



MASTER PUBLISHER AGREEMENT

This Master Publisher Agreement ("Agreement") is made by and between Flex Marketing Group, LLC, as well as any legal entities that own, are owned by, or are under partial or total common ownership with Flex Marketing Group, LLC including, without limitation, AD1 Media Group, LLC (collectively, "Company" or "Flex") and the publisher or network as indicated below (collectively, "Publisher") and sets forth the parties' respective rights and obligations to be undertaken by the parties, (each, a "Party," or together, the "Parties").

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, premises, mutual promises and conditions set forth herein below, the Parties hereto agree as follows:

1. **Introduction.** The following Terms and Conditions ("Terms") of this Agreement set forth the Parties' respective rights and obligations with respect to Publisher's relationship with Company, Publisher's participation in the Ad Network Program ("Program") and Publisher's use of the Ad Network and associated user interface (collectively, the "Network"), located on the Company Website ("Website"). Publisher agrees to use the Network and participate in the Program only in accordance with the Terms of this Agreement. **Company reserves the right, in its sole discretion, to make updates and/or changes (collectively, "Modification(s)") to the Website, Network, and/or to the Terms at any time, without prior notification to You.** However, any payment Modifications will not retroactively apply to any compensation accrued prior to the applicable Modifications. **Finally, as a condition precedent to entering into this Agreement, Publisher hereby acknowledges and agrees that Publisher may not engage in any marketing and/or call-driven traffic or lead generation via SMS/Text, Smart Messaging, EMS, MMS or any other type of text messaging service or protocol.** The latest Terms will be posted on the Website. Publisher's continued use of the Network after the posting of any Modifications thereof shall constitute Publisher's acknowledgement and agreement to such Modifications. Publisher should regularly check the Website for Modifications. Publisher agrees that Publisher is relying solely on this Agreement in making its decision to participate in the Program and is not relying on any representations, guarantees or statements other than as stated within this Agreement. **If Publisher does not agree to the Terms of this Agreement in its entirety, Publisher is not authorized to: (i) register for or participate in the Program; and/or (ii) use or access the Network, in any manner whatsoever.**
2. **The Program.**
 - 2.1. **Approval.** In order to participate in the Program, Publisher must first obtain written confirmation of approval from Company. Conditioned upon Publisher's receipt of approval, Publisher's continued right to participate in the Program is conditioned upon ongoing compliance with the Terms of this Agreement. **Publisher agrees that Company may in its sole discretion, refuse to grant approval and/or withdraw Publisher's approval at any time, for any reason.** Failure by Publisher, at any time, to abide by the Terms of this Agreement may in Company's sole discretion result in immediate withdrawal of Publisher's approval.
 - 2.2. **Network.** The Network allows Company to post offers of advertising campaigns ("Campaigns") sponsored by Company and/or its third party affiliate advertising partners ("Advertisers"). Each Campaign Insertion Order ("Insertion Order" or "IO") will specify the amount of compensation and the terms under which Publisher will receive payment of compensation ("Commissions") for Billable Leads (as defined below) when the applicable Campaign's requirements are fulfilled.
 - 2.3. **Creative Content.** Company shall make available to Publisher the various e-mail creatives, display marketing materials, text links, and/or banner advertisements (collectively, the "Creative Content") associated with the applicable Campaign. All Creative Content will be posted on the Network for download, publication and distribution by Publisher subject to the Terms of this Agreement. Upon grant of approval to participate in the Program, Publisher will be permitted to download all applicable Creative Content: (i) for publication on Publisher's website and/or any other website published with, owned, operated and/or controlled by Publisher ("Publisher Website(s)"); and/or (ii) for distribution within Program-related commercial e-mail marketing messages ("E-mails") sent to those e-mail addresses listed in Publisher's database and/or any other database of e-mail addresses affiliated with, owned, operated and/or controlled by Publisher ("Publisher Database"). Company reserves the right in its sole discretion, to update, change or revise any Creative Content that is made available to Publisher at any time. Publisher hereby acknowledges and agrees to use only the most recent and up-to-date version of Creative Content. Publisher must immediately comply with all requests by Company to modify, alter or otherwise change the positioning, placement, frequency and/or other editorial decisions related to Creative Content; and must immediately remove Creative Content upon receiving notice from Company or upon the termination or expiration of any applicable Campaign and/or applicable IO. Publisher may not otherwise alter, modify or change any Creative Content in any manner, whatsoever without the Company's prior consent; and shall display the Creative Content exactly as it appears on the Network. Publisher agrees that if Company's name, including any abbreviation thereof, is not an approved "From" Line, then Publisher shall not use the same in the originating e-mail address line or "subject" line of any E-mails. If mailing to or from the State of California, Publisher must have an accurately openly registered mailing domain in the "friendly from" line, which must be accessible through "whois" searches. Publisher agrees that Company may terminate Publisher's right to use any Creative Content in whole or in part and/or Publisher's right to participate in any Campaign at any time, for any reason, whatsoever. Publisher further agrees to remove from its systems and prevent any downstream affiliates (including, but not limited to, "Sub-Publishers" as that term is defined below) from distributing Campaigns and/or associated Creative Content as soon as possible following Company's written or e-mailed removal request; and in any event not more than one (1) day following Company's dispatch of such a written removal request. Failure by Publisher to adhere to any of the foregoing requirements and/or Publisher's use or attempted use of any marketing materials other than the heretofore approved Creative Content in connection with any applicable Campaign, shall constitute a material breach of this Agreement and shall, in addition to all other legal remedies available to Company, be grounds for the immediate termination of this Agreement, without notice or opportunity to cure.
 - 2.4. **Leads.** Subject to any additional Campaign-specific terms that may apply, the Creative Content may be used by Publisher to generate Qualified Leads. As used herein, a "Qualified Lead" is a lead: (i) based on a user's genuine interest in receiving the product or service being promoted; (ii) generated by Publisher solely for use by Company; (iii) that passes all validation filters and requirements set by Company; (iv) that is posted to Company in real-time, immediately following a user's opt-in; (v) from a user to whom Publisher displayed no other related offerings of the same product vertical during the visit in which the lead was generated; and (vi) from a user that, to Publisher's knowledge, has not previously opted-in to any related marketing program. As used herein, a "Billable Lead" is a Qualified Lead that has not

been returned to Company or otherwise rejected by the applicable Advertiser(s) as a Lead Return. For the avoidance of doubt, a Billable Lead is a lead that has been accepted by the applicable Advertiser and not returned or rejected. As used herein, a "Lead Return" is an otherwise Qualified Lead that has been returned to Company or otherwise rejected by the applicable Advertiser as a result of, without limitation, fraud, invalid data (disconnected phone number, undeliverable e-mail address, incorrect contact information, etc.), duplicate leads, or leads not being delivered in real-time, immediately following a user's request.

