

PreciseTarget, Inc.
Publisher Terms of Service
Last Updated: June 17, 2025

THESE TERMS OF SERVICE (“**TERMS**”) ARE ENTERED INTO BETWEEN THE ENTITY THAT HAS EXECUTED AN SOW THAT REFERENCES AND INCORPORATES THESE TERMS OF SERVICE BY REFERENCE (“**PUBLISHER**”) AND PRECISETARGET, INC. (“**PRECISETARGET**”), AND GOVERNS THE TERMS AND CONDITIONS PURSUANT TO WHICH PUBLISHER MAY ACCESS TO AND USE OF THE SERVICES. THESE TERMS AND THE SOW (AS DEFINED BELOW), CONSTITUTE THE COMPLETE UNDERSTANDING BETWEEN THE PARTIES ON THE SUBJECT MATTER (“**AGREEMENT**”) AND IS EFFECTIVE ON THE DATE THAT THE INITIAL SOW IS FULLY EXECUTED BY THE PARTIES (“**EFFECTIVE DATE**”). BY ENTERING INTO AN SOW AND/OR OTHERWISE ACCESSING OR USING THE SERVICES, CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND THE OTHER TERMS AND CONDITIONS OF THE AGREEMENT. IF CUSTOMER DOES NOT ACCEPT THESE TERMS, CUSTOMER IS NOT AUTHORIZED TO ACCESS OR USE THE SERVICES.

1. DEFINITIONS. Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

1.1 “Affiliate Party” means the party designated on an SOW as the party acting as an affiliate of a Brand pursuant to an Affiliate Program Agreement.

1.2 “Affiliate Program Agreement” means the affiliate program agreement entered into between the Affiliate Party and a Brand.

1.3 “Applicable Data Privacy Laws” means data protection and privacy laws and regulations applicable to the Services, including, without limitation, the CCPA.

1.4 “Brand” means any entity that has any Offers delivered to PreciseTarget, and have entered into a separate Affiliate Program Agreement.

1.5 “Brand Marks” means the trademarks, service marks, trade names or service names of the Brand licensed by the Affiliate Party under the relevant Affiliate Program Agreement.

1.6 “Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.7 “Non-Affiliate Party” means the party that is not designated on an SOW as the Affiliate Party.

1.8 “Offer” means any digital offer used by Brand to promote Brand's products and/or services.

1.9 “Personal Data” has the meaning given in the Applicable Data Privacy Laws.

1.10 “PreciseTarget System” means PreciseTarget's proprietary system designed to provide personalized affiliate offers to publishers.

1.11 “Personalized Offers” means any Offers that are input into the PreciseTarget System and customized to individual Publisher Users based on specific preferences, past purchases or other relevant data.

1.12 “Publisher Data” means any content provided or submitted by, or on behalf of, Publisher, its Publisher Users or Brand for use with the Services, including, without limitation, certain information about the Publisher Properties and the Publisher Users, and any Offers provided by Brand to Publisher.

1.13 “Publisher Properties” means the websites and/or mobile applications that Publisher owns or operates or for which Publisher otherwise has a contractual right to make Inventory available to third parties for the serving of Advertisements.

1.14 “Publisher User” means any users of the Publisher Properties.

1.15 “Services” means PreciseTarget’s: (1) use of the PreciseTarget System to generate the Personalized Offers; and (2) any other services set forth in the applicable SOW.

1.16 “SOW” means any online or written form or other communication provided by PreciseTarget evidencing the Services to be provided to Publisher.

2. SERVICES

2.1 Generally. The Services enable Publisher to present Personalized Offers to Publisher Users on the Publisher Properties. Publisher (or PreciseTarget on behalf of Publisher, when applicable) will display the Personalized Offers to Publisher Users in the manner mutually agreed by the parties in the SOW.

