

Terms and Conditions

Publishers | Affiliates

Publishers Terms and Conditions

This Ludus Affiliate Network Advertiser Agreement (“Advertiser Agreement”), shall govern the relationship between Ludus Affiliate Network (“Ludus Affiliate Network” or “we”) and the Advertiser (“Advertiser”), whereby Advertiser may obtain access to the Affiliate Network (“Ludus Affiliate Network”) of registered third party affiliates (“Affiliates”) and publishers (“Publishers”), and related technology and software (“Ludus Affiliate Network Ad Server”), to market customized advertisements and links provided by Advertiser and/or Ludus Affiliate Network (“Ads,” as further defined below). The Ludus Affiliate Network, as well as the services provided by Ludus Affiliate Network in connection therewith (“Services”), are further described in the Insertion Order (“IO”) attached hereto and incorporated herein by reference (the IO, together with this Advertiser Agreement, the “Agreement”). The terms of the IO shall supersede all contrary terms set forth in this Advertiser Agreement, unless expressly set forth to the contrary. In any instance where Advertiser is an agency entering into the Agreement on behalf of a client, any reference to “Advertiser” shall refer jointly to Advertiser as well as the applicable underlying client.

1. Ludus Affiliate Network/Services

Advertiser agrees to accept and pay for, and Ludus Affiliate Network agrees to provide, the Services identified and set forth in the Agreement. In connection with the Services, Ludus Affiliate Network shall undertake marketing campaigns with Advertiser (each an “Ad Campaign”) whereby Ludus Affiliate Network will distribute Advertiser’s proprietary advertising materials including, without limitation, banners, buttons, text-links, clicks, co-registrations, pop-ups, pop-unders, e-mail, graphic files and similar online media (collectively, “Advertiser Ads”) and/or, where applicable, Ludus Affiliate Network Ads (as defined below) through the Ludus Affiliate Network either:

1. on Publisher websites via the Ludus Affiliate Network Ad Server for impressions-based Ad Campaigns (“CPM”); or
2. by Affiliates via e-mail based marketing, search engine marketing, website based marketing and/or other online marketing means. In connection with such Ad Campaigns, Advertiser shall pay Ludus Affiliate Network commissions depending on the number of valid clicks, impressions, sales/actions (“CPA”), applications and leads (“Leads”), and/or

such other compensable activities generated on behalf of Advertiser as set forth in the subject IO (collectively, "Actions"). The applicable Actions, the fees due to Ludus Affiliate Network for each Action and other applicable terms and conditions of the Ad Campaigns entered into hereunder shall be specified in each IO. Ludus Affiliate Network shall not be held liable or responsible for any actions or inactions of its Publishers or Affiliates.

2. Account

Upon the execution of the Agreement, Advertiser must register on the Ludus Affiliate Network website and create a unique, password-protected account ("Account"). Advertiser will be responsible for safeguarding and maintaining the confidentiality of its Account and associated password. Advertiser shall remain fully and solely responsible for any and all actions taken under Advertiser's Account, whether authorized by Advertiser or not. Advertiser must immediately notify Ludus Affiliate Network of any unauthorized use of Advertiser's Account. Advertiser is responsible for keeping its Account information current, complete and accurate, and Advertiser acknowledges and agrees that Ludus Affiliate Network will have no responsibility or liability, directly or indirectly, for failure to deliver notices as a result of inaccurate Account information.

3. Ads

Advertiser shall develop all aspects of the Advertiser Ads, other than where the parties agree that Ludus Affiliate Network shall assist in the development of Ads. The parties understand and agree that Advertiser is the sole owner of any and all intellectual property rights associated with any Advertiser Ads; other than those portions that Ludus Affiliate Network prepares on Advertiser's behalf (such portions hereinafter referred to as, the "Ludus Affiliate Network Ads" and together with the Advertiser Ads, the "Ads"). The parties understand and agree that Ludus Affiliate Network is the sole owner of any and all intellectual property rights associated with the Ludus Affiliate Network Ads, other than Advertiser's trademarks, logos, copyrights and other pre-existing Advertiser intellectual property incorporated in the Ludus Affiliate Network Ads. Under no circumstances shall Ludus Affiliate Network be authorized to use the Ads other than in connection with Advertiser's Ad Campaigns as set forth in the IO(s). Advertiser shall submit all Advertiser Ads to Ludus Affiliate Network for approval prior to the commencement of the subject Ad Campaign set forth in the applicable IO. Advertiser shall not alter, modify or otherwise change the Ads, or any other Ads-related feature, in any manner whatsoever, without obtaining Ludus Affiliate Network's prior express written consent, after the applicable Ad has been approved by Ludus Affiliate Network. Notwithstanding the foregoing, Ludus Affiliate Network shall have sole discretion with respect to the creation of the "subject" and "from" lines used in its e-mailing of any Ads. Ludus Affiliate Network reserves the right, in its sole discretion and without liability, to: change any of its Ad Guidelines at any time; and to reject, omit, exclude or terminate any Ad for any reason at any time, with subsequent notice to

the Advertiser, whether or not such Ad was previously acknowledged, accepted or published by Ludus Affiliate Network. Such reasons for rejection, omission or exclusion of Ads include, but are not limited to, where Ludus Affiliate Network deems, in its sole discretion, that the Ads, including the applicable products and/or services promoted by such Ads (“Advertiser Products”), and any website linked to from such Ads, are in violation of any applicable law, rule, regulation or other judicial or administrative order or where the content thereof may tend to bring disparagement, ridicule or scorn upon Ludus Affiliate Network or any of its Publishers and/or Affiliates. Advertiser reserves the right to reject, omit, exclude, terminate or request a change to the Ads at any time and Ludus Affiliate Network shall, subject to the provisions set forth herein, comply with such request as soon as practical but in no event later than three (3) business days after its receipt thereof. Advertiser may cancel or suspend a CPM-based Ad Campaign, or an Ad associated with such a CPM-based Ad Campaign, effective within approximately twenty-four (24) business hours of Ludus Affiliate Network’s receipt of Advertiser’s cancellation notice, which Advertiser can deliver by logging into its Account and following the instructions on the applicable menu.

