

**STANDARD TERMS AND CONDITIONS COVERING SALES CONTRACTS FOR DIGITAL ADS**

Last update : March 2013

**1. Contract formation, insertion orders and inventory availability**

1.1. From time to time, parties may negotiate insertion orders under which a media company will deliver ads (“ads”) provided by an agency or advertiser to a Radio-Canada site or sites (the “site”) for the benefit of the agency or advertiser. The insertion order will be binding only if accepted as provided in Section 1.2 below.

Each insertion order will specify:

- 1.1.1. The type(s) and amount(s) of inventory to deliver (e.g., impressions, clicks or other actions desired) (the “deliverables”);
- 1.1.2. The price of such deliverables;
- 1.1.3. The maximum amount to be spent pursuant to the insertion order (if applicable);
- 1.1.4. The start and end dates of the campaign;
- 1.1.5. The identity and contact information of any third-party ad servers (“third-party ad server”).

Other items that may be included if the parties so desire are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special ad delivery scheduling or ad placement requirements; and specifications concerning ownership of data collected.

- 1.2. Should Radio-Canada submit an insertion order to the agency or advertiser, the ad will be deemed to be accepted if the agency or advertiser has not contacted Radio-Canada with any objection regarding the insertion order within three business days of receiving this order.
- 1.3. If the specified inventory is not available, Radio-Canada will make commercially reasonable efforts to notify the agency or advertiser within three business days of accepting the insertion order.
- 1.4. Accepted insertion orders may be revised only by written notification signed by the authorized agents of both parties.

**2. Ad placement and positioning**

2.1. Radio-Canada will comply with the terms of the insertion order, including all ad placement restrictions and requirements to create a reasonably balanced delivery schedule. Radio-Canada will provide, within the scope of the insertion order, an ad to the site specified on the insertion order when this site is visited by an Internet user. Any exceptions will be approved by the agency or advertiser in writing.

2.2. Unless otherwise specified in the insertion order, Radio-Canada will use commercially reasonable efforts to provide the agency or advertiser with prior notification of any major changes to the site that would change the target audience. This notice must be given at least 10 business days before the change. Should such a modification occur without notice, the agency or advertiser will have as its sole remedy the right to immediately cancel the insertion order without penalty.

2.3. Radio-Canada will submit or make electronically accessible to the agency or advertiser the final technical specifications of an ad within two business days of accepting an insertion order, as agreed upon by the parties. Changes to the specifications after the two business day period will allow the agency or advertiser to suspend (without altering the end date unless otherwise agreed by the parties) delivery of the affected ad for a reasonable time in order to:

- 2.3.1. Send revised artwork, a copy or active URLs (“advertising materials”);
- 2.3.2. Request that Radio-Canada resize the ad at no cost and with final creative approval of the agency or advertiser (as applicable) within a reasonable time period to fulfill the guaranteed levels of the insertion order.
- 2.3.3. Accept a comparable replacement; or

- 2.3.4. If the parties are unable to negotiate an alternate or comparable replacement in good faith within five business days, immediately cancel the insertion order for the affected ad without penalty.
- 2.4. Ad delivery will comply with the editorial guidelines stated on the insertion order. If the editorial guidelines are violated, the sole remedy of the agency or advertiser will be the following:
  - 2.4.1. If Radio-Canada is notified of a violation of the editorial guidelines and takes no measures to correct the problem within 30 days of receiving notice, the ads affected by this violation will be non-billable; and
  - 2.4.2. If Radio-Canada is unable to correct the violation or a correction has a negative impact, the parties will, in good faith, negotiate alternative changes to the ad in order to address the impact. If the parties cannot agree on alternative changes within five business days of implementing a correction, the agency, advertiser or Radio-Canada may, at the end of the five business days, immediately cancel the insertion order without penalty.

