Resolution No.: 20996
Sponsor: Tony Miller
Date: June 21, 2022

Request for Legislative Action

Completed by County Counselor's Office			
Action Requested:	Resolution	Res.Ord No.:	20996
Sponsor(s):	Tony Miller	Legislature Meeting Date:	6/21/2022

Introduction

Action Items: ['Authorize']

Project/Title:

Authorizing a Sole Source Purchase with Charter, DBA Spectrum Reach, for the 2022 Parks + Rec Marketing Program.

Request Summary

Jackson County Parks + Rec welcomes over 1.4 Million visitors annually to our parks, lakes, and special events. Our annual marketing program includes outreach through multiple platforms to connect with a diverse audience, including print, online, cable, and radio advertising. These efforts maximize return-on-investment by generating revenues for ongoing programming and facility operations.

Parks + Rec and the Purchasing Department have researched cable advertising available in the County, as well as message delivery metro-wide on other platforms such as Mobile devices, Third Party Apps, and On Demand programming. We have found that, while we could buy some one-off specific programming with other providers, we cannot access the inventory and market exposure that Charter, DBA Spectrum Reach, is able to provide. Spectrum Reach is able to deliver the best coverage of cable households throughout Jackson County, and the metro area, and they are the only provider with access to Comcast, AT&T and Direct TV consumers. This expenditure is consistent with Chapter 1030.1 of the Jackson County Code – Sole Source.

Contact Information

Department:	Parks + Rec	**Submitted Date:**	5/26/2022
Name:	Brian P. Nowotny	**Email:**	BPNowotny@jacksongov.org
Title:	Deputy Director Park Operations	**Phone:**	816-503-4803

Budget Information

Amount authorized by this legislation this fiscal year:	$19,002
Amount previously authorized this fiscal year:	$ 0
Total amount authorized after this legislative action:	$19,002
Is it transferring fund?	No
Single Source Funding:	

Request for Legislative Action

Fund:	Department:	Line Item Account:	Amount:
003 (Park Fund)	1601 (Director of Parks)	56210 (Advertising)	$19,002

Prior Legislation	
Prior Ordinances	
Ordinance:	Ordinance date:
Prior Resolution	
Resolution:	Resolution date:
20146	April 23, 2019

Purchasing	
Does this RLA include the purchase or lease of supplies, materials, equipment or services?	Yes
Chapter 10 Justification:	Sole Source
Core 4 Tax Clearance Completed:	Not Applicable
Certificate of Foreign Corporation Received:	Not Applicable
Have all required attachments been included in this RLA?	Yes

Compliance	
Certificate of Compliance	
In Compliance	
Minority, Women and Veteran Owned Business Program	
Goals Not Applicable for following reason: Sole Source	
MBE: .00%	
WBE: .00%	
VBE: .00%	
Prevailing Wage	
Not Applicable	

Fiscal Information
• There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered.

Request for Legislative Action

History
Submitted by Parks + Rec requestor: Brian P. Nowotny on 5/26/2022. Comments: Approved by Department Approver Michele Newman on 5/26/2022 5:43:45 PM. Comments: Approved by Purchasing Office Approver Barbara J. Casamento on 5/27/2022 10:41:52 AM. Comments: Returned for more information by Compliance Office Approver Katie M. Bartle on 5/31/2022 10:31:10 AM. Comments: Spectrum Reach is not in compliance. They can go to https://jacomocompliance.com/login.php to apply for a certificate. Submitted by Requestor Brian P. Nowotny on 6/13/2022 4:06:46 PM. Comments: Updated documents with Compliance information, including "Charter, DBA Spectrum Reach" Approved by Department Approver Michele Newman on 6/13/2022 4:18:29 PM. Comments: Approved by Purchasing Office Approver Barbara J. Casamento on 6/13/2022 4:28:49 PM. Comments: Approved by Compliance Office Approver Katie M. Bartle on 6/14/2022 9:47:15 AM. Comments: Approved by Budget Office Approver Mark Lang on 6/15/2022 3:33:49 PM. Comments: The fiscal note has been attached. Approved by Executive Office Approver Sylvya Stevenson on 6/15/2022 3:54:43 PM. Comments: Approved by Counselor's Office Approver Katherine Henry on 6/16/2022 11:41:53 AM. Comments:

Fiscal Note:

This expenditure was included in the Annual Budget.

PC#

Date: June 15, 2022

RES # 20996

eRLA ID #: 531

Org Code/Description		Object Code/Description		Not to Exceed
003	**Park Fund**			
1601	Director of Parks	56210	Advertising	$ 19,002
				$ 19,002

APPROVED

By Mark Lang at 3:32 pm, Jun 15, 2022

Budget Office

JACKSON COUNTY
Parks + Rec

22807 Woods Chapel Road
Blue Springs, Missouri 64015
MakeYourDayHere.com

Michele Newman, Director
(816) 503-4800
Fax: (816) 795-1234

MEMORANDUM

To: Barbara Casamento, Purchasing Administrator

From: Michele Newman, Director, Parks + Rec

Date: May 25, 2022

Subject: Sole Source Recommendation/Charter dba Spectrum Reach

Jackson County Parks + Rec serves over 1,400,000 visitors annually at our parks, lakes, and recreational facilities. Our Enterprise program, which includes revenue generating centers such as the marinas, campgrounds, and golf course, relies on a robust and diverse marketing program to reach our audience, the citizens of Jackson County. Our marketing lineup includes many different forms of communication, including online, print, radio and television platforms.

In order to make the best use of our marketing dollars, Parks + Rec researched and evaluated cable television advertising opportunities in our marketplace. This included traditional cable marketing, as well as message delivery on other cable-connected platforms, such as Mobile Devices, Third Party Apps, and On Demand programming.

Our research found that there is only one provider that can provide the specific services, and reach the diverse audience, that we require to deliver our cable message, and that is Charter dba Spectrum Reach. Spectrum is the largest multi-screen cable advertising partner in the Kansas City Market. Spectrum Reach has *exclusive* access to Comcast, AT&T, Dish, DirectTV and DirectTV Stream households. No other cable provider can offer this type of diverse multi-platform programming. They are a one-stop-shop, with the ability to reach all of these systems and networks county and metro-wide. Not only does Spectrum Reach have over 450,000 cable subscribers in the Kansas City market, they have unmatched reach across every device, with exclusivity to the Spectrum Reach App/VOD and Satellite/Telco providers, as well as streaming networks such as Roku, Sling and Pluto. They have a reach of up to 97% of adults, age 18 and older, in the greater metropolitan area, plus Streaming TV. Monthly reports and analytics will be available to us through Spectrum Reach's proprietary AudienceTrak Dashboard, as well as access to creative, spots, impressions, and upcoming airings, all helping us track the return on our investment.

None of the other cable operators in our area can provide the access that Spectrum Reach does, across numerous multi-media platforms. While we could buy some specific one-off programming with other providers, we

cannot access the far-reaching inventory that Spectrum Reach is able to produce. Below is a summary of the other providers that were evaluated:

- Consolidated Communications – 10,000-12,000 homes in Johnson County only
- Vyve –1,000-1,100 homes Atchison only
- Vyve – less than 300 homes in Garnett
- Vyve – less than 500 homes in Ottawa
- United Fiber – less than 3,000 homes in St. Joseph
- Prime Media – only covers Wichita and Topeka -- https://primemediaproductions.com/video-advertising/coverage-areas
- Google Fiber TV is no longer a provider in the market as of April. They had roughly 30,000 homes when they shut down, and Spectrum picked up a majority of those homes recently.

You have shared with us that the Purchasing Department has also researched this information, with similar findings. For these reasons, we are requesting that Spectrum Reach be considered a Sole Source, as none of the other providers can access the inventory and provide the impact that Spectrum Reach is able to offer. Below is a summary of our proposed 2022 Cable Marketing Campaign Program.

Thank you for your consideration, and please do not hesitate to contact me if I can provide any additional information.

Parks + Rec's 2022 Cable Marketing Campaign Details

Total investment - $19,001.20
Implementation Dates – June/July, the peak of the prime season for Enterprise locations
Targeted geography – Jackson County, MO
Audience target - Adults 25-54, HHI $50K+, Family & Kids, Lifestyle & Entertainment, Outdoor Activities Enthusiast

- 3,460 :15 second commercials on Television networks such as HGTV, Food, History, TBS, Golf, A&E, Hallmark, Bravo, Discovery, and in-game Royals Baseball
- 171,428 impressions or views on streaming Television networks similar to above
- 149,222 impressions or views on premium online video pre-roll. Websites include kansascity.com, kshb.com, espn.com, active.com. All online video impressions are served in a brand safe environment on ComScore's top publishers

Added Value:

- Edited the beaches spot to highlight current offerings - $75 value
- 250 commercials per zone (3 total zones) running throughout the campaign on demo appropriate networks - $7,500 value
- Production of two network taggable spots – Fire Masters on Cooking Channel and Hallmark's Christmas In July - $250 value