4. Placement

The positioning, placement, frequency and other editorial decisions related to Ads shall be made by Ludus Affiliate Network and/or its Affiliates and Publishers, as applicable, in their respective sole discretion. The applicable IO may set forth the particular place(s) where Ads may appear and/or be distributed. Advertiser agrees that in a case where no points of placement or distributions are set forth in the applicable IO or, in cases where “Run of Affiliate Network” or similar designation is specified in the applicable IO, the Ads may appear at any point of placement and/or distribution that Ludus Affiliate Network and/or its Affiliates and Publishers may determine, in their respective sole discretion.

5. Ad Codes

Unless otherwise stated in writing by Ludus Affiliate Network, each Ad used by Ludus Affiliate Network in connection with an Ad Campaign must include, in unaltered form, the special transaction tracking computer code provided by Ludus Affiliate Network (“Ad Codes”). Advertiser will not knowingly modify, circumvent, impair, disable or otherwise interfere with any Ad Codes and/or other technology and/or methodology required or made available by Ludus Affiliate Network to be used in connection with any and all Ads. In connection with CPA-based Ad Campaigns, Advertiser agrees to pay Ludus Affiliate Network a default payment of Fifty Cents (\$0.50) CPM on a net thirty (30) day basis in instances where conversion data cannot be supplied due to a failure of the Ad Codes and Advertiser’s inability to provide such information, in the alternative. All determinations made by Ludus Affiliate Network in connection with the Ads, Actions and any associated fees invoiced to Advertiser shall be final and binding on Advertiser. Notwithstanding the foregoing, Ludus Affiliate Network’s Services

do not involve investigating or resolving any claim or dispute involving Advertiser and any Publisher, Affiliate or other third party.

6. E-mail Marketing

The following terms apply to all Ad Campaigns transmitted via e-mail by Ludus Affiliate Network's Affiliates on behalf of Advertiser. Any and all e-mail based Ads:

1. shall comply with all applicable federal and state laws including, but not limited to, the CAN-SPAM Act of 2003 ("CAN-SPAM") and any and all Federal Trade Commission implementing regulations;
2. must not infringe, misappropriate or otherwise violate any copyright, patent, trademark, trade secret or other similar intellectual property right, or otherwise violate or breach any duty toward, or rights of, any person or entity including, without limitation, rights of privacy and publicity; and
3. must not result in any consumer fraud, product liability or breach of contract to which Advertiser is a party or cause injury to any third party. Advertiser shall cause a valid physical postal address for Advertiser to appear in each e-mail Ad, along with a functioning unsubscribe link (such unsubscribe link must remain active for at least thirty (30) days after e-mail delivery). Ludus Affiliate Network may make available, at a Ludus Affiliate Network-designated FTP site ("FTP Site"), a suppression list (and associated login information), updated on a regular basis, generated from e-mail Ad Campaigns transmitted by Ludus Affiliate Network's Affiliates for Advertiser under applicable IO(s). Advertiser shall upload its own list of suppressed e-mail addresses to the FTP Site, if one is provided by Ludus Affiliate Network, or send its suppressed e-mail addresses to Ludus Affiliate Network via e-mail no less than daily. If no such suppressed e-mail addresses are supplied by Advertiser, then Ludus Affiliate Network may conclude that no such addresses exist. The suppression list and login provided by Ludus Affiliate Network are deemed to be Confidential Information of Ludus Affiliate Network, as defined hereinbelow. Suppression lists may not be used by Advertiser for any purpose other than to comply with applicable laws regulating e-mail transmissions. Advertiser agrees to process any unsubscribe requests within seven (7) days of being posted at the FTP Site.

7. Payments

The rates for Actions shall be set forth in the applicable IO(s). Ludus Affiliate Network will invoice Advertiser twice monthly. Unless otherwise set forth in the applicable IO, payment will be due to Ludus Affiliate Network within thirty (30) days of the date appearing on each invoice. If payment is not made in a timely manner, Ludus Affiliate Network may, at its option,

immediately terminate the Agreement and/or any applicable IO(s). Interest will accrue on any past due amounts at the rate equal to the lesser of one and one half percent (1.5 per month or the maximum amount permitted by law. In addition, Advertiser shall be liable to Ludus Affiliate Network for all attorneys' fees and other costs of collection incurred in collecting such unpaid amounts. Advertiser agrees and acknowledges that it shall be fully responsible for any and all taxes, whether state or local, and related fees, costs and penalties incurred by Ludus Affiliate Network and/or any of its Publishers or Affiliates pursuant to Chapter 57 of the Laws of 2008 amending the New York State Tax Law.

