

## SPECIFIC TERMS AND CONDITIONS – ADVERTISING SERVICES

These Specific Terms and Conditions – Advertising Services and the Procurement Standard Terms and Conditions (<http://www.qwest.com/about/company/business/terms.html>) apply to Qwest's purchase of Services.

### 1. DEFINITIONS:

- 1.1 "Marketing Project Request" means an Order tool used by Qwest to purchase Services that generally includes the scope of work required for a specific project, including deliverables and due dates, budget parameters when available and other documentation as appropriate to the Services.
- 1.2 "Services" means any work performed by or for Supplier in connection with the Order, including the products, materials, and other items to be prepared by or on behalf of Supplier or delivered to Qwest, as described in the Order.
- 1.3 "Supplier Materials" means previously developed materials, including without limitation software and related documentation, previously copyrighted or patented by, or otherwise proprietary to, Supplier and not originally prepared hereunder.
- 1.4 "Third-Party Materials" means any materials that are incorporated in advertising or other materials prepared by or on behalf of Supplier in connection with the Order and are owned or licensed by an entity other than Supplier or Qwest.

### 2. PRIOR APPROVALS:

Supplier will submit to Qwest for prior review and approval, in adequate time as determined by Qwest to meet the production schedules agreed to by Qwest and the Supplier, all copy, art (creative designs), media plans, proposed expenditures for advertising in publications, on radio and television, all agreements entered into as agent for Qwest, and all other related materials. Such approval must be confirmed in writing and will be deemed effective only if granted by Qwest's primary contact(s), as listed in the Order and updated or otherwise modified by Qwest as necessary. Supplier acknowledges that only such primary contacts have authority to commit to expenditures and provide the necessary approvals that will allow for completion of projects.

### 3. CHANGES:

#### 3.1 Changes to Existing Orders and Marketing Project Requests.

Qwest will notify Supplier to add to, modify, cancel or terminate (collectively, "Change(s)") the Services, as required. Supplier will obtain written confirmation of all Changes if notice was not provided in writing.

#### 3.2 Changes involving New Requests,

Supplier will promptly carry out instructions involving new requests upon receipt of instructions from Qwest, using its best efforts to perform no act or omission that may increase the expense to Qwest in connection with an Order beyond those unavoidable, non-cancelable expenses inherent in the Services that have been agreed to prior to receipt of the applicable Change instructions. If Supplier does take action to increase expense beyond what is unavoidable, or does not take appropriate action where necessary to avoid such increase. Qwest will not be liable for any such increased expense.

### 4. EFFECT OF TERMINATION:

Immediately upon the expiration or termination of the Order for any reason, or at any time upon the request of Qwest, to the greatest extent not inconsistent with any entity's rights in Third-Party Materials and Supplier Materials, any and all used and unused advertising plans, ideas, and materials paid for by Qwest (all of which Supplier acknowledges and agrees will be Qwest's property) will immediately be returned to Qwest or its designee. Supplier agrees that, in the event that the Order expires or is terminated for any reason, Supplier will reasonably transfer according to Qwest's instructions, all reservations, contracts, and arrangements with advertising media or others for advertising space, broadcasting time, or materials yet to be used and all rights and claims thereto. All amounts due and owing for work performed prior to termination that are not the subject of a dispute will be paid in full by Qwest.

## **5. THIRD PARTY EXPENSES:**

### **5.1 Reimbursable Expenses.**

Qwest agrees to reimburse Supplier for reasonable and necessary fees and expenses that Supplier pays to third parties with no mark-up or handling fee for providing services directly to Qwest, provided however, that such fees and expenses were approved in advance in writing by Qwest and meet Qwest's standard guidelines for reimbursement which, if applicable, will be included in the Order (collectively, "Reimbursable Expenses").