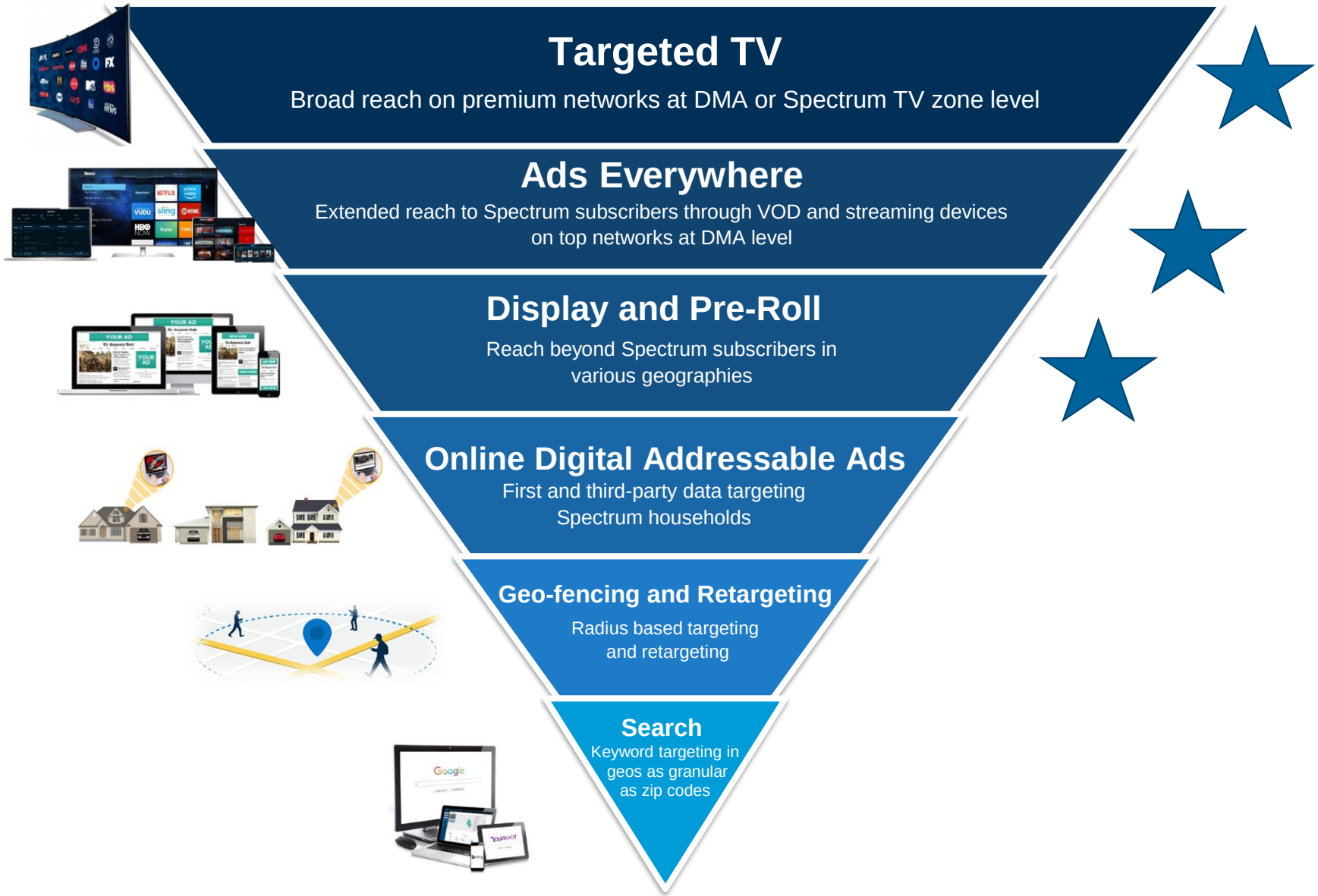
Jackson County Parks + Rec

2022

Charter DBA Spectrum Reach

Spectrum REACH

Branding: Get the message out about Jackson County Parks + Rec summer event calendar, golf, boating and beaches! Fill the funnel below to extend your reach to those consumers that count!



Jackson County Parks + Rec 2022 Recommendation:

TACTICS:
Television
Streaming Television
Online Video Pre-Roll

TARGETING:
Adults 25-54
Household Income (HHI) $50K+
Family & Kids
Lifestyle & Entertainment
Outdoor Activities Enthusiast

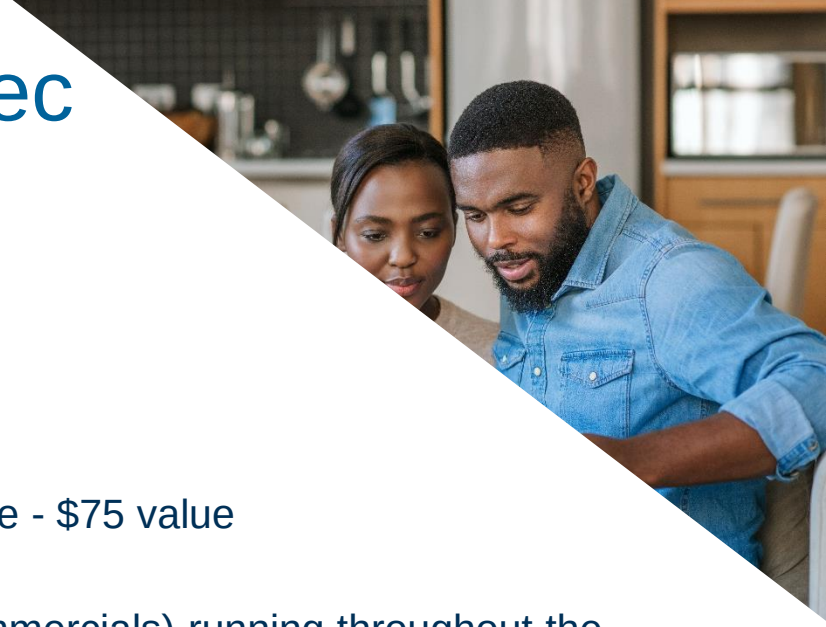
Target Geography:

- Jackson County, MO

The powerful combination of Spectrum's first-party viewing data with trusted third party data creates enhanced targeting to reach the right viewers and maximize the opportunity to deliver your message wherever and whenever your potential customers are watching.

Spectrum REACH

Jackson County Parks + Rec 2022 ADDED VALUE:



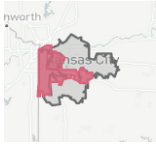
Added Value:

- Edited the beaches spot to remove outdated footage - $75 value
- 250 commercials per zone (3 total zones = 750 commercials) running throughout the campaign on demo appropriate networks - $7500 value
- Production of 2 network taggable spots – Fire Masters and Hallmark's Christmas in July – to promote and generate awareness of Jackson County Parks + Rec - $250 value

Spectrum REACH

Our Recommendation

Linear Zones



East Zone
Central Zone
AT&T Central

Demographic

Adults 25-54
Outdoor Enthusiasts

Targeted Television June, July & August 2022	**3,460 Total Commercials - :15 bookends** **$10,315**
Streaming Television (target audience on page 3)	**171,428 Total Impressions/Commercials** **$6,000** (average cost per impression 3.5 cents!)
Targeted Online Video	**149,222 Total Impressions** **$2,686**
Added Value	1. Edited beaches spot to include new footage - $75 value 2. 250 commercials per zone (3 zones) running on demo appropriate networks. - $7,500 value 3. Production of 2 network taggable spots – Fire Masters and Hallmark's Christmas in July. - $250 value

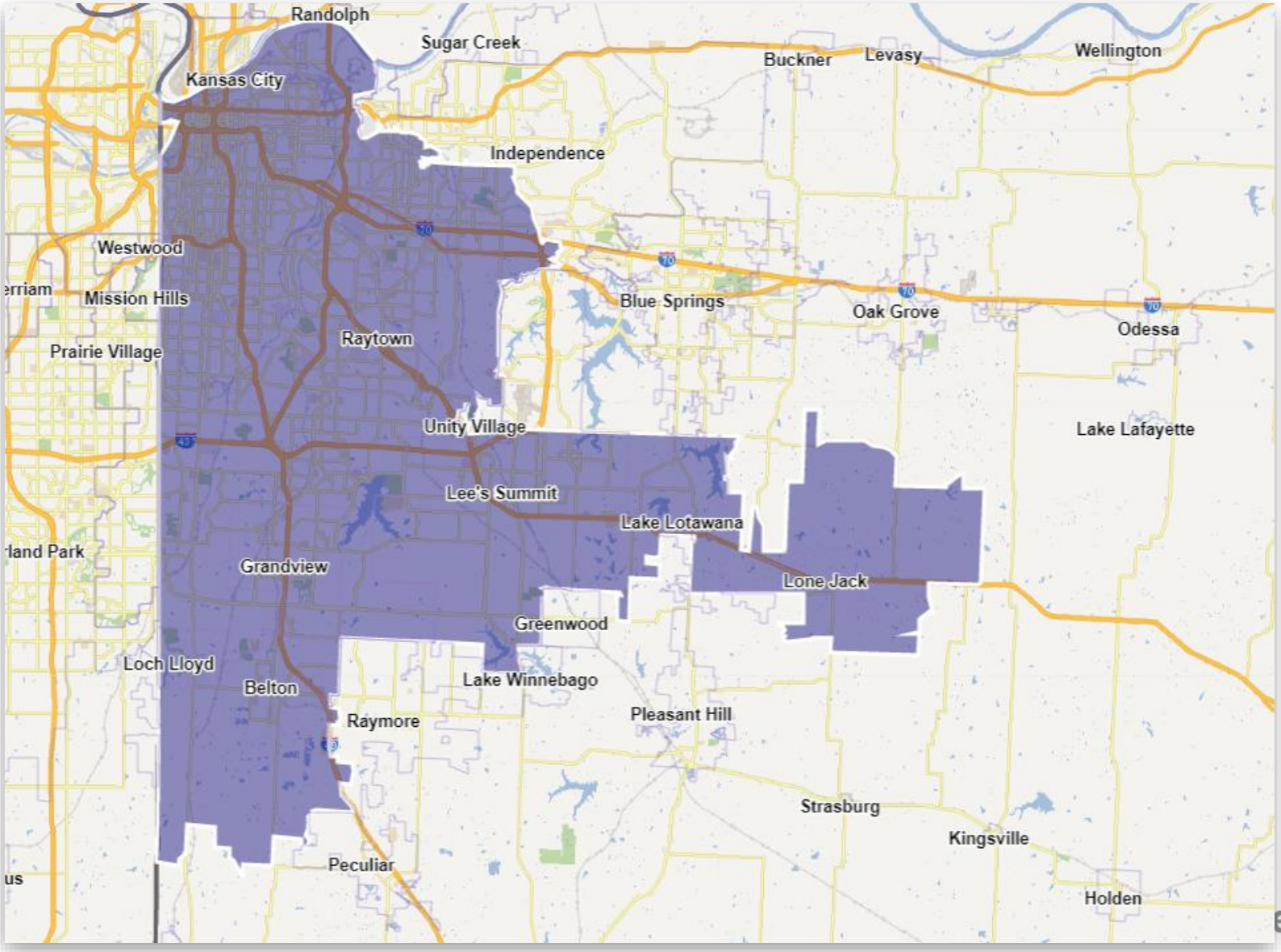
Total: $19,001.20

Charter DBA Spectrum Reach
Taylor Rubin
9225 Indian Creek Parkway, Suite 500
Overland Park, KS 66210
Taylor.Rubin@charter.com
816-222-5875