8. Leads/CPA/Unaccepted Actions

In connection with Leads and CPA-based Ad Campaigns, Advertiser will pay Ludus Affiliate Network for all Actions generated; provided, however, that Advertiser shall have no obligation to pay for any Lead/CPA-based Action that:

1. it rejects within five (5) days of its receipt thereof; and
2. both parties determine is not a Valid Action (as defined below). Where Ludus Affiliate Network determines that such Action is a Valid Action, Advertiser must pay for same. A "Valid Action" means an individual person that:
 3. is not a computer generated user, such as a robot, spider, computer script or other automated, artificial or fraudulent method designed to appear like an individual, real live person;
 4. in the case of CPA-based Campaign, is a valid sale that is not fraudulent, cancelled, charged back or otherwise nullified; and
 5. in the case of Leads-based Campaigns, has submitted information that meets all of Advertiser's criteria as set forth in the applicable IO. The data associated with any and all Lead/CPA-based Actions ("Action Data") that are not both accepted and paid for by Advertiser shall be deemed the Confidential Information of Ludus Affiliate Network, subject to any and all restrictions set forth herein ("Unaccepted Action Data"). Upon Advertiser's acceptance of a Lead/CPA-based Action (and payment to Ludus Affiliate Network therefor in accordance with payment terms set forth herein and in the applicable IO), Ludus Affiliate Network shall grant to Advertiser joint ownership and the full right to use such Action Data. Where Advertiser does not accept Leads/CPA-based Actions, where Advertiser fails to make payments for same in accordance with the payment terms herein and in the applicable IO and/or where such Leads/CPA-based Actions are later determined not to be Valid Actions, Advertiser shall have no rights in and to such Action Data, and such Action Data shall be considered and treated as

Unaccepted Action Data. Without limiting the generality of the confidentiality obligations set forth herein, Advertiser agrees that it:

6. will not transfer, export, display, forward or otherwise share information contained in the Unaccepted Action Data to/with any third party;
7. will not use the information contained in the Unaccepted Action Data on its own behalf in any manner not expressly authorized by Ludus Affiliate Network;
8. will not use the information contained in the Unaccepted Action Data to create any interactive on-line, CD-ROM or other derivative product;
9. will not publicly display the information contained in the Unaccepted Action Data on the Internet; and
10. will notify Ludus Affiliate Network as soon as it learns of any actual or suspected unauthorized use of or access to the information contained in the Unaccepted Action Data and provide reasonable assistance to Ludus Affiliate Network in the investigation and prosecution of any such unauthorized use or disclosure.

9. Term/Termination

The Agreement shall continue for the term set forth in any underlying IO, provided that either party may terminate the Agreement and/or any IO at any time, upon five (5) business days' prior written notice. Upon termination or expiration of the Agreement for any reason:

1. Advertiser will pay Ludus Affiliate Network all amounts then due and owing as of the termination date within thirty (30) days as set forth in Section 7 hereinabove;
2. any and all licenses and rights granted to either party in connection with the Agreement shall immediately cease and terminate; and
3. any and all Confidential Information or proprietary information of either party that is in the other party's possession or control must be immediately returned or destroyed. Notwithstanding any termination of the Agreement, any provisions of the Agreement that may reasonably be expected to survive termination of the Agreement, shall survive and remain in effect in accordance with their terms.

10. Warranty/Limitation of Liability

THE LUDUS Affiliate Network, SERVICES, LUDUS Affiliate Network ADS, AD GUIDELINES, ACTIONS AND AD CODES PROVIDED BY LUDUS Affiliate Network UNDER THE

AGREEMENT AND/OR ANY APPLICABLE IO ARE SUPPLIED ON AN “AS IS” AND “AS AVAILABLE” BASIS. TO THE FULLEST EXTENT OF THE LAW, LUDUS Affiliate Network MAKES NO WARRANTIES (INCLUDING IMPLIED WARRANTIES OF PURPOSE AND NON-INFRINGEMENT), GUARANTEES, REPRESENTATIONS, EXPRESS, IMPLIED, ORAL OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LUDUS Affiliate Network DOES NOT WARRANT OR GUARANTY ACTIONS, CONVERSION RATES AND/OR RESPONSE RATES. THE LUDUS Affiliate Network, SERVICES, LUDUS Affiliate Network ADS, AD GUIDELINES, ACTIONS AND/OR AD CODES MAY CONTAIN BUGS, ERRORS, PROBLEMS OR OTHER LIMITATIONS. LUDUS Affiliate Network HAS NO LIABILITY, WHATSOEVER, TO ADVERTISER OR ANY THIRD PARTY, FOR ANY OTHER PARTY’S SECURITY METHODS AND PRIVACY PROTECTION PROCEDURES AND LUDUS Affiliate Network DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, THAT ANY OTHER PARTY’S SECURITY METHODS AND PRIVACY PROTECTION PROCEDURES WILL BE UNINTERRUPTED OR ERROR-FREE. LUDUS Affiliate Network HAS NO LIABILITY FOR ADVERTISER’S USE OF, OR INABILITY TO USE, THE AD GUIDELINES OR APPLICABLE ACTIONS AND LUDUS Affiliate Network DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND/OR IMPLIED, THAT ADVERTISER’S USE OF THE LUDUS Affiliate Network, SERVICES, LUDUS Affiliate Network ADS, AD GUIDELINES AND/OR ACTIONS WILL BE UNINTERRUPTED OR ERROR-FREE. LUDUS Affiliate Network MAKES NO GUARANTEES, AND ACCEPTS NO RESULTING LIABILITY, FOR FAILURE TO MEET SCHEDULED DELIVERY DATES. IN NO EVENT SHALL LUDUS Affiliate Network BE RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUE OR PROFITS, EVEN IF LUDUS Affiliate Network HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LUDUS Affiliate Network WILL NOT BE LIABLE, OR CONSIDERED IN BREACH OF THE AGREEMENT, ON ACCOUNT OF A DELAY OR FAILURE TO PERFORM UNDER THE AGREEMENT AND/OR ANY IO AS A RESULT OF CAUSES OR CONDITIONS THAT ARE BEYOND LUDUS Affiliate Network’S CONTROL. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, LUDUS Affiliate Network’S LIABILITY UNDER ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNTS PAID TO LUDUS Affiliate Network BY ADVERTISER DURING THE PRIOR SIX (6) MONTH PERIOD PURSUANT TO THE AGREEMENT. LUDUS Affiliate Network SHALL NOT BE HELD LIABLE OR RESPONSIBLE FOR ANY ACTIONS OR INACTIONS OF PUBLISHERS AND/OR AFFILIATES.

