

HERCLE™

PUBLISHER TERMS & CONDITIONS

THESE PUBLISHER TERMS AND CONDITIONS (the "Agreement") constitute a legally binding agreement between Ignite Media Solutions, LLC ("HERCLE") and you (interchangeably, "Publisher", "Affiliate", "You" or "Your"), the user of the HERCLE Network (as defined below). You and HERCLE may also be individually referred to herein as "party" and collectively as "parties." This Agreement sets forth the terms and conditions that shall govern Your use of the HERCLE Network. You agree that you shall not use the HERCLE Network other than in accordance with this Agreement. If You do not agree to the terms and conditions contained herein, You may not use the HERCLE Network for any reason or in any manner. HERCLE reserves the right to make changes to the HERCLE Network and these Publisher Terms & Conditions at any time. It is Your responsibility to stay up to date. Your continued use of the HERCLE Network after any such change shall constitute Your explicit consent to such change.

1. Description of the HERCLE Network; Participation Requirements.

1.1. Description of the HERCLE Network. HERCLE shall provide the service (the "Service"), which shall include, without limitation, placing offers of advertising programs and associated creative of the advertisers and/or merchants (the "Advertisers") on the HERCLE Site ("Program(s)"), the web-based application, and reporting. The Programs shall set forth the creative, the amount and terms under which You may be entitled to payment ("Bounty"), and the terms and conditions (if any). A Bounty is generated from a specified event ("Event") identified in the applicable Program, such as clicks, click-throughs, sales, registrations, impressions or leads. "Site" or "HERCLE Site" shall mean the website through which the Service is accessed. "HERCLE Network" shall mean, collectively, the Service and the HERCLE Site.

1.2. Participation in the HERCLE Network. You may only participate in the HERCLE Network if You agree to be bound by the terms and conditions of this Agreement, and You receive HERCLE's explicit approval, as described in Section 1.4 below. HERCLE's approval of Your participation in the HERCLE Network may be withheld or terminated at any time, in HERCLE's sole discretion, with or without cause, regardless of whether HERCLE initially grants approval of Your participation.

1.3. Publisher Criteria. In order for Publisher to be accepted as a participant in the HERCLE Network, the Publisher website(s) and those of its partners ("Publisher Website(s)": (a) may not consist solely of a list of links or advertisements, or consist solely of an advertisement from a Program, (b) must be written in English and contain only English language content, (c) may not be a third party's website, (d) must be fully functional at all levels, and not contain any "under construction" sections, and/or (e) may not include spawning process pop-ups or cause more than one pop-up window to appear.

1.4. Participation Approval Process. Prior to participation in the HERCLE Network, Publisher shall complete a Publisher Network Application ("Application"). If HERCLE determines to accept such Application, HERCLE shall send an e-mail to Publisher communicating HERCLE's acceptance ("Acceptance E-mail"). Publisher shall only be entitled to participate in the HERCLE Network upon receipt of an Acceptance E-mail.**2. License.**

Subject to the terms and conditions of this Agreement and HERCLE's issuance of an Acceptance E-mail to Publisher, HERCLE grants Publisher a revocable, non-transferable, non-exclusive limited license to use the HERCLE Network and any data, reports, information or analyses arising out of such use ("Site Data") solely for the purposes set forth in this Agreement. Publisher may only access the HERCLE Site via web browser, unless otherwise approved by HERCLE in writing. Publisher may not attempt in any way to alter, modify, eliminate, conceal, or otherwise render inoperable or ineffective the HERCLE Site or any tags, source codes, links, pixels, modules or other data provided by or obtained from HERCLE that allows HERCLE to measure advertising performance and provide the Service. Any alternation of integration tags may impact Publisher's ability to be paid for Events, or to otherwise receive Bounties. Publisher may not

use, copy, emulate, clone, rent, lease, sell, modify, decompile, disassemble, reverse engineer or transfer the HERCLE Site, any content therein, or any portion thereof.

3. Use of HERCLE Network.

3.1. Program Terms. HERCLE shall be responsible for displaying and administering all active Programs. HERCLE may change a Program, including, without limitation, the creative materials or the Bounty, at any time in its sole discretion. Any such change shall be deemed effective upon posting on the HERCLE Site. HERCLE may also display terms and conditions of a particular Program or an additional agreement from the respective Advertiser. Publisher acknowledges and agrees that HERCLE does not approve, endorse, or agree with any of the content or links in the Programs. The existence or availability of a Program in no way constitutes the endorsement or approval of HERCLE.