### **5.2 Bids and Invoices.**

- (a)** When Qwest provides prior written consent to subcontract Services, Supplier will use commercially reasonable judgment to select third-party suppliers to bid on and perform the Services. Supplier will obtain at least 3 subcontractor bids for any Service(s) priced in excess of \$25,000 and for any print/lettershop Service priced in excess of \$10,000. Supplier will obtain at least 4 subcontractor bids if a print project is estimated to exceed \$300,000. Supplier will review the bids received and recommend the bid that, in Supplier's reasonable judgment, provides the highest value to Qwest for the least cost when considering the schedule for performance and the required level of quality. The recommended bid will be promptly sent to Qwest for approval, along with information regarding the other bid(s) received by Supplier. Qwest will review the recommendation and the information regarding the other bid(s) and, if the recommendation is approved, provide Supplier with written authorization to proceed with the recommended subcontractor. If, for any reason, Qwest does not approve Supplier's recommendation, Qwest may give written directions to Supplier to (a) proceed with one of the other bids or (b) obtain and submit additional bids.
- (b)** Supplier will submit invoices for Reimbursable Expenses (including amounts owed to subcontractors) to Qwest monthly. However, Supplier may, with Qwest's prior written approval, submit certain invoices (e.g., those for other production work or subcontractors) in advance or upon job completion. Supplier will identify all expenses (e.g., printing, lodging, meals, travel) and make available for audit all receipts equal to or greater than \$50. In the case of a subcontractor whose bid has been accepted, Supplier will promptly forward a complete copy of the subcontractor's invoice. Any taxes imposed on the provision of Services or materials will be separately stated on any invoice. Qwest reserves the right to request and receive from Supplier supporting documentation regarding any taxes, expenses, or other charges that Supplier claims Qwest is obligated to pay. Qwest is under no obligation to remit any disputed amounts on any invoice until such dispute is resolved. When Supplier invoices Qwest for any payment that Supplier claims to have made to a third party, before paying the invoice, Qwest may require Supplier to furnish evidence of Supplier's payment.
- (c)** Qwest will not be obligated to pay any amounts that exceed Supplier's estimates as previously approved by Qwest. If Supplier knows or expects that any fees or expenses may exceed such estimates, Supplier will immediately notify Qwest in writing providing the amount(s) in excess and the reason(s). Supplier will not incur or authorize such excess fees or expenses unless it receives prior written authorization from Qwest. If any term of any Supplier estimate conflicts with the Order, such conflicting term will be deemed null and void.
- (d)** Supplier acknowledges and agrees that it will be fully and solely responsible for paying all subcontractors, agents, and others with whom Supplier deems necessary to provide the Services, unless otherwise agreed to in writing by Qwest. Qwest reserves the option, at its sole discretion, to directly pay a subcontractor, agent or others with whom Supplier deems necessary to provide the Services.
- (e)** Supplier acknowledges and agrees that Qwest will not be liable to Supplier or any of Supplier's subcontractors for any late fees, late-payment interest, charges, or other penalties resulting from late, incorrect, or missing Invoices for Reimbursable Expenses to Qwest.

## **6. SUPPLIER'S REPRESENTATIONS AND WARRANTIES:**

### **6.1 Supplier Acknowledgment of Responsibility.**

Supplier acknowledges and agrees that it will be responsible for the quality, completeness, and coordination of all information, materials, aids, testimonials, projects, reports, and other items and Services developed and furnished in connection with the Order.

### **6.2 Additional Representations and Warranties.**

Supplier further represents and warrants that:

- (a) the Services will be performed in accordance with all applicable governmental laws, ordinances, codes, and regulations, including without limitation the Telecommunications Act of 1996;
- (b) the Services will be performed in accordance with all advertising guidelines, rules, regulations and orders of the Federal Trade Commission, National Advertising Review Council, National Advertising Division, National Advertising Review Board, Children's Advertising Review Unit, Electronic Retailing Self-Regulation Program, or any other body governing advertising; and
- (c) Supplier owns or will own, either directly or by written assignment from its contractors and subcontractors (which assignments Supplier will provide to Qwest upon request), all right, title, and interest, including all intellectual property and other proprietary rights, necessary for Supplier to provide Qwest the ownership interest in and to the Work Product set forth in the Section "Work Product" of these Specific Terms and Conditions.

### **6.3 Compliance with Qwest Policies.**

Supplier will comply with Qwest legal and business policies affecting the performance of the Services, including but not limited to advertising guidelines, trademark clearance guidelines, brand guidelines, and privacy policies. Such policies and guidelines will be provided to Supplier.

## **7. FURNISHING OF LABOR, TOOLS, EQUIPMENT AND MATERIAL:**

### **7.1 Supplier Responsibility for Labor, Tools Equipment and Material.**

Supplier will supply all labor, supervision, machinery, tools, equipment, fuel, power, materials, expendable supplies, transportation, licenses, permits, bonds, and any other items necessary for the performance of the Services except such items which Qwest specifically agrees to furnish. All materials, supplies, and other items purchased by Supplier will be in Supplier's own name and account, provided, however, subject to Qwest's prior approval under the terms and limitations of the Section titled "Agency," Supplier may state in its agreements with vendors that it is acting as Qwest's agent. Supplier will be responsible for all freight and delivery, costs of materials, supplies, equipment, and other items at its work site(s) and will be responsible for in-transit loss or damage. The parties acknowledge and agree that all labor, tools, and equipment used in connection with the Services are included in the Service fee negotiated between the parties and set forth in the Order.