11. Representation and Warranties

Advertiser represents and warrants that:

1. it has the power and authority to enter into and perform its obligations under the Agreement;

2. at all times, the Ads (and their transmission), the Advertiser Products, any Advertiser website linked to from the Ads and Advertiser itself will comply with all applicable foreign, federal, state or local laws, rules, regulations and ordinances including, without limitation, the Gramm-Leach Bliley Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, CAN-SPAM, the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act, the Federal Communications Act, and all rules and regulations promulgated under any of the foregoing, 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 (collectively, "Laws");
3. it owns and/or has any and all rights to permit the use of the Advertiser Ads and, where approved, Ludus Affiliate Network Ads, by Ludus Affiliate Network, its Publishers and Affiliates, as contemplated by the Agreement;
4. at all times, the Ads (and their transmission), the Advertiser Products, any Advertiser website linked to from the Ads and Advertiser itself will not violate any applicable rights of any third party including, but not limited to, infringement or misappropriation of any copyright, patent, trademark, trade secret or other proprietary, property or other intellectual property right;
5. it will not disable "back" browser functionality to prohibit end-users from returning to the website from which the Ad was selected, if applicable;
6. Advertiser has a reasonable basis for any and all claims made within the Ads and possesses appropriate documentation to substantiate such claims;
7. for CPA and Leads Campaigns, the Ads, and/or the landing page from each Ad where an Action is completed (for example, Advertiser's website page where an end-user is directed when such end-user clicks on the Ad, fills in a registration form or takes a similar action in connection with the Ad) contains a prominent link to Advertiser's privacy policy, which policy provides, at a minimum, adequate notice, disclosure and choices to end users regarding Advertiser's use, collection and disclosure of their personal information;
8. Advertiser shall fulfill all commitments made in the Ads;
9. no Ad is targeted to end-users under the age of eighteen (18);
10. prior to loading any computer program onto an individual's computer including, without limitation, programs commonly referred to as adware and/or spyware, but excluding

cookies (provided that cookies are disclosed in Advertiser's privacy policy and end-users are instructed on how to disable such cookies), Advertiser shall provide clear and conspicuous notice to, and shall obtain the express consent of, such individual to install such computer program;

11. the Ads, Advertiser Products, any Advertiser website linked to from the Ads do not:
12. contain any misrepresentations or content that is defamatory;
13. contain content that is violent, obscene, offensive, including content that contains nudity or implied nudity or content that is morally or ethically offensive or sexually suggestive;
14. promote or support gambling or sweepstakes or contests; or
15. contain any "worm," "virus" or other device that could impair or injure any person or entity;
16. Advertiser is not, nor is Advertiser acting on behalf of any person or entity that is, prohibited from engaging in transactions with U.S. citizens, nationals or entities under applicable U.S. law and regulation including, but not limited to, regulations issued by the U.S. Office of Foreign Assets Control ("OFAC"); and (m) Advertiser is not, nor is Advertiser acting on behalf of any person or entity that is, a Specially Designated National ("SDN"), as OFAC may so designate from time to time.

12. Indemnification

Advertiser shall irrevocably defend, indemnify and hold Ludus Affiliate Network, its Publishers, Affiliates and each of their respective employees, officers, directors, members, managers, shareholders, contractors and agents harmless from and against any and all liability, loss, damage or expense (including, without limitation, reasonable attorneys' fees, costs and expenses) arising out of or related to any allegation, claim or cause of action, involving:

1. Advertiser's breach of the Agreement, any and all applicable IO(s) or any representation or warranty contained therein;
2. the Ads, Advertiser Products and/or Advertiser websites; and/or
3. any claim that Ludus Affiliate Network is obligated to pay any taxes in connection with Advertiser's participation hereunder.

13. Confidentiality

For purposes of the Agreement, “Confidential Information” shall mean all data and information, of a confidential nature or otherwise, disclosed during the term of the Agreement by one party (“Disclosing Party”) to the other party (“Receiving Party”), as well as information that the Receiving Party knows or should know that the Disclosing Party regards as confidential including, but not limited to:

1. a party’s business plans, strategies, know how, marketing plans, suppliers, sources of materials, finances, business relationships, personally identifiable end-user information, pricing, technology, employees, trade secrets and other non-public or proprietary information whether written, oral, recorded on tapes or in any other media or format;
2. the material terms of the Agreement and/or any associated IO(s);
3. with respect to Ludus Affiliate Network, the Unaccepted Action Data and suppression lists; and
4. any information marked or designated by the Disclosing Party as confidential. The Receiving Party agrees to hold all Confidential Information in trust and confidence and, except as may be authorized by the Disclosing Party in writing, shall not use such Confidential Information for any purpose other than as expressly set forth in the Agreement or disclose any Confidential Information to any person, company or entity, except to those of its employees and professional advisers:
5. who need to know such information in order for the Receiving Party to perform its obligations hereunder; and
6. who have entered into a confidentiality agreement with the Receiving Party with terms at least as restrictive as those set forth herein. Confidential information shall not include any information that the Receiving Party can verify with substantial proof that:
7. is generally available to or known to the public through no wrongful act of the receiving party;
8. was independently developed by the Receiving Party without the use of Confidential Information; or
9. was disclosed to the Receiving Party by a third party legally in possession of such Confidential Information and under no obligation of confidentiality to the Disclosing Party. The Receiving Party agrees that monetary damages for breach of confidentiality may not be adequate and that the disclosing party shall be further entitled to injunctive relief, without the requirement to post bond.

