

Daily News Digital Advertising Terms and Conditions, Programmatic Platform Sales (“Additional Terms”)

These Additional Terms govern the relationship between Daily News, L.P. (“Daily News”) and the advertiser or trading desk (“Advertiser”) and, if applicable, its agency (“Agency”) named on (i) the insertion order that references these Additional Terms, or (ii) the programmatic deal, i.e., deal id, that is submitted through the site or application on which a link to these Additional Terms appears ((i) or (ii), the “Programmatic Order”).

1. The Programmatic Order and these Additional Terms are referred to herein collectively as the “Advertising Agreement” and constitute the entire agreement among Daily News, Advertiser and Agency with respect to the subject matter thereof. In the event of any conflict or inconsistency between the Programmatic Order and these Additional Terms with respect to the Advertiser’s and Agency’s relationship with the Daily News, these Additional Terms will prevail over any other click-through terms that appear on the Programmatic Order. Notwithstanding anything to the contrary in this paragraph, the parties acknowledge and agree that each party has a separate relationship with a third party platform provider facilitating the purchase of advertising hereunder (the “Platform Provider”); the Platform Provider is not a party to this Advertising Agreement; and, with respect to each party’s relationship with the Platform Provider, in the event of any conflict between the terms between such party and the Platform Provider and this Advertising Agreement, the terms negotiated between such party and Platform Provider will control.
2. Daily News and Advertiser, or Agency on behalf of Advertiser, have entered into a Programmatic Order pursuant to which Advertiser, or Agency on behalf of Advertiser, will provide Daily News with one or more advertisements (“Ads”) for display on the Daily News website. The artwork, copy or active URLs for Ads are referred to as the “Advertising Materials”.
3. Impression delivery is not guaranteed. Bids from Advertiser and Agency compete in real time with Advertiser’s and Agency’s other bids and third-party bids. Advertiser and Agency must submit reasonable bids, as determined by Daily News in its sole discretion.
4. Daily News reserves the right to deactivate Advertiser’s tags or deal id at any time for any reason (including, without limitation, in the event tags are broken, the block list is not adhered to, or the criteria in Paragraph 6 below are not adhered to).
5. Advertiser and Agency each represent and warrant to Daily News that it has all necessary rights, including, without limitation, all necessary licenses and clearances, to use the content contained in the Ads and Advertising Materials as specified on the Programmatic Order.
6. Advertiser and Agency shall not display Ads or utilize Advertising Materials that: (i) infringe upon any copyright, patent, trademark, trade secret, or other proprietary right; (ii) violate any applicable law, statute, ordinance, regulation, right of publicity or privacy; (iii) are lewd, pornographic or obscene; (iv) contain or promote illegal activity, misleading advertising, discrimination based upon race, sex, religion, national origin, physical disability, sexual orientation or age; (v) promote or sell products or services pertaining to alcohol, tobacco, gambling, firearms, or pornography; (vi) promote or sell products or services offered by any competitor of Daily News; (vii) include cookies that collect information to identify Daily News or its end users; (viii) engage in the solicitation of end users through the use of unsolicited commercial electronic mail messages (SPAM); (ix) contain malware of any sort (as described in Google’s malware policy), otherwise violate Google’s advertising policies; or (x) are otherwise reasonably determined by Daily News to be inappropriate.
7. Ads are provided on “as is” and “as available” basis with no warranties whatsoever. TO THE FULLEST EXTENT PERMITTED BY LAW, DAILY NEWS DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, ASSOCIATED WITH THE ADS, ADVERTISER’S/AGENCY’S USE OF OR PARTICIPATION IN THE ADS, INCLUDING, WITHOUT LIMITATION: (A) EXPRESS OR IMPLIED WARRANTIES; (B) WARRANTIES ARISING FROM A COURSE OF PERFORMANCE OR DEALING OR TRADE USAGE; (C) WARRANTIES OF UNINTERRUPTED OPERATION WITHOUT ERROR; (D) IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS ADVERTISING AGREEMENT; (E) EXPRESS OR IMPLIED WARRANTIES REGARDING PAGE VIEWS, VISITORS OR UNIQUE VISITORS; AND (F) EXPRESS OR IMPLIED

WARRANTIES RELATING TO THE SECURITY, RELIABILITY, TIMELINESS, AVAILABILITY AND/OR PERFORMANCE OF THE ADS.