- 2.5. **Lead Tracking Codes and Reporting.** Company may, from time-to-time, insert certain data mining tools within Creative Content which will enable Company to measure Publisher's performance and determine Publisher's Commissions ("Lead Data"). Publisher agrees that all Lead Data shall be the sole property of Company. Publisher further agrees that it may NOT share any such Lead Data with any other third party or entity without the prior written authorization of Company. These data mining tools include, but are not limited to, embedded tags, source codes, links, pixels and modules (collectively, "Lead Tracking Codes"). Publisher agrees that each individual piece of Creative Content made available to Publisher must include all applicable Lead Tracking Codes, in an unaltered form. Publisher agrees that it shall not knowingly, modify, circumvent, impair, disable or otherwise interfere with any Lead Tracking Codes and/or other technology and/or methodology required or made available by Company to be used in connection with any Creative Content. Company is responsible for tracking all Qualified Leads, Billable Leads, Lead Returns, and Commissions. Qualified Leads will be reported in Company's reporting platform and will be accessible to Publisher through the Network.

3. **Publisher's Participation in the Program.**

- 3.1. **Registration.** In order to complete the registration process, Publisher must provide a "username" and "password". Publisher agrees to provide Company with true, accurate and complete information at all times, and to update this information as required to remain true, accurate and complete. Any information provided by Publisher that is untrue, inaccurate, incomplete or not current, constitutes a material breach of this Agreement and shall be grounds for the immediate termination of this Agreement, without notice or opportunity to cure. Publisher is responsible for safeguarding the confidentiality of its credentials; and for any use or misuse of the Program and/or Network occurring under Publisher's account. Publisher agrees to immediately notify Company of any known or suspected unauthorized access to or use of Publisher's account or any other known or suspected breach of security or misuse of the Network. By completing the registration process, Publisher confirms that it: (i) has fully read this Agreement; (ii) understands all of the Terms of this Agreement; and (iii) acknowledges and agrees to be fully bound by the Terms of this Agreement.
- 3.2. **Lawful Use.** Publisher agrees to use the Network only for lawful purposes. Company reserves the right to monitor Publisher's use of the Network in order to ensure its lawful use. If Publisher or any other individual authorized by Publisher to use the Network on Publisher's behalf restricts or otherwise inhibits any other third party publisher's ("Third-Party Publisher") lawful use of the Network, it shall constitute a material breach of this Agreement and shall be grounds for the immediate termination of this Agreement, without notice or opportunity to cure.
- 3.3. **Publisher Database and Publisher Websites.** All E-mails disseminated by Publisher pursuant to this Agreement must be transmitted to e-mail addresses found within the Publisher Database. Any attempt to broker third party deals to deliver Creative Content without first obtaining Company's written authorization is strictly prohibited and, in addition to all other legal remedies available to Company, shall be grounds for the immediate termination of this Agreement, without notice or opportunity to cure. Publisher agrees that at all times during the term of the Agreement and for a period of at least three (3) years thereafter, it must maintain a complete and accurate accounting of all sign-up/registration data for every e-mail address found within its Publisher Database. Within twenty-four (24) hours of Company's request, Publisher shall provide to Company, at a minimum, all of the following data for any e-mail address to which it has disseminated Creative Content in connection with its participation in the Program: (i) e-mail address and IP address used to sign-up/register for the Publisher Database; (ii) date and time stamp of the sign-up/registration; (iii) source URL of sign-up/registration; and (iv) applicable Privacy Policy used in connection with valid sign-up/registration. In the event that either Party receives a complaint from any e-mail end-user recipient ("Recipient") to whom Publisher disseminated Creative Content in connection with its participation in the Program, Publisher agrees that it shall immediately provide Company with appropriate records verifying Recipient's valid sign-up/registration and authorization to receive E-mails from Publisher. All E-mails sent by Publisher pursuant to this Agreement must be disseminated from Company-approved Publisher Websites. Publisher agrees that all Publisher Websites must be fully functional at all levels; no "under construction" websites or sections shall be permitted.
- 3.4. **Network Problems.** Publisher agrees that on occasion the Network may be inaccessible, unavailable or otherwise inoperable for any reason including but not limited to, the following: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs; and/or (iii) causes beyond Company's control or which are not reasonably foreseeable by Company including but not limited to, interruption or failure of telecommunication or digital transmission links, hostile network attacks, the unavailability, operation, or inaccessibility of websites or interfaces, network congestion or other failures. Company shall attempt to provide Publisher with access to the Network on a continuous basis. Publisher agrees that Company has no control over the availability of the Network on a continuous or uninterrupted basis. Accordingly, the Terms this Agreement are subject to Company hardware, software, and bandwidth traffic limitations. And Company's failure to deliver because of technical difficulties does not represent a material breach and/or failure to meet its obligations under this Agreement.

4. **Marketing Restrictions.**

- 4.1. **Intellectual Property.** Publisher agrees that it may NOT use brand names and/or trademarks of another party (e.g., Apple® or Dell®) in either the "subject" or "from" lines or body of any commercial e-mail message. Publisher may not use third party trademarks in any other way to direct traffic to any Publisher Websites or Advertiser websites including but not limited to, purchasing keywords from a search engine service provider that include the trademark, service mark and/or brand name, or any derivative of any such trademark, service mark or brand name, of any of the Advertisers, Company and/or any of their respective Third-Party Publishers.
 - 4.2. **Deceptive Practices.** Publisher agrees that it may NOT utilize deceptive practices to generate leads such as "employment sites" that mislead consumers with the promise of employment for completing an offer. Publisher may not post Creative Content on public message boards, chat rooms or in public areas of social networking and job/employment sites including, but not limited to, MySpace.com, Facebook.com, Craigslist.org, etc. Publisher may not include or promote any Campaign through any blogs, news articles or other social media without the prior written authorization of Flex in each instance. Publisher agrees that no Creative Content shall be placed on or through any fake news sites or blogs or any websites which appear to be, but are not, a news organization. And Publisher agrees that no
-

Creative Content shall be placed on any websites which promote or display comments or testimonials which are not in real time from real users. Publisher may not allow Creative Content to be placed on any non-Publisher Websites without the prior express written authorization of Company. Publisher may not, nor knowingly permit any person to activate Creative Content or inflate the amount of Qualified Leads through any deceptive or misleading practice, method or technology including but not limited to, the use of any spyware, adware, device, program, robot, i-frames, hidden frames, redirects, spiders, computer script or other automated, artificial or fraudulent methods designed to appear like an individual, real live person generating a Qualified Lead.