### **3. Payment and payment liability**

- 3.1. The agency and/or advertiser agrees to pay Radio-Canada the rates specified in the insertion order, plus applicable taxes, all subject to the other provisions of these terms.
- 3.2. The agency and/or advertiser agrees to make payment upon receipt of the invoice from Radio-Canada. Any sum remaining unpaid 30 days after the invoice date will bear interest at the annual rate of 19.56%, compounded and calculated monthly at the rate of one and a half per cent (1.5%). Interest is payable on demand.

#### **Authorized agent**

The agency understands that it is the advertiser's authorized agent.

The agency will provide Radio-Canada upon request with written confirmation of the relationship between the agency and advertiser. This confirmation should include, for example, the advertiser's acknowledgment that the agency is its agent and is authorized to act on its behalf in connection with the insertion order and these terms. In addition, at Radio-Canada's request, the agency will confirm whether the advertiser has paid the agency sufficient advance funds to make payments pursuant to the insertion order. If the agency's credit is or becomes impaired, Radio-Canada may require payment in advance.

For clarity, the parties recognize that the agency and advertiser will be jointly and severally liable for payment of all sums owing to Radio-Canada.

### **4. Reporting**

- 4.1. Within two business days of the start date on the insertion order, Radio-Canada will provide confirmation to the agency or advertiser, electronically or in writing, stating whether the components of the insertion order have begun delivery.
- 4.2. At the agency's or advertiser's request, Radio-Canada will submit a report, electronically or in writing, unless otherwise stipulated in the insertion order. The reports will indicate the number of impressions delivered and the number of clicks occurring during the campaign.

### **5. Cancellation and termination**

- 5.1. The agency or advertiser may cancel an insertion order without penalty through a written notice given 10 business days prior to delivery of the first impression of the advertising materials in the insertion order. Cancellations received within 10 business days prior to delivery of the first impression of the insertion order are subject to a 10-day sliding scale of required payment. For clarity and by way of example, if the agency or advertiser cancels the insertion order five business days prior to delivery of the first impression, the agency or

advertiser will only be responsible for payment for the first five days of impression of the advertising materials in the insertion order.

- 5.2. Upon delivery of the first impression of the insertion order, the agency or advertiser may cancel the insertion order for any reason without penalty by providing Radio-Canada with written notice of cancellation, which will be effective after the later of:
  - 5.2.1. Ten (10) business days after delivery of the first impression of the insertion order; or
  - 5.2.2. Five (5) business days after providing Radio-Canada with a written notice. The agency or advertiser will be responsible for the total number of days that the advertising materials were executed.
- 5.3. Either party may terminate an insertion order at any time if the other party is in breach of one of its obligations hereunder that is not cured within 10 business days after receipt of written notice thereof from the non-breaching party, except as otherwise stated in these terms with regard to specific breaches. Additionally, if the agency or advertiser commits a violation of the Advertising Standards (as defined in Section 8.1 below) where such policy has been provided by Radio-Canada to the agency, on three separate occasions after having received timely notice of each such breach, even if such breach has been cured by the agency or advertiser, then Radio-Canada may terminate the insertion order associated with such breach upon written notice. If the agency or advertiser does not cure a violation of a policy within the applicable 10-day cure period after written notice, where such policy had been provided by Radio-Canada to the agency, then Radio-Canada may terminate the insertion order associated with such breach upon written notice.
- 5.4. If the advertiser or agency becomes insolvent or bankrupt, Radio-Canada may immediately terminate the present agreement without prior notice.
- 5.5. Short rates will apply to cancel buys to the degree stated on the insertion order.

