

Standard Terms & Conditions

These Standard Terms and Conditions (“**Standard Terms**”) shall be deemed incorporated by reference into any advertising insertion order (the “**Insertion Order**”) submitted by the party identified as advertiser in the Insertion Order, or its agency set forth in the Insertion Order (collectively, “**Advertiser**”), and shall govern the Insertion Order, superseding all terms therein except for those relating to advertisement scheduling and pricing. All Insertion Orders are subject to acceptance by WorldView Technologies, Inc. (“**WorldView**”) which administers the Kitchens.com website. Rates and the Standard Terms are subject to change without notice. WorldView reserves the right to refuse or cancel any Insertion Order, without cause, at any time, in its sole discretion. The Standard Terms and Insertion Order shall be collectively known as the “**Agreement**”. Advertiser and its agency (if applicable) shall be jointly and severally responsible under this Agreement.

1. Definitions

- (a) “**Banner Ad**” means the graphic file supplied by the Advertiser that contains the advertisement to be displayed and that can be selected by a user as a Link.
- (b) “**Click-Through**” means each occurrence of any visitor clicking on a displayed Banner Ad.
- (c) “**Impression**” means each occurrence of a display of a Banner Ad.
- (d) “**Link**” means a request for information from a server other than the Kitchens.com server.
- (e) “**Page**” means an HTML document that may contain text, images, or other on-line elements.
- (f) “**Start Date**” means the first day the Kitchens.com server will display a Banner Ad.

2. Term of Agreement

The term of this Agreement commences on the Start Date designated by WorldView in the Insertion Order and, unless terminated earlier pursuant to this Agreement, terminates after the number of Impressions specified in the Insertion Order are delivered. Any renewal of the Insertion Order and acceptance of any additional Insertion Order shall be at WorldView’s sole discretion. Pricing for any renewal period is subject to change by WorldView from time to time in its sole discretion.

3. Terms of Payment

Payments by Advertiser will be made in accordance with the payment terms set forth in the applicable Insertion Order. Amounts paid by Advertiser after any due dates shall bear interest at the rate of one-and-one-half percent (1.5%) per month (or the highest rate permitted by law, if less) until paid in full. In the event of any failure by Advertiser to make payment, Advertiser will be responsible for all reasonable expenses (including attorneys’ fees) incurred by WorldView in collecting such amounts. All payment amounts in this Agreement are in U.S. dollars and are exclusive of any applicable taxes and shall be made free and clear of, without reduction for, (and Advertiser shall be responsible for and shall indemnify WorldView against) any applicable

U.S. and foreign, state, and local taxes; value-added or sales taxes; withholding taxes, duties or levies and assessments, howsoever designated or computed, pertaining to the payments under this Agreement (excluding taxes based upon the net income of WorldView). Advertiser shall promptly furnish WorldView with tax receipts evidencing the payment of any taxes referred to in the preceding sentence. WorldView and Advertiser shall cooperate with each other in minimizing any applicable tax and in obtaining any exemption from or reduced rate of tax available under any applicable law or tax treaty.

4. Positioning.

Although WorldView may endeavor to target Banner Ads based on industry, product areas or other factors, all Banner Ads are run-of-site and the positioning of Banner Ads within the Kitchens.com website or on any Page is at the sole discretion of WorldView. Any provision in an Insertion Order purporting to require a particular Page or position will not be binding on WorldView, but shall be treated as a request only. In no event will adjustments, reruns, or refunds be made because of the Page, section, or position in which a Banner Ad has been published.

5. No Assignment or Resale of Ad Space.

Advertiser may not resell, assign, or transfer any of its rights hereunder. Any attempt by Advertiser to resell, assign or transfer such rights shall result in immediate and automatic termination of this Agreement, in which case WorldView shall be released of any obligations and liabilities arising under this Agreement.