- 4.3. **Incentives.** Publisher agrees that it may NOT: (i) use incentivized offers, create the appearance of incentivized offers, establish or cause to be established any promotion that provides any incentives, sweepstakes entries, rewards, points or other compensation to be earned in connection with generating Qualified Leads, or otherwise attempt to induce Internet users to click on any Creative Content or perform any action through the use of any other incentives, without obtaining Company's authorization; and/or (ii) place any statement in close proximity to Creative Content requesting that e-mail Recipients or Internet users "click" on the Creative Content (e.g., "Please click here").
 - 4.4. **Additional Restrictions.** Publisher agrees that it may NOT: (i) place misleading statements in close proximity to any Creative Content; (ii) take control of a user's computer by delivering advertisements that a user of a computer cannot close without turning off the computer or closing all sessions of the Internet browser for the computer; (iii) install or execute on another's computer one or more additional software program(s) without authorization of that individual (in addition, Publisher must clearly provide instructions to disable the software, such that the software is easily identifiable and the removal can be performed without undue effort or knowledge by the user of the computer); (iv) distribute spyware or other similar harmful software; and/or (v) redirect traffic to a website other than the website listed by the particular Advertiser. Additionally, spawning process pop-ups are strictly prohibited. And finally, Publisher shall not be permitted to send any SMS/text or call-driven traffic pursuant to this Agreement. Any SMS/text or call-driven traffic used by Publisher shall be a breach of this Agreement and will result in the Publisher forfeiting all amounts earned hereunder.
 5. **Sub-Publishers.** For purposes of this Agreement, any business partners, agents, contractors, or associates of Publisher that participate in or perform any activities for or on behalf of Publisher as a part of the Program and/or pursuant to this Agreement shall be deemed to be "Sub-Publishers." If Publisher utilizes the services of any such Sub-Publishers to perform any of its obligations pursuant to this Agreement, then the term "Publisher," as used within this Agreement shall also mean and include all such Sub-Publishers. Publisher shall provide Company with all name and unique SubID of any such Sub-Publisher(s) as well as the marketing methods used by the Sub-Publishers. Notwithstanding the foregoing, however, neither Publisher nor any of its applicable Sub-Publishers shall be permitted to broker or re-distribute any Campaigns and/or Creative Content without Company's prior written approval. Company reserves the right to withhold, refuse, or subsequently retract or revoke approval of any Sub-Publisher(s) at any time, for any reason whatsoever. Publisher agrees that Publisher is fully responsible for the acts and/or omissions of its Sub-Publishers and is jointly and severally liable with such Sub-Publishers. Company may revoke Publisher's approval to participate in any Campaign based upon the acts or omissions of Publisher's Sub-Publishers. Company reserves the right to use all legal measures available and necessary in order to ensure that Publisher and its Sub-Publishers are in compliance with this Agreement. Publisher agrees that it shall fully and unconditionally indemnify Company for any and all actions of its Sub-Publishers including, but not limited to, payment of legal fees and costs if necessary. Company agrees to contractually obligate each Sub-Publisher to conduct its business in strict compliance with applicable law and the Terms of this Agreement.
 6. **Grant of Rights.** Subject to the Terms of this Agreement, Company grants to Publisher a non-transferable, non-assignable, non-sublicensable, revocable, non-exclusive, limited license, to participate in the Program. Publisher shall not acquire any rights, title or interest in the Network, Creative Content or any other information provided to Publisher as part of this Agreement. Publisher agrees that the Network is Company's property and is protected by U.S. and international copyright, trademarks, patents and other proprietary rights and laws relating to Intellectual Property. All non-public information, data and reports received from Company herein or as part of the Program is proprietary to and owned by Company. All Company and Publisher trademarks, trade names, service marks, and logos, whether or not registered (collectively, the "Marks"), shall be the sole and exclusive property of the respective owning Party, which shall own all right, title and interest therein. All rights not expressly granted hereunder are expressly reserved to Company. In the event that Publisher also maintains its own network of publishers, Publisher may NOT provide the Program or any Campaign or Creative Content to its own network of publishers, without the prior written authorization of Company. If Publisher fails to adhere to the foregoing, in addition to any other legal remedies available to Company, Publisher shall forfeit its rights to any otherwise unpaid Commissions owed by Company under this Agreement.
 7. **Payment.**
 - 7.1. **Commissions.** Company shall pay Commissions to Publisher approximately thirty (30) days after the last day of each calendar month based upon the total number of Billable Leads (as determined by the number of Qualified Leads tracked and reported by Company, offset by any Lead Returns). Publisher agrees that Company shall pay Commissions to Publisher for the amount earned by Publisher during the previous month, less any taxes required to be withheld under applicable law. Publisher further agrees that Company shall have no obligation to compensate Publisher for any revenue events (leads) generated in excess of the Daily Cap (if any) as set forth within the IO. As used herein, "Daily Cap" means the maximum number of revenue generating events that Company (or the applicable Advertiser) will accept for a specific Campaign, in one calendar day. All determinations made by Company in connection with the Lead Tracking Codes, Qualified Leads, Disqualified Leads, Billable Leads, Lead Returns, payment from Advertisers, and any associated Commission payments due to Publisher shall be final and binding on Publisher. Notwithstanding the foregoing, Publisher agrees that Company, in its sole discretion, may withhold all payments due and owing to Publisher until such time as the applicable Advertiser has paid Company pursuant to the associated Campaign and/or for any other reason whatsoever. Company reserves the right to reduce all Commissions otherwise owed to Publisher where the applicable Advertiser has offset corresponding payments owed to Company as a result of Lead Returns. In no event shall Company be liable to pay Publisher Commissions for any Lead Returns and/or any other leads rejected by the Advertiser for any reason whatsoever. Company's obligations under this Agreement do not involve or include investigating or resolving any claim or dispute involving Publisher and any Advertiser or other third party. If, due to any impairment of the Lead Tracking Codes or any other reason, Company is unable or fails to provide Publisher with accurate and/or complete Lead Data, Publisher agrees that Company shall work with Publisher in good faith in order to calculate projected leads ("Projected Leads").
 - 7.2. **Minimum Payment Threshold.** Payments of Commissions shall be made to Publisher provided that Publisher has accumulated at least Fifty Dollars (\$50.00) ("Minimum Payment Threshold") in accrued revenues during the calendar month. Publisher agrees that if at any time during the term of this Agreement Publisher has not accumulated the Minimum Payment Threshold, then the amount due to Publisher will continue to roll over to the next month until an amount equal to or greater than the Minimum Payment Threshold has been accrued. Upon
-

expiration or termination of this Agreement, all legitimate amounts due and owing to Publisher (not disputed in good faith by Company), including any amounts below the Minimum Payment Threshold, shall be paid during the next billing cycle.