## **6. Makegoods**

- 6.1. Radio-Canada will monitor delivery of ads and notify the agency or advertiser electronically or in writing as soon as possible (no later than two weeks before the end date of the insertion order unless the length of the campaign is less than two weeks) if it believes that an under-delivery is likely. In the case of a probable or actual under-delivery, the parties may arrange a makegood consistent with these terms.
- 6.2. If the deliverables for any campaign fall below guaranteed levels, as set forth in the insertion order, or if an ad is omitted (placement or creative unit), the agency or advertiser and Radio-Canada will try to agree on the terms of a makegood. If no makegood can be agreed on, the announcer or agency may execute a credit equal to the value of the under-delivered portion for which it was charged. In no event will Radio-Canada provide a makegood or extend any ad beyond the period set forth in the insertion order without the agency's written consent.

## **7. Force majeure**

- 7.1. Excluding payment obligations, neither party will be liable for delay or default in performing its obligations hereunder for reasons beyond its control, including but not limited to fire, flood, accident, earthquakes, telecommunication line failures, electrical outages, network failures, natural disasters or labour disputes. In such instances, the party delayed or in default will do its utmost to correct the problem by all normal channels of good business practice.
- 7.2. Excluding payment obligations, should a force majeure event continue for five business days, the party not in default has the right to cancel the remainder of the insertion order without penalty.

## **8. Advertising materials**

- 8.1. The agency or advertiser is obliged to submit advertising materials in keeping with Radio-Canada's Advertising Standards ("Advertising Standards"). If advertising materials are late, the advertiser or agency is

still responsible for the media purchased pursuant to the insertion order. Advertising materials are considered late if:

8.1.1. Radio-Canada receives the final advertising materials, approved by the advertiser and completely functional, less than three business days for a standard banner ad or less than five business days for rich media or video ads, before the start of the specified ad campaign.

This three- or five-day period is required for Radio-Canada to 1) check for compliance with specifications and policy, and 2) for testing and scheduling purposes. Provisions for late creative are outlined in **Appendix A: Late Creative Policy**.

8.2. Radio-Canada reserves the right within its discretion to reject or remove from its site any ads where the advertising materials or the website to which the ad is linked does not comply with its Advertising Standards or, in its sole judgment, does not comply with any applicable law, regulation or other judicial or administrative order. In addition, Radio-Canada reserves the right within its discretion to reject or remove from its site any ads where advertising materials or the site to which the ad is linked tends to disparage, ridicule or scorn Radio-Canada or any of its affiliates (as defined below).

8.3. On receipt of advertising materials from the agency or advertiser, Radio-Canada will notify the agency if these do not comply with specifications or Advertising Standards. Advertising materials that require adjustments are still subject to all timelines and provisions for late creative.

8.4. Radio-Canada will not edit or modify the submitted ads in any way, including but not limited to resizing, without approval from the agency or advertiser. Radio-Canada will use such ads in strict compliance with these terms and any written instructions from the agency or advertiser.

8.5. When applicable, third-party ad server tags will be implemented so that they are functional.

8.6. Radio-Canada and the agency or advertiser will not use the other's trade name, trademarks, logos or ads in a public announcement (including but not limited to press releases) regarding the existence or content of these terms or an insertion order without the other's prior written approval.

## **9. Indemnification**

9.1. The agency or advertiser will indemnify Radio-Canada, its representatives and its employees from any damages, material or other (including extra-judicial costs) and from any claim for damages (notably for copyright infringement, breach of contract or collective agreement, defamation, or violation of image rights), resulting from the broadcast, use or archiving by Radio-Canada, under the terms of this agreement, of a commercial message or any other material provided by the agency or advertiser.

## **10. Limitation of liability**

In no event will the agency or advertiser be liable to Radio-Canada for loss of profits, loss of revenue, or special, exemplary, indirect, incidental or punitive damages whatsoever.

## **11. Non-disclosure, data ownership, privacy and laws**

11.1. The terms of this contract are confidential and may not be disclosed by a party without the other party's prior consent in writing.