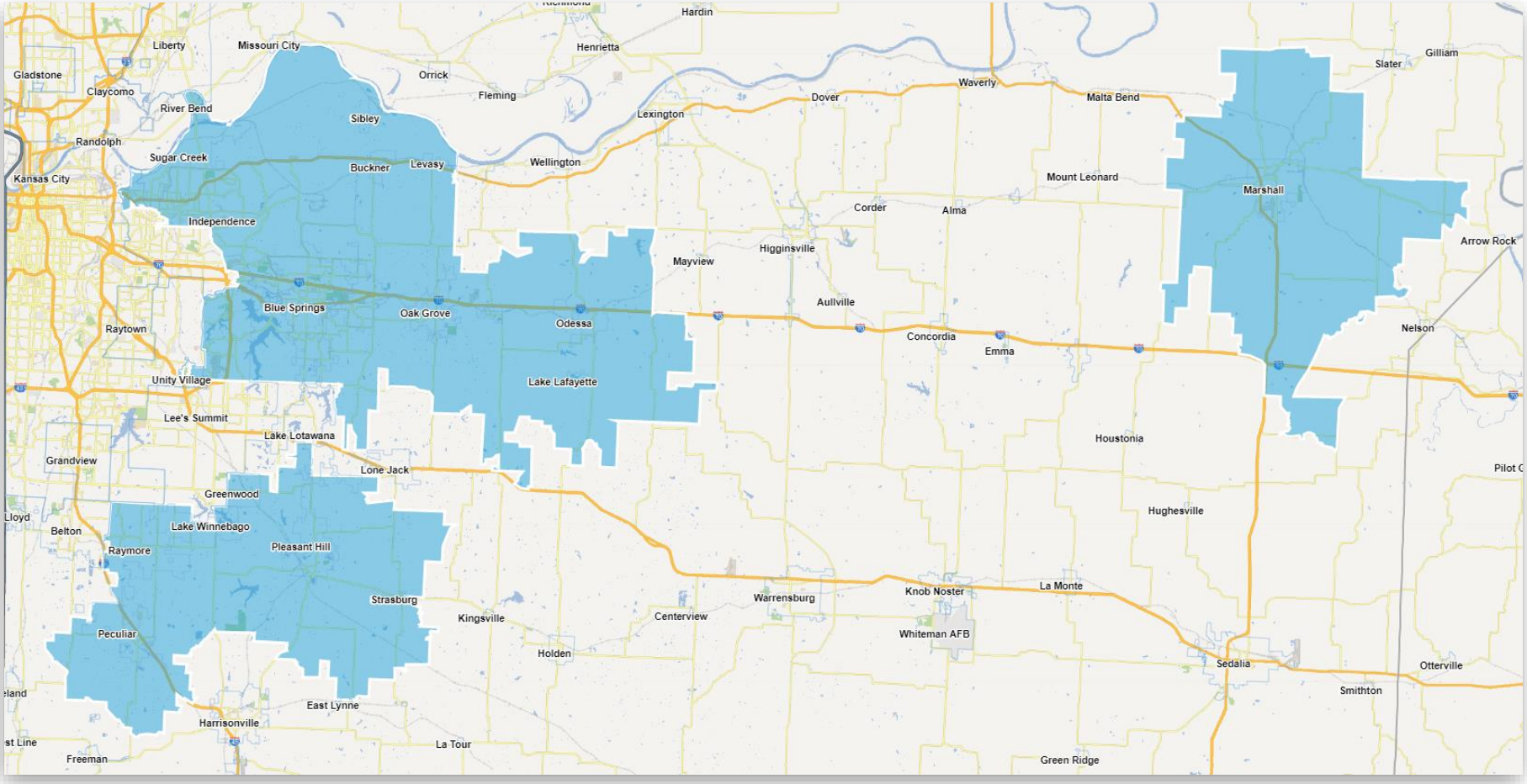
Client Name Date

Client Signature

Central Zone – Charter/AT&T – 5961/1446



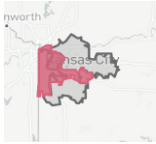
East Zone – Comcast/AT&T – 5963/1447



ATT Zone not included – not buying Marshall, Pleasant Hill zone 1447

2022 Campaign Investment Summary

Linear Zones



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Charter DBA Spectrum Reach
Taylor Rubin
9225 Indian Creek Parkway, Suite 500
Overland Park, KS 66210
Taylor.Rubin@charter.com
816-222-5875

Client Name Date

Client Signature

SPECTRUM REACH TERMS AND CONDITIONS

The advertiser, agency, time-buying, or other media placement service (collectively, **"Client"**) contracting for the cablecast, wireless distribution, internet delivery, video over internet protocol delivery (**"IPTV"**), video on demand (**"VOD"**) placement, mailing or other distribution of any kind (collectively, **"distribution"**) of commercial advertisements, video assets, overlays, programs, printed or other content materials of any kind (collectively, **"Advertisements"**) and Charter Communications Operating, LLC (**"Spectrum Reach"**) hereby agree to these Terms and Conditions. **"Agreement"** means these Terms and Conditions, together with all Appendices hereto, any orders placed by or on behalf of Client and accepted by Spectrum Reach for distribution of any Advertisement, Ad Content (as defined in Section 5(b)) or other materials, whether on a System, via IPTV, over the internet or otherwise (collectively, **"Orders"**), and any statements of work entered into between the parties for production services (collectively, **"SOWs"**).

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 18, WHICH INCLUDES A WAIVER OF CLASS ACTIONS AND PROVISIONS FOR OPTING OUT OF ARBITRATION, WHICH AFFECTS CLIENT'S RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICES.

1. BILLING AND PAYMENTS

(a) Except as otherwise agreed by Spectrum Reach in writing, Spectrum Reach will bill Client on a monthly basis.

(b) Client will pay each invoice in full within 30 days after receipt, without any deduction or right of set-off or counterclaim; provided that Spectrum Reach in its discretion reserves the right to require payment in advance of any scheduled distribution date. Except as otherwise agreed by Spectrum Reach in writing, Spectrum Reach will have no obligation to accept payment in any form other than cash or immediately available funds. If Spectrum Reach agrees to accept payment by check, Spectrum Reach may process Client's check payments electronically. With electronic check conversion, (i) Client's bank account may be debited in the amount of Client's check as early as the same day Spectrum Reach receives payment, (ii) the transaction will appear on Client's bank statement as an electronic funds transfer, and (iii) Client's original check will be destroyed and will not be returned to Client's bank.

(c) Upon Client's request, Spectrum Reach may include verifications of performance with monthly invoices issued under this Agreement, but the furnishing, completeness and accuracy of such verifications will not be a condition precedent to Client's obligation to timely pay any such invoice. Spectrum Reach will not be liable to Client for, and makes no representations or warranties with respect to, such verifications, except that any such verification for any video content distribution system owned by Spectrum Reach on which any applicable Advertisement was distributed will accurately reflect the internal log for such system.

(d) Other remedies for non-payment notwithstanding, if any amounts payable to Spectrum Reach under this Agreement are not received on or before the tenth day after such amount was due, then a late payment charge equal to 1.5% per month of such past due amount, cumulative (or if such amount exceeds the maximum permitted under applicable law, then such maximum amount) will become due and payable by Client to Spectrum Reach in addition to such amounts owed under this Agreement, until all amounts are paid in full. Client will reimburse Spectrum Reach for all amounts incurred in connection with collection activities, including without limitation collection agency charges, reasonable attorney fees and costs.

(e) Time is of the essence hereof. If Spectrum Reach does not receive timely payment, then Spectrum Reach in its sole discretion may discontinue further performance under this Agreement in addition to such other remedies as may be available to it under this Agreement, at law or in equity.

2. TERMINATION

(a) Orders for traditional linear spot cable Advertisements of 60 seconds or less in duration may be canceled by Client upon 14 days prior written notice to Spectrum Reach, but no such cancellation will be effective until 14 days after the initial start date under this Agreement unless otherwise expressly agreed by Spectrum Reach in writing.

(b) Orders for traditional linear spot cable Advertisements of more than 60 seconds in duration may be canceled by Client upon 28 days prior written notice to Spectrum Reach, but no such cancellations will be effective until 28 days after the initial start date under this Agreement unless otherwise expressly agreed by Spectrum Reach in writing.

(c) Advertisements consisting of non-traditional or "advanced" advertising where additional and varying

cancellation times are necessarily required, including without limitation Advertisements involving VOD, overlay creation or approval, or Advertisements to be distributed on any website or over the internet (collectively, **"Internet Advertisements"**) or Advertisements to be distributed to any device via IPTV (**"IPTV Advertisements"**), may be canceled by Client upon delivery of such advance written notice (which may be 60 days or longer) as Spectrum Reach may determine is reasonably necessary under the circumstances taking into account applicable advertising campaign, distribution system or device requirements.

(d) Spectrum Reach may, without liability to Client, terminate this Agreement or stop or suspend distribution of any Advertisement at any time for any reason. No such termination or suspension by Spectrum Reach will relieve Client of Client's obligations to timely pay to Spectrum Reach in full all amounts due under this Agreement. Upon any such termination or suspension, all amounts owed to Spectrum Reach under this Agreement will be immediately due and payable, including but not limited to any fees previously waived by Spectrum Reach.

(e) If Client cancels all or any portion of this Agreement or any Order, all discounts are void and rates on Spectrum Reach's then current rate card will apply. Upon cancellation, all then outstanding and unpaid amounts attributable to distribution of Client's Advertisements will be immediately due and payable by Client. In addition, Client will pay all non-recoverable out-of pocket expenses incurred by Spectrum Reach in connection with any related promotion, contest, sponsorship, sweepstakes or other service provided to Client in connection herewith.