3.2. Publisher's Acceptance of a Program. Publisher agrees that it will, at all times, utilize Programs and any Program related materials (including but not limited to Suppression Lists (as defined in Section 6)) at its own risk. Publisher acknowledges and agrees that upon accepting an offer for a Program, it shall be in compliance with the terms and conditions of the Program (if any), the terms and conditions of the additional Advertiser agreement (if any), and the terms and conditions contained herein, including, for the avoidance of doubt, the representations and warranties set forth in Section 9. In addition, Publisher acknowledges that, prior to Publisher's acceptance of an offer for a Program, a specific Advertiser's agreement may be displayed to Publisher, and Publisher shall be required to accept the terms of that Advertiser's agreement in order to accept that Advertiser's particular Program, and Publisher shall thereby be bound to such Advertiser's terms and conditions. Failure by Publisher to adhere to the requirements set forth in this Section 3.2, in addition to all other remedies available to HERCLE, may result in immediate termination of this Agreement by HERCLE and withholding of a Bounty or any payment to Publisher, without penalty to HERCLE.

3.3. Bounty. HERCLE shall be solely responsible for calculating Your Bounty, and HERCLE's calculations shall be final and binding. Any questions regarding Your Bounty must be submitted in writing within three (3) calendar days of Your receipt of such Bounty, or the Bounty will be deemed accurate and accepted by You.

3.4. Third Party Publishers. Publisher hereby acknowledges and agrees that to the extent it represents or acts on the behalf of third party publishers and/or affiliates ("Third Party Publishers"), Publisher assumes all liability for the Third Party Publishers and will ensure that Third Party Publishers comply with the terms of this Agreement and all applicable laws and regulations. For the purposes of this Agreement, "Publisher" shall mean the Publisher and any Third Party Publishers.

4. Prohibited Conduct.

4.1 Fraudulent Activity. You may not engage in any fraudulent activity ("Fraudulent Activity") in connection with the promotion of any Programs. Fraudulent Activity shall include, without limitation: (a) having click-through rates that are higher than industry averages and where solid justification for such click-through rates is not evident to the reasonable satisfaction of HERCLE, (b) generating clicks to click-only Programs with no indication of site traffic, (c) having leads or clicks generated through fraudulent traffic generation, such as prepopulation of forms or other fraudulent means as determined by HERCLE, (d) having much higher click to conversion rates than industry averages and where solid justification for such higher rates is not evident to the reasonable satisfaction of HERCLE, or (e) using fake redirects, automated software, and/or fraud to generate Events. HERCLE shall be the sole arbitrator of what constitutes Fraudulent Activity.

4.2 Prohibited Content. The content of the Publisher Website(s) incorporating any Program(s) may not promote, advocate, facilitate or otherwise include any of the following ("Prohibited Content"):

- (a) Racial, ethnic or political hate-mongering or otherwise objectionable content;

- (b) Investment, money-making opportunities or advice not permitted under law;
- (c) Violent imagery or profanity;
- (d) Pornographic, obscene, sexually explicit or related content;
- (e) Material that defames, abuses, is libelous, is tortuous or threatens physical harm to others;
- (f) Material that impersonates any person or entity;
- (g) Any indication that any statements Publisher makes are endorsed by HERCLE or an Advertiser, without HERCLE's specific prior written consent;
- (h) Promotion of illegal substances or activities (e.g., illegal narcotics, how to build a bomb, counterfeiting money, etc.);
- (i) Material that discriminates on the basis of race, ethnicity, gender, age, disability, religion or sexual orientation;
- (j) Content which is inappropriate or harmful to children;
- (k) Promotion of terrorism or terrorist-related activities, sedition or similar activities;
- (l) Software pirating (e.g., warez, hotline);
- (m) Hacking or phreaking;
- (n) Any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (o) Any software, product or service that is illegal or that violates the rights of a third party including, but not limited to, spyware, adware, programs designed to send unsolicited advertisements (i.e. "spamware"), programs that instigate the spread of viruses, services that send unsolicited advertisements, programs designed to initiate "denial of service" attacks, mail bomb programs and programs designed to gain unauthorized access to networks on the Internet;
- (p) Any software, product or service that harvests or collects the personal information of Internet users, whether or not for commercial purposes, without the express consent of such users;
- (q) Any spoofing, redirecting or trafficking from other websites in an effort to gain traffic;
- (r) Any content that infringes upon the intellectual property rights of any third party;
- (s) Any material that otherwise infringes upon the rights of any third parties including, without limitation, false advertising, unfair competition, invasion of rights of publicity or privacy, violation of any anti-discriminatory law or regulation, or any other right of any person or entity;

(t) Gambling, contests, lotteries, raffles, or sweepstakes;

(u) Any material that violates the CAN-SPAM Act of 2003, as amended ("CAN-SPAM"), the Federal Trade Commission Act, as amended ("FTC Act"), or the Children's Online Privacy Protection Act ("COPPA"); or

v) Any illegal activity whatsoever (including any violations of applicable U.S. state or federal law or regulation, or the laws of any other jurisdiction in which Publisher conducts business).