2.2 Support Services. Subject to the terms and conditions of this Agreement, PreciseTarget will exercise commercially reasonable efforts to provide support to Publisher for the display of the Personalized Offers in accordance with its standard policies and procedures, or as otherwise set forth in an SOW. Publisher acknowledges that Publisher’s access to and use of the Personalized Offers may be suspended for the duration of any scheduled or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including as a result of power outages, system failures or other interruptions, or any other acts, omissions or failures on the part of PreciseTarget.

2.3 Third-Party Services. Publisher acknowledges and agrees that certain features and functions of the Services are made available by third parties that control such features and functions (“**Third-Party Providers**”), and that the access to and use of such features and functions (“**Third-Party Services**”) is solely determined by the relevant Third Party Providers. PreciseTarget will have no liability to Publisher for any unavailability of any Third-Party Services, or any Third-Party Provider’s decision to discontinue, suspend or terminate any Third-Party Services. All right, title and interest in and to any Third-Party Services are and shall remain the sole property of their respective Third-Party Providers.

2.4 SOWs. Each SOW is hereby incorporated into this Agreement by reference and is subject to the terms and conditions of this Agreement; *provided, however*, that in the event of a conflict with the terms contained in any SOW, the terms contained in the body of this Agreement shall control unless express reference to the superseded term in the Agreement is set forth in the SOW. Any terms and conditions that may be contained in any acknowledgement, invoice, purchase order or other Publisher-provided form are specifically null and void.

3. INTELLECTUAL PROPERTY

3.1 License Grant. Subject to the terms and conditions of this Agreement, PreciseTarget grants to Publisher a non-exclusive, non-transferable license during the term set forth on the SOW to access and use the Personalized Offers and to use and reproduce the Personalized Offers solely for display to Publisher Users on the Publisher Properties.

3.2 Ownership. As between Publisher and PreciseTarget, all Intellectual Property Rights in the Brand Marks, Publisher Data, Publisher Properties and the Offers: (a) will remain the sole property of Publisher or its licensors (including Brands); and (b) are hereby reserved by Publisher or its licensors, unless specifically granted to PreciseTarget in the Agreement. As between Publisher and PreciseTarget, all Intellectual Property Rights in the Services (a) will remain PreciseTarget’s sole property; and (b) are hereby reserved by PreciseTarget.

3.3 Limitations. Publisher agrees that it will not, and will not permit any Publisher User, Brand or other party to: (a) permit any party to access or use the Services or Documentation, other than the Publisher Users authorized under this Agreement; (b) modify, adapt, alter or translate the Services, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services; (e) use or copy the Services, except as expressly allowed under this subsection; or (f) disclose or transmit any data contained in the Services to any individual other than a Publisher User, except as expressly allowed herein. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Publisher regarding the Services, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Services.

3.4 Feedback. Publisher hereby grants to PreciseTarget a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Publisher, including Authorized Users, relating to the Services. PreciseTarget will not identify Publisher as the source of any such feedback.

4. DATA USAGE

4.1 Publisher Data. Publisher is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Publisher Data. Any collection and use by Publisher of Publisher User information in connection with the delivery of Personalized Offers on the Publisher Properties will be governed by the terms of the Publisher's privacy policy and/or the DPA (as defined below). Publisher will obtain all third party licenses, consents and permissions needed for PreciseTarget to use the Publisher Data to provide the Services and to exercise all licenses granted by Publisher herein. Publisher hereby grants PreciseTarget a non-exclusive, worldwide, royalty-free and fully paid license to use the Publisher Data as necessary for purposes of providing and improving the Services (including, without limitation, to generate Personalized Offers to display to Publisher Users).

4.2 Publisher Warranty. Publisher represents and warrants that: (i) it has the right to grant PreciseTarget the license and other rights relating to the Publisher Data provided in this Agreement; and (ii) any Publisher Data processed and/or hosted by PreciseTarget as part of the Services shall not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious code intended to damage PreciseTarget's system or data; or (e) otherwise violate the rights, including any applicable privacy rights, of a third party. Publisher agrees that any use of the Personalized Offers contrary to or in violation of the representations and warranties of Publisher in this section constitutes unauthorized and improper use of the Services.