- 7.3. **Limitations.** Notwithstanding the foregoing, Company shall not be responsible to make payment of Commissions to Publisher where: (i) the leads are generated using fraud, incentivized marketing or are otherwise in violation of any of the Terms of this Agreement; and/or (ii) the subject Recipient did not opt-in to receiving E-mails from Publisher. Company shall not pay Commissions to Publisher on any billings: (a) that occur before Publisher is approved to participate in the Program; and/or (b) that occur after expiration or termination of either the applicable Campaign or this Agreement. Additionally, Publisher agrees that Company may, in its sole discretion, require Publisher to provide a W-9, or similar tax identification information, as a condition precedent to receiving any Commission payments. Publisher is responsible for paying all applicable taxes due to all taxing authorities arising from, or in connection with its participation in the Program. Without limiting the foregoing, Publisher agrees that it is fully responsible for all taxes, whether state or local, and related fees, costs and/or penalties incurred by Company and/or any of its Advertisers pursuant to Chapter 57 of the Laws of 2008 amending the New York State Tax Law. In addition to any other remedies that may be available at law or in equity, Company reserves the right to withhold and/or cancel Commission payments due and owing to Publisher at any time, in its sole discretion, when Company believes in good faith that Publisher: (I) is in breach of any of the Terms of this Agreement; and/or (II) has threatened to undermine the relationship between Company and any applicable Advertisers.
8. **Suppression Lists.** Company agrees that it will endeavor to make available to Publisher a list of all e-mail addresses and/or domains associated with unsubscribe (opt-out) requests ("Suppression List") that it receives. With respect to any Suppression List generated in connection with Publisher's participation in the Program, Publisher agrees to: (i) download Suppression Lists from the "Suppression Data" area of the Website not less than every seven (7) days; (ii) use any such Suppression List, and the individual Recipient's records, solely for the suppression purposes set forth herein, even after expiration or termination of this Agreement; (iii) use any such Suppression Lists to remove all e-mail addresses and/or domains contained therein from future E-mail dissemination; (iv) not use any such Suppression Lists for purposes of e-mail marketing (or provide the Suppression List to any third party for said purposes) and not send, or cause to be sent, any E-mails to any e-mail address and/or domain appearing on any such Suppression List; (v) not use any such Suppression Lists for purposes of e-mail appending in any manner whatsoever; (vi) hold any such Suppression List in trust and confidence and use the same solely for the suppression purposes set forth herein; (vii) not retain a copy of any such Suppression List following the expiration or termination of this Agreement; and (viii) not disclose any such Suppression List to any employee, consultant, Sub-Publisher, or third party individual, corporation or entity without first ensuring said party's written agreement to be bound by this Agreement. Such agreement shall be immediately forwarded to Company, upon request. Company reserves the right to withhold its authorization to such disclosure and may within its sole discretion, accordingly bar the disclosure of any such Suppression List. All Suppression Lists provided by Company are deemed to be Confidential Information of Company, as defined herein. Publisher agrees that Suppression Lists may NOT be used by Publisher for any purpose other than to comply with applicable laws regulating e-mail marketing. Publisher further agrees that: (a) it has downloaded and removed the domains located on the Federal Communications Commission's ("FCC's") wireless domain names list (<http://www.fcc.gov/cgb/policy/DomainNameDownload.html>) from any and all current data used in connection with its participation in the Program; and (b) any and all new data that it acquires, regardless of its source, will be scrubbed against the FCC's wireless domain names list and that the domain names contained therein will be removed before disseminating any E-mails in connection with its participation in the Program. Publisher agrees to maintain tangible records evidencing the removal of any e-mail addresses from all applicable Suppression Lists for verification by Company upon request.
9. **Fraud.** Company actively monitors the Network and all Program-related activities for potential fraud. If, at any time, Company suspects or detects fraud, Company reserves the right in its sole discretion to immediately terminate Publisher's approval to participate in the Program pending further investigation. Publisher agrees that Company, in its sole discretion, shall be responsible for determining the existence of fraud; and Publisher shall be bound by all such determinations. Upon a good faith determination of fraud by Company, Publisher agrees that Publisher bears the burden of proving to Company that Publisher did not engage in fraud. If Publisher fraudulently generates leads or inflates leads by fraudulent traffic generation (such as pre-population of forms or mechanisms not approved by Company or use of websites in co-registration campaigns that have not been approved by the applicable Advertiser), as determined solely by Company, then Publisher shall forfeit its entire Commission for all Campaigns and it shall constitute a material breach of this Agreement and shall be grounds for the immediate termination of this Agreement, without notice or opportunity to cure. If Publisher is notified that fraudulent activities may be occurring and Publisher fails to take prompt action to stop the fraudulent activities, then in addition to any other remedies available to Company, Publisher shall be responsible for all costs and legal fees arising from these fraudulent activities. Additionally, in the event that Publisher has already received Commission payment(s) based upon fraudulent activities, Company reserves the right to seek credit or remedy from future earnings or to demand reimbursement from Publisher.
10. **Term & Termination.** The term of this Agreement shall begin on Publisher's receipt of written confirmation of approval by Company and shall remain in effect until terminated as set forth herein. This Agreement may be terminated by either Party, at any time, with or without cause, by giving the other Party written notice ("Notice of Termination"). The Parties agree that Notice of Termination must be furnished in writing to be effective. Notice of Termination may be sent via e-mail. Notice of Termination shall be effective upon dispatch by the terminating Party ("Effective Date of Termination"). It is understood that Publisher is only eligible to earn Commissions on Qualified Leads generated during the term of this Agreement. Upon effective Notice of Termination, all rights and/or licenses granted herein shall immediately terminate. Upon termination of this Agreement: (i) all amounts due and owing under this Agreement through the Effective Date of Termination shall become due and payable; and (ii) the Parties shall immediately cease performance of its obligations as set forth herein. Publisher agrees to: (a) immediately cease to use and remove from all Publisher Websites, all Creative Content made available to Publisher; and (b) immediately cease disseminating all E-mails in connection with any Campaigns. All licenses and rights granted by Company to Publisher in connection with this Agreement shall immediately cease and terminate. And all Confidential Information, Creative Content and/or Proprietary Information of Company (including, as applicable, any confidential or proprietary information of any Advertiser) that is in Publisher's possession or control must be immediately returned to Company or destroyed upon request. Publisher shall provide written confirmation of destruction executed by an officer, upon request, within five (5) business days. All Terms of this Agreement which are expressly or by their nature impliedly intended to survive the expiration or termination of this Agreement shall not be affected by such expiration or termination. In particular, the rights and obligations of the Parties pertaining to Confidentiality, Indemnification, Representations and Warranties, Limitations of Liability and Dispute Resolution shall survive the termination or expiration of this Agreement.
11. **Acceptable Use Policy.**
- 11.1. **General.** This Acceptable Use Policy ("AUP") sets forth the approved and prohibited uses of the Network and in connection with Publisher's participation in the Program. Publisher agrees that any violation of this AUP may result in disciplinary action up to and including the

termination of this Agreement, as well as any other available legal remedies. As used herein, "SPAM" is used to describe unsolicited or unauthorized commercial e-mail messages. These messages are often referred to as junk, bulk or unsolicited commercial e-mail. An e-mail message will be considered unsolicited if it is not one hundred percent (100%) opt-in by all Recipients. E-mails will be considered SPAM if it contains any deceptive or unsubstantiated claims regarding products or services and/or consists of any unfair business practices. Company is committed to the highest standards of privacy and takes proactive measures to maintain a strict NO SPAM policy. Company requires that Publisher practice permission-based e-mail marketing techniques and does not participate in nor condone the sending of SPAM. Company shall thoroughly investigate any allegations or SPAM complaints made by Recipients in connection with the Program. Company shall determine in its sole discretion whether Publisher has used any Creative Content to disseminate SPAM and reserves the right to immediately terminate this Agreement upon such a determination.

