

## NEPTUNE FREE STANDING INSERT PROGRAMS – U.S.

The terms herein are incorporated into, form a part of and govern the agreement for co-op free-standing insert services between Client and CB Neptune Holdings, LLC., (collectively, the “**Agreement**”). Each Letter of Commitment (as defined below) shall be subject to the terms and conditions of the Agreement.

**1. Program Description.** Neptune shall provide free-standing inserts (each an “**Insert**”) containing advertising and/or promotional materials supplied by Client (together with all advertising copy, art, mechanicals and final film and other materials provided to Neptune, collectively “**Client Materials**”), as well as advertising and/or promotional materials furnished by other advertisers, for distribution in the markets agreed upon for each letter of commitment signed and delivered by Client (each a “**Letter of Commitment**”).

### **2. Client Materials.**

(a) Client shall be responsible for the submission of all Client Materials (including any changes thereto), the signed Letter of Commitment and the relevant market list to Neptune on or before the due dates (the “**Due Dates**”) specified in the applicable Letter of Commitment. Client hereby licenses Neptune the right to use all such Client Materials as contemplated hereby. All changes requested by Client with respect to Client Materials must be agreed to in writing by both parties. All Client Materials submitted to Neptune must conform to Neptune’s specified formatting and printing guidelines. Failure by Client to timely deliver Client Materials on or prior to the Due Dates shall render the applicable Letter of Commitment subject to cancellation by Neptune, subject to Section 5(a). If Neptune includes Client Materials in the applicable Insert notwithstanding late delivery of Client Materials, the signed Letter of Commitment or the relevant market list, Client shall be liable for all applicable late delivery charges per the prevailing rate card (collectively, the “**Late Delivery Charges**”). Neptune reserves the right by notice to Client, to change the Due Dates to dates earlier than those set forth in the applicable Letter of Commitment.

(b) Neptune reserves the right to reject in its reasonable discretion any Client Materials if inappropriate for publication. Should Client fail to re-deliver conforming Client Materials by the Due Dates, Neptune has the right to cancel the Program.

(c) Unless otherwise authorized in advance, or unless provided for herein, Neptune will not make any material changes to Client Materials without the consent of Client. Neptune reserves the right to make immaterial changes (e.g., change or lighten type, cuts, and borders) to Client Materials without submitting proof thereof to Client.

(d) Neptune shall not be responsible for publishing in an Insert more than one version of Client Materials or for publishing any specific features, except as indicated in the applicable Letter of Commitment or in an addendum thereto signed by both Neptune and Client.

(e) Delivery of Client Materials, including without limitation any product samples or other materials to be included in an Insert, shall be furnished by Client to Neptune, delivery duty paid, to such locations as Neptune may designate from time to time.

### **3. Price and Payment.**

(a) Client shall pay Neptune for each Letter of Commitment the Circulation Charges, Production Charges and Other Charges (each as defined below and, collectively, the “**Program ap Rates**”) set forth in the body of the Agreement. “**Market List Circulation**” means, for each Letter of Commitment, the circulation of the distribution vehicle distributing the Insert containing Client Materials in the agreed upon markets, as calculated by reference to Neptune’s then current market list (as updated from time to time by Neptune, the “**Market List**”). Neptune may update the Market List one or more times per calendar year to account for changes in reported circulations. “**Other Charges**” means, collectively, (i) any surcharges imposed based on the content of Client Materials, (ii) all additional or special charges for oversize or special coupons which include, without limitation, additional charges for ink, paper, press time, and distribution and loss of revenue due to space configuration necessary to accommodate oversize coupons, (iii) all additional production and media work done by Neptune (at Neptune’s then current rates), and (iv) any other applicable fees set forth in the Letter of Commitment. “**Production Charges**” means the production charges applicable to the Letter of Commitment, plus any applicable Late Delivery Charges. Neptune in its sole discretion reserves the right to change and/or increase FSI pricing with thirty (30) calendar days notice to Client. All amounts due for each Letter of Commitment are exclusive of all applicable taxes. Client shall be responsible for all Federal, State, municipal and other taxes imposed on all services performed by Neptune.

(b) Should Neptune, in its discretion, extend credit to Client, the total Program Fee will be invoiced approximately four (4) weeks prior to the scheduled publication date and shall be due no later than thirty (30) days from the invoice date. Should Neptune, in its discretion, decline to extend or revoke the extension of credit to Client at any time, the total Program Fee must be received by Neptune along with the executed Letter of Commitment or when invoiced to the extent such charges are not known at the time the Letter of Commitment is executed. To be considered for credit, Client must provide Neptune with a completed credit application and such other information as Neptune may request from time to time.