4.3. Prohibited Conduct. If Publisher engages in any Fraudulent Activity and/or uses any Prohibited Content (collectively, "Prohibited Conduct"), as determined by HERCLE in its sole discretion, in addition to all other remedies available to HERCLE, Publisher will forfeit its entire Bounty for all Programs, and this Agreement and all of Publisher's rights hereunder shall immediately terminate. Furthermore, to the extent that Publisher's Prohibited Conduct damages HERCLE's relationship with an Advertiser, the parties agree that Publisher will be liable to HERCLE for consequential and special damages, including, without limitation, lost profits. If Publisher is notified that Prohibited Conduct may be occurring, and Publisher fails to take prompt action to stop such Prohibited Conduct, then, in addition to any other remedies available to HERCLE, Publisher shall be responsible for all costs and legal fees arising from such Prohibited Conduct.

4.4. Prohibited Conduct by Third Party Publishers. Upon notice by HERCLE that a Third Party Publisher is engaging, or has engaged, in Prohibited Conduct, including but not limited to fraudulent traffic generation, Publisher agrees to terminate its relationship with such Third Party Publisher, as it pertains to the Third Party Publisher's participation in the HERCLE Network. If Publisher is notified that a Third Party Publisher is engaging, or has engaged, in Prohibited Conduct, and Publisher fails to terminate its relationship with such Third Party Publisher within four (4) hours of notice by HERCLE, HERCLE reserves the right to immediately terminate this Agreement and revoke the Bounty otherwise due to Publisher, in addition to all other remedies available to HERCLE. Further, in the event that HERCLE determines, in its sole discretion, that a Third Party Publisher is engaging, or has engaged, in Prohibited Conduct, HERCLE shall recalculate and withhold the Publisher's Bounty accordingly. For the avoidance of doubt, HERCLE reserves the right to withhold or recalculate amounts generated by Prohibited Conduct of Third Party Publishers, regardless of whether Publisher participated in or knew about the Prohibited Conduct.

4.5 Monitoring. Publisher acknowledges and agrees that HERCLE may use any means of monitoring Publisher's activities in connection with the Programs, including, without limitation, through the use of seed e-mail accounts, third party monitoring services, proprietary monitoring systems, and through monitoring Publisher's promotional activities.

4.6. Complaints, Litigation and Investigation. In the event You receive a complaint from an email recipient, and/or a request or inquiry for details regarding where the email recipient opted-in to receive email communications from You, You shall respond to such complaints/inquiries within seventy-two (72) hours. This information must include: (i) date; (ii) time; (iii) originating IP; and (iv) and the location from which the email address or other recipient information was obtained. To the extent that Publisher becomes aware of any litigation or investigation concerning Publisher's e-mail or other Internet practices or procedures, Publisher will immediately notify HERCLE (irrespective of whether such litigation relates to Publisher's relationship with HERCLE).

5. Suppression Lists.

To the extent that HERCLE provides an opt-out or unsubscribe list ("Suppression List") via the HERCLE Site in connection with a Program, Publisher shall scrub its database against the most recent Suppression List prior to promoting the Program, such that the e-mail addresses that appear in the Suppression List are removed from the list of prospective recipients. Publisher shall not at any time send any e-mails to a Suppression List. Publisher will not use the Suppression List in any manner other than

for the purpose set forth in this Section 5. Failure to adhere to this requirement may, in addition to all other remedies available to HERCLE, result in immediate termination of this Agreement and a revocation of the Bounty otherwise due to Publisher, without penalty to HERCLE. Publisher shall not obtain any ownership interest or rights in and to any Suppression List.

6. Confidential Information.

The term "Confidential Information" shall mean the terms of this Agreement and all proprietary information, data, trade secrets, and business information, including but not limited to the identities of the Advertisers, the Program rates for Events, and other information of any kind whatsoever, which HERCLE discloses, in writing, orally or visually, to Publisher, or to which Publisher has access, in connection with discussions, negotiations and performance between and by the parties. Publisher agrees to use the Confidential Information solely for the purposes contemplated by this Agreement, and to refrain from disclosing the Confidential Information to any third party, unless (a) any disclosure is necessary and permitted in connection with Publisher's performance of its obligations or exercise of its rights under this Agreement or any other agreement between the parties, (b) any disclosure is required by applicable law; provided, that Publisher gives HERCLE advance notice thereof so as to afford HERCLE an opportunity to intervene and seek an order or other appropriate relief for the protection of Confidential Information from any unauthorized use or disclosure, or (c) any disclosure is made with the written consent of HERCLE.

