement has been duly taken. This Agreement constitutes a valid and binding obligation of such party, enforceable against it in accordance with its terms.

(c) The execution and delivery by such party of this Agreement do not, and the consummation of the transactions contemplated hereby will not, (i) violate or conflict with the organizational documents of such party or (ii) constitute a material breach or default or give rise to any lien or other encumbrance, third-party right of termination, cancellation, material modification or acceleration under any material agreement, understanding or undertaking to which it is a party or by which it is bound, or violate or conflict with any applicable law.