8. Advertiser will defend, indemnify and hold harmless Daily News and its directors, officers, employees and agents from any liabilities, damages, costs and expenses (including reasonable attorneys' fees) resulting from any claim, action or proceeding brought by a third party resulting from (i) an alleged breach of Advertiser's representations, warranties, covenants and agreements in these Additional Terms, or (ii) the content or subject matter of any Ad or Advertising Materials and any content or website to which an Ad links.
9. Agency represents and warrants that it has the authority as Advertiser's agent to bind Advertiser to these Additional Terms and each Programmatic Order, and that all of Agency's actions related to these Additional Terms and each Programmatic Order will be within the scope of such agency. Agency will defend, indemnify and hold harmless Daily News and its directors, officers, employees and agents from any liabilities, damages, costs and expenses (including reasonable attorneys' fees) resulting from (i) Agency's alleged breach of the foregoing sentence, or (ii) any claim, action or proceeding brought by a third party alleging that Agency has breached any Agency-specific obligations under these Additional Terms including, without limitation, those set forth in Paragraphs 5, 9, and 12-16 of these Additional Terms.
10. Except in connection with a party's indemnification obligations or intentional misconduct, in no event will any party be liable for any consequential, indirect, incidental, punitive, special, or exemplary damages whatsoever, including, but not limited to, damages for loss of profits, business interruption, loss of information, and the like, incurred by another party arising out of this Advertising Agreement, even if such party has been advised of the possibility of such damages. Except in connection with a party's indemnification obligations or intentional misconduct, in no event will any party's liability to the other exceed (i) with respect to Advertiser and the Agency, the amounts payable by Advertiser to Daily News for the Ads placed hereunder, and (ii) with respect to Daily News, the amounts paid to Daily News for the Ads placed hereunder during the thirty day period preceding the date a claim arises.
11. In the event Daily News is unable to fulfill this Advertising Agreement because of extraordinary events, this Advertising Agreement will be suspended during the period of inability to perform and the terms extended for a like period. Daily News will not have any liability because of such suspension.
12. Neither Advertiser nor Agency shall be permitted to use Daily News's trade names, trademarks, logos, content, or other creative in any of its advertisements, whether or not on a Daily News publication, or to make any promotional or merchandising reference to Daily News, without the prior written approval of Daily News.
13. Advertiser and Agency will not disclose to any third party any data collected on the Daily News website, including, without limitation, information about Daily News's users, in a manner that (i) contains or reveals personally-identifiable information of a user or (ii) associates users with Daily News. Advertiser and Agency will not merge personally identifiable information collected from users with information previously collected as non-personally identifiable information without robust notice of, and the user's prior affirmative (i.e., "opt-in") consent to, that merger.
14. Daily News reserves the right, directly and/or through third parties, to collect or use data provided by, from or related to Ads via a cookie, web beacon, log data analysis or other mechanism or method, for purposes of segmenting, re-targeting, creating or supplementing user profiles or inventory profiles, creating, supplementing or amending interest categories, or syndication or other distribution to third parties. Advertiser and Agency will not, will not attempt to, and will not assist or knowingly permit any third party to collect or use data provided by, from or related to Daily News via a cookie, web beacon, log data analysis or other mechanism or method, for purposes of segmenting, re-targeting, creating or supplementing user profiles or inventory profiles, creating, supplementing or amending interest categories, or syndication or other distribution to third parties, unless (i) such data collection and usage are authorized in writing by Daily News, or (ii) the data is independently derived by Advertiser or Agency from a user's "click" on an Ad and not related to Daily News.
15. Advertiser and Agency will not disclose any data or metrics regarding the performance of the Daily News website (e.g., number of impressions, interactions, header information, etc.) to any third parties except to each other.

16. Each Advertiser website is required to (i) contain a privacy policy that (a) discloses (x) the usage of third-party technology and (y) the data collection and usage resulting from third party technology; (b) contains a conspicuous live hyperlink to an opt-out website that provides the user the ability to opt out of interest-based advertising, if data is collected on such website for purposes of interest-based advertising; (c) complies with all applicable privacy laws, rules and regulations; and (d) contains a conspicuous live hyperlink to such privacy policy from such website's home page; and (ii) to the extent required by applicable law, rule or regulation, a mechanism to obtain users' prior and informed consent to the usage of third-party technology (reasonable evidence of such consent to be maintained to the extent so required). Daily News acknowledges that Agency has no control over Advertiser's websites and as such, Agency's sole obligation hereunder shall be to notify Advertisers of the requirements set forth in this Paragraph 16.

17. This Advertising Agreement will be governed by the laws of the State of New York, and any claims, legal proceedings, or litigation arising in connection with this Advertising Agreement will be brought solely in the state or federal courts located in New York County, New York, and the parties consent to the jurisdiction of such courts.

18. Neither Agency nor Advertiser may resell, assign or transfer any of its rights or obligations hereunder. If any provision herein is held to be unenforceable, the remaining provisions will remain in full force and effect. All rights and remedies hereunder are cumulative. Paragraphs 8-10, 12-15, 17-19, and any other provisions necessary to give effect to this Agreement shall survive the termination or expiration of this Advertising Agreement.

19. By placing Ads with Daily News, Advertiser and Agency agree to be bound by this Advertising Agreement. No failure or delay by Daily News in exercising any of its rights, powers or privileges hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any other or further exercise thereof.

20. These Additional Terms may be modified at any time and from time to time by Daily News in its discretion. The date of the most recent revision is November 19, 2015.