4.3 Publisher Responsibility for Data and Security. Publisher and its Authorized Users shall have access to the Publisher Data and shall be responsible for all changes to and/or deletions of Publisher Data. Publisher shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Publisher Data.

4.4 Publisher User Data. Neither PreciseTarget nor Publisher will pass or provide to the other party any Personal Data, including any Personal Data of Publisher Users. Before any such Personal Data is collected, used, transmitted, or processed by or on behalf of Publisher, Publisher will enter into a Data Processing Addendum ("DPA") with PreciseTarget. If Publisher has not entered into a DPA, Publisher represents, warrants and covenants that no Personal Data processed by PreciseTarget under this Agreement is subject to Applicable Data Privacy Laws. Publisher is solely responsible for tracking any Publisher Users who may opt out of the Personalized Offers in accordance with Applicable Data Privacy Laws.

5. PUBLISHER RESPONSIBILITIES

5.1 General. Except as otherwise provided in this Agreement or in an applicable SOW, Publisher will be responsible for obtaining, installing, inter-connecting and maintaining the Publisher Properties, all computers, servers, and other equipment, software and/or communications services necessary for inter-connection with or otherwise for use in conjunction with the Services. PreciseTarget will use reasonable efforts to provide Publisher with prior notice of any change or modification in PreciseTarget's requirements that may affect compatibility.

5.2 Security. Publisher will take, at its sole expense, all physical and information systems security measures reasonably necessary to protect the Publisher Properties, equipment and systems. Publisher will protect the security of its data, equipment and systems. Publisher acknowledges and agrees that PreciseTarget will have no liability for any loss resulting from any unauthorized third-party access to the Publisher Properties, equipment or data, unless caused by PreciseTarget's acts or omissions.

5.3 Publisher Properties. Publisher shall not do, or permit any other party to do, any of the following: (a) provide or deliver or perpetuate through the Services, or fail to use commercially reasonable efforts to prevent the provision, delivery, or perpetuation through the Services of, any malicious code, malware or viruses, via media or ads purchased or sold or otherwise; (b) generate impressions, clicks, displays, views, conversions or any other actions that are tracked and may serve as a basis for payment or analysis with respect to any Personalized Offers displayed to Publisher Users through any invalid means, or otherwise deploy or facilitate invalid means in its use of the PreciseTarget Platform; (c) violate any agreements, conditions or terms of usage imposed by a third party on Publisher related to the use of such third party's technology, content or materials; or (d) provide Inventory on pages

of any Property that (i) may be harmful, abusive, obscene, threatening, or defamatory, (ii) include content that is pornographic, obscene or contains sexually explicit images or activity; (iii) is illegal; or (iv) is subject to the Children's Online Privacy Protection Act (i.e., is directed to children under the age of 13 who reside in the United States or any territory thereof, or that collects information from users known by the Publisher to be under the age of 13 who reside in the United States or any territory thereof).

5.4 Trademark License. Subject to the terms and conditions of this Agreement, Publisher hereby grants to PreciseTarget a non-exclusive, non-transferable, revocable, royalty-free license (without the right to grant sublicenses) to use and reproduce the Brand Marks solely in connection with generating the Personalized Offers and displaying the Personalized Offers on the Publisher Properties. PreciseTarget's use of the Brand Marks will be subject to Brand's written logo and trademark usage guidelines, if provided to PreciseTarget. Publisher grants no rights in the Brand Marks on behalf of the Brand other than those expressly granted in this section.

6. CONFIDENTIALITY

6.1 Confidential Information. During the term of this Agreement, each party (the "**Disclosing Party**") may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information that is marked as "confidential" or "proprietary" or which the Receiving Party should reasonably know is confidential and/or proprietary, given the nature of information and context of disclosure (collectively, "**Confidential Information**"). For the avoidance of doubt, the Services, Documentation and all enhancements and improvements thereto will be considered Confidential Information of PreciseTarget.