6. Provision of Advertising Materials.

Advertiser will provide all materials for the Banner Ads in accordance with WorldView's policies in effect at the time, including without limitation the manner of transmission to WorldView and the lead-time prior to display of the Banner Ad. WorldView shall not be required to display any Banner Ad that is not received in accordance with such policies and reserves the right, at WorldView's sole discretion, to charge Advertiser for any inventory or work-in-process held by WorldView pending receipt of acceptable materials from Advertiser which are past due, or display in substitution any prior Banner Ad submitted by Advertiser. All changes to Banner Ads must be delivered to WorldView prior to the lead-time deadline. Advertiser hereby grants to WorldView a nonexclusive, worldwide, royalty-free license to use, perform, reproduce, display, transmit, and distribute the Banner Ads and all contents therein in accordance herewith.

7. Statistics.

WorldView makes no guarantee with respect to usage statistics or Click-Throughs for any Banner Ads. Advertiser acknowledges that delivery statistics provided by WorldView are the official and definitive measurements of WorldView's performance on any delivery obligations provided in the Insertion Order. No other measurements or usage statistics (including those of Advertiser or third parties) shall be accepted by WorldView or have any effect on this Agreement. Any Impressions or Click-Throughs originating from the ISP number of the Kitchens.com server shall not be counted toward the fulfillment of the responsibilities of WorldView.

8. Right to Reject Advertisement.

All contents of Banner Ads are subject to WorldView's approval. WorldView reserves the right to reject or cancel any Banner Ads, Insertion Orders, Link or position commitments, at any time, for any reason whatsoever (including belief by WorldView that any placement thereof may degrade the graphic quality or "look-and-feel" of the Kitchens.com website, may subject WorldView to criminal or civil liability or that is inconsistent with WorldView's policies or business objectives).

9. Proprietary Rights.

WorldView retains all right, title and ownership interest in and to the Kitchens.com website, including all intellectual property and proprietary rights therein. The Kitchens.com website may contain the copyrighted material, trademarks, and other proprietary information of WorldView and its licensors. Except for that information which is in the public domain or for which you have been given permission, you will not copy, modify, publish, transmit, distribute, perform, display, or sell any such proprietary information.

10. No Warranty.

WORLDVIEW MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WITHOUT LIMITATION ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE.

11. Limitations of Liability.

In the event that WorldView fails to deliver the number of Impressions specified in the Insertion Order, or in the event of any other failure, technical or otherwise, of such Banner Ad to appear as provided in the Insertion Order, the sole liability of WorldView and exclusive remedy of Advertiser shall be limited to placement of the Banner Ad at a later time until the total Impressions are delivered. IN NO EVENT SHALL WORLDVIEW BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, LOST PROFITS, INDIRECT OR OTHER DAMAGES, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, EVEN IF WORLDVIEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. WORLDVIEW'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM IS LIMITED TO THE AMOUNT RECEIVED BY WORLDVIEW FROM ADVERTISER FOR THE INSERTION ORDER GIVING RISE TO THE CLAIM. Without limiting the foregoing, WorldView shall have no liability for any failure or delay resulting from delays, breakdowns or disruptions to the Internet or other communications facilities, or any governmental action, natural disaster, power failure, 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 WorldView. Advertiser acknowledges that WorldView has entered into this Agreement in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

12. Advertiser's Representations; Indemnification.

Advertiser represents and warrants to WorldView that Advertiser holds all necessary rights to permit the use of the Banner Ads by WorldView for the purpose of this Agreement; and that the use, reproduction, distribution, transmission or display of Banner Ads, any data regarding users, and any material to which users can link, or any products or services made available to users, through the Banner Ads will not: (a) violate any criminal laws or any rights of any third parties; or (b) contain any material that is unlawful or otherwise objectionable, including without limitation any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law. Advertiser assumes all liability for its Banner Ads and agrees to indemnify, defend and hold WorldView harmless from and against any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to: (c) breach of any of the foregoing representations and warranties; or (d) any third-party claim arising from display or use of or access to the Banner Ads under this Agreement or any material to which users can link, or any products or services made available to users, through the Banner Ads under this Agreement.