7. Payment Terms.

HERCLE will pay Publisher in connection with the occurrence of any completed Event. Unless otherwise stated in the Program terms and conditions, Payment shall be made to Publisher approximately fifteen (15) days from the end of the calendar month in which a completed Event occurred, less any returns and charge backs, and pursuant solely to HERCLE's calculations and reports. All payments to Publisher by HERCLE are contingent upon HERCLE receiving payment from the Advertisers. In the event HERCLE fails to receive payment from an Advertiser, HERCLE shall have no payment obligation to Publisher with respect to that Advertiser. Publisher accepts all risks associated with non-payment by an Advertiser and acknowledges that HERCLE is not a guarantor of any Advertiser payment obligation. HERCLE will not pay for any Events that occur before a Program is initiated, or after a Program terminates. HERCLE will not be obligated to pay any interest or late payment fees in connection with Bounties or other payments held or withheld by HERCLE. HERCLE is not liable for Events that are not recorded due to Publisher's error. All accounts will be paid in US dollars (\$US). For Publishers located in the United States and Canada, if the compensation owed to Publisher for any one month period is less than twenty-five dollars (\$25), HERCLE will withhold payment until the total amount due is at least twenty-five dollars (\$25), or, if earlier, until this Agreement is terminated. For Publishers located in all other countries, if the compensation owed to Publisher for any one month period is less than one hundred dollars (\$100), HERCLE will withhold payment until the total amount due is at least one hundred dollars (\$100) or, if earlier, until this Agreement is terminated. Every Publisher account must have a unique, valid taxpayer identification number (TIN) or valid Social Security number. If Publisher has an outstanding balance due to HERCLE or its related business entities (including, without limitation, its parents, sisters or subsidiaries) under this Agreement or any other agreement, Publisher agrees that HERCLE may offset such outstanding balance from amounts payable to Publisher by HERCLE pursuant to this Agreement. If, in HERCLE's sole discretion, Publisher is deemed to have violated the terms of this Agreement or any of the policies referenced herein, then HERCLE may, in addition to all other remedies available to HERCLE, revoke the Bounty otherwise due Publisher, without liability to HERCLE. HERCLE may also apply a debit to Your Bounty at any time (including future payment cycles) or seek a refund for a Bounty otherwise paid to You for any completed Events if HERCLE does not receive payment from the Advertiser or if, in HERCLE's sole and absolute discretion, the Event(s) were completed in violation of the terms of this Agreement or any of the policies referenced herein.

8. Term and Termination.

8.1. Term. This Agreement shall begin upon HERCLE's delivery of an Acceptance E-Mail to Publisher and remain in effect for an initial term of one (1) year ("Initial Term"), unless otherwise terminated pursuant to the terms contained herein. The Initial Term shall be automatically renewed for successive one (1) year terms (each a "Renewal Term," together with the Initial Term, the "Term").

8.2. Termination. In addition to any other termination rights contained herein, either party may terminate this Agreement upon three (3) business days prior written notice to the other party, for any reason or no reason. This Agreement may be terminated at any time by a party, effective immediately upon written notice, if the other party (a) files a voluntary petition in bankruptcy, (b) makes an assignment for the benefit of its creditors, or (c) breaches any of the material terms of this Agreement or the any of the other policies referenced herein. Following the applicable notice periods, if any, termination pursuant to this Section 8.2 shall be automatic, and shall not require any action by either party. In addition, HERCLE reserves the right, in its sole and absolute discretion, to terminate a Program or Publisher's participation in a Program at any time for any reason. HERCLE also reserves the right to terminate Publisher's access to the HERCLE Site at any time, with or without notice to Publisher, for any reason. Upon termination, all legitimate moneys due to Publisher that are actually collected from the applicable Advertiser (including amounts below the payment threshold) will be paid during the next billing cycle. Upon termination of this Agreement for any reason, any and all licenses and rights granted to Publisher in connection with this Agreement shall immediately cease and terminate. Further, Publisher acknowledges and agrees that if instructed to do so by HERCLE and/or if this Agreement terminates, Publisher will (a) immediately discontinue the use of the HERCLE Network, (b) immediately cease to use and remove from the Publisher Websites any and all advertisements and/or related materials made available to Publisher in connection with Publisher's participation in the HERCLE Network, and (c) immediately cease transmitting any and all e-mails in connection with any Program.

9. Representations and Warranties; Indemnification.

9.1. Publisher Representations and Warranties. Publisher represents and warrants that:

- (a) Your execution, delivery and performance of this Agreement will not conflict with or violate: (i) any provision of law, rule or regulation to which You are subject; (ii) any order, judgment or decree applicable to You; (iii) any provision of Your corporate by-laws or certificate of incorporation, if applicable; or (iv) any agreement or other instrument applicable to You;
- (b) You will not use third-party trademarks in any 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 Company, any Advertiser and/or any of their respective affiliates or clients;
- (c) Publisher has all necessary rights and authority to enter into this Agreement and to place advertising on the Publisher Websites and send advertising to the Publisher e-mail lists;
- (d) Publisher owns and/or has the right to use all materials contained on Publisher Websites;
- (e) the Publisher Websites and the content contained on the Publisher Websites will not infringe or violate the patents, copyrights, trademarks, rights of publicity, defamation, rights of privacy, moral rights, music performance or other music-related rights, or any other right of any third party;

(f) the Publisher Websites will not contain any Prohibited Content, or links to Prohibited Content or any other illegal or objectionable content;

(g) Publisher will not use fraud or deceit when marketing a Program or presenting a Program to consumers or otherwise engage in Fraudulent Activity;