14. Non-Circumvention

Advertiser recognizes that Ludus Affiliate Network has proprietary relationships with its Publishers and Affiliates. Advertiser agrees not to circumvent Ludus Affiliate Network's relationship with such Publishers and Affiliates, or to otherwise solicit, purchase, contract for or obtain services similar to the Services performed by Ludus Affiliate Network hereunder from any Publisher and/or Affiliate that is known, or should reasonably be known, by Advertiser to have such a relationship with Ludus Affiliate Network, during the term of the Agreement and for six (6) months following termination or expiration of the Agreement. Notwithstanding the foregoing, to the extent that Advertiser can show that any such Publishers and Affiliates already provided such services to Advertiser prior to the date of the first IO executed by the parties, then Advertiser shall not be prohibited from continuing such relationship. Advertiser agrees that monetary damages for its breach, or threatened breach, of this Section 14 will not be adequate and that Ludus Affiliate Network shall be entitled to:

1. injunctive relief (including temporary and preliminary relief) without the requirement to post a bond;
2. liquidated damages from Advertiser in the amount equal to one hundred percent (100%) of the fees paid by Advertiser to the subject Publisher and/or Affiliate, as applicable, for the prior twelve (12) month period; and
3. any and all other remedies available to Ludus Affiliate Network at law or in equity.

15. Force Majeure

Other than with respect to payment obligations arising hereunder, neither party will be liable, or be considered to be in breach of this Agreement, on account of such party's delay or failure to perform as required under the terms of this Agreement 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 diligence (a "Force Majeure Event"). If any such Force Majeure Event occurs including, without limitation, acts of God, fires, explosions, telecommunications, Internet or Affiliate Network failure, results of vandalism or computer hacking, storm or other natural occurrences, national emergencies, acts of terrorism, insurrections, riots, wars, strikes or other labor difficulties, or any act or omission of any other person or entity, the affected party will give the other party notice and will use commercially reasonable efforts to minimize the impact of any such event.

16. Miscellaneous

Assignment. Neither party may assign, transfer or delegate any of its rights or obligations under the Agreement or any IO without the prior written consent of the other party, and any

attempts to do so shall be null and void; provided, however, that either party may assign the Agreement, any IO or any portion hereof/thereof, to:

1. an acquirer of all or substantially all of such party's equity, business or assets;
2. a successor in interest whether by merger, reorganization or otherwise; or
3. any entity controlling or under common control with such party.
4. Choice of Law/Venue. The Agreement shall be construed in accordance with and governed by the laws of the State of New York. In the event that any suit, action or other legal proceeding shall be instituted against either party in connection with the Agreement, each hereby submits to the jurisdiction of either the United States District Court for the Southern District of New York or any New York State court of competent jurisdiction, located in New York County, and further agrees to comply with all the requirements necessary to give such court jurisdiction.
5. Modification. The Agreement, any exhibits attached hereto and any and all applicable IO(s) represent the complete and entire expression of the agreement between the parties, and shall supersede any and all other agreements, whether written or oral, between the parties. The Agreement, any exhibits attached hereto and any and all applicable IO(s) may be amended only by a written agreement executed by an authorized representative of each party. To the extent that anything in or associated with any IO is in conflict or inconsistent with the Agreement, the IO shall take precedence.
6. Non-Waiver/Severability. No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. If any provision contained in the Agreement is determined to be invalid, illegal or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the real intention of the parties, and the remaining provisions of the Agreement will remain in full force and effect.
7. Relationship of the Parties. The parties hereto are independent contractors. There is no relationship of partnership, agency, employment, franchise or joint venture between the parties. Neither party has the authority to bind the other, or incur any obligation on its behalf; provided, however, that Ludus Affiliate Network acts as a limited agent of Advertiser for the sole purpose of performing the Services set forth in applicable IO(s).

IN WITNESS WHEREOF, Ludus Affiliate Network and Advertiser have caused this Advertiser Agreement to be executed by their duly authorized representatives.

Affiliate Terms and Conditions

Affiliate Program Operating Agreement This Affiliate Program Operating Agreement (the “Agreement”) is made and entered into by and between Ludus (“Ludus” or “we”), and you, (“you” or “Affiliate”) the party submitting an application to become a Ludus affiliate). The terms and conditions contained in this Agreement apply to your participation with affiliates.ludusnetwork.com (“Affiliate Program”). Each Affiliate Program offer (an “Offer”) may be for any offering by Ludus or a third party (each such third party a “Client”) and may link to a specific web site for that particular Offer (“Program Web Site”). Furthermore, each Offer may have additional terms and conditions on pages within the Affiliate Program and are incorporated as part of this Agreement. By submitting an application or participating in an Offer, you expressly consent to all the terms and conditions of this Agreement.

1. Enrollment in the Affiliate Program

You must submit an Affiliate Program application from our website. You must accurately complete the application to become an affiliate (and provide us with future updates) and not use any aliases or other means to mask your true identity or contact information. After we review your application, we will notify you of your acceptance or rejection to the Affiliate Program, generally within two (2) business days. We may accept or reject your application at our sole discretion for any reason.