11.2. The parties will preserve the confidentiality of all information or material of a confidential nature as well as all financial or privileged data that may come to their knowledge or into their possession. The parties will not disclose this information or material to third parties in any way over the lifetime of the contract and after its expiry except:

11.2.1. In cases of legal proceedings;

11.2.2. In cases where a party is required to disclose certain information by a law, regulation, ruling or ordinance.

11.3. Radio-Canada is subject to the *Access to Information Act, R.S.C. 1985, c. A-1*. Consequently, materials held by CBC/Radio-Canada may be subject to a request for information and be disclosed if no exception or exemption provided by this Act is applicable.

## **12. Third-party ad servers (applicable if such a server is used)**

12.1. Radio-Canada will track delivery through its own ad server and the agency or advertiser will also track delivery through its proprietary or subcontracted third-party server whose identity is set forth in the insertion order. The agency or advertiser may not substitute the third-party ad server specified in the insertion order without Radio-Canada's consent. The agency or advertiser and Radio-Canada agree to give reciprocal access to relevant and non-proprietary statistics from both ad servers, or if such is not available, to provide daily reports for the first three days of the insertion order and weekly placement-level activity reports to each other thereafter. In the event that Radio-Canada's ad server measurements are higher than those produced by the third-party ad server of the agency or advertiser by more than 10% over the invoice period, the agency or advertiser will facilitate a reconciliation effort between Radio-Canada and the third-party ad server. If the discrepancy cannot be resolved and the agency or advertiser has made a good faith effort to facilitate a reconciliation, the third-party ad server measurements of the agency or advertiser will be used with a maximum adjustment of 10%.

12.2. Where an agency or advertiser uses a third-party ad server and that server cannot serve the ad, the agency or advertiser may, upon written notification to Radio-Canada, temporarily suspend delivery under the insertion order for a period of up to 72 hours. Upon receipt of the written notification of a non-functioning third-party ad server, Radio-Canada must make every commercially reasonable effort to suspend delivery. The agency or advertiser will not be held liable for payment for any ad that runs during the 72 hours after receipt of the written notification by Radio-Canada. After the 72-hour period, if Radio-Canada does not receive subsequent written notification from the agency or advertiser stating that the third-party ad server is still unable to serve the ad, Radio-Canada can resume delivery under the insertion order and the agency or advertiser will pay for ads that would have run after the 72-hour period. If the agency or advertiser sends such subsequent non-functioning notification, Radio-Canada may at its discretion decide to use the inventory that would have been otherwise used for its own ads or for ads provided by a third party. Upon notification that the third-party ad server is functioning, Radio-Canada will have 72 hours to resume delivery. Any delay in resuming delivery beyond this period, without reasonable explanation, will result in Radio-Canada owing a makegood to the agency or advertiser.

## **13. Miscellaneous**

13.1. Radio-Canada represents and warrants that it has all necessary permits, licences and clearances to sell the inventory represented in the insertion order subject to these terms, including any applicable policies. The advertiser represents and warrants that it has all necessary licences and clearances to use the content found in its ads and advertising materials.

13.2. Neither the agency nor the advertiser may resell, assign or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without Radio-Canada's prior written approval will be null and void. All terms of an insertion order will be binding upon and inure to the benefit of the parties hereto.

13.3. Nothing in this agreement will be modified or deemed to have been modified unless there is a new written agreement between the parties.

13.4. This agreement constitutes the entire agreement of the parties and supersedes all previous agreements, understandings or commitments, either oral or written, between the parties.

13.5. In the event of any inconsistency between the terms of an insertion order and these terms, the terms of the insertion order will prevail. All insertion orders will be governed by the laws of the province of Quebec.

Radio-Canada and the agency (on behalf of itself and not the advertiser) agree that any claims, legal proceedings or litigation arising from the insertion order (including these terms) will be brought solely in the Superior Court, and the parties consent to the jurisdiction of such court. No modification of these terms or any insertion order will be binding unless in writing and signed by both parties. If any provision herein is unenforceable, the remaining provisions will remain in force. All rights and remedies hereunder are cumulative.