(h) Publisher will not alter the creative materials provided in a Program in any way, unless authorized in writing by HERCLE;

(i) Publisher will comply with all local, state and federal laws and regulations, including, but not limited to, CAN-SPAM, COPPA and the FTC Act.;

(j) Publisher will not transmit any e-mail: (i) with false or misleading header information; (ii) with a "from line" that is false or misleading and does not accurately identify a person initiating the e-mail; (iii) with a subject line that is misleading, false or misrepresentative or is likely to mislead the recipient about the content or subject matter of the e-mail; (iv) that does not include a clear and conspicuous identification that the e-mail is an advertisement or solicitation, (v) that does not contain a clear and conspicuous notice of the opportunity to decline to receive further communications, (vi) that does not contain a valid physical postal address of the Advertiser and Publisher, and (vii) that does not contain a functioning return e-mail or other Internet-based mechanism, that (A) a recipient may use to submit a reply e-mail or other form of Internet-based communication requesting not to receive future commercial e-mails from Publisher and Advertiser, and (B) remains capable of receiving such messages or communications for no less than thirty (30) days after the e-mail was sent; or (viii) with any content that (A) infringes or violates any intellectual, proprietary or privacy rights, or (B) is Prohibited Content;

(k) Publisher will not transmit any e-mail (i) if Publisher knows, or has reason to know, that the e-mail address was obtained using an automated means, including without limitation, harvesting software, such as harvesting bots or harvesters, dictionary attacks, etc., or an Internet service which indicated that at the time the address was obtained the service was not to give or sell the address to others; or (ii) to any individual that has requested not to receive any e-mails from You more than ten (10) days after receipt of such request, unless the recipient subsequently requests that such e-mail communication be initiated again;

(l) Publisher will download and remove the e-mail addresses containing the domains located on the FCC's wireless domain list (<http://www.fcc.gov/cgb/policy/DomainNameDownload.html>) from any list used in connection with the Programs;

(m) Publisher will not attempt in any way to alter, modify, eliminate, conceal, or otherwise render inoperable or ineffective the Site tags, source codes, links, pixels, modules or other data provided by or obtained from HERCLE that allows HERCLE to measure ad performance and provide the Service;

(n) You may not advertise or otherwise promote any Program via a third party website's internal communication system, including, without limitation, internal website e-mail (e.g. Myspace.com or Facebook.com e-mail), bulletin boards (e.g., Craigslist.org), chat rooms, or comments;

(o) Publisher will send e-mail to only those recipients who have opted-in to receive e-mail communications from You when advertising or otherwise promoting the Programs. To the extent that You maintain bulk opt-in email lists, or via third-party marketing campaigns

obtain, use or access bulk opt-in emails lists, You shall maintain electronic and/or tangible records evidencing the actual subscriptions to such lists. The verification information shall include: (i) date; (ii) time; (iii) originating IP; and (iv) the location from which the email address or other recipient information was obtained. Upon request by Hercle, You must be able to provide verification information as evidence of subscription. In the event that You receive, via email or other Internet-based form of communication, a message from an email recipient that such recipient wishes to unsubscribe or opt-out of receiving email communications from You, You shall remove that recipient from Your subscriber list within ten (10) days and immediately cease to send them commercial emails. You shall maintain electronic and/or tangible records evidencing the removal of such email addresses from Your subscriber list, and upon request by Hercle, You must be able to provide such records as evidence of removal.

(p) Publisher will not target any Program to children under the age of eighteen (18);

(q) There is no pending or, to the best of Your knowledge, threatened claim, action or proceeding against You;

(r) Upon accepting an offer for a Program, You will comply with any and all additional terms and conditions of such Program that are not otherwise in this Agreement. Failure to adhere to the foregoing representations and warranties may, in addition to all other remedies available to HERCLE, result in immediate termination of this Agreement pursuant to Section 10.2 and a revocation of the Bounty otherwise due to Publisher, without penalty to HERCLE. Further, Publisher acknowledges and agrees that:

- (a) HERCLE does not represent, warrant, or make any specific or implied promises as to the successful outcome of any Programs; and
- (b) if any errors or undesirable results occur to Publisher or a third party that do not result from the willful misconduct of HERCLE, gross neglect of HERCLE, or breach of this Agreement by HERCLE, then HERCLE shall not be responsible for any losses or damages Publisher may incur and Publisher shall not be entitled to compensation for such losses or to the payment of damages by HERCLE.