11.2. Permission-based Guidelines.

- 11.2.1. *General.* Publisher agrees that (i) all e-mail addresses to which Publisher disseminates E-mails were collected from Publisher Websites and in compliance with the applicable sites' privacy policy ("Publisher Privacy Policy"), and such Privacy Policies specifically allow for: (a) Publisher to transfer such data to third party business partners for marketing purposes; and (b) Publisher to use the data as contemplated herein; (ii) the data was/will be obtained, collected and compiled without employing deceptive or illegal practices; (iii) Recipients have consented to receiving E-mails from Publisher, and such consent includes the right to transfer the data to third party business partners for the use contemplated by this Agreement; and (iv) the data was obtained using methods that fully comply with all applicable state, federal and international laws, rules and implementing regulations including, but not limited to, the CAN-SPAM Act of 2003, as amended ("CAN-SPAM") and the e-mail marketing laws of the several states that are not pre-empted by CAN-SPAM, Section 5 of the Federal Trade Commission Act, the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act of 1996, Personal Information Protection and Electronic Documents Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, the Telemarketing Sales Rule, The Fighting Internet and Wireless Spam Act, Canada's Online Protection Legislation ("COPL" or more colloquially, "CASL"), and all of the rules and regulations promulgated thereunder, as well as all applicable state laws including, without limitation, the California Financial Privacy Act and the Vermont Consumer Protection Act, and all rules and regulations promulgated under such state laws, international laws, rules and regulations, as well as IAS network, domain and e-mail service provider guidelines, with respect to the Program (collectively, "Laws and Regulations"). Company reserves the right to terminate this Agreement if Publisher cannot prove that every Recipient provided the requisite permission.
- 11.2.2. *Recipient's Permission.* Publisher agrees that before adding a new e-mail address to its Publisher Database, it must first have received the Recipient's Permission. As used herein, "Permission" means that the Recipient provided Publisher with the e-mail address for the explicit purpose of receiving E-mails. Publisher agrees that Company may later require Publisher to use unselected ("unchecked") check-boxes at the point at which the Recipient's Permission is obtained. In so doing, Publisher agrees that such a change would then become a condition precedent to obtaining Permission as set forth under this Agreement.
- 11.2.3. *Requirements.* Publisher must successfully remove the e-mail address of every recipient who requests to be unsubscribed within five (5) days of the Recipient's initial unsubscribe request. Please be advised that in addition to Company's request that Publisher respond to all unsubscribe requests with courtesy, Publisher is required to retain a copy of all unsubscribe requests that it receives and must furnish them to Company upon request. Finally, every e-mail message sent pursuant to this Agreement must: (a) be Confirmed Opt-in; (b) be Authenticated; (c) include a single-click unsubscribe link; (d) include the name and physical address of the sender; and (e) adhere to the Hard Bounce Rule (as defined below). As used herein, "Confirmed Opt-In" means that after a Recipient requests to become a subscriber and receive E-mails, that Recipient shall receive a confirmation that must be responded to in order to validate the subscription. Publisher agrees that it must have used a "Confirmed Opt-in" subscription method for all Recipients. Any attempt by Publisher to disseminate E-mails to a Recipient whose e-mail address was not obtained via the Confirmed Opt-in process is strictly prohibited. As used herein, "Authenticated" means that Publisher must be able to provide Company with the source of each Recipient's e-mail address and the method used to sign up. This includes, but is not limited to, date and time of sign up, IP address of sign up, and the website of sign up. Publisher must be able to authenticate every Recipient to whom it has disseminated E-mails. Publisher agrees that every E-mail disseminated in connection with its participation in the Program must contain a functional, single-click unsubscribe link that enables the Recipients to instantly be removed from the Publisher Database without having to provide access data (e.g., Login and/or Password). Each unsubscribe link must remain fully functional for a period of not less than thirty (30) days after the date on which Publisher disseminated the applicable e-mail message. Publisher agrees that it will not disable, remove or attempt to disable or remove any unsubscribe link. Publisher agrees that it must remove any e-mail addresses from its Publisher Database at the latest, following the third notification that the applicable addresses have been Hard Bounced. For the purposes of this Agreement, the term "Hard Bounced" means the return of an E-mail disseminated to an e-mail address as a result of being permanently undeliverable or because the address does not exist.
- 11.2.4. *Co-registration.* For the purposes of this Agreement, the term "Co-registration" means an arrangement between third party business partners to collect Recipient information. In order to successfully obtain Permission through Co-registration on a third party business partner's website, Publisher agrees that at the time Permission was obtained, there must have been separate, distinct and unchecked opt-in check-boxes for each e-mail list such that the Recipient sufficiently understood that it was providing Permission to receive third party e-mail marketing messages.
- 11.2.5. *Limitations.* Please be advised that even when proper Permission is granted, it doesn't last forever. Publisher agrees that Permission shall automatically expire on the second anniversary of the date on which Permission was first obtained. Therefore, Publisher must obtain new and fresh Permission (at a minimum) every two (2) years from each Recipient within the Publisher Database in order to comply with this AUP.

- 11.3. Prohibited Uses. Without prejudice to the prohibitions set forth above, the following is a non-exclusive list of additional uses that are prohibited when participating in the Program: (i) Publisher is prohibited from sending E-mails to any e-mail addresses obtained by means of harvesting, dictionary attack (the practice of sending e-mail to addresses made up of random combinations of letters and/or numbers into multiple permutations in the hope of reaching valid e-mail addresses), or purchased, rented, borrowed or otherwise acquired from a third party (whether or not the third party obtained the Recipient's consent); (ii) Publisher is prohibited from sending E-mails to any Distribution List. (As used herein, "Distribution List" means any e-mail address that forwards to more than one individual at a time. Please be advised
-

that this includes generic e-mail addresses including but not limited to business@domain.com, support@domain.com, sales@domain.com, info@domain.com, postmaster@domain.com, and webmaster@domain.com, as it is impossible to determine whether or not the requisite permission was obtained); (iii) Publisher is prohibited from sending E-mails that employ Deceptive Practices. (As used herein, "Deceptive Practices" includes: (a) falsifying or obscuring components of an e-mail message header, including the "From" line and the routing information ("received" lines), in order to conceal their identity; (b) using vague, misleading or deceptive subject lines, in order to induce Recipients to open E-mails; (c) assuming a fake identity, in order to communicate with recipients, (d) impersonating any person, including but not limited to, an official of Company or an information provider; (e) using Company's bandwidth for anything other than e-mail marketing; or (f) failing to identify the E-mails as an advertisement); (iv) Publisher is prohibited from sending E-mails: (w) that use a third party's Internet domain name without permission of the third party, or otherwise misrepresent any information identifying the point of origin or the transmission path; (x) that are unrelated to the purpose(s) for which the Recipient's Permission was initially intended; (y) through a computer or network without prior written authorization; or (z) from an outside host; (v) Publisher is prohibited from using the Program for any type of one-time mass mailing scheme to any Recipients who did not Opt-in; (vi) Publisher is prohibited from sending E-mails that utilize Cookie Re-Spawning. (As used herein, "Cookie re-spawning" means the use of a Flash storage device to back up browser cookies and restore them after recipients delete them; or otherwise utilize Flash storage as a form of consumer tracking without the privacy notices and controls that typically accompany the use of browser cookies); (vii) Publisher is prohibited from sending E-mails that utilize User Agents. (As used herein, "User Agent" means a little bit of code that tells a website which operating system and web browser a computer is using, which is often used as a means of tallying information about visitors to the website); and (viii) Publisher is prohibited from knowingly sending E-mails to any Recipients featured on industry Blocklists. (As used herein, "Blocklist" means any IP or URL-based listing of e-mail addresses to which marketers should never disseminate or attempt to disseminate campaigns including, without limitation, Barracuda, Brightmail, CBL, NJABL, Spamcop, and Spamhaus). Finally, as used herein, "Blacklist" means any and all lists of individuals or entities identified as disseminators of SPAM. If, at any time, Company is implicated on an industry Blacklist, then Publisher shall have no more than ninety-six (96) hours from the Receipt of Blacklist notification in order to remedy the situation. If, after the expiration of the allotted ninety-six (96) hours, Publisher has been unable or unwilling to obtain satisfactory resolution (as determined by Company), then Company may terminate this Agreement. **In no event shall any Publisher be allowed to market to or contact any recipient via SMS text messaging.** In the event Publisher markets to or contacts any Recipient via SMS marketing, as liquidated damages for the reasonable estimation of loss and not as a penalty, Publisher shall pay the Company \$25,000 per violation. In the event that Publisher markets to or contacts Recipients via SMS marketing three (3) times in any rolling twelve (12) month period, as liquidated damages for the reasonable estimation of loss and not as a penalty, Publisher shall pay the Company \$500,000.