6.2 Protection of Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Publisher) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to PreciseTarget). In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

6.3 Exceptions. The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

7. TERM AND TERMINATION

7.1 Term. This Agreement will begin on the Effective Date and remains in effect so long as any SOW is in effect (the "**Term**"). Each SOW remains in effect for the period of time set forth on the SOW, unless earlier terminated by either party in accordance with the section titled *Termination*.

7.2 Termination. Either party may terminate this Agreement and/or any SOW: (i) immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach; or (ii) upon thirty (30) days' written notice to the other party in the event that the Affiliate Program Agreement is terminated, or otherwise no longer has the right to be an affiliate of the Brand under the Affiliate Program Agreement. In addition, PreciseTarget may terminate this Agreement upon written notice to Publisher if Publisher becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, or liquidation for the benefit of creditors.

7.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled *Confidentiality*; and (c) all amounts accrued during the Term will become due and payable. The sections and subsections titled *Definitions, Limitations, Ownership, Feedback, Disclaimer of Warranties, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination*, and *Miscellaneous* will survive expiration or termination of this Agreement for any reason.

8. FEES. The Affiliate Party agrees to pay to the Non-Affiliate Party the fees set forth on an SOW ("**Fees**"). Except as otherwise provided in the applicable SOW, all Fees are payable within thirty (30) days after the end of each calendar month in which the corresponding payment was actually received by the Affiliate Party. In addition to the Fees, Publisher agrees to pay, and to indemnify and hold PreciseTarget harmless from, any sales, use, excise, import or export, value added or similar tax or duty not based on PreciseTarget's net income, including any penalties and interest, as well as any costs associated with the collection or withholding thereof, and all governmental permit fees, license fees and customs and similar fees levied upon delivery of the Services which PreciseTarget may incur in connection with this Agreement.

9. WARRANTIES AND DISCLAIMERS. PreciseTarget represents and warrants that it will provide the Services and perform its other obligations under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards. Provided that Publisher notifies PreciseTarget in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail, PreciseTarget will, as Publisher's sole and exclusive remedy, for any breach of the foregoing, re-perform the Services which gave rise to the breach or, at PreciseTarget's option, refund the fees paid by Publisher for the Services which gave rise to the breach. EXCEPT FOR THE FOREGOING WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES AND THE PERSONALIZED OFFERS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE. PRECISETARGET DOES NOT WARRANT THAT ANY ERRORS CAN BE CORRECTED, THE SERVICES WILL MEET PUBLISHER'S REQUIREMENTS, OR THAT OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

10. LIMITATION OF LIABILITY

10.1 Types of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PRECISETARGET, NOR ANY OF ITS AFFILIATES, SUBCONTRACTORS, LICENSORS, VENDORS, SUPPLIERS OR RESELLERS, NOR ANY OF ITS THIRD PARTY PARTNERS, BE LIABLE TO PUBLISHER OR ANY OTHER THIRD PARTY FOR LOST REVENUES, LOST PROFITS OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, RELIANCE OR EXEMPLARY DAMAGES ARISING FROM PUBLISHER'S OR ANY OTHER THIRD PARTY'S USE OF OR INABILITY TO USE THE SERVICES INCLUDING, BUT NOT LIMITED TO, LOSS OF TECHNOLOGY, LOSS OF DATA OR INTERRUPTION OR LOSS OF USE DAMAGES WHETHER OR NOT PRECISETARGET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

10.2 Amount of Damages. THE MAXIMUM AGGREGATE LIABILITY OF PRECISETARGET, ITS LICENSORS, VENDORS AND RESELLERS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), SHALL NOT EXCEED THE ACTUAL FEES PAID BY THE AFFILIATE PARTY TO THE NON-AFFILIATE PARTY DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE INITIAL EVENT GIVING RISE TO LIABILITY HEREUNDER.