2. Obligations of the Parties

Subject to our acceptance of you as an affiliate and your continued compliance with the terms and conditions of this Agreement, Ludus agrees as follows:

1. We will make available to you via the Affiliate Program graphic and textual links to the Program Web Site and/or other creative materials (collectively, the “Links”) which you may display on web sites owned or controlled by you, in emails sent by you and clearly identified as coming from you and in online advertisements (collectively, “Media”). The Links will serve to identify you as a member of our Affiliate Program and will establish a link from your Media to the Program Web Site.
2. We will pay Affiliate for each Qualified Action (the “Commission”). A “Qualified Action” means an individual person who (i) accesses the Program Web Site via the Link, where the Link is the last link to the Program Web Site, (ii) is not a computer generated user, such as a robot, spider, computer script or other automated, artificial or fraudulent method to appear like an

- individual, real live person, (iii) is not using pre-populated fields (iv) completes all of the information required for such action within the time period allowed by Ludus and (v) is not later determined by Ludus to be fraudulent, incomplete, unqualified or a duplicate.
3. We will pay you any Commissions earned monthly, provided that your account is currently greater than \$100. Accounts with a balance of less than \$100 will roll over to the next month, and will continue to roll over monthly until \$100 is reached. We reserve the right to charge back to your account any previously paid Qualified Actions that are later determined to have not met the requirements to be a Qualified Action.
 4. Payment for Commissions is dependent upon Clients providing such funds to Ludus, and therefore, you agree that Ludus shall only be liable to you for Commissions to the extent that Ludus has received such funds from the Clients. You hereby release Ludus from any claim for Commissions if Ludus has not received such funds from the Clients.
 5. Ludus shall automatically generate an invoice on behalf of Affiliate for all Commissions payable under this Agreement and shall remit payment to Affiliate based upon that invoice. All tracking of Links and determinations of Qualified Actions and Commissions shall be made by Ludus in its sole discretion. In the event that Affiliate disputes in good faith any portion of an invoice, Affiliate must submit that dispute to Ludus in writing and in sufficient detail within thirty (30) days of the date on the invoice. If Affiliate does not dispute the invoice as set forth herein, then Affiliate agrees that it irrevocably waives any claims based upon that invoice. In the event that Affiliate is also tracking Qualified Actions and Affiliate claims a discrepancy, Affiliate must provide Ludus with Affiliate's reports within three (3) days after 30th day of the calendar month, and if Ludus's and Affiliate's reported statistics vary by more than 10% and Ludus reasonably determines that Affiliate has used generally accepted industry methods to track Qualified Actions, then Ludus and Affiliate agree to make a good faith effort to arrive at a reconciliation. If the parties are unable to arrive at a reconciliation, then Ludus's numbers shall govern.
 6. If Affiliate has an outstanding balance due to Ludus under this Agreement or any other agreement between the Affiliate and Ludus, whether or not related to the Affiliate Program, Affiliate agrees that Ludus may offset any such amounts due to Ludus from amounts payable to Affiliate under this Agreement.

Affiliate also agrees to:

7. Have sole responsibility for the development, operation, and maintenance of, and all content on or linked to, your Media.
8. Ensure that all materials posted on your Media or otherwise used in connection with the Affiliate Program (i) are not illegal, (ii) do not infringe upon the intellectual property or personal rights of any third party and (iii) do not contain or link to any material which is harmful, threatening, defamatory, obscene, sexually explicit, harassing, promotes violence, promotes discrimination (whether based on sex, religion, race, ethnicity, nationality, disability or age), promotes illegal activities (such as gambling), contains profanity or otherwise contains materials that Ludus informs you that it considers objectionable (collectively, "Objectionable Content").
9. Not make any representations, warranties or other statements concerning Ludus or Client or any of their respective products or services, except as expressly authorized herein.
10. Make sure that your Media does not copy or resemble the look and feel of the Program Web Site or create the impression that your Media is endorsed by Ludus or Clients or a part of the Program Web Site, without prior written permission from us.
11. Comply with all (i) obligations, requirements and restrictions under this Agreement and (ii) laws, rules and regulations as they relate to your business, your Media or your use of the Links.
12. Comply with the terms, conditions, guidelines and policies of any third party services used by Affiliate in connection with the Affiliate Program, including but not limited to, email providers, social networking services and ad networks.
13. Always prominently post and make available to end-users, including prior to the collection of any personally identifiable information, a privacy policy in compliance with all applicable laws that clearly and thoroughly discloses all information collection, use and sharing practices, including providing for the collection of such personally identifiable information in connection with the Affiliate Program and the provision of such personally

identifiable information to Ludus and Clients for use as intended by Ludus and Clients.

14. Always prominently post and make available to end-users any terms and conditions in connection with the Offer set forth by Ludus or Client, or as required by applicable laws regarding such Offers.
15. Make sure to not place Ludus ads on any online auction platform (i.e. eBay, Amazon, etc).

The following additional program-specific terms shall apply to any promotional programs set forth below:

16. Email Campaigns. For all email campaigns, Affiliate must download the "Suppression List" from the Offers section of Ludus. Affiliate shall filter its email list by removing any entries appearing on the Suppression List and will only send emails to the remaining addresses on its email list. Ludus will provide an opt-out method in all Links, however, if any opt-out requests come directly to Affiliate, Affiliate shall immediately forward them to Ludus at info@ludusnetwork.com. Affiliate's emails containing the Links may not include any content other than the Links, except as required by applicable law.

1. Affiliate agrees that failure to download the Suppression List and remove all emails from the database before mailing may result in Commission withholdings, removal or suspension from all or part of the Affiliate Program, possible legal action and any other rights or remedies available to Ludus pursuant to this Agreement or otherwise. Affiliate further agrees that it will not mail or market to any suppression files generated through the Ludus network, and that doing so may result in Commission withholdings, removal or suspension from the Affiliate Program, possible legal action and any other rights or remedies available to Ludus pursuant to this Agreement or otherwise.