13. Construction.

No term or condition other than those set forth in the Standard Terms or in the Insertion Order relating to Banner Ads scheduling and pricing shall be binding on WorldView unless in a writing signed by duly authorized representatives of the parties. Waiver of the Insertion Order or this Agreement by WorldView for the convenience of the Advertiser shall not prevent WorldView from subsequently enforcing all the terms hereof. In the event of any inconsistency between the Insertion Order and the Standard Terms, the Standard Terms shall control. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. The terms and conditions hereof shall prevail exclusively over any written instrument submitted by Advertiser, including Advertiser's Insertion Order, and Advertiser hereby disclaims any terms therein, except for terms therein relating to Banner Ads scheduling and pricing. Any change to this Agreement must be made in writing and signed by both parties. WorldView is not bound by any verbal Insertion Order or other agreement, nor by any arrangement not specifically stated in this Agreement.

14. Confidentiality.

"Confidential Information" shall mean: (a) Banner Ads, prior to publication; (b) the Insertion Order and any WorldView statistics that shall be deemed WorldView Confidential Information; and/or (c) any information designated in writing, or identified orally at time of disclosure, by the disclosing party as "confidential" or "proprietary". During the term of this Agreement, and for a period of two (2) years following this term, neither party will use or disclose any Confidential Information of the other party except as specifically contemplated herein. The foregoing restriction does not apply to information that: (d) has been independently developed by the receiving party without access to the other party's Confidential Information; (e) has become publicly known through no breach of this Section by the receiving party; (f) has been rightfully received from a third party authorized to make such disclosure; (g) has been approved for release in writing by the disclosing party; or (h) is required to be disclosed by a competent legal or governmental authority.

15. Termination; Effect of Termination.

(a) Material Breach by Advertiser. In the event of a material breach by Advertiser, WorldView may terminate this Agreement immediately without notice or cure period and without liability to WorldView. In the event of any such termination, Advertiser shall remain liable for any amount due under Insertion Orders delivered to WorldView and such obligation to pay shall survive any termination of this Agreement.

(b) Material Breach by WorldView. In the event of a material breach by WorldView, Advertiser may terminate this Agreement upon prior written notice to WorldView, provided that WorldView has not cured such material breach within thirty (30) calendar days of such notice. WorldView shall refund or credit Advertiser for the unused pro-rata portion (based on the number of Impressions delivered compared to the number of Impressions purchased pursuant to the applicable Insertion Order) of the price of the advertising package purchased. Except as otherwise provided in this Section, Insertion Orders are not cancelable by Advertiser.

(c) Without Cause. WorldView shall be entitled to terminate this Agreement without cause upon thirty (30) calendar days written notice; provided, however, that WorldView shall refund or credit Advertiser for the unused pro-rata portion (based on the number of Impressions delivered compared to the number of Impressions purchased pursuant to the applicable Insertion Order) of the price of the advertising package purchased.

(d) Effect of Termination. If the parties contemplate any provision to survive any termination or expiration of this Agreement, such provision shall survive such termination or expiration. At the request of the disclosing party, the receiving party shall return all of the disclosing party's Confidential Information to the disclosing party.

16. Miscellaneous.

This Agreement: (a) shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to principles of conflicts of law; and (b) will not be governed by the United Nations Convention of Contracts for the International Sale of Goods. Advertiser shall make no public announcement regarding the existence or content of the Insertion Order without WorldView's prior written approval, which approval shall not be unreasonably withheld. Any dispute hereunder will be negotiated in good faith between the parties within forty-five (45) calendar days commencing upon written notice from one party to the other. Any notices under this Agreement shall be sent to the addresses set forth in the Insertion Order (or in a separate writing) by facsimile or nationally recognized express delivery service and deemed given upon receipt. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. If any provision contained in this Agreement is determined to be invalid, illegal, or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the original intention of the parties, and the remaining provisions of this Agreement will remain in full force and effect.