- 11.4. **Prohibited Content.** Publisher is prohibited from disseminating E-mails that include or display any content that contains, promotes, references or links to: (i) material that exploits children or otherwise exploits any individuals under eighteen (18) years of age; (ii) material that is grossly offensive, including blatant expressions of discrimination, bigotry, prejudice, racism, sexism, ageism, gender-bias, hatred or excessive profanity or that is abusive, invasive, lewd, lascivious, libelous, defamatory, vulgar, obscene, harassing, threatening or otherwise unlawful or threatening against an individual or group; (iii) false, misleading, illegal or deceptive activity; (iv) pornographic, sexually explicit or otherwise adult-oriented content, including but not limited to magazines, video and software, or escort services; (v) political, religious or charitable organizations, issues or causes; (vi) firearms, weaponry, ammunition, fireworks, explosives hazardous materials, hazardous substances or instructions on how to assemble or otherwise make bombs, grenades or other weapons; (vii) odds making and betting/gambling services, including but not limited to poker, casino games, horse and dog racing and college and pro sporting events; (viii) tobacco and tobacco-related products, alcoholic beverages, illegal drugs or drug paraphernalia; (ix) infringements or misappropriations of the intellectual property rights of any third party; (x) material that introduces viruses, worms, harmful code and/or Trojan horses on the Internet; (xi) material that is unsolicited or unauthorized, including advertising, solicitations, promotional materials, junk mail, spam, chain letters, pyramid schemes or ponzi schemes; or (xii) content otherwise deemed unsuitable or detrimental to the reputation of Company or its other Publishers.
- 11.5. **Enforcement.** Company reserves the right to monitor Publisher's activities to ensure strict compliance with this AUP. Publisher agrees that it is responsible for ensuring that its E-mails do not generate a number of SPAM complaints in excess of industry norms. Company shall determine in its sole discretion whether Publisher's number of SPAM complaints is within industry norms. Publisher agrees that Company's determination shall be final, binding and conclusive for all purposes under this Agreement. If Company determines that Publisher's number of SPAM complaints are in excess of industry norms, Company reserves the right to immediately terminate this Agreement. If Company determines in its sole discretion that Publisher has violated or attempted to violate the AUP, Company reserves the right to pursue the following non-exclusive list of remedies: (i) bring an action in any court of competent jurisdiction to enjoin such activity, it being understood that such activity may cause irreparable harm to Company which may not be fully compensable by monetary damages; or (ii) recover from Publisher monetary losses caused to Company by such activity in an amount equal to the Company's actual monetary loss, including but not limited to any damage, loss or expense (including attorneys' fees) resulting from any third party claim made against Company as a result of Publisher's conduct in violation of this provision. Publisher shall be responsible for reasonable costs incurred by Company in bringing such actions, including attorneys' fees.
12. **Representations and Warranties.** The Parties hereby represent and warrant that: (i) this Agreement has been duly and validly executed and delivered by it; and constitutes each Party's legal, valid and binding obligation which is fully enforceable against it in accordance with its Terms; (ii) it is duly licensed, authorized and certified by all applicable governmental and regulatory authorities to perform all of its rights and duties pursuant to this Agreement; and (iii) either Party may enter into similar agreements with other potential third parties in direct competition with the other Party. Publisher further represents and warrants that: (a) Publisher will only disseminate E-mails to those Recipients that have given Permission, and have not revoked such Permission as of the date that the E-mail was disseminated to such Recipient; and (b) Publisher will comply with all applicable Laws and Regulations. Publisher shall be solely responsible for the development, operation and maintenance of Publisher Websites, Publisher Database and for all materials that appear throughout Publisher Websites. Such responsibilities include, without limitation: (I) the technical operation of Publisher Websites and all related equipment; (II) the accuracy and propriety of materials posted on Publisher Websites; (III) ensuring that materials posted on Publisher Websites do not violate or infringe upon the rights of any third party and are not defamatory, obscene, libelous, harmful, illegal or otherwise offensive; (IV) ensuring that Publisher Websites (including any Publisher Privacy Policy featured therein) and Publisher Database and any applicable use thereof, will comply with all Laws and Regulations; (V) ensuring compliance by any Sub-Publishers with the Terms of this Agreement; (VI) ensuring that Publisher Website shall, at all times during the term of this Agreement, maintain a Publisher Privacy Policy that complies with all Laws and Regulations; and (VII) ensuring that the Publisher Privacy Policy clearly and conspicuously explains that Publisher Websites are allowed to share any information collected therein with third parties, as contemplated hereunder.

13. **Confidentiality.** As used herein, "Confidential Information" means any non-public information of the other Party ("Disclosing Party") that is designated as confidential, or that the recipient ("Receiving Party") knew or reasonably should have known was confidential because it derives independent value from not being generally known to the public. Without limiting the generality of the foregoing, the Terms of this Agreement shall be considered Company's and Publisher's Confidential Information. Confidential Information shall not include any information which: (i) a Party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the other Party; (ii) at the time of disclosure or later, is published or becomes part of the public domain through no intentional or inadvertent act, failure to act, or breach on the part of a Party; (iii) a Party has developed independently without reference to any Confidential Information of the other Party; or (iv) a Party can demonstrate came into its possession from a third party subject to no restriction of confidentiality and who had a bona fide right to make such information available. As used herein, the term "becomes part of the public domain" shall mean readily accessible to the public in a written or other publication, and shall not include information which was only available by a substantial searching of the published literature or information the substance of which must have been pieced together from a number of publications and sources. Both Parties agree that the Receiving Party shall have the burden of proving the applicability of any of the foregoing exceptions. Each Party shall maintain and protect all of the Confidential Information of the other Party as confidential and secret. The Receiving Party shall not disclose nor cause the disclosure of any of the Confidential Information of the Disclosing Party to any third person or entity for any purpose at any time and shall undertake all steps reasonably necessary to prevent such disclosure. The Receiving Party shall be entitled solely to disclose such Confidential Information to those employees and consultants of such Party who have a specific need to use such information in connection with the purposes of this Agreement. All employees and consultants to whom the Receiving Party discloses any Confidential Information of the Disclosing Party shall be advised of the existence and scope of this Agreement and shall be bound either by the Terms of this Agreement or by legally binding nondisclosure restrictions for the benefit of the Disclosing Party which must be at least as restrictive as this Agreement. Neither Party shall be permitted to use the Confidential Information of the other Party other than as set forth herein and required for the performance of its obligations under this Agreement. Neither Party shall be permitted to use the Confidential Information of the other Party for any other use or purpose at any time. Neither Party shall copy or otherwise reproduce the Confidential Information of the other Party for any purpose without the prior written authorization of the other Party; provided that a reasonable number of copies may be made by the Receiving Party solely to the extent necessary for the performance of its obligations herein. However, the Receiving Party shall have the burden of proving such authorization and/or necessity. These confidentiality restrictions shall lapse with respect to any particular item of Confidential Information seven (7) years after the initial disclosure of such Confidential Information by the Disclosing Party to the Receiving Party. In the event that the Receiving Party is requested or ordered in any legal proceeding to disclose any of the Confidential Information of the other Party, the Receiving Party shall not make any such disclosures without the prior written authorization of the other Party in the case of a request, or without prompt prior written notice to the other Party in the case of an order. The Receiving Party shall provide the other Party with prompt notice of any such requests or orders and shall cooperate with each independent steps to attempt to resist or narrow such requests or orders, or to attempt to obtain appropriate protective orders or other assurances of nondisclosure that the other Party elects. Both Parties agree that a monetary remedy for a breach or violation of this Section will be inadequate and will be impracticable and extremely difficult to prove, and that any such breach or violation would cause the other Party irreparable harm. Accordingly, in the event of any breach or violation of this Section, in addition to any other available rights and remedies at law or in equity, said other Party shall be entitled to temporary and permanent injunctive relief and other equitable relief without the necessity of posting a bond or making any undertaking in connection therewith and without the necessity of proving actual damages.
14. **Limitation of Liability; Disclaimer of Warranty.**

