

CLICKBANK ADVERTISING TERMS AND CONDITIONS

Last Updated Date: January 24, 2013

These ClickBank Advertising Terms and Conditions ("**Terms**") shall be deemed incorporated by reference into any insertion order (the "**Insertion Order**") executed by Advertiser and ClickBank and shall govern the Insertion Order. As used herein, "**Advertiser**" means the advertiser set forth in the Insertion Order. As used herein, "**Advertisement**" means any promotional, marketing, or other advertising material provided or made available to ClickBank by Advertiser under the Agreement. All Insertion Orders are subject to acceptance by ClickBank.

1. **CLICKBANK POLICIES; CONFLICTS.** These Terms incorporate by reference the terms and conditions set forth in the ClickBank Client Contract, and the policies referenced therein as amended from time to time (collectively, the "**ClickBank Policies**"). In the event of any conflict between these Terms and the ClickBank Policies, these Terms shall govern, but only with respect to the specific provisions containing such conflict. In the event of any conflict between these Terms and an Insertion Order, these Terms shall govern, but only with respect to the specific provisions containing such conflict.
2. **SERVICES.** Advertiser desires to participate in ClickBank's advertising program, under which ClickBank will place Advertisements on Advertiser's behalf on the ClickBank network. Each Insertion Order shall be considered accepted by ClickBank when signed electronically or in writing by an authorized representative of ClickBank. Unless specified in writing to the contrary, each Insertion Order shall constitute a separate, distinct, and independent work assignment, and shall have no effect upon other Insertion Orders.
3. **TERM.** These Terms shall commence on the Effective Date of the applicable Insertion Order and will remain in effect until terminated earlier as permitted herein ("**Term**").
4. **TERMINATION.**
 - a. **Termination for Cause; Suspension.** Either party may terminate these Terms upon written notice if the other party breaches the Agreement in any material respect, and the breach remains uncured for a period of forty eight (48) hours following the breaching party's receipt of notice from the non-breaching party. The non-breaching party shall notify the breaching party within ten (10) days of the occurrence and discovery of the breach. In addition, ClickBank reserves the right, in its sole discretion, to immediately suspend any Advertisements from placement on the ClickBank network if it reasonably suspects or determines that Advertiser has breached any of these Terms or the ClickBank Policies.
 - b. **Termination for Convenience.**
 - i. **Termination by Advertiser.** Except as otherwise provided in an Insertion Order, Advertiser may terminate these Terms