10.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

11. INDEMNIFICATION

11.1 By Publisher. Publisher will indemnify, defend and hold harmless PreciseTarget, its officers, directors, affiliates, subsidiaries, licensors, agents and employees harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable

and related attorneys' fees and court costs arising out of or relating to: (i) Publisher's breach or alleged breach of the subsection titled *Publisher Warranty*; (ii) any disputes between Publisher and any Publisher Users, and when Publisher is the Affiliate Party, any disputes between Publisher and Brands; or (iii) any claim that Publisher Data infringes upon, misappropriates or otherwise violates the rights of any third parties, including any Intellectual Property Rights or rights of publicity.

12. MISCELLANEOUS

12.1 Compliance with Laws. Publisher shall comply with all laws, regulations, rules, ordinances, orders and industry self-regulatory guidelines applicable to its access to and use of the Services, including, without limitation, the provision of the Personalized Offers displayed on the Publisher Properties. Without limiting the foregoing, Publisher shall comply with the relevant export administration and control laws and regulations, as may be amended from time to time, including, without limitation, the United States Export Administration Act, to ensure that the Services are not transferred or exported (directly or indirectly) in violation of U.S. law.

12.2 Publicity. PreciseTarget may publicly list Publisher as a customer of PreciseTarget and, subject to Publisher's brand guidelines, use Publisher's trademark, trade name, and logo solely for marketing or promotional purposes.

12.3 Assignment. Publisher may not assign or delegate, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any of its rights or obligations under this Agreement to any third party, and any attempt to do so will be void and of no effect.

12.4 Governing Law and Venue. This Agreement will be subject to and governed by the laws of the State of Maryland, without regard to conflicts of laws principles. For any litigation arising from or related to this Agreement, the parties hereby consent to the exclusive jurisdiction of and venue in the state and federal courts located in Montgomery County, Maryland.

12.5 Government End Users. The Services are a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Services with only those rights set forth therein.

12.6 Export. Publisher agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from PreciseTarget, or any products utilizing such data, in violation of the United States export laws or regulations.

12.7 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Publisher agrees that the section titled *Limitation of Liability* will remain in effect notwithstanding the unenforceability of any provision in the subsection titled *Limited Warranty*.

12.8 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.9 Remedies. Except as provided in the sections titled *Limited Warranty* and *Indemnification*, the parties' rights and remedies under this Agreement are cumulative. Publisher acknowledges that the Services contain valuable trade secrets and proprietary information of PreciseTarget, that any actual or threatened breach of the sections titled *Intellectual Property* or *Confidentiality* or any other breach by Publisher of its obligations with respect to Intellectual Property Rights of PreciseTarget will constitute immediate, irreparable harm to PreciseTarget for which monetary damages would be an inadequate remedy. In such case, PreciseTarget will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Services, or any portions thereof, that Publisher attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

12.10 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

12.11 Independent Contractors. Publisher's relationship to PreciseTarget is that of an independent contractor, and neither party is an agent or partner of the other. Publisher will not have, and will not represent to any

third party that it has, any authority to act on behalf of PreciseTarget.

12.12 Notices. All notices or other communications required or permitted under this Agreement will be made in writing to the other party by electronic mail as follows: If to PreciseTarget, marketing@precisetarget.com and if to Publisher, at the email address provided to PreciseTarget upon registration. Notwithstanding the foregoing, all legal notices will be made in writing to the other party as follows: If to PreciseTarget, 2 Bethesda Metro Center, Suite 310, Bethesda, Maryland 20814, and if to Publisher, at the address provided to PreciseTarget upon registration. Such notices will be delivered by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by electronic mail, any such notice will be considered to have been given on the day such electronic mail was sent. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its contact information for receipt of notice by giving notice of such change to the other party.

12.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

12.14 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Publisher and PreciseTarget.