(c) Client shall be responsible for payment of all amounts due to Neptune under each Letter of Commitment, whether such Letter of Commitment is executed by Client directly or by an agency or third-party compiler acting as agent for Client (an “**Agency**”). Mailing of invoices to any Agency or acceptance of payment from an Agency are solely for the convenience of Client, and Client shall remain liable for its obligations to Neptune until such time as Neptune has been paid in full all amounts due to it under the Agreement and each Letter of Commitment. Unless Client either includes the relevant purchase order number in the space indicated in the signed Letter of Commitment returned to Neptune or provides the purchase order number to Neptune in writing no later than eight (8) weeks prior to the scheduled

publication date, Client agrees to pay the total Program Fee without submitting to Neptune a purchase order in connection therewith.

(d) Should Client fail to remit any payments when due, Neptune may release the advertising space in any Inserts previously contracted by Client (and, as applicable, the corresponding category exclusivity) to another advertiser and such release of such advertising space shall be deemed a cancellation of such Letter of Commitment for purposes of Section 5(a). Neptune shall have the right to charge, and Client agrees to pay, interest on past due balances at the rate of the lesser of one- and one-half percent (1.5%) per month or the maximum amount permitted by law. Client shall be responsible for all Neptune's costs of collection of past due amounts (including without limitation reasonable attorneys' fees and costs).

(e) All terms and pricing provided herein by Neptune to Client in this Agreement shall contemplate 100% on time payment by Client to Neptune. At any time should Client fail to maintain 100% on time payment to Neptune in accordance with the terms of this Agreement, Neptune reserves the right to either terminate or modify the pricing terms of this Agreement or Letter of Commitment.

#### **4. Category Exclusivity; Reservation/Challenge Policy.**

(a) Neptune agrees that no coupon for a product Directly Competitive (as defined below) with any of Client's couponed products (as listed on the applicable Letter of Commitment) will appear in the same Insert in the same markets as the promotion for Client's couponed products (as listed on the applicable Letter of Commitment) appears. "**Directly Competitive**" shall be determined under the then current guidelines utilized by Neptune as of the publication date unless otherwise mutually agreed to by Neptune and Client in writing.

(b) Client may, prior to entering into a Letter of Commitment, request a non-binding reservation for a program with Neptune. All reservations shall be subject to Neptune's then current FSI Reservation and Challenge Policy.

#### **5. Cancellation.**

(a) Delivery of an executed Letter of Commitment shall constitute a binding commitment of Client and Neptune with respect to the insertion contemplated by such Letter of Commitment. If Client requests cancellation of a Letter of Commitment or a decrease in the Market List Circulation following delivery of an executed Letter of Commitment, fails to meet any minimum spend or volume commitments during the relevant term as set forth in a signed Letter of Commitment, or if a Letter of Commitment is cancelled for any other reason including without limitation under Section 2, the parties agree that, as a reasonable approximation of the damages suffered by Neptune in such event, Client shall nevertheless be responsible for the full amount of the total Program Fee (as specified in the Letter of Commitment, and with respect to a Letter of Commitment, the full minimum commitment set forth therein), as well as any other charges and expenses incurred by Neptune resulting from the cancellation. No liability shall accrue to Neptune if Neptune is unable to cancel a Letter of Commitment or change Market List Circulation after an executed Letter of Commitment is delivered by Client and Client shall remain fully responsible for such executed Letter of Commitment.

(b) Neptune may, by notice to Client, cancel any further obligation on its part under a Letter of Commitment and/or terminate the Agreement upon the happening of any one or more of the following events or conditions: (i) failure by Client to perform or breach of the terms and conditions contained in the Agreement or a Letter of Commitment, including, without limitation, the failure by Client to pay any part of any amounts due to Neptune promptly when due; or (ii) if Client shall make an assignment for the benefit of creditors, commence any proceeding under bankruptcy, reorganization or insolvency laws or be the subject of any such proceeding or generally fail to pay its debts as they become due.