- 13.6. Any notice required to be delivered hereunder must be delivered three business days after deposit in Canada Post, return receipt requested; one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Radio-Canada and the agency must be sent to the attention of the contact as specified in the insertion order with a copy to the legal department. All notices to the advertiser must be sent to the address given in the insertion order.
- 13.7. Sections 3, 9, 10 and 11 will survive termination or expiration of this agreement. In addition, each party will return or destroy the other party's confidential information and remove advertising materials and ad tags.
- 13.8. Should any discrepancy occur between the English and French versions of this document, the English version will prevail.



**APPENDIXE A : LATE CREATIVE POLICY**

Last update : March 1st, 2008

**DEFINITION: ADVERTISING MATERIAL DUE DATES**

The Late Creative Policy for Canadian media companies is the policy proposed by IAB. For more information, please consult the site [www.iabcanada.com](http://www.iabcanada.com).

The Late Creative Policy for online Canadian media companies requires that final advertiser-approved, fully functional online advertising materials (in accordance with the media company’s individual specifications, which may be IAB Canada standard banner, rich media or video units or otherwise) be delivered as follows:

- Final advertiser-approved, fully functional ad creative for standard banner ad units (see [www.iabcanada.com](http://www.iabcanada.com) for definition and file size restrictions) is due three business days prior to the start of the ad campaign as set out in the original insertion order.
- Final advertiser-approved, fully functional ad creative for rich media and video ad units (see [www.iabcanada.com](http://www.iabcanada.com) for definition and file size restrictions) is due five business days prior to the start of the ad campaign as set out in the original insertion order.
- The media company will use this three- or five-day period to 1) check for compliance with specifications and policy and 2) testing and scheduling.
- The media company will use commercially reasonable efforts to notify the agency of non-compliance with specifications or policy within one business day of its receipt of advertising materials and will notify the agency of any changes required as a result of testing, within two business days for standard banner creative and three business days for rich media and video.
- For clarity, the protocol for the three- or five-day deadline period is as follows:
  - Day 1: The media company will run a specifications check\* and notify the agency of any material issues within 24 hours after receipt of advertising materials.
  - Days 2 to 3 or 2 to 5: Upon confirmation that specifications are correct, the media company will begin a full implementation check\*\* of advertising materials.
- If the media company finds the advertising materials to have implementation issues that originated with the agency, these materials will then be considered “not final” and the two- or four-day allowance period to launch will begin again upon re-submission of fully functional advertising materials.
- It is understood that the media company will make every effort (but without guarantee) to work together with the agency to rectify issues with advertising materials within the three- or five-day deadline period so that advertising materials will start as per the insertion order.

\* **Specifications check** includes but is not limited to inclusion of close button, file dimension and weight check, as well as animation (timing or looping) check.

\*\* **Full implementation check** includes but is not limited to clickthrough and reporting check, Z-index/Wmode check, JavaScript conflict check, and ad server conflict check.

**NOTE:** If an advertiser or agency is using a third-party ad server or rich media or video vendor external to the agency or the agency’s ad server to deliver and track its online ad campaign, it is recommended that final advertiser-approved, fully functional creative of all types be delivered to the external third-party ad server or vendor company at least 10 business days prior to the start of the campaign as set out in the original campaign insertion order, to allow for any additional external ad server or vendor testing and tagging.