IN NO EVENT SHALL COMPANY BE LIABLE TO PUBLISHER OR TO ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, ANY CUSTOMERS OBTAINED THROUGH PUBLISHER'S MARKETING EFFORTS) FOR ANY DAMAGES OF ANY KIND ARISING FROM PUBLISHER'S USE OF THE NETWORK AND/OR ITS DISPLAY OF ANY CREATIVE CONTENT ON PUBLISHER WEBSITES, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY AND/OR CONSEQUENTIAL DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED IN WRITING OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S MAXIMUM AGGREGATE LIABILITY TO PUBLISHER AND/OR TO ANY THIRD PARTY UNDER ALL CIRCUMSTANCES SHALL BE THREE HUNDRED DOLLARS (\$300). REGARDLESS OF ANY LAW TO THE CONTRARY, NO ACTION, SUIT OR PROCEEDING SHALL BE BROUGHT AGAINST COMPANY MORE THAN ONE (1) YEAR AFTER THE DATE UPON WHICH THE CLAIM AROSE. PUBLISHER AGREES THAT THIS LIMITATION OF DAMAGES IS FAIR AND REASONABLE. THE NEGATION OF DAMAGES SET FORTH HEREIN IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND PUBLISHER. THE NETWORK AND ALL CREATIVE CONTENT WOULD NOT BE PROVIDED TO PUBLISHER WITHOUT SUCH LIMITATIONS. COMPANY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY RESULTS OBTAINABLE THROUGH THE PROGRAM. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY PUBLISHER FROM COMPANY AND/OR ANY ADVERTISER BY AND THROUGH THE NETWORK SHALL CREATE ANY WARRANTY, REPRESENTATION AND/OR GUARANTEE NOT EXPRESSLY STATED WITHIN THIS AGREEMENT. SOME STATES LIMIT THE ABILITY TO DISCLAIM ALL WARRANTIES, SO THIS SECTION OR SOME PORTIONS OF IT MAY NOT APPLY.

DUE TO THE NATURE OF INTERNET AVAILABILITY AND ACCESSIBILITY, COMPANY CANNOT GUARANTEE THAT THERE WILL BE NO DOWNTIME OR OTHER INTERRUPTIONS IN SERVICE REGARDING THE PROGRAM. WITHOUT LIMITING THE FOREGOING, THE PROGRAM AND BY EXTENSION, THE NETWORK AND ALL CREATIVE CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY OF ANY KIND. COMPANY MAKES NO WARRANTIES WHATSOEVER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY HAS NO LIABILITY WHATSOEVER TO PUBLISHER OR TO ANY THIRD PARTY, FOR PUBLISHER'S USE OF OR INABILITY TO USE THE NETWORK AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, THAT PUBLISHER'S USE OF THE NETWORK WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY OF THE CREATIVE CONTENT WILL BE AVAILABLE TO PUBLISHER.

Company makes no representations or warranties and disclaims any responsibility and/or liability, regarding the content or nature of any Campaign or Creative Content made available in connection with participation in the Program. Company has no liability to Publisher for unapproved materials, including all copy, images, URL names, and search terms used by Publisher. Company makes no representations or warranties about any other third party website which Publisher may access in connection with its participation in the Program. When Publisher accesses a third-party website that is not associated with and is independent from Company, Publisher hereby acknowledges and agrees that Company has no control over the content of that website. Furthermore, a link to a non-Company website does not mean that Company endorses or accepts any responsibility for the content or the use of such website. It is Publisher's sole responsibility to take precautions to ensure that websites, downloads, attachments, and other such files are free of Trojan horses, worms, viruses and/or other items of a destructive nature.