#### **6. Limitation of Liability.**

(a) In the event of any error or omission by Neptune in the performance of its obligations under the Agreement or a Letter of Commitment, including without limitation the failure to publish Client Materials in an Insert, Neptune's liability shall not exceed the total Program Fee for the applicable Letter of Commitment multiplied by a fraction, the numerator of which is the Market List Circulation of the distribution vehicle in which the error or omission occurred and the denominator of which is the total Market List Circulation for all markets in which Client Materials were scheduled to be published. Any adjustment to the total Program Fee in accordance with this paragraph shall be the sole remedy in the event of any error or omission by Neptune. No adjustment shall be made for immaterial errors or omissions.

(b) Should distribution of an Insert containing Client Materials be prevented in a given area as a result of fire, flood, war, riot, accident, strikes, acts of God, interruption of or delay in transportation, plant closing or operations shut downs, changes in laws or regulations or any other causes beyond Neptune's reasonable control, if Neptune provides Client alternate distribution within the same general distribution area within thirty (30) days after the original scheduled publication date, Client shall remain liable for the total Program Fee. If Neptune is unable to supply such alternate distribution for the affected distribution, Client shall remain liable for fifty percent (50%) of the Program Fee for such affected distribution.

(c) Anything to the contrary herein notwithstanding, in no event shall Neptune's liability in connection with the Agreement or any Letter of Commitment exceed the amount previously paid to Neptune by Client in respect of the applicable Letter of Commitment. Neptune shall not, under any circumstances, be responsible for any indirect, special, punitive, or consequential damages, including, without limitation, loss of profits, business interruption or loss of goodwill, regardless of cause.

(d) Neptune shall have no liability for errors or omissions in cases where Client fails to provide Client Materials by the applicable Due Dates, even if Neptune accepts Client Material for publication.

#### **7. Representations and Warranties.** Client represents, warrants and covenants to Neptune that: (i) Client owns or has the appropriate license

to use any and all Clients Materials provided to Neptune hereunder; (ii) no part of Client Materials contains or will contain any defamatory or libelous matter, nor will Client Materials, in any way, infringe upon or violate any copyright, trademark, patent, right of privacy or any other rights (statutory, proprietary or otherwise); (iii) Client, Client Materials and the distribution of Client Materials as contemplated by the Agreement and each Letter of Commitment will not violate the provisions of any law, regulation, ordinance or ruling of any court, government body or agency, including, without limitation, laws, regulations, ordinances and rulings with respect to games of chance and sweepstakes, couponing and advertising with respect to Client's products; (iv) any and all product samples distributed in connection with Client Materials, including without limitation, micro-fragrance, and the packaging and labeling thereof, are and will be in compliance with all applicable laws, regulations, ordinances and rulings; (v) Client Materials do not and will not contain any coupon, tie-in or other promotion for any products other than Client's products unless agreed to in writing in advance by Neptune; (vi) it has full power and authority to enter into and perform under the Agreement and each Letter of Commitment; (vii) the Agreement and each Letter of Commitment (a) has been and will be duly authorized, executed and delivered by Client and (b) constitute and will constitute valid and binding obligations of Client; (viii) performing under this Agreement and each Letter of Commitment does not and will not breach, conflict with or constitute a default under any other agreement, arrangement or instrument applicable to any advertiser participating in such program, including Client; and (ix) the person executing and delivering the Agreement and each Letter of Commitment is duly authorized to do so.

#### **9. Indemnification for Third Party Claims.**

(a) Neptune shall indemnify, defend and hold Client and its affiliates and their respective directors, shareholders, officers, employees and other representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees), which Client or such indemnitees shall incur by reason of any claim, suit, proceeding, investigation or action by any governmental authority or other third party against or involving Client or such indemnitees based upon, or arising out of, any breach or alleged breach by Neptune of any of its obligations under the Agreement or any Letter of Commitment, except to the extent arising from the negligence or intentional misconduct of Client. In case of the assertion of any third-party claim which may give rise to indemnification by Neptune hereunder, Client shall give prompt notice thereof to Neptune. Neptune shall have the right to defend, at Neptune's expense, any such claims, suits or actions and to manage and control all such claims, suits or actions with attorneys of its own selection, except that Neptune shall not settle any such claim, suit or action without the prior written consent of Client, such consent not to be unreasonably withheld.