9.2. Downloadable Software. The Programs made available in connection with the Services are generally intended for placement on Publisher websites and in Publisher e-mails, not in downloadable software programs ("**Downloadable Software**"). However, where Hercle provides express written authorization, Hercle will allow certain Programs to be included in/with Downloadable Software that meets the requirements of all applicable federal, state and local rules, regulations, statutes, court orders and decrees, as well as industry standards, as determined in the sole and absolute discretion of Hercle. Prior to including any Program in/with Downloadable Software, Hercle must first approve the Downloadable Software, as well as the Programs to be used in the Downloadable Software, in an acceptance e-mail (the "**Acceptance E-mail**"). You may only use the Downloadable Software approved in the Acceptance E-mail with the Programs approved in the Acceptance E-mail. No other Downloadable Software shall be permitted, nor may You use the approved Downloadable Software in connection with any other Programs, without prior authorization from Hercle. Hercle may reject Your request to use Downloadable Software and/or terminate Your use of authorized Downloadable Software at any time for any reason, in the sole and absolute discretion of Hercle. All Downloadable Software must, at a minimum, satisfy the following conditions, as determined by Hercle in its sole and absolute discretion:

(a) **Informed User Consent.** A user must provide informed, affirmative consent before the Downloadable Software may be installed on the user's computer. Informed, affirmative consent means, without limitation, requiring a clear, unambiguous and affirmative manifestation of consent by the user to install the Downloadable Software and providing the user clear and conspicuous notice regarding (i) the information collected, tracked and/or transmitted by the Downloadable Software, (ii) changes made to the user's

computer settings, (iii) the types of advertisements that will be displayed to the user and the frequency of such advertisements, and (iv) and the full legal name and address of the Downloadable Software vendor.

(b) Consistency of the Downloadable Software. Downloadable Software must not surprise users with notices, disclosure, or actions that are inconsistent with the applicable Downloadable Software's initial solicitation, disclosures or notices.

(c) Targeting of the Advertisements and Downloadable Software. Neither the Downloadable Software nor the advertisements delivered through the use of the downloadable software may be targeted toward anyone under the age of 18. Notwithstanding the foregoing, the Downloadable Software and the advertisements must comply with the Children's Online Privacy Protection Act ("**COPPA**"). Hercle expressly reserves the right to make the final determination as to the intended audience of any and all Downloadable Software and the advertisements delivered through the use of the Downloadable Software.

(d) Benefit to Users. The Downloadable Software must offer users a genuine benefit in exchange for installing the Downloadable Software and receiving the advertisements delivered through the Downloadable Software. If the Downloadable Software merely shows advertisements to the users without offering anything substantial in return, the Downloadable Software does not offer a genuine benefit to the users.

(e) Frequency and Intrusiveness of the Advertisements. Downloadable Software must not show an unreasonably numerous amount of advertisements or advertisements that are intrusive in nature. Each advertisement displayed via the Downloadable Software must be closable by a user using ordinary operating system functions, such as by clicking on the "X" in the upper-right hand corner on the applicable advertisement's title bar.

(f) Advertising Placement. An advertisement displayed via the Downloadable Software may not altogether replace, or redirect a user away from the website or webpage that the user requested. Advertisements displayed in response to the user's attempt to access a certain website or search for a certain trademark are strictly prohibited absent the express consent of the applicable website and/or trademark owner, as applicable.

(g) Privacy Policy. The Downloadable Software must include an associated privacy policy that is available for viewing by the user prior to the installation of the Downloadable Software, as well as on vendor's website, and that complies with commercial best practices regarding privacy policies. The Downloadable Software must strictly adhere, in all respects, to its applicable privacy policy.

(h) Removal. A user must be able to remove Downloadable Software via the standard function within the user's operating system (e.g., The Add or Remove Programs in the Control Panel of Microsoft Windows). The procedure for removing the Downloadable Software may not unreasonably impede the removal of the Downloadable Software.

(i) Fair Value to Advertisers. Downloadable Software must generate bona fide Events (as defined by the Publisher Terms and Conditions) for the Advertisers. Without limiting the generality of the foregoing, an Event shall not be considered a bona fide Event if it is associated with a user who is already at an Advertiser's website or actively searching for an Advertiser's website.

(j) Reputation; Record of Compliance. The Downloadable Software, and the Downloadable Software's vendor, must each have, in Hercle's sole discretion, a strong

track record of compliance with all applicable laws, rules, regulations, and industry standards.

9.3. Search Marketing. Keyword bidding and search marketing content, including without limitation creative, landing pages, and microsites (collectively, "Search Marketing Content"), utilized by You in connection with any Search Marketing Program must comply with all of the following obligations, as determined in the sole discretion of Hercle:

(a) Keyword Bidding. All keywords purchased by You in connection with a Search Marketing Program must: (i) have some nexus to its corresponding Search Marketing Content so as not to be misleading, and (ii) meet the additional criteria specified by the applicable Advertiser (if any). You may not use and/or purchase keywords that include the trademark, service mark and/or brand name, or any derivative of any such trademark, service mark or brand name, of any Hercle advertiser and/or any of its affiliates or clients without Hercle's express prior written consent. You may not purchase keywords that violate the intellectual property rights of any third party.

(b) Compliance. Any and all Search Marketing Content utilized by You must comply with all applicable federal, state, local, provincial, and foreign laws, rules, and regulations, as well as the applicable rules, policies, and procedures of any search engine.