15. **Indemnification.** Publisher agrees to indemnify, defend and hold harmless Company, its parents, affiliates, and each of their respective officers, directors, partners, members, managers, employees, agents and attorneys, from and against any and all liabilities, claims, actions, suits, proceedings, judgments, fines, damages, costs, losses and expenses (including reasonable attorneys' fees, court costs and/or settlement costs) arising from or related to: (i) Publisher's breach of this Agreement and/or any representation or warranty contained herein; (ii) the Publisher Website(s), Publisher Database, and/or Publisher's other marketing practices; (iii) any third party allegation or claim against Company relating to a violation of any Laws and/or Regulations; (iv) any allegation that Publisher has infringed upon the trademark, trade name, service mark, copyright, license, intellectual property or other proprietary right of any third party; (v) any non-Advertising Campaign related content, goods or services offered, sold or otherwise made available by Publisher on and through the Publisher Website(s), Publisher Database or otherwise; (vi) any claim that Company is obligated to pay any taxes in connection with Publisher's participation in the Program ; and/or (viii) Publisher's participation in the Program , in any manner whatsoever. Publisher shall promptly assume such defense with counsel reasonably acceptable to Company upon written notice to Publisher of such indemnifiable claim. Additionally, Company reserves the right to participate in the defense at its sole expense. Publisher agrees not to settle any indemnifiable claim without the prior written approval of Company. Publisher shall immediately notify Company of any current, impending, or potential legal actions, complaints, inquiries or investigations against it by a third party for matters relating to Publisher Website(s), Publisher Database, e-mail complaints, e-mail deployment, violations of CAN-SPAM (or other applicable regulations, including all Laws and Regulations), or any other violations in connection with Publisher's business whether or not Publisher is obligated to indemnify Company for such claim hereunder.
16. **Non-Solicitation.** Publisher recognizes that in addition to Company's proprietary relationships with other Third-Party Publishers within the Network, Company also has proprietary relationships with all the Advertisers that participate in the Network ("Network Advertisers"). Publisher agrees that Publisher will not circumvent Company's relationship with any such Third-Party Publishers or Network Advertisers, or otherwise offer, approach, induce, solicit, make available, provide, contract for or otherwise perform, directly or indirectly, advertising, marketing or promotional services similar to the services performed by Publisher and/or Company (as applicable) pursuant to this Agreement for any Network Advertiser or other Third-Party Publishers during the term of this Agreement and then for a one (1) year period following termination or expiration of this Agreement.
17. **Conflict of Terms.** If there is a conflict between any of the Terms of this Agreement and either: (i) a previous version of this Agreement; (ii) all prior oral or written agreements or understandings between the Parties as to the subject matter of this Agreement; (iii) any and all additional terms found throughout the Website; or (iv) any Company invoice, then the terms of this Agreement shall, in all instances, govern, prevail and control.
18. **Miscellaneous.**
- 18.1. **Entire Agreement.** Both Parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels any and all other previous or subsequent written and oral agreements, communications and/or other understandings relating to the subject matter of this Agreement. Any electronic terms of Publisher which Company or Advertiser may be required to accept, such as, but not limited to, for accessing reporting, invoicing or providing Lead data, shall be of no force and effect, even if such acceptance occurs prior to, contemporaneous with, or subsequent to this Agreement or an IO. The Terms of this Agreement may be modified by Company from time-to-time in its sole discretion. Publisher agrees that any participation by Publisher in the Program and/or use of the Network after any such Modifications have been posted on the Network and/or the Website shall be deemed to be continued and complete acceptance of this revised Agreement. Except as set forth herein, no conditions other than those set forth under this Agreement, or amendments or modifications to this Agreement, shall be binding on Company unless and until Company expressly agrees in a signed writing by an authorized Company representative. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 18.2. **Modification.** No waiver, amendment or modification of any provision of the Terms of this Agreement (including any exhibits or schedules) shall be effective unless it is an E-mail Amendment. As used herein, "E-mail Amendment" is a modification to this Agreement through e-mail communications between authorized agents of the respective Parties evidencing mutual assent to the modification(s); provided, however, that the subject of such modifications shall be limited to the following terms: (i) Daily Cap, (ii) Cost Per Lead, and (iii) Campaign Launch Date. Modifications of any other Terms must be in writing and signed by authorized representatives of both Parties. No waiver by any Party of a breach or violation of this Agreement or any failure to exercise any right hereunder shall operate or be construed as a waiver of any subsequent breach or violation of the same or of a different kind or a relinquishment of such right.
- 18.3. **Governing Law; Arbitration of Disputes.** This Agreement shall be treated as though it were executed and performed in New York, New York and shall be governed by and construed in accordance with the laws of the State of New York (without reference or regard to principles of conflicts of law). All disputes arising under this Agreement shall be settled by binding arbitration utilizing a retired judge mutually selected by the Parties and conducting under the auspices of JAMS/Endispute (or its successor or any similar service), and shall include the right to conduct discovery pursuant to the rules of Civil Procedure for New York courts. Such arbitration shall be conducted in New York County and any decision and/or award may be entered in any court of competent jurisdiction. Nothing herein shall be construed to preclude any Party from seeking injunctive relief in order to protect its rights pending an outcome in arbitration. In the event of any legal action or proceeding arising out of the Terms or subject matter of this Agreement, the prevailing Party in said action or proceeding shall be entitled to recover from the other Party the costs and expenses incurred therein, including reasonable attorneys' fees and expert witness fees.
- 18.4. **Injunctive Relief.** Both Parties agree that its breach of this Agreement would cause irreparable injury to the other for which monetary damages are not an adequate remedy. Accordingly, both Parties are entitled to injunctive relief and other equitable remedies in the event of a breach of this Agreement, without the necessity of posting a bond. The availability of injunctive relief shall be a cumulative and non-exclusive remedy.
- 18.5. **Force Majeure.** Neither Party shall be liable for, or shall be considered to be in breach of the Terms and Conditions of this Agreement on account of any delay or failure to perform as required herein as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable efforts. If any force majeure event occurs (which shall include, without limitation, telecommunications, Internet or Network failure, results of computer hacking, acts of God, fire, explosion, vandalism, storm or other natural occurrences, any conflicting order, direction, action or request of the United States government (including, without limitation, state and local governments) or of any regulatory department, agency, commission, court, bureau, corporation or other instrumentality, or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages or other such labor difficulties), the affected Party shall provide prompt written notice to the other Party and shall use
-

commercially reasonable efforts to minimize the impact of such event. Notwithstanding the foregoing, the Parties' obligations to the other shall be excused and/or postponed during and only for the duration of the applicable force majeure event and shall resume as soon as practicable after the force majeure event has ended.

- 18.6. Additional. To the fullest extent permitted by applicable law and notwithstanding any applicable statute of limitations, the Parties agree that any claims for breach of this Agreement must be brought within one (1) year of the date that the aggrieved Party first has notice of the existence of such breach. Any attempt by any individual, whether or not the Publisher specifically referenced herein, to damage, destroy and/or otherwise tamper or interfere with the operation of the Program or the Network, is a violation of both civil and criminal law. Company shall diligently pursue all remedies in this regard against any offending individual or entity to the fullest extent permissible by law and in equity. This Agreement shall bind and inure to the benefit of each Party's permitted successors and assigns. Company may assign this Agreement, or any portion thereof, at its sole discretion. However, Publisher may not assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written authorization of Company, which may be withheld for any reason. Company agrees that such a determination of authorization shall be made in good faith and shall not be unreasonably withheld. But any attempt by Publisher to assign any part of this Agreement without the prior written authorization of Company shall be null and void. Company shall be retained by Publisher as an independent contractor and not as an employee, agent or representative of Publisher. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and Publisher has no authority of any kind to bind Company in any respect whatsoever. Publisher agrees that Company may in its sole discretion engage the services of subcontractors or agents to assist Company in the performance of any of its obligations under this Agreement. In the event that any provision of this Agreement shall be held to be unlawful or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect and shall be construed to give the fullest effect to the intent of the Parties expressed herein. Publisher agrees that any third party linked sites available via the Network are not under Company's control. Company merely provides these third-party links as a convenience and the publishing of any third-party link does not in any way imply endorsement by Company of the linked website and/or any association with its operators. Accordingly, Publisher agrees that Company is not responsible for the contents or operation of such third party linked websites or any links contained within such third party linked websites. Company may include Publisher's name and/or logo within its Website and/or throughout its promotional materials. Similarly, Publisher may use Company's name and/or logo on its Publisher Websites. However, Publisher agrees that it shall not create, publish, distribute or permit any written material that makes reference to Company without first obtaining written authorization. Neither Party grants to the other any title, interest or other right in any Marks under this Agreement. Publisher agrees that by clicking on the button labeled "Submit" (or such similar links as may be designated by Company to accept the Terms and Conditions of this Agreement), Publisher is submitting a legally binding electronic signature and is entering into a legally binding contract. Publisher agrees that Publisher's electronic submissions constitute Publisher's agreement and intent to be bound by all the Terms of this Agreement. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act") or other similar statutes, Publisher hereby acknowledges and agrees to THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE NETWORK OR IN CONNECTION WITH THE PROGRAM. Additionally, Publisher hereby waives any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means. All notices relating to this Agreement shall be made in writing and deemed effective: (i) upon delivery when delivered in person; (ii) upon transmission when delivered by email; or (iii) when delivered by registered or certified mail, postage prepaid, return receipt requested or by nationally-recognized overnight courier service to: (a) Publisher at the address provided during registration; and (b) Company at 1841 Broadway, Suite 600, New York, NY 10023.