## RESPONSIBILITY

If final advertiser-approved, fully functional advertising materials are not received by the online media company according to the due dates above, the creative will be considered LATE, and the following will apply:

- Although the advertiser still “owns” the ad impressions, space and time period that the original online ad was slated to run (i.e., online media companies cannot re-sell this space while the advertiser seeks to remedy the late creative), unless the advertiser or its agency has supplied a STAND-IN GIF or JPG AD (see below) to run in place of the late creative, media companies have the right to run a STAND-IN PSA AD in place of the late creative.
- The advertiser and its agency has effectively “lost” all ad impressions that run (regardless of whether they run as a STAND-IN GIF or JPG AD or a STAND-IN PSA AD), while the advertiser’s intended creative remains outstanding.
- The advertiser and its agency will be billed for all impressions purchased pursuant to the original insertion order, regardless of whether these impressions featured the intended creative, a STAND-IN GIF or JPG AD or a STAND-IN PSA AD.
- Media companies do not “owe” advertisers and their agencies any impressions that run featuring a STAND-IN GIF or JPG AD or a STAND-IN PSA AD.
- If additional impressions are required to meet goals of the advertiser or agency, additional space and impressions must be booked and purchased in addition to the original insertion order (assuming the inventory is available).

## OPTIONS FOR FILLING LATE CREATIVE SPACE/IMPRESSIONS

If final advertiser-approved, fully functional advertising materials are not received by the online media company according to the due dates above, the advertiser and its agency are still responsible for the media purchased, pursuant to the insertion order, or up to the point where the campaign has been cancelled. (The cancellation clause stipulated hereunder will apply.)

To make sure that the booked ad space is filled while the advertiser and its agency attempt to remedy the late creative situation, the media company may elect to enforce one of the following provisions:

### *STAND-IN GIF or JPG AD Replacement*

- A GIF or JPG version of the advertiser’s intended creative (or other designated creative meeting the online media company’s technical and content specifications) may be provided by the advertiser and its agency to the online media company, either by the advertising material deadline date (recommended) or thereafter in order to fill any late creative space.
- This GIF or JPG will be considered a STAND-IN GIF or JPG AD and will run until the final fully functional intended creative can be delivered.
- The online media company will use the STAND-IN GIF or JPG AD as the approved advertising materials in all designated placements as outlined in the insertion order.
- Upon receipt of the final advertiser-approved and fully functional advertising materials, the online media company will replace the STAND-IN GIF or JPG AD with the intended advertising materials within the requisite three or five business days after receipt. If the intended advertising materials are delivered prior to the campaign start, the online media company will make every effort, but without guarantee, to replace the STAND-IN GIF or JPG AD with the intended advertising materials in time for the campaign start.



***STAND-IN PUBLIC SERVICE ANNOUNCEMENT AD Replacement***

- An IAB Canada–approved public service announcement (meeting the media company’s technical and content requirements) may be substituted by the online media company if no STAND-IN GIF or JPG AD creative is provided by the advertiser or its agency before the deadline date for advertising materials.
- This public service announcement will be considered STAND-IN PSA AD creative and will run until final advertising materials can be put live.
- The online media company will use the STAND-IN PSA AD as the approved advertising materials in all designated placements as outlined in the insertion order.
- Upon receipt of the “fully functional advertising materials,” the online media company will replace the STAND-IN PSA AD with the intended creative within the requisite three or five business days. If the intended creative is delivered prior to the campaign start, the online media company will make every effort, but without guarantee, to replace the STAND-IN PSA AD with the intended creative in time for the campaign start.
- A predetermined series of PSA ads will be put together by IAB Canada and made available to online media companies across Canada and will be served by EyeReturn ([www.eyereturn.com](http://www.eyereturn.com)), which has generously offered its services in this respect.

**REPORTING**

- The online media company will include results for STAND-IN GIF or JPG AD or STAND-IN PSA AD creative in its delivery reports, within reporting guidelines as outlined in the insertion order.
- A STAND-IN GIF or JPG AD or STAND-IN PSA AD will be identified as such within the report, along with the respective impressions delivered.

**BILLING**

- The advertiser and its agency will be billed for the original full contracted amount pursuant to the original insertion order, which may include any or all STAND-IN GIF or JPG AD or STAND-IN PSA AD impressions, as a result of late creative.

**MISCELLANEOUS**

- Should any discrepancy occur between the English and French versions of this document, the English version will prevail.