(c) Clarity and Consistency of Disclosures. Hercle strictly prohibits the display of potentially misleading terms in any Search Marketing Content transmitted by You (e.g., the term "free" or substantially similar terms, such as "complimentary"). All Search Marketing Content transmitted by You in connection with a Search Marketing Program must be consistent, from the creative to the corresponding landing pages, confirmation pages and/or other webpages that are linked to such creative so as not to be misleading.

(d) Intellectual Property in Search Marketing Content. Your Search Marketing Content must not utilize any copyright, patent, trademark, trade secret or other similar intellectual property right of any third party without their consent. Furthermore, Your Search Marketing Content must not falsely represent or imply that You are associated with or certified by any third-party (e.g., You are an "Official Partner" of a brand or other entity).

(f) Social Media and Bulletin Boards. Hercle strictly forbids the use of social media profiles (e.g., Facebook or MySpace) and bulletin boards (e.g., Craigslist) to advertise or distribute Search Marketing Content. Notwithstanding the foregoing, this does not preclude You from purchasing keywords which reside on social media websites to advertise and distribute Search Marketing Content.

(g) Minors. You may not distribute Search Marketing Content to anyone under the age of 18.

(h) Privacy Policy. You shall conspicuously post a privacy policy on any and all website(s), landing page(s), and/or other web page(s) upon which you collect consumer information in connection with a Search Marketing Program. The privacy policy must comply with all federal and state privacy laws. Your data protection, use and privacy practices must adhere to Your applicable privacy policy in all respects.

9.4. Testimonials and Endorsements. Testimonials and endorsements broadly mean any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring Advertiser. The following applies to any and all websites and materials used by You to promote campaigns on the Hercle affiliate network, including, without limitation, blog websites, review websites, articles, and news websites (collectively, "**Promotional Materials**"). All

Promotional Materials must be in compliance with the following guidelines, as determined by Hercle in its sole and absolute discretion:

(a) Honesty. Endorsements in Promotional Materials must reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, endorsements in Promotional Materials may not contain any representations that would be deceptive, or could not be substantiated, if made directly by the Advertiser. Upon request from Hercle, You must be able to verify all claims stated on any Promotional Materials by providing documentation to back up Your claims within three (3) business days.

(b) Endorsements by Consumers. An endorsement on a central or key attribute of a product or service will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve. Accordingly, if an endorsement does not have adequate substantiation that the endorser's experience is representative, You must clearly and conspicuously disclose either what the generally expected performance would be in the depicted circumstances or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. Finally, all endorsements from consumers must be real. Upon request from Hercle, You must provide personally identifiable documentation of any consumer depicted in Your Promotional Materials, including, but not limited to, first name, last name, physical address and driver's license or other government issued identification.

(c) Endorsements by Experts. For purposes of this Testimonial & Endorsement Policy, an "expert endorser" is someone who, as a result of experience, study or training possesses knowledge of a particular subject that is superior to that generally acquired by ordinary individuals. Accordingly, to use an expert endorsement in Promotional Materials, an expert endorser's qualifications must, in fact, give him or her, the expertise that he or she is represented as possessing with respect to the endorsement. Moreover, an expert endorsement must be supported by an actual exercise of expertise and the expert's evaluation of the product or service must have been at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented. Upon request from Hercle, You must provide documentation within three (3) business days to substantiate any endorsements made by experts appearing in your Promotional Materials.

(d) Endorsements by Organizations. An organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Upon request from Hercle, You must provide documentation within three (3) business days to substantiate any endorsements made by organizations.

(e) Disclosure of Material Connections. When there is a connection between the endorser and the seller of the advertised product that might materially affect the weight and credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), such connection must be clearly and conspicuously disclosed in the Promotional Materials. Consumers are generally expecting independent advice. Accordingly, to the extent an economic motive exists for an endorsement of a product or service, the consumer should be aware of this economic motive.

(f) Actual Consumers and Actors. Promotional Materials presenting endorsements by what are represented as actual consumers should utilize actual consumers, or clearly and conspicuously disclose that the persons are not actual consumers. Upon request from Hercle, You must provide personally identifiable documentation of any consumer depicted in Your Promotional Materials, including, but not limited to, first name, last name, physical address and driver's license or other government issued identification.

(g) FTC Compliance. All Promotional Materials containing endorsements or testimonials must comply with all aspects of the Federal Trade Commissions Guides Concerning the Use of Testimonials and Testimonials in Advertising.