(b) Client shall indemnify, defend and hold Neptune and its affiliates and their respective directors, shareholders, officers, employees and other representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) which Neptune or such indemnitees shall incur by reason of any claim, suit, proceeding, investigation or action by any governmental authority or other third party against or involving Neptune or such indemnitees based upon, or arising out of, any breach or alleged breach by Client of the Agreement or any Letter of Commitment, the contents of any Client Materials, the manufacture, marketing, use, distribution or purchase of Client's products, including, without limitation, any samples or micro-fragrances which may be distributed, the redemption of coupons or the negligence or intentional misconduct of Client. In case of the assertion of any third-party claim which may give rise to indemnification by Client hereunder, Neptune shall give prompt notice thereof to Client. Client shall have the right to defend, at Client's expense, any such claims, suits or actions and to manage and control all such claims, suits or actions with attorneys of its own selection, except that Client shall not settle any such claim, suit or action without the prior written consent of Neptune, such consent not to be unreasonably withheld. At Neptune's request, Client will supply acceptable evidence of insurance to reasonably cover the foregoing indemnification of Neptune against liability.

(c) Client shall bear exclusive responsibility for the entire cost of all coupons redeemed, including, without limitation, the coupon value, and all applicable handling fees, and for compliance with all applicable laws and regulations relating to couponing and advertising activities with respect to Client Materials, products, and promotions.

**10. Warranties and Waiver.** Neptune makes no warranties or representations, either express or implied, as to fitness, merchantability, or any other matters of any kind or nature, except as expressly set forth herein. A waiver by either party hereto of any default or breach by the other or of any provision hereof shall not be considered a waiver of any subsequent default or breach of the same or of any other provisions hereof. The failure of either party to object to or to take affirmative action with respect to any conduct of the other which is in violation of the Agreement, or a Letter of Commitment shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

**11. Confidentiality.** Each party shall keep the terms of the Agreement and each Letter of Commitment confidential and shall not disclose any of such terms other than to such party's respective officers, directors, employees, affiliates, contractors or advisors with a need to know such terms in order for such party to perform its obligations hereunder and thereunder and who represent personally that they agree to keep such terms confidential, except as required to be disclosed by law, regulation, proceeding, order or investigation of any court or governmental authority or agency (provided that, to the extent permissible, reasonable prior notice is provided to the other party prior to disclosure) and except as is necessary to enforce the Agreement. If a third party (e.g., advertising agency or other promotional services company) is authorized by Client to place Client's programs, then Neptune and Client are authorized to provide to such agency or company only such information (rates, schedules, terms and conditions) as reasonably necessary to ensure successful placement of that Insert program and compliance with the Agreement and each Letter of Commitment, provided such third party agrees to keep such information confidential.