17. Advertising Campaigns. No Links can appear to be associated with or be positioned on chat rooms or bulletin boards unless otherwise agreed by Ludus in writing. Any pop-ups/unders used for the Affiliate Program shall be clearly identified as Affiliate served in the title bar of the window and any client-side ad serving software used by Affiliate shall only have been installed on an end-user's computer if the function of the software is clearly disclosed to end-users prior to installation, the installation is pursuant to an

affirmatively accepted and plain-english end user license agreement and the software be easily removed according to generally accepted methods.

18. **Affiliate Network Campaigns.** For all Affiliate's that maintain their own affiliate networks, Affiliate agrees to place the Links in its affiliate network (the "Network") for access and use by those affiliates in Affiliate's Network (each a "Third Party Affiliate"). Affiliate agrees that it will expressly forbid any Third Party Affiliate to modify the Links in any way. Affiliate agrees to maintain its Network according to the highest industry standards. Affiliate shall not permit any party to be a Third Party Affiliate whose web site or business model involves content containing Objectionable Content. All Third Party Affiliates must be in good standing with Affiliate. Affiliate must require and confirm that all Third Party Affiliates affirmatively accept, through verifiable means, this Agreement prior to obtaining access to the Links. Affiliate shall promptly terminate any Third Party Affiliate who takes, or could reasonably be expected to take, any action that violates the terms and conditions of this Agreement. In the event that either party suspects any wrongdoing by a Third Party Affiliate with respect to the Links, Affiliate shall promptly disclose to Ludus the identity and contact information for such Third Party Affiliate. Affiliate shall promptly remove any Third Party Affiliate from the Affiliate Program and terminate their access to future Offers of Ludus in the Network upon written notice from Ludus. Unless Ludus has been provided with all truthful and complete contact information for a Third Party Affiliate and such Third Party Affiliate has affirmatively accepted this Agreement as recorded by Ludus, Affiliate shall remain liable for all acts or omissions of any Third Party Affiliate.

3. Confidentiality

Except as otherwise provided in this Agreement or with the consent of Ludus, you agree that all information, including, without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, and pricing and sales information, concerning us or any of our affiliates provided by or on behalf of any of them shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by you for any purpose other than your participation in the Affiliate Program, except and solely to the extent that any such information is generally known or available to the public through a source other than you. Affiliate shall not use any information obtained from the Affiliate Program to develop, enhance or operate a service that competes with the Affiliate Program, or assist another party to do the same.

4. Limited License & Intellectual Property

We grant you a nonexclusive, nontransferable, revocable right to use the Links and to access our web site through the Links solely in accordance with the terms of this Agreement, for the sole purpose of identifying your Media as a participant in the Affiliate Program and assisting in increasing sales through the Program Web Site.

You may not alter, modify, manipulate or create derivative works of the Links or any Ludus graphics, creative, copy or other materials owned by, or licensed to, Ludus in any way. You are only entitled to use the Links to the extent that you are a member in good standing of the Affiliate Program. We may revoke your license anytime by giving you written notice. Except as expressly stated herein, nothing in this Agreement is intended to grant you any rights to any of Ludus's trademarks, service marks, copyrights, patents or trade secrets. You agree that Ludus may use any suggestion, comment or recommendation you choose to provide to Ludus without compensation. All rights not expressly granted in this Agreement are reserved by Ludus.

5. Termination

This Agreement shall commence on the date of our approval of your Affiliate Program application and shall continue thereafter until terminated as provided herein. You may terminate your participation in the Affiliate Program at any time by removing all Links from your Media, deleting all copies of the Links. We may terminate your participation in one or more Offers or this Agreement at any time and for any reason which we deem appropriate with or without prior notice to you by disabling the Links or providing you with a written notice. Upon termination of your participation in one or more Offers or this Agreement for any reason, you will immediately cease all use of and delete all Links, plus all Ludus or Client intellectual property, and will cease representing yourself as a Ludus or Client affiliate for such one or more Offers. All rights to validly accrued payments, causes of action and any provisions, which by their terms are intended to survive termination, shall survive any termination.

6. Remedies

In addition to any other rights and remedies available to us under this Agreement Ludus reserves the right to delete any actions submitted through your Links and withhold and freeze any unpaid Commissions or charge back paid Commissions to your account if (i) Ludus determines that you have violated this Agreement, (ii) Ludus receives any complaints about your participation in the Affiliate Program which Ludus reasonably believes to violate this Agreement or (iii) any Qualified Action is later determined to have not met the requirements set

forth in this Agreement or on the Affiliate Program. Such withholding or freezing of Commissions, or charge backs for paid Commissions, shall be without regard as to whether or not such Commissions were earned as a result of such breach. In the event of a material breach of this Agreement, Ludus reserves the right to disclose your identity and contact information to appropriate law enforcement or regulatory authorities or any third party that has been directly damaged by your actions.

7. Anti-Spam Policy

You must strictly comply with the federal CAN-SPAM Act of 2003 (the "Act"). All emails sent in connection with the Affiliate Program must include the appropriate party's opt-out link. From time to time, we may request – prior to your sending emails containing linking or referencing the Affiliate Program that you submit the final version of your email to Ludus for approval by sending it to your Ludus representative and upon receiving written approval from Ludus of your email the email may be transmitted to third parties.

It is solely your obligation to ensure that the email complies with the Act. You agree not to rely upon Ludus's approval of your email for compliance with the Act, or assert any claim that you are in compliance with the Act based upon Ludus's approval.

8. Fraud

You are expressly prohibited from using any persons, means, devices or arrangements to commit fraud, violate any applicable law, interfere with other affiliates or falsify information in connection with referrals through the Links or the generation of Commissions or exceed your permitted access to the Affiliate Program. Such acts include, but are in no way limited to, using automated means to increase the number of clicks through the Links or completion of any required information, using spyware, using stealware, cookie-stuffing and other deceptive acts or click-fraud. Ludus shall make all determinations about fraudulent activity in its sole discretion.