9.5. Indemnification. Publisher, on its own behalf and on behalf of its Third Party Publishers, will defend, indemnify, and hold harmless HERCLE, the Advertisers, and their respective affiliates, directors, employees, agents, successors and assigns from all claims, actions, losses, liability, damages, costs, and expenses (including reasonable attorney's fees and expenses) (collectively "Claims") arising from or related to: (a) any breach of Publisher's obligations under this Agreement and/or any Program terms and conditions, including the representations or warranties contained therein, (b) any claim that Publisher infringes upon any rights of any third party, (c) any allegation that Publisher or its partners or other agents violated any foreign or domestic, federal, state or local law or regulation, including but not limited to CAN-SPAM, (d) Publisher's improper or unauthorized use of the HERCLE Site or any Program, (e) any third party claim related to the Publisher Website, e-mails and/or marketing practices, (f) any content, goods or services offered, sold or otherwise made available by Publisher on or through the Publisher Website, e-mails or otherwise, or (g) a Third Party Publisher's breach of any obligations or warranties set forth herein. HERCLE reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the Publisher hereunder. Publisher acknowledges that the Advertisers are intended third party beneficiaries of these indemnities. Publisher agrees that it will not assert a defense based upon lack of privity against any Advertiser seeking to enforce this Agreement.

10. Disclaimer of Warranty.

THE HERCLE SITE AND SERVICE IS PROVIDED ON AN "AS IS", "WHERE IS", AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND AND WITHOUT GUARANTEE OF CONTINUOUS OR UNINTERRUPTED DISPLAY OF ANY ADVERTISEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, HERCLE MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

11. Limitation of Liability.

UNDER NO CIRCUMSTANCES SHALL HERCLE BE LIABLE TO PUBLISHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS OR LOST DATA (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTORY OR OTHERWISE ARISING FROM THIS AGREEMENT, THE HERCLE SITE, SERVICE OR ANY ASPECT OF THE RELATIONSHIP PROVIDED HEREIN. HERCLE SHALL NOT IN ANY EVENT BE LIABLE TO PUBLISHER FOR MORE THAN THE AMOUNT PAID BY HERCLE TO PUBLISHER HEREUNDER FOR THE THREE (3) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. NO ACTION, SUIT OR PROCEEDING SHALL BE BROUGHT AGAINST HERCLE MORE THAN ONE (1) YEAR AFTER ACCRUAL OF THE CAUSE OF ACTION. THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY REMEDIES HEREUNDER AND APPLY REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12. Non-Solicitation.

Publisher recognizes that HERCLE has proprietary relationships with the Advertisers that participate in the HERCLE Network. Publisher agrees not to circumvent HERCLE's relationship with any such Advertiser, or otherwise solicit, induce, recruit or encourage, directly or indirectly, any Advertiser that is known by Publisher to participate in the HERCLE Network and/or otherwise have a business relationship with HERCLE for purposes of obtaining advertising, marketing or promotional services similar to those offered by HERCLE during the term of this Agreement and for the six (6) month period following

termination or expiration of this Agreement. Notwithstanding the foregoing, to the extent that Publisher can show that any such Advertiser or third party already provided such services to Publisher prior to the effectiveness of this Agreement, then Publisher shall not be prohibited from continuing such relationship.

13. Miscellaneous.

- **13.1. Entire Agreement.** This Agreement, together with the documents listed in Section 1.5, constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the parties whether written or oral.
- **13.2. Assignment.** Publisher shall not assign this Agreement and any rights or obligations hereunder without the express written approval of HERCLE, which approval shall not be unreasonably withheld. HERCLE may assign this Agreement with or without Your consent.
- **13.3. Notices.** All notices to You shall be sent by certified mail, fax, e-mail or courier to the addresses submitted by You when signing up for the HERCLE Network, or at such different address as may be designated by You in writing. You shall send all notices to HERCLE to the contact information listed on the HERCLE Site. Notice to HERCLE will be effective upon receipt.
- **13.5. Waiver.** No failure of either party to enforce any of its rights under this Agreement will act as a waiver of such rights. No waiver by either party of any breach of any provision hereof shall be deemed a waiver of any subsequent or prior breach of the same or any other provision.
- **13.6. Independent Contractor.** The parties to this Agreement are independent contractors. Neither party is an agent, representative, partner, employee, or joint venturer of the other party. Neither party will have any right, power, or authority to enter into any agreement on behalf of, or incur any obligation or liability of, or to otherwise bind the other party.
- **13.7. Severability.** In the event that any provision of the Agreement conflicts with the law under which the Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the parties to the Agreement (a) such provision will be restated to reflect as nearly as possible HERCLE's original intention in accordance with applicable law, and (b) the remaining terms, provisions, covenants, and restrictions of the Agreement will remain in full force and effect.
- **13.8. Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, shortage of materials or supplies, or any other cause beyond the reasonable control of such party.
- **13.9. Survival.** In the event of termination of this Agreement: Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 shall survive.
- **13.10. Governing Law and Jurisdiction.** This Agreement is governed by the laws of the State of Virginia as such laws are applied to agreements entered into and to be performed entirely within Virginia between Virginia residents. Publisher consents to the personal jurisdiction of the state and federal courts located in Arlington and Fairfax Counties of the Commonwealth of Virginia. Publisher waives any right to object to the venue of such courts. Such courts shall have exclusive jurisdiction over any suit or action arising from or related to this Agreement, and Publisher agrees to not file any such suit or action in any other court.