(f) If Client cancels any special promotion, contest, sponsorship, sweepstakes or other service provided to Client by Spectrum Reach then, at Spectrum Reach's sole discretion, any related discounts for Advertisements will be void and rates on Spectrum Reach's then current rate card will apply.

3. EFFECT OF BREACH

(a) If Client materially breaches this Agreement, including without limitation a failure to pay any sum when due then, in addition to its other termination rights as set forth in this Agreement, Spectrum Reach may terminate this Agreement immediately upon notice (which may be either written or verbal) to Client and may, without liability, cease distributing Advertisements, provided that any such termination will not in any way release any party from its obligation to pay in full all amounts due under this Agreement. Upon any such termination, all unpaid amounts due to Spectrum Reach under this Agreement will become immediately due and payable.

(b) If Spectrum Reach materially breaches this Agreement, then Client may cancel this Agreement upon written notice to Spectrum Reach, unless Spectrum Reach has cured or is diligently proceeding to cure such breach.

4. RATES AND CHARGES

(a) Rates for any Advertisement purchased by Client will be as set forth on the applicable Order (plus any applicable taxes, franchise fees, and/or other assessments by any governmental authority), provided that if no rate is set forth thereon, the applicable rate will be as set forth on Spectrum Reach's rate card then in effect at the time of Spectrum Reach's acceptance of the applicable Order. Spectrum Reach reserves the right to increase rates at any time without prior notice; provided that with respect to any Order accepted by Spectrum Reach prior to any such rate increase, such increase will not be applied to Advertisements distributed under such Order until 45 days after written notice to Client of such increase.

(b) With Spectrum Reach's prior written approval, Advertisements of a parent and/or subsidiary of Client (or, if applicable, the person or entity on whose behalf Client is acting), scheduled to be distributed within 13 weeks from the date of the first distribution of an Advertisement, or from the start of a pre-determined contract year, may be combined for discounts.

(c) Client will pay all expenses related to the delivery of Advertisements and/or scheduling instructions to Spectrum Reach. Neither Spectrum Reach nor any Spectrum Reach affiliated, owned and/or represented video content distribution system (**"System"**) will accept or process mail, correspondence, or telephone calls in connection with the distribution of any Advertisement under this Agreement, except as otherwise expressly agreed in writing by Spectrum Reach and at the sole risk of Client and subject to payment or reimbursement by Client of all expenses incurred by Spectrum Reach or any System in connection therewith.

5. AD CONTENT

(a) Client hereby grants to Spectrum Reach a worldwide, non-exclusive, limited, sublicensable right to distribute, reproduce, copy, reformat, digitize, adapt, compress, transcode, display, perform and technologically manipulate any Advertisement on or via:

(i) Systems,

(ii) any devices to which such Advertisements may be distributed via IPTV,

(iii) any internet websites or applications on which such Advertisements are scheduled to be distributed, or

(iv) any other distribution method or platform,

in each case as reasonably necessary in order to distribute the Advertisement as ordered by Client.

(b) Except as otherwise agreed by Spectrum Reach in writing, Client will deliver or cause to be delivered to Spectrum Reach or the applicable System(s) the content of all Advertisements (**"Ad Content"**). Client will comply with all of Spectrum Reach's requirements regarding the format and technical and other specifications for Advertisements and Ad Content and the delivery thereof.

(c) In the case of Advertisements to be distributed on any System (**"System Advertisements"**), Client will deliver such Advertisements and scheduling instructions to Spectrum Reach or the System, as applicable, at least 48 hours in advance of the agreed time of distribution in the case of traditional spot cable System Advertisements. In the case of Internet Advertisements, IPTV Advertisements or non-traditional or "advanced" advertising System Advertisements where additional and varying lead times are necessarily required, including without limitation Advertisements involving VOD or overlay creation or approval, Client will deliver such Advertisements and scheduling instructions in accordance with such instructions as Spectrum Reach may determine and provide to Client depending upon applicable advertising campaign, System, device or platform requirements. If Advertisements and/or Ad Content and associated instructions are not delivered to Spectrum Reach in the proper formats and with the proper specifications by the applicable deadline established by Spectrum Reach, then Spectrum Reach may bill Client for the time reserved.

(d) Spectrum Reach will use commercially reasonable efforts to distribute Advertisements despite late receipt thereof, but will have no liability for Advertisements that are not distributed due to late delivery by Client.

(e) All Advertisements are subject to the prior approval of Spectrum Reach, and Spectrum Reach may, for any reason or for no reason, without restriction or liability and in Spectrum Reach's sole discretion, refuse to distribute any Advertisement or Ad Content. Without limiting the foregoing, Spectrum Reach may refuse to distribute any Advertisement or Ad Content which Spectrum Reach in its sole discretion determines (i) does not meet Spectrum Reach's technical, scheduling, or delivery requirements, (ii) violates the terms of this Agreement or any of Spectrum Reach's agreements with programming suppliers, or (iii) is illegal, unsatisfactory, unsuitable, or contrary to the public interest for any reason whatsoever (any such refusal under clauses (i), (ii) or (iii) being **"For Cause"**). If Spectrum Reach refuses to distribute any Advertisement or Ad Content, Spectrum Reach will attempt to so notify Client by telephone, facsimile or email. If Spectrum Reach refuses to distribute any Advertisement or Ad Content For Cause and Client fails to timely furnish or cause to be furnished satisfactory replacement Ad Content, Spectrum Reach may bill Client for the time reserved.

(f) Spectrum Reach will exercise commercially reasonable precautions in handling Advertisement materials or other property furnished to it under this Agreement, but will not be liable for any loss or damage thereto. All tapes, production and other Ad Content or related materials used in any Advertisement will be the exclusive property of Spectrum Reach, unless otherwise expressly agreed by Spectrum Reach in writing. No commercial tapes, Ad Content or other Advertisement materials provided by Client will be returned unless: (i) Client has so requested and Spectrum Reach has expressly so agreed in writing, and (ii) Client picks up such materials at its own expense within 30 days after the last distribution date under this Agreement. Otherwise, Spectrum Reach may dispose of all such tapes and other Ad Content or other Advertisement materials at any time after 30 days following the last use or distribution date. In addition, any video tapes, hard drive storage or other physical media on which video shot or produced by Spectrum Reach is stored will not be retained and can be reused for other customers, recycled or disposed of unless otherwise expressly agreed by Spectrum Reach in writing.

(g) Without notice to, or consent of, Client, Spectrum Reach may (i) provide copies of Advertisements, Ad Content or any other Advertisement material to third parties in connection with Spectrum Reach's marketing or other ordinary course business activities; and (ii) deliver copies of this Agreement or of Advertisements, Ad Content or any other Advertisement material to third parties as required by applicable law or regulations or pursuant to a subpoena, court order, governmental or municipal inquiry or similar judicial, regulatory, administrative or other process.

(h) With respect to any Advertisement that contains nudity, indiscreet sexuality, profane language, or excessive violence, Spectrum Reach may (i) limit the distribution of such Advertisement to time slots between 10:00 PM and 5:00 AM in the local time zone in which the Advertisement is distributed and (ii) require Client to provide, at Client's expense, an audio/video disclaimer (satisfactory to Spectrum Reach) before, during, and after such Advertisement, including without limitation the following or substantially similar statements (complete with the appropriate information):

(A) OPEN: "The following advertisement contains scenes of [description of nature of scene] and may not be suitable for children under 17. Parental discretion is advised.";

(B) WITHIN ADVERTISEMENT (before each potentially objectionable scene): "The following segment of the advertisement contains scenes of [description of nature of scene] and may not be suitable for children under 17. Parental discretion is advised."; or

(C) CLOSE: "The preceding advertisement was produced by an independent producer, and does not necessarily reflect the views of Charter Communications or its employees, officers or directors."

(i) Spectrum Reach will not be liable for any loss, erasure damage, or any other destruction to any Ad Content delivered by or on behalf of Client or, even if accepted by Spectrum Reach, any telephone, mail, facsimile, or other communications from any third party relating to any Advertisements.

6. DISTRIBUTION ISSUES; SUBSTITUTIONS

(a) If, for any reason, all or any portion of any System Advertisement is not distributed at the scheduled time, Spectrum Reach may provide a "make good" in the form of, at its option, (i) distribution of such Advertisement at a subsequent time in the same or a comparable manner or class of air time or (ii) a corresponding credit for subsequent Advertisement distribution.

(b) Spectrum Reach may cease distribution of Internet Advertisements if the total number of impressions for a specified display period is reached prior to the end of the scheduled display stop date. If there is a shortfall in delivery of Internet Advertisement impressions of more than 10% at the end of any specified period, Spectrum Reach may provide, as Client's sole remedy, "make good" impressions through the same or a comparable manner or class of placements, to be delivered no later than 60 days following the applicable scheduled display stop date.

(c) Spectrum Reach will have the right to substitute for any Advertisement any programming which in Spectrum Reach's sole discretion is deemed to be (i) of greater local or national interest or importance, including without limitation sporting events, or (ii) necessary for Spectrum Reach to distribute in order to comply with its agreements with programming suppliers. Spectrum Reach will notify Client in advance or within a reasonable time after any such substitution, and Section 6(a) will apply.

(d) Advertisements scheduled in programs following events (such as feature films, sports or special programming of any kind), which run beyond their normally scheduled time, or Advertisements scheduled in programs which are interrupted for any reason, will be automatically rescheduled within the delayed or interrupted program without prior notice to Client and will be billed at the rate as if the event had concluded at its normal time or there had been no interruption.

(e) With respect to the distribution of any Advertisement as part of VOD programming or using a System's VOD platform, or using IPTV, or Advertisements consisting of non-traditional or "advanced" advertising of any kind, Client acknowledges that other content, tools or information provided by Spectrum Reach or third parties may appear on the screen over or with such Advertisement or Ad Content including, without limitation, (i) navigational content appearing during processes such as program selection, ordering and playback, (ii) applicable privacy and/or consent notices, and/or (iii) any content, tools or information that viewers could cause to be displayed. Spectrum Reach, its affiliates or agents may copy and store Advertisements during the distribution term as Spectrum Reach may deem appropriate under the circumstances in order to optimize performance and distribution on the Systems.