### **7.2 Supplier Responsibility for Marks.**

Supplier will conduct in-house, on-line searches for all new trademarks, service marks, trade names, logos, and slogans ("Marks") developed or used hereunder (unless such Marks are provided by Qwest) and forward the search results to Qwest. Qwest will be responsible for obtaining comprehensive searches and for final clearance of the Marks before Supplier uses the same in any Materials created or produced hereunder. If Qwest chooses to seek to register any of the Marks, Qwest will be solely responsible for the application and registration process, including without limitation commissioning and paying for, whether through Supplier or otherwise, any comprehensive, vendor-performed availability searches.

## **8. WORK PRODUCT:**

### **8.1 Work Product.**

All materials, including sketches, drawings, data, records, reports, specifications, proposals, software and related documentation, inventions, materials, ideas, concepts, research, and any other items discovered, prepared or developed by or for Supplier in the course of or resulting from performance in connection with the Order will be considered Work Product prepared for Qwest. If the Work Product prepared for Qwest

includes any Supplier Materials or Third-Party Materials, Qwest will have the rights in the Supplier Materials or Third-Party Materials as set forth in the Procurement Standard Terms and Conditions.

## **8.2 Third Party Materials.**

Supplier will inform Qwest in writing each time Services involve rights in Third-Party Materials, describing in detail the nature and scope.

## **8.3 Perfection of license.**

Supplier agrees (a) not to challenge or seek to register with any governmental or other entity anywhere in the world Qwest's rights in Work Product and (b) to cooperate fully with Qwest to enable Qwest to perfect and enjoy its rights in Work Product, including without limitation executing and delivering to Qwest, whether during the term of the Order or thereafter, any document(s) that Qwest reasonably believes necessary to protect such rights.

## **9. CONFIDENTIAL INFORMATION:**

### **9.1 Title and Use of Confidential Information.**

Title to all property and Confidential Information owned by Qwest and furnished to Supplier under the Order hereunder will remain with Qwest (subject to applicable limitations, if any, on rights in Third-Party Materials and Supplier Materials). Any property and Confidential Information owned by Qwest and in Supplier's possession or control will be used by Supplier and its suppliers only in the performance in connection with the Order unless otherwise authorized in writing in advance by Qwest. Supplier will give such property and Confidential Information sufficient protection to keep it confidential and will promptly return the same to Qwest after use or upon expiration or termination of the Order or upon request.

### **9.2 No License.**

Nothing in the Order will be construed to grant Supplier any right, title, or interest, including without limitation any license interest, in or to any copyrights, inventions, patents, trademarks, service marks, trade names, trade secrets, or any other property now or hereafter owned or controlled by Qwest, provided, however, that Supplier may use such property as reasonably necessary to perform the Services.

## **10. AGENCY:**

Subject to Qwest's prior written approval, Qwest hereby appoints Supplier as its agent solely for the limited purpose of negotiating and entering into agreements with third parties for the provision of goods or services directly to Qwest in connection with the Order.

## **11. ADDITIONAL INDEMNIFICATION:**

Supplier will also indemnify, defend and hold harmless Qwest (including its officers, directors, employees and agents) and its affiliates against any loss, cost, expense or liability (including without limitation attorneys' fees and costs and awarded damages) sustained because of (i) Supplier's failure to obtain or maintain any permits or licenses required in the ordinary course of business arising in connection with the Order, or (ii) Qwest's use of the Services, except to the extent that any such claims or demands are based solely on materials provided by Qwest hereunder and not altered thereafter, or on Marks approved by Qwest.

## **12. ADDITIONAL INSURANCE REQUIREMENTS:**

### **12.1 Advertising Agencies Professional Liability.**

Supplier will maintain Advertising Agencies Professional Liability insurance, covering errors and omissions of the Supplier and including media liability coverage, with limits of not less than \$2,000,000 per occurrence and endorsed to provide contractual liability with respect to liability assumed by Supplier hereunder. Such insurance will provide a retroactive date prior to the date of the Order and an extended claims reporting period of not less than 1 year after the termination of the Order.