#### **12. General.**

- (a) The Agreement and each Letter of Commitment shall be governed by, construed, and enforced in accordance with, the laws of the State of New York, without regard to principles in respect of conflict of law.
- (b) Any claim of any nature related to or arising out of the Agreement or any LOC or other program commitment or to any services shall be exclusively submitted to arbitration in accordance with the then current International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitrations by, for any claims for \$1,000,000 or less, a sole arbitrator, and for any claims in excess of \$1,000,000, three arbitrators of whom each party will appoint one and these two shall select the third. The arbitration shall be conducted in the State of New York, County of New York and a complete record shall be maintained of all proceedings. An appeal may be taken under the CPR Arbitration Appeal Procedure from any final award of an arbitral panel in any arbitration arising out of or related to the Agreement or any LOC or other program commitment or to any services that is conducted in accordance with the requirements of such Appeal Procedure. Unless otherwise agreed by the parties and the appeal tribunal, the appeal shall be conducted at the place of the original arbitration. Arbitration on an individual basis shall be the exclusive remedy for any claims that might otherwise be brought on a class, representative or collective basis. Accordingly, Client may not participate as a class or collective action representative, or as a member of any class, representative or collective action, and will not be entitled to a recovery in a class, representative or collective action in any forum. Any disputes concerning the validity of this class, representative or collective action waiver will be decided by a court of competent jurisdiction located in the State of New York and County of New York, not by an arbitrator, which shall be the only exception to this commitment to exclusively arbitrate.
- (c) Neither the Agreement nor any Letter of Commitment may be assigned or transferred by Client without the prior written consent of Neptune, which consent shall not be unreasonably withheld. The Agreement and each Letter of Commitment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. No provision herein or in any Letter of Commitment shall be nullified or affected in any manner as a result of any reorganization or by any change to any other form of business organization of Client. In the event of any merger, consolidation, or sale of all or substantially all of the assets of Client (each a **"Transaction"**), Client agrees that it will fully assign the Agreement and each Letter of Commitment to the other party to such Transaction. Client agrees that it will provide Neptune with at least thirty (30) days prior written notice of any such Transaction. Client shall have no obligation to assign the ROFR Agreement to any acquirer of an individual brand, brands or other assets constituting less than all or substantially all of the assets of Client (each such brand, brands or assets, a **"Sold Asset"**), however Client shall assign that portion of each outstanding Letter of Commitment with respect to such Sold Asset to such acquirer.
- (d) The Agreement and the Letters of Commitment constitute the entire agreement of the parties with respect to the subject matter hereof and thereof and (i) shall supersede all prior agreements, arrangements and understandings with respect thereto and (ii) may not be modified by the terms, conditions or provisions of any purchase or insertion order or other documents or instructions submitted by or on behalf of Client, whether or not any such purchase or insertion order or other document or instruction is signed or acknowledged by Neptune. The Agreement and each Letter of Commitment may not be changed or modified, or any provisions therein waived except in a writing signed by both parties that states the specific provisions of the Agreement or Letter of Commitment to be so changed, modified, or waived.
- (e) If any term or provision of the Agreement or any Letter of Commitment shall, to any extent, be held to be invalid or unenforceable, the remaining terms and provisions of the Agreement and/or the Letter of Commitment, as the case may be, shall not be affected thereby and each term and provision thereof shall be valid and enforced to the fullest extent permitted by law provided that any such invalidity or unenforceability does not negatively impact the nature of the relationship contemplated by the Agreement and/or the Letter of Commitment, as the case may be. Subject to the foregoing, if a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed written, construed, and enforced as limited. The Agreement and each Letter of Commitment shall be construed without regard to any presumption or other rule requiring construction against the party causing such documents to be drafted.
- (f) No action of any kind arising out of or related to the performance of the Agreement and any Letter of Commitment or otherwise may be brought by either party more than twelve (12) months after the same has accrued, except an action for non-payment of any amounts for which Client is responsible for under each Letter of Commitment or indemnification which may be commenced within the period provided by statute. In addition, all disputes that include claims for credit must be made known by Client to Neptune in writing within one hundred twenty (120) days of the invoice date. Such disputes shall not be reason to withhold payment when due, except that the specific and reasonable amount disputed may be withheld in good faith until such time as the dispute has been reviewed and resolved. Any such dispute not disclosed to Neptune in writing within one hundred twenty (120) days from the invoice date shall be deemed waived by Client and such invoice shall be deemed an account stated.
- (g) Any provision of the Agreement or a Letter of Commitment which contemplates performance or observance subsequent to expiration of the term or termination of such agreements (including without limitation confidentiality, warranty, and indemnification provisions) shall survive the expiration of the term or any termination of such agreements and shall remain subject to these terms and conditions. The terms and conditions of the Agreement shall continue to apply to any Letter of Commitment executed prior to the expiration of the term or any termination of the Agreement with a scheduled publication date after the expiration of the term or termination of the Agreement.
- (h) Client acknowledges and agrees that monetary damages would not be an adequate remedy for the damage suffered by Neptune as a result of a breach of any of the provisions of the Agreement or a Letter of Commitment by Client and, accordingly, Client agrees that in addition to any other remedy which is available to Neptune, Neptune shall be entitled, without bond and without the necessity of showing actual monetary damages, to equitable relief, including without limitation, relief by way of temporary or permanent injunction and to such

other relief that any court of competent jurisdiction may deem just and proper to enforce the terms and provisions of the Agreement and/or Letter of Commitment.

(i) Except as specifically provided herein, the rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that the parties may otherwise have at law or in equity. Neptune shall have no duty to mitigate any damages.

(j) Headings of sections or paragraphs are for convenience only.

(k) Neither the Agreement nor the Letters of Commitment nor the transactions contemplated thereby are to be construed as creating a partnership, joint venture, master-servant, principal- agent, or other relationship for any purpose whatsoever. Neither party may be held responsible for the acts either of omission or commission of the other party, and neither party is authorized to or has the power to obligate or bind the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever.

(l) All notices required or permitted to be given pursuant hereto shall be given to the parties by hand delivery, reputable overnight courier, or by certified mail, return receipt requested, postage prepaid, to the addresses of Neptune and the Client and/or Agency set forth on the Agreement.

- END -