9. Representations and Warranties

You hereby represent and warrant that this Agreement constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms and that you have the authority to enter into this Agreement. Subject to the other terms and conditions of this Agreement, Ludus represents and warrants that it shall not knowingly violate any law, rule or regulation which is applicable to Ludus's own business operations or Ludus's proprietary products or services.

10. Modifications

In addition to any notice permitted to be given under this Agreement, we may modify any of the terms and conditions of this Agreement at any time by providing you with a notification by email. The changes will become effective ten (10) business days after such notice. If the modifications are unacceptable to you, you may terminate this Agreement without penalty solely on the account of such termination within such ten (10) business day period. Your continued participation in this Affiliate Program ten (10) business days after a change notice has been posted will constitute your acceptance of such change. In addition, Ludus may change, suspend or discontinue any aspect of an Offer or Link or remove, alter, or modify any tags, text, graphic or banner ad in connection with a Link. Affiliate agrees to promptly implement any request from Ludus to remove, alter or modify any Link, graphic or banner ad that is being used by Affiliate as part of the Affiliate Program.

11. Independent Investigation

You acknowledge that you have read this Agreement and agree to all its terms and conditions. You have independently evaluated the desirability of participating in the Affiliate Program and each Offer and are not relying on any representation, guarantee or statement other than as set forth in this Agreement or on the Affiliate Program.

12. Mutual Indemnification

Affiliate hereby agrees to indemnify, defend and hold harmless Ludus and Clients and their respective subsidiaries, affiliates, partners and licensors, directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on (i) any failure or breach of this Agreement, including any representation, warranty, covenant, restriction or obligation made by Affiliate herein, (ii) any misuse by Affiliate, or by a party under the reasonable control of Affiliate or obtaining access through Affiliate, of the Links, Offers or Ludus or Client intellectual property, or (iii) any claim related to your Media, including but not limited to, the content contained on such Media (except for the Links).

Ludus hereby agrees to indemnify, defend and hold harmless Affiliate and its subsidiaries, affiliates, partners, and their respective directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on a claim that Ludus is not authorized to provide you with the Links.

13. Disclaimers

THE AFFILIATE PROGRAM AND LINKS, AND THE PRODUCTS AND SERVICES PROVIDED IN CONNECTION THEREWITH, ARE PROVIDED TO AFFILIATE "AS IS". EXCEPT AS EXPRESSLY SET FORTH HEREIN, LUDUS EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. LUDUS DOES NOT WARRANT THAT THE AFFILIATE PROGRAM OR LINKS WILL MEET AFFILIATE'S SPECIFIC REQUIREMENTS OR THAT THE OPERATION OF THE AFFILIATE PROGRAM OR LINKS WILL BE COMPLETELY ERROR-FREE OR UNINTERRUPTED. LUDUS EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY ACT OR OMISSION OF A CLIENT OR THEIR PRODUCTS OR SERVICES. LUDUS DOES NOT GUARANTEE THAT AFFILIATE WILL EARN ANY SPECIFIC AMOUNT OF COMMISSIONS.

14. Limitation of Liability

IN NO EVENT SHALL LUDUS BE LIABLE FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE LINKS, PROGRAM WEB SITES, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR OTHER INJURY, DAMAGE OR DISRUPTION OF ANY KIND BEYOND THE REASONABLE CONTROL OF LUDUS. IN NO EVENT WILL LUDUS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PERSONAL INJURY / WRONGFUL DEATH, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT LUDUS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. LUDUS'S CUMULATIVE LIABILITY TO AFFILIATE, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO AFFILIATE BY LUDUS IN COMMISSIONS DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO SUCH CLAIM.

15. Governing Law & Miscellaneous

Affiliate shall be responsible for the payment of all attorneys fees and expenses incurred by Ludus to enforce the terms of this Agreement. This Agreement contains the entire agreement between Ludus and Affiliate with respect to the subject matter hereof, and supersedes all prior and/or

contemporaneous agreements or understandings, written or oral. Affiliate agrees that Ludus shall not be subject to or bound by any Affiliate insertion order or online terms and conditions that amend, conflict with or supplement this Agreement, regardless of whether Ludus “clicks through” or otherwise indicates its acceptance thereof. Affiliate may not assign all or any part of this Agreement without Ludus’s prior written consent. Ludus may assign this Agreement at any time with notice to Affiliate. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and valid assigns of the parties hereto. The provisions of Section 3, 4(b), 6, 7, 8, 12-15 and any accrued payment obligations shall survive the termination of this Agreement. Except as set forth in the “Modifications” section above, this Agreement may not be modified without the prior written consent of both parties. If any provision of this Agreement is held to be void, invalid or inoperative, the remaining provisions of this Agreement shall continue in effect and the invalid portion of any provision shall be deemed modified to the least degree necessary to remedy such invalidity while retaining the original intent of the parties. Each party to this Agreement is an independent contractor in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. No course of dealing nor any delay in exercising any rights hereunder shall operate as a waiver of any such rights. No waiver of any default or breach shall be deemed a continuing waiver or a waiver of any other breach or default.

By submitting and application to Affiliate Program, you affirm and acknowledge that you have read this Agreement in its entirety and agree to be bound by all of its terms and conditions. If you do not wish to be bound by this Agreement, you should not submit an application to Affiliate Program. If an individual is accessing this Agreement on behalf of a business entity, by doing so, such individual represents that they have the legal capacity and authority to bind such business entity to this Agreement. This Agreement was last revised on 25-08-2011