### **12.2 Contests, Sweepstakes or Games.**

If Supplier services involve contests, sweepstakes or games, Supplier will maintain liability insurance that

includes coverage for the promotion and end-to-end administration, including coverage for over-redemption of prizes, with limits of not less than \$2,000,000 per occurrence with a retroactive date prior to the date of the Order and an extended claims reporting period of not less than 1 year after the termination of the Order.

### **12.3 Production Insurance.**

If Supplier services involve advertising production, Supplier will be responsible to secure and maintain, or require production company to secure and maintain, Production Insurance covering general liability, hired/non-owned automobile liability, workers compensation, equipment, negative and faulty stock, third party property damage, and errors and omissions with limits of not less than \$2,000,000 per occurrence. If any production involves the use of aircraft for filming purposes, the Supplier will be responsible for securing aircraft liability through the aircraft supplier/owner with limits of not less than \$5,000,000. Qwest will be named additional insured on the Production general liability, Production hired/non-owned automobile liability, Production errors and omissions and Aircraft Liability insurance policies noted above for services related to the Order.

### **12.4 Property Insurance.**

Supplier will maintain "All-Risk" Property insurance on a replacement cost basis covering Qwest property in Supplier's care, custody or control, including while in transit.

### **12.5 Aircraft, Helicopters or Balloons.**

- (a) If Supplier secures events which require the use of aircraft or helicopters, owner/operator will provide Aircraft Liability covering the ownership, operation and maintenance of all owned and non-owned aircraft with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage, including passengers. Qwest and Supplier are to be named as additional insured for services related to the Order.
- (b) If Supplier secures events which require the use of hot air balloons, owner/operator will provide hot air balloon liability covering the ownership, operation and maintenance of all owned and non-owned balloons with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage, including passengers. Qwest and Supplier are to be named as additional insured for services related to the Order.

### **12.6 Risk of Loss.**

Supplier will be responsible and pay any loss or damage to property owned by Qwest in Supplier's care, custody or control. Unused Qwest property will be returned to Qwest upon the expiration or termination of the Order.

### **12.7 Subrogation.**

Policies will contain provisions waiving any rights of subrogation in favor of the insured and against Qwest, Qwest's representative, or any agent or subcontractor under Qwest's control.

## **13. ASSIGNMENT WITH RESPECT TO CERTAIN CONTRACTS:**

Notwithstanding anything to the contrary herein, any contract that Supplier will have entered into with talent or for music or other elements for Qwest's advertising will be assigned at the request of Qwest or simultaneously on the effective date of termination at the request of Qwest provided that such assignment does not cause Qwest or any of its other advertising agencies to become a signatory to any collective bargaining agreements with any unions in the entertainment industry such as, without limitation, SAG, AFTRA, AMPTP, WGA, and DGA ("Union Agreements"), to Qwest or its designee.. Upon assignment, Qwest will assume all the rights and obligations under the contract and any union obligation that would have been applicable to Supplier, and Supplier will be relieved of any responsibility or liability incurred after said assignment, provided, however, that Supplier will immediately provide Qwest with a copy of all such contracts and upon request, will provide reasonable assistance to Qwest as Qwest assumes the obligations thereunder.

## **14. NO CONFLICTS OF INTEREST:**

Supplier affirms that it does not provide similar Services to any other entity that offers telecommunications

or internet services similar to those provided by Qwest and that therefore no conflict of interest with any third-party agreement exists. Supplier agrees that if it provides Services to Qwest in a region of the world such as North America, South America, Europe, Asia, Africa, Australia, or Antarctica (each, a "Region"), Supplier will not provide similar services to any other entity offering in that particular Region telecommunications or internet services similar to those provided by Qwest.

**15. SURVIVAL:**

The following provisions of these Specific Terms and Conditions – Advertising Services regarding “Effect of Termination”; “Third Party Expenses”; “Supplier’s Representations and Warranties”, “Work Product”; “Confidential Information”; and “Indemnification” and all others that by their sense and context are intended to survive the expiration of the Order will survive.

**16. SEQUENTIAL LIABILITY FOR ADVERTISING:**

Supplier will make arrangements to place the advertising as agent for Qwest when a “Buy Authorization Form” has been signed by both parties and authorized by Qwest. All media placements or purchases will be on the basis of sequential liability where the Supplier will be solely liable to the media supplier for media placed by the Supplier on behalf of Qwest to the extent payment has been made from Qwest to the Supplier as identified in the Order. With respect to the media suppliers, Supplier is acting as Qwest’s payment agent. For media sums owing to a media supplier, but not paid by Qwest to Supplier, Qwest will be solely liable to the media supplier.