(f) Except as otherwise expressly agreed by Spectrum Reach in writing, Client's purchase of advertising time for System Advertisements may not include distribution of such Advertisement via IPTV. Furthermore, Client's purchase of advertising time on a network may, but does not necessarily, include the purchase of advertising time on duplicate or alternative feeds of such network (including without limitation standard definition versions or other feeds offered on alternate channel locations, advertising time distributed on a time-shifted basis, or advertising distributed over the internet or using IPTV).

(g) Spectrum Reach makes no representations or warranties to Client with respect to the distribution schedules for System Advertisements that are distributed in standard definition feeds or using IPTV. Any verifications of performance delivered by Spectrum Reach under this Agreement will apply only to System Advertisement schedules that run in high definition feeds. If a standard definition feed is not simulcast with the corresponding high definition feed, then System Advertisements will not run at the same time in both feeds. Client acknowledges and agrees that regardless of whether or not a standard definition feed is simulcast with the corresponding high definition feed, System Advertisements distributed in standard definition feeds often are not able to be distributed in the same advertising zones as the corresponding Advertisements in the high definition feed. Except as otherwise agreed by Spectrum Reach in writing, distribution of System Advertisements in the high definition feed as ordered by Client will satisfy Spectrum Reach's obligations under this Agreement.

(h) **SPECTRUM REACH MAY NOT HAVE THE CAPABILITY TO INSERT ON HD SIMULCAST NETWORKS. AUDIENCE ESTIMATES FOR HD PROGRAMMING ARE NOT ADJUSTED FOR NON-INSERTION.**

(i) Client also acknowledges and agrees that program names and schedules may change at any time due to alterations by the networks or other causes, and that Spectrum Reach is not liable for any such changes.

7. RATINGS POINT PROJECTIONS

(a) If a projected number (a **"Ratings Projection"**) of ratings points, as published by The Nielsen Company (**"Nielsen"**), is requested in writing by Client and accepted by Spectrum Reach with respect to any one or more Advertisements, then Client hereby agrees that such Ratings Projection will be deemed fulfilled if the total ratings points (as published by Nielsen) for the programs in which such Advertisements are inserted, achieve at least 90% of such Ratings Projection taken as a whole.

(b) If the total ratings points (as published by Nielsen) for such programs are less than 90% of such Ratings Projection, then at the written request of Client received by Spectrum Reach within 90 days after the last run date of the relevant contract flight, Spectrum Reach will cause the appropriate Systems to distribute the relevant Advertisement(s) at a subsequent time (or times) until the total ratings points for such programs (as published by Nielsen) are at least 90% of such Ratings Projection.

(c) If at any time Nielsen ceases to publish ratings points for cable television programming generally, then the ratings point determination with respect to any applicable Ratings Projection will be as determined and published by another entity acceptable to Spectrum Reach that provides such ratings point information for cable television programming generally. If no entity acceptable to Spectrum Reach publishes such information, then Spectrum Reach's obligation to fulfill any Ratings Projection with respect to this Agreement will be null and void and Spectrum Reach will have no further obligations with respect thereto.

(d) If a projected number of ratings points is not requested in writing by Client and accepted by Spectrum Reach, then Spectrum Reach's obligation to distribute Advertisements under this Agreement will be limited to the schedule as ordered by Client and accepted by Spectrum Reach.

8. SUBSCRIBER COUNTS

(a) Spectrum Reach makes no representations or warranties to Client with respect to the number or composition of (i) subscribers to whom an Advertisement actually may be distributed, or (ii) users by whom an Advertisement may be viewed or accessed, as the case may be. The number and composition of subscribers or users of any System or other distribution platform are estimates and will vary by network, type of video feed, programming tier or package, geographic areas and other circumstances, and may change at any time. In particular, Spectrum Reach makes no representations or warranties to Client with respect to the number or composition of subscribers to whom an Advertisement will be distributed when (i) viewed in a standard definition feed or using any of Spectrum Reach's "Enhanced TV" services, including without limitation Start Over, Look Back, Catch Up, or other similar services, or (ii) such distribution occurs via IPTV. The number of homes capable of accessing VOD Advertisements is also an estimate and may vary by the number of homes actually subscribing to or eligible for digital System service, IPTV and/or other factors.

(b) Notwithstanding anything to the contrary in this Agreement or in any other materials reviewed by Client, the number of subscribers to which any System Advertisement will be deemed distributed for purposes of this Agreement will be the applicable high definition Ad Insertable Universe Estimate for the applicable System, network tier and channel as of the distribution date of such Advertisement as determined by reference to the applicable Universe Estimate published by Nielsen. Under no circumstances will Spectrum Reach be liable to Client in any way for any changes that may occur in the number or composition of subscribers to any System (or other distribution platform), network tier or channel during the term of this Agreement or otherwise.

(c) Spectrum Reach may place System Advertisements on behalf of third party System operators under an advertising interconnect or other agreement in effect for all or part of a Designated Market Area (**"Applicable DMA Territory"**). In such event, Spectrum Reach cannot guarantee that System Advertisements ordered by Client will be distributed to all subscribers within the Applicable DMA Territory. Client hereby agrees that an order will be deemed fulfilled if a System Advertisement is distributed to at least 90% of the Spectrum Reach insertable subscribers in the Applicable DMA Territory.

(d) **ADVERTISEMENTS MAY BE VIEWABLE ONLY IN A PORTION OF THE GEOGRAPHICAL AREA COVERED BY THE INTERCONNECT OR THE SYSTEM HEADEND. SPECTRUM REACH MAY USE SEVERAL DIFFERENT ACCEPTED INDUSTRY STANDARDS FOR CALCULATING SUBSCRIBER NUMBERS AND SPECTRUM REACH'S METHODS MAY DIFFER FROM THOSE USED BY OTHER SYSTEM OPERATORS.**

(e) With respect to Internet Advertisements, an order or campaign will be deemed fulfilled and fully delivered if at least 90% of the ordered impressions were delivered.

(f) With respect to IPTV Advertisements, an order or campaign will be deemed fulfilled and fully delivered if Spectrum Reach's internal logs reflect that Client's Advertisements were included in the applicable video feed at the designated point of measurement, as reasonably determined by Spectrum Reach.

9. SCREEN VIEW AND INTERNET ISSUES

(a) The organization, format, structure or "look and feel" of any internet website, microsite, IPTV display, VOD navigation path or screen view used for distribution of Advertisements will vary by System location and/or hardware configuration. Spectrum Reach reserves the right to redesign or modify at any time without notice any or all of the organization, format, structure or "look and feel" of any internet website, microsite, IPTV display, VOD navigation path or screen view used for distribution of Advertisements In the event such modifications affect the placement of an Advertisement, Spectrum Reach will attempt to notify Client and work with Client to display the advertisement in a comparable manner.

(b) In addition, Internet Advertisements, IPTV Advertisements, including but not limited to banners and overlays, and VOD or Viewer selected Advertisements are subject to, and Spectrum Reach will have no liability for, any website, network or platform downtime (regardless of cause), including without limitation downtime caused by (i) server failures or downtime, (ii) the telecommunications and/or network related equipment of Spectrum Reach or its internet or other service providers, or (iii) the construction, installation, repair, maintenance, presence, use or removal of systems or equipment connected to or comprising the network or Spectrum Reach's internet service or the applicable website.

(c) Except as otherwise agreed by Spectrum Reach in writing, (i) placement and/or positioning of Internet Advertisements on any applicable websites will be at the sole discretion of Spectrum Reach, and (ii) placement and/or positioning of IPTV Advertisements on any applicable device also will be at the sole discretion of Spectrum Reach.

(d) Client acknowledges and agrees that if a third party ad server is used to distribute an Internet Advertisement, Spectrum Reach cannot control or guarantee the identity of the internet websites that will be used to distribute such Internet Advertisement. Client further acknowledges and agrees that Spectrum Reach cannot control or guarantee the identity or nature of any end user or viewer of any Internet Advertisement, and will have no liability to Client for any impressions or views generated by non-human or automated traffic (including, without limitation, bot traffic).

(e) All Internet and/or IPTV Advertisement materials will comply with Spectrum Reach's applicable technical requirements. All programming codes and computer files are the property of Spectrum Reach.

10. ADDITIONAL TERMS

(a) Client agrees that any production services provided to it by or on behalf of Spectrum Reach will also be subject to Appendix A located at this link.

(b) Client agrees that the distribution of Internet Advertisements, other than (i) Internet Advertisements as part of a Search Campaign or otherwise distributed in Search Inventory (in each case as defined in Appendix C), or (ii) Internet Advertisements distributed in ATT Inventory (as defined in Appendix D) will also be subject to Appendix B located at this link.

(c) Client agrees that the distribution of Internet Advertisements as part of a Search Campaign or otherwise distributed in Search Inventory will also be subject to Appendix C located at this link.

(d) Client agrees that the distribution of Advertisements in ATT Inventory will also be subject to Appendix D located at this link.

(e) Appendices A, B, C and D are, collectively, referred to herein as the **"Additional Terms"** and are incorporated into, and made a part of, this Agreement by this reference. In the event of a conflict between this Agreement and any of the Additional Terms, this Agreement will prevail.

11. DELIVERABLE AND FULFILLMENT RELATED ISSUES

(a) To the extent that any of Client's Advertisements as ordered contemplate delivery of any other services or materials to end users or System subscribers, then additional and separate fees, charges and Ad Content delivery and other requirements may apply. Except as otherwise agreed by Spectrum Reach in writing, Spectrum Reach will not be liable to Client under any circumstances for under or over delivery of any such other services or materials to end users or System subscribers.

(b) Further, if Spectrum Reach, in its sole discretion, agrees in writing that any of Client's Advertisements as ordered may include delivery of services or materials to end users or System subscribers by a third party fulfillment house engaged by or on Client's behalf (a **"Client Fulfillment House"**), Spectrum Reach will make available to such Client Fulfillment House such Subscriber Information (as

defined in Section 15(e)) and other information (collectively, **"Fulfillment Information"**) as Spectrum Reach, in its sole discretion, deems to be reasonably appropriate in order for Client Fulfillment House to deliver such services or materials to such end users or System subscribers, so long as Client Fulfillment House has previously executed and delivered to Spectrum Reach, and remains in compliance with all material terms of, a written third party fulfillment house agreement that is acceptable to Spectrum Reach in its sole discretion (the **"Client Fulfillment House Agreement"**).

(c) As between Client and Spectrum Reach, Client will be solely responsible for all costs, fees and expenses associated with any and all services or materials performed or provided by Client Fulfillment House, including without limitation pursuant to the Client Fulfillment House Agreement.

(d) Except as otherwise agreed by Spectrum Reach in writing in a separate fulfillment services agreement or addendum, Spectrum Reach provides no guarantees or assurances regarding availability, deliverability, accuracy or accessibility of mailing lists or addresses or any Fulfillment Information, the absence of mail carrier failures or delays, the performance of any Client Fulfillment House, or the timing or verification of fulfillments generally.

12. ADVERTISEMENT DATA; REPORTS

(a) Spectrum Reach and/or any System reserve the right to and may collect, retrieve, retain, analyze and store certain information and/or data relating to any one or more Advertisements or associated video or other content assets, including without limitation information or data with respect to numbers of views, viewing trends or durations, time shifting or "Enhanced TV" usage statistics, impressions, clicks, conversions, leads, engagement or any other information or data reflecting the success, performance, response rates or patterns of subscriber behavior relating to System, VOD, IPTV, Internet or other Advertisements or associated video or other content assets of any kind (collectively, **"Advertisement Data"**).

(b) Except as otherwise agreed by Spectrum Reach in writing, Spectrum Reach will have no obligation to provide Client with any reports or data of any kind relating to any one or more Advertisements, including without limitation any Advertisement Data. To the extent Spectrum Reach does provide Client with reports or data as set forth above, (i) Client will be responsible for all costs of generating and providing such reports or data, and (ii) Spectrum Reach will use its commercially reasonable efforts to deliver such reports or data to Client in accordance with industry standards, provided that Spectrum Reach does not warrant the accuracy of any such reports or data.

(c) If for any reason Spectrum Reach does provide Client with any Advertisement Data, (i) such Advertisement Data will be solely owned by, and constitute Confidential Information of, Spectrum Reach and will be subject to Section 15, (ii) Spectrum Reach hereby grants to Client a limited license to use such Advertisement Data in the United States during the term of the applicable Order solely for the purpose of evaluation of Client's advertising campaign on Spectrum Reach's Systems, (iii) Client will not combine such Advertisement Data with any other data or information, (iv) Spectrum Reach will not be obligated to include in or provide with such Advertisement Data any data associated with any third parties except as expressly set forth in the applicable Order, and (v) Client will promptly return or destroy such Advertisement Data upon Spectrum Reach's written request after any expiration or termination of the applicable Order.

(d) If any third party ad server is used to distribute any Internet Advertisement, Client agrees that the traffic and impressions reporting provided by Spectrum Reach (and not that of such third party ad server) will control with respect to Spectrum Reach's obligations under this Agreement, including without limitation determinations of any billing thresholds.

13. INDEMNIFICATION; LIMITATION OF LIABILITIES

(a) Client will indemnify, defend and hold Spectrum Reach and its affiliates, and each of their respective present and former officers, shareholders, members, directors, employees, partners, and agents (collectively, the **"Indemnified Parties"**) harmless from and against any and all costs, judgments, damages, loss, expenses, and/or liabilities, including without limitation investigation and litigation expenses and reasonable attorneys' fees, arising out of any third-party action, claim, demand or proceeding (each, a **"Claim"**) arising out of (i) any breach of any of Client's representations, warranties or covenants under this Agreement, including but not limited to any failure to make timely payment to Spectrum Reach, (ii) the distribution of any Advertisement and/or Ad Content or other materials provided by or on behalf of Client, including without limitation any Advertisement, Ad Content or other material that infringes, misappropriates or violates (hereafter, **"infringes"**) any copyrights, music synchronization or performance rights, dramatic or non-dramatic music rights, trademark or tradename rights, patent rights or any other literary, dramatic or music performance rights or rights of privacy or publicity (collectively, **"IP Rights"**) of any third party, violates applicable law or regulations, or gives rise to any claim or cause of action or results in actual damages or losses,

(iii) any breach by any Client Fulfillment House of any applicable Client Fulfillment House Agreement, (iv) the performance of any services or delivery of any materials by any Client Fulfillment House on Client's behalf, pursuant to any Client Fulfillment House Agreement or otherwise, or (v) any Internet Advertisement provided by or on behalf of Client that contains links to third party websites, or otherwise results in end user exposure to any virus, worm or "Trojan Horse" or other contaminating or destructive features, materials or information. Each Indemnified Party will have the right, but not the obligation, to employ separate counsel and to participate in the defense or settlement of any such Claim. Client will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on any Indemnified Party, without such Indemnified Party's prior written consent.

(b) **IN NO EVENT WILL SPECTRUM REACH OR ITS AFFILIATES OR THIRD PARTY PROVIDERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF DATA, BUSINESS PROFITS, BUSINESS INTERRUPTION, AND GOODWILL, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF THIS AGREEMENT OR BE SUBJECT TO EQUITABLE REMEDIES OR INJUNCTIVE RELIEF.**

(c) Notwithstanding anything in this Agreement to the contrary, the sole remedies available to Client for any claims arising out of (i) the negotiation, performance or breach of this Agreement by Spectrum Reach or any System, or (ii) the distribution by Spectrum Reach or any System of any Advertisement or Ad Content provided by or on behalf of Client, will be, at Spectrum Reach's sole discretion, (Y) substitute distribution of such Advertisement, Ad Content or related material at a subsequent time in the same or a comparable manner or class of air time, or (Z) a corresponding credit for subsequent distribution of Advertisements on the applicable Spectrum Reach Systems, platform or sites.

(d) Spectrum Reach will have the right to offset against any payment obligations due to Client any amounts owed to Spectrum Reach under this Agreement or any other agreement or arrangement, including any amounts owed for services, expenses to cover failures to perform or remediate, mitigate or in settlement of any claims or damages. Such amounts will be offset and thereby reduce the amount payable by Spectrum Reach to Client.

14. REPRESENTATIONS AND WARRANTIES

(a) If Client is an agency or time-buying service acting on behalf of an advertiser and/or agency (or both, as the case may be), then Client hereby represents, warrants and covenants that it has the authority from such advertiser and/or agency (or both, as the case may be) to enter into this Agreement and to otherwise act as agent for such advertiser and/or agency (or both, as the case may be) for all purposes hereof.

(b) Client further represents, warrants and covenants that with respect to all Advertisements and Ad Content placed by or on its behalf for distribution under this Agreement, including without limitation on any System, using IPTV or over the internet: (i) it has secured all rights, licenses, releases and consents required in connection with such distribution on the Systems or via such other distribution method or platform, including without limitation copyright performance and music synchronization rights (including without limitation through to the viewer music performance rights) with regard to all Advertisement materials, including without limitation video, audio, script, talent and other materials; (ii) the Advertisements are truthful and not misleading and Client has a reasonable basis for all claims made within the Advertisements and possesses appropriate documentation to substantiate such claims; (iii) no Advertisements are or will be illegal, libelous, slanderous or defamatory; (iv) all Advertisements will be appropriate for family viewing under local community standards; (v) no Advertisement violates any applicable federal or state law, statute or regulation; (vi) no Internet Advertisement contains any virus, trap, time bomb, bot or other software routine or computer instructions that could modify, destroy, transmit, disable or otherwise damage or permit unauthorized access to or transmissions from or of end user or Spectrum Reach computer systems, software or data; (vii) no Ad Content infringes or will infringe the rights of any person, including without limitation IP Rights; (viii) any collection or use of data arising from or in connection with any Advertisement is done in compliance with Client's privacy policy and all applicable federal and state laws, statutes and regulations; and (ix) all Advertisements comply with all network, carrier and Spectrum Reach guidelines.

(c) Without limiting any other right or remedy that Spectrum Reach may have under this Agreement, at law or in equity, and in addition to its other termination rights as set forth in this Agreement, Spectrum Reach may terminate this Agreement and/or immediately cease distribution of any Advertisement if any of the foregoing representations are breached or if Spectrum Reach has substantial reason to believe such representations have been breached.

(d) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT (IF APPLICABLE) THE PRODUCTS, SERVICES AND DELIVERABLES PROVIDED BY SPECTRUM REACH OR ITS AFFILIATES OR THIRD PARTY PROVIDERS UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND SPECTRUM REACH SPECIFICALLY DISCLAIMS AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO ANY SUCH PRODUCT, SERVICE OR DELIVERABLE OR THE FUNCTIONALITY OR PERFORMANCE THEREOF, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALINGS OR COURSE OF PERFORMANCE.

(e) WITHOUT LIMITING THE FOREGOING, SPECTRUM REACH SPECIFICALLY DISCLAIMS AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES (i) WITH RESPECT TO (A) THE ACCURACY OF OR INFORMATION INCLUDED IN, OR THE RESULTS GENERATED BY, ANY ADVERTISEMENT, AD CONTENT OR OTHER MATERIAL PROVIDED BY OR ON BEHALF OF CLIENT, OR THE DISTRIBUTION THEREOF BY SPECTRUM REACH, (B) THE NUMBER OF END USERS OR SYSTEM SUBSCRIBERS THAT WILL ACTUALLY VIEW, INITIATE OR HAVE ACCESS TO ANY INTERNET, IPTV OR VOD ADVERTISEMENT, (C) THE ACCURACY OR RELEVANCY OF ANY DATA USED TO DELIVER OR DISPLAY ANY ADVERTISEMENT TO ANY SPECIFIED END USER, SYSTEM SUBSCRIBER OR CUSTOMER, (D) END USER, SYSTEM SUBSCRIBER OR CUSTOMER RESPONSE RATES, (E) THE ABILITY TO CONVERT RESPONSES INTO SALES, (F) THE PROFILE, IDENTITY, DEMOGRAPHICS OR LOCATION OF ANY END USER, SYSTEM SUBSCRIBER OR CUSTOMER WHO MAY RESPOND TO AN ADVERTISEMENT, (G) THE VOLUME, LEVEL, NUMBER OR TYPES OF ACTIONS OR DELIVERABLES GENERATED, OR (H) POSITIONING OR ADJACENCY OF ANY ADVERTISEMENT, OR (ii) THAT ANY INTERNET, IPTV OR VOD ADVERTISEMENT OR DISTRIBUTION PLATFORM OR THE OPERATION THEREOF WILL (A) MEET CLIENT'S REQUIREMENTS, (B) BE UNINTERRUPTED OR ERROR-FREE, (C) BE CONTINUOUSLY AVAILABLE TO ALL APPLICABLE END USERS OR SYSTEM SUBSCRIBERS AT THE SAME TIME, OR (D) BE TARGETED, DISPLAYED OR DELIVERED TO ANY SPECIFIC END USER, SYSTEM SUBSCRIBER OR CUSTOMER (INCLUDING WITHOUT LIMITATION ANY END USER, SYSTEM SUBSCRIBER OR CUSTOMER WITH SPECIFIC DEMOGRAPHIC, GEOGRAPHIC OR BEHAVIORAL ATTRIBUTES) OR IN ACCORDANCE WITH ANY SPECIFIED TARGETING CRITERIA (E.G. GEO-LOCATIONAL TARGETING CRITERIA).

(f) CLIENT ACKNOWLEDGES AND AGREES THAT (i) ALL PERFORMANCE ESTIMATES, PROJECTIONS OR FORECASTS PROVIDED BY SPECTRUM REACH TO CLIENT ARE FOR REFERENCE PURPOSES ONLY, ARE NOT GUARANTEES OR COMMITMENTS AND ARE SPECULATIVE AND MAY NOT ACCURATELY PREDICT OR REFLECT THE ACTUAL PERFORMANCE OF ADVERTISEMENTS, (ii) IF ANY THIRD PARTY AD SERVER IS USED TO DISTRIBUTE ANY ADVERTISEMENT, SPECTRUM REACH CANNOT CONTROL OR GUARANTEE THE IDENTITY OF THE WEBSITES THAT WILL BE USED TO DISTRIBUTE SUCH ADVERTISEMENT, (iii) SPECTRUM REACH CANNOT CONTROL OR GUARANTEE THE IDENTITY OR NATURE OF ANY END USER OR VIEWER OF ANY ADVERTISEMENT, AND (iv) THIRD PARTIES MAY GENERATE ACTIONS THROUGH ADVERTISEMENTS FOR PROHIBITED OR IMPROPER PURPOSES OR THROUGH PROHIBITED, IMPROPER OR ILLEGITIMATE MEANS (INCLUDING SPIDERS, ROBOTS AND OTHER AUTOMATED OR MECHANICAL MEANS), AND CLIENT ACCEPTS THE RISK OF ANY SUCH ACTIONS AND AGREES THAT SPECTRUM REACH WILL NOT BE LIABLE IN CONNECTION THEREWITH.

(g) SPECTRUM REACH WILL NOT BE LIABLE FOR ANY WEBSITE, NETWORK OR PLATFORM DOWNTIME (REGARDLESS OF CAUSE), INCLUDING WITHOUT LIMITATION DOWNTIME CAUSED BY (i) SERVER FAILURES OR DOWNTIME, (ii) THE TELECOMMUNICATIONS OR NETWORK RELATED EQUIPMENT OF SPECTRUM REACH OR ITS INTERNET OR OTHER SERVICE PROVIDERS, OR (iii) THE CONSTRUCTION, INSTALLATION, REPAIR, MAINTENANCE, PRESENCE, USE OR REMOVAL OF SYSTEMS OR EQUIPMENT CONNECTED TO OR

"All of the clients obligations of this paragraph 15 are subject to the requirements of the Missouri Open Records Act, chapter 610 RSMo"

COMPRISING THE NETWORK OR SPECTRUM REACH'S INTERNET SERVICE OR THE APPLICABLE WEBSITE(S).

15. CONFIDENTIAL INFORMATION

(a) Client agrees that (i) it will keep all Confidential Information received or obtained from Spectrum Reach in connection with any Advertisement distributed under this Agreement, whether on a System or otherwise, completely confidential and will not disclose any such Confidential Information to any third party, even on an anonymized, combined or aggregated basis, unless such disclosure is specifically authorized by Spectrum Reach in writing, and (ii) it will not use such Confidential Information for any purpose other than its performance of this Agreement. Confidential Information of Spectrum Reach received by Client under this Agreement will not be disclosed to any individual serving as an employee of, or as consultant, advisor or independent contractor to Client, unless such individual has a need to know such information within the scope and performance of such individual's ordinary course job responsibilities.

(b) **"Confidential Information"** of Spectrum Reach will include all information or material that a reasonable person would consider to be confidential under the circumstances, regardless of whether such information or material is actually marked "Confidential." Spectrum Reach's Confidential Information will include, but will not be limited to, the financial terms of this Agreement and the rates to be paid by Client under this Agreement, Subscriber Information (as defined in Section 15(e)), Fulfillment Information, and all Advertisement Data. Confidential Information will not include any information that (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a wrongful disclosure directly or indirectly by Client or its representatives), (ii) was or becomes available to Client from a source other than Spectrum Reach, provided that such source is not directly or indirectly bound by an obligation of confidentiality to Spectrum Reach, or (iii) is independently developed by Client without violating any of its obligations under this Agreement.

(c) Client will exercise the same degree of care to protect Spectrum Reach's Confidential Information as Client exercises with respect to Client's own confidential information of a similar nature, which will in no event be less than reasonable care. Client also will use and maintain appropriate security measures to protect Spectrum Reach's Confidential Information, which are at least as stringent as those measure Client uses to protect its own confidential information of a similar nature. Without limiting the foregoing, Client will maintain and secure any of Spectrum Reach's Confidential Information in electronic data format using security measures that meet or exceed the ISO/IEC 27002 information security controls standard.

(d) Notwithstanding the foregoing, (i) if Client is an agency or time-buying service acting on behalf of an advertiser and/or agency (or both, as the case may be), then Client may disclose Confidential Information to such advertiser and/or agency on a need-to-know basis and such advertiser and/or agency also will be subject to all of the requirements of this Section 15 with respect to the Confidential Information so disclosed; and (ii) Client may use and disclose Confidential Information (A) once it has become publicly disclosed (other than by Client in breach of its obligations under this Agreement), and (B) to the extent that Client may be compelled by applicable law to do so and is so advised by legal counsel.

(e) For purposes of this Agreement, **"Subscriber Information"** will include, without limitation, name, address, telephone numbers, social security numbers, PIN number, credit card or bank account numbers, email addresses, billing addresses, Media Access Control (MAC) addresses, Internet Protocol (IP) addresses or any other information that specifically mentions or refers to a Spectrum Reach subscriber or constitutes personally identifiable subscriber information. To the extent that Client receives Subscriber Information from or about any internet website, IPTV or VOD advertising users or System subscribers (collectively, **"Spectrum Reach Customers"**), Client acknowledges and agrees that (a) it will use such Subscriber Information only for the express purpose of a one-time solicitation with respect to the specific product or service that was originally advertised in the Advertisement that generated such Subscriber Information (the **"Advertised Product"**), (b) it will purge the Subscriber Information from its or any third parties customer list, mailing list or similar customer database after the use of such Subscriber Information pursuant to clause (a) above, (c) without the express written permission of Spectrum Reach, it will not contact any Spectrum Reach Customers through any means of communication including, without limitation, by telephone or email or make any solicitations through any means of communications, including but not limited to telephone or email solicitations of the Advertised Product or any other product to any Spectrum Reach Customers, and (d) it will not use such Subscriber Information for any purpose other than that set forth in clause (a) above, including without limitation (i) offering, soliciting or contacting Spectrum Reach Customers with respect to products or services other than the Advertised Product, (ii) including the Subscriber Information on any Client or third party mailing list after the initial direct mail solicitation permitted in clause (a) above, (iii) offering, soliciting or contacting Spectrum Reach Customers using methods other than direct mailings, including without limitation

mass mailings, telephone solicitations or electronic mailings and (iv) selling, sharing, leasing or otherwise disclosing or disseminating Subscriber Information to any third parties for any purpose that is not directly related to the sale of the Advertised Product, as well as the inclusion of Subscriber Information on any third party mailing list or customer list.

(f) Client hereby agrees to (i) comply with all applicable privacy laws; (ii) display its privacy policy in a readily accessible and conspicuous location; and (iii) take reasonable steps to enable third parties to access Client's privacy policy.

(g) Except with the prior written consent of Spectrum Reach, which will not be unreasonably withheld, or as otherwise required by applicable law, Client will not, nor will it permit any of its affiliates to issue any press release or make any other public announcement or any oral or written statements concerning the terms of this Agreement (other than its existence) or the transactions contemplated hereby.

(h) In addition, Client hereby consents to Spectrum Reach's disclosure of billing information, air time, rates and any other information to any third party directly related to the relevant Advertisement, including without limitation disclosure of Spectrum Reach's rates and the terms of this Agreement to agency clients.

16. CLIENT/AGENCY/SERVICE

(a) Notwithstanding anything herein to the contrary (or the party to which any invoice may be rendered under this Agreement), if Client is an agency or time-buying service acting on behalf of an advertiser and/or agency (or both, as the case may be), then all obligations of Client under this Agreement, including without limitation the obligations of Client under Sections 1, 4, 13, 14 and 15, will be the joint and several obligations of such time-buying service, agency and advertiser, as the case may be.

(b) Failure of an agency or time-buying service to receive adequate funds from an advertiser or client does not relieve such agency or time-buying service from the obligation to timely pay all amounts due to Spectrum Reach under this Agreement. Payment by an advertiser to its agency or time-buying service, as the case may be, or payment by an agency to a time-buying service, will not constitute or otherwise excuse the obligation of full and timely payment of all amounts due to Spectrum Reach under this Agreement. Any acceptance of payment from an agency or time-buying service will not relieve the advertiser or client from liability for any amounts unpaid by such agency or time-buying service. In no event will Spectrum Reach be responsible for paying or remitting to any agency or time-buying service, whether as commission or otherwise, any amount or portion thereof paid to Spectrum Reach by any advertiser.

(c) Client hereby grants Spectrum Reach authorization to (i) access applicable credit reporting (commercial/consumer) in order to establish credit terms and perform periodic reviews of credit history and (ii) contact provided references for use in making a decision regarding Client's creditworthiness.

17. GENERAL

(a) This Agreement is subject to the terms and conditions of all licenses held by Spectrum Reach or any System, and to all federal, state and municipal laws now in force or hereafter enacted, including without limitation the rules, regulations, orders, decision and policies of the Federal Communications Commission.

(b) Unless otherwise expressly agreed in writing by Spectrum Reach, all production materials, creative copy, work products, concepts, ideas or intellectual property rights of any kind that may be provided to Client by Spectrum Reach will be and remain the exclusive property of Spectrum Reach.

(c) Spectrum Reach will have no obligation to recognize any agency or other commission that Spectrum Reach deems does not conform to customary industry standards and practices.

(d) Spectrum Reach may identify Client as an advertising client of Spectrum Reach in client lists and other marketing materials.

(e) This Agreement is not exclusive and Spectrum Reach and all Systems remain free to solicit and to distribute programs or announcements of other advertisers whether or not they compete with the business, products or services of Client.

(f) This Agreement, including the rights under it, may not be assigned or transferred without the prior written consent of Spectrum Reach; nor may Spectrum Reach be required to distribute Advertisements under this Agreement for the benefit of any client other than as expressly provided herein. Failure of Spectrum Reach or Client to enforce any of the provisions hereof will not be construed as a general relinquishment or waiver as to that or any other provision.

(g) This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof, and no change to any of its terms or provisions will be effective unless (i) posted on Spectrum Reach's website, provided that such change will not apply to pre-existing Orders if Client provides to Spectrum Reach notice of rejection of such change within 30 days after the date such change was posted to such website, or (ii) made in writing and signed by both parties. Except as otherwise agreed in writing by the parties, these Terms and Conditions will

apply to all current and future Orders placed by or on behalf of Client, and to all future SOWs entered into between the parties.

(h) All questions with respect to the formation and construction of this Agreement, and the rights and obligations of the Parties hereto, will be governed by and determined in accordance with the laws of the State of New York applicable to agreements entered into and performed entirely within the State of New York, without giving effect to the choice or conflicts of law provisions thereof.

(i) Any discrepancy, dispute or disagreement by Client with respect to any distribution or other service provided, or amount charged, under this Agreement must be reported to Spectrum Reach in writing within 30 days from the later of (i) the last scheduled distribution date, and (ii) the invoice date. Time is of the essence hereof and any failure by Client to so notify Spectrum Reach will constitute a waiver by Client of any and all claims or causes of action arising therefrom or related thereto.

(j) Either (i) Client's signature below, (ii) delivery to Spectrum Reach or any System of any Advertisement, Ad Content or other materials by or on behalf of Client for distribution under this Agreement, or (iii) the parties' execution of a written SOW, will constitute Client's acceptance of these Terms and Conditions.

(k) Sections 13, 15, 16 and 18 and this Section 17 will survive any cancellation or termination of this Agreement.

(l) Except as set forth in Section 18, all notices required or permitted under this Agreement will be delivered in writing via certified mail (return receipt requested) or nationally recognized overnight courier to:

If to Spectrum Reach, to:

The Spectrum Reach sales office that handles Client's account.

With a copy to:

Charter Communications Operating, LLC
400 Atlantic Street
Stamford, CT 06901
Attn: Benjamin Shin, VP, Assoc. GC

If to Client, to:

Client's address set forth on the applicable Order or SOW.

Either party may change its address for notice by providing the other party notice of such change in compliance with this provision.

(m) Neither party will be liable to the other for any failure or delay in fulfilling an obligation hereunder, if said failure or delay is attributable to unforeseen circumstances or circumstances beyond its reasonable control, including, but not limited to, any fire, power failure, labor dispute or strike, government measure, riot, insurrection, terrorism, flood, storm explosions, earthquake, act of God or war, power failure, third party connection or utilities outage, Internet or other network disruption or latency, or interruption or failure of ISP or carrier lines (each, **"Force Majeure Event"**); provided that no Force Majeure Event will excuse any payment obligation of any party hereunder.

(n) The parties agree that the terms of this Agreement and the parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each party under this Agreement only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective parties hereto.

(o) If any provision in this Agreement (or any portion thereof) or the applications of any such provision (or any portion thereof) to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such provision(s) (or portions) shall be severed from this Agreement and the invalidity, illegality or unenforceability thereof shall not affect any other provision of this Agreement, and this Agreement as modified after severing such language shall remain in force and effect.

(p) The headings of Sections of this Agreement are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of this Agreement. Each party represents that it has had the opportunity to participate in the preparation of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in connection with the construction or interpretation of this Agreement.

18. ARBITRATION

(a) The following provisions are important with respect to this Agreement regarding the services hereunder. **PLEASE READ THEM CAREFULLY TO ENSURE THAT CLIENT UNDERSTANDS EACH PROVISION.** This Agreement requires the use of arbitration to resolve disputes and otherwise limits the remedies available to Client in the event of a dispute.

(b) Subject to the "Right to Opt Out" and "Exclusions" paragraphs below, the parties agree to arbitrate disputes and claims arising out of or relating to this Agreement, the services hereunder or marketing of

the services Client has received from Spectrum Reach. Notwithstanding the foregoing, either party may bring an individual action on any matter or subject in small claims court.

(c) **THIS AGREEMENT MEMORIALIZES A TRANSACTION IN INTERSTATE COMMERCE. THE FEDERAL ARBITRATION ACT GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THESE ARBITRATION PROVISIONS.**

(d) A party who intends to seek arbitration must first send to the other a written notice of intent to arbitrate, entitled "Notice of Intent to Arbitrate" (**"Notice"**). The Notice to Spectrum Reach should be addressed to: VP and Associate General Counsel, Litigation, Charter Communications, 12405 Powerscourt Drive, St. Louis, MO 63131 (**"Arbitration Notice Address"**). The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought. If the parties do not reach an agreement to resolve the claim within 30 days after the Notice is received, either party may commence an arbitration proceeding, in which all issues are for the arbitrator to decide (including the scope of the arbitration clause), but the arbitrator will be bound by the terms of this Agreement.

(e) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, **"AAA Rules"**) of the American Arbitration Association (**"AAA"**), as modified by this Agreement, and the arbitration will be administered by the AAA. The AAA Rules and fee information are available at www.adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Arbitration Notice Address.

(f) **EACH PARTY IS RESPONSIBLE FOR ALL COSTS IT INCURS IN THE ARBITRATION, INCLUDING BUT NOT LIMITED TO ATTORNEYS FEES OR EXPERT WITNESS COSTS.**

(g) If the arbitrator's award exceeds $75,000, either party may appeal such award to a three-arbitrator panel administered by the AAA and selected according to the AAA Rules, by filing a written notice of appeal within 30 days after the date of entry of the arbitration award. The appealing party must provide the other party with a copy of such appeal concurrently with its submission of the appeals notice to AAA. The three-arbitrator panel must issue its decision within 120 days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel will be final and binding, except for any appellate right which may exist under the Federal Arbitration Act.

(h) The parties may agree that arbitration will be conducted solely on the basis of the documents submitted to the arbitrator, via a telephonic hearing, or by an in-person hearing as established by AAA rules.

(i) Unless the parties agree otherwise in writing, all hearings conducted as part of the arbitration will take place in the Borough of Manhattan, New York City, New York.

(j) The arbitrator may award injunctive relief only in favor of the party seeking relief, only to the extent sought, and only to the extent necessary to provide the specific relief warranted by such individual's claim.

(k) The parties agree that the arbitrator must give effect to the terms of this Agreement.

(l) **CLIENT WILL NOT BRING CLAIMS OTHER THAN IN CLIENT'S INDIVIDUAL CAPACITY AND WILL NOT BRING CLAIMS ON BEHALF OF, OR AS PART OF, A CLASS ACTION OR REPRESENTATIVE PROCEEDING.**

(m) Furthermore, unless the parties agree otherwise in writing, the arbitrator may not consolidate proceedings or more than one person's claims and may not otherwise preside over any form of representative or class proceeding. If this specific paragraph is found to be unenforceable, then the entirety of these arbitration provisions will be null and void and rendered of no further effect with respect to the specific claim at issue.

(n) **Right to Opt Out.** If Client does not wish to be bound by these arbitration provisions, Client must notify Spectrum Reach in writing within 30 days of (a) the date that this arbitration provision becomes effective, if Client is an existing customer, or (b) the date that Client first orders services hereunder. Client may opt out by mail to the Arbitration Notice Address. Client's written notification to Spectrum Reach must include Client's name, address, and Spectrum Reach account number as well as a clear statement that Client does not wish to resolve disputes with Spectrum Reach through arbitration. Client's decision to opt out of this arbitration provision will have no adverse effect on Client's relationship with Spectrum Reach or the provision of services hereunder to Client by Spectrum Reach.

(o) **THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY RIGHT TO TRIAL BY JUDGE OR JURY.**

(p) **NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF ANY OR ALL OF THESE ARBITRATION PROVISIONS IS DETERMINED TO BE UNENFORCEABLE FOR ANY REASON, OR IF ANY CLAIM IS BROUGHT THAT IS FOUND BY ANY COURT TO BE EXCLUDED FROM THE SCOPE OF THESE ARBITRATION PROVISIONS, THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY RIGHT TO TRIAL BY JURY.** For

purposes of the foregoing sentence only, in the event such waiver is found to be unenforceable, it will be severed from this Agreement, rendered null and void and of no further effect without affecting the rest of these arbitration provisions.

(q) EXCLUSIONS. NOTWITHSTANDING THE FOREGOING, THE FOLLOWING CLAIMS OR DISPUTES WILL NOT BE SUBJECT TO ARBITRATION:

i. ANY INDIVIDUAL ACTION BROUGHT BY EITHER PARTY ON ANY MATTER OR SUBJECT THAT IS WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS.

ii. ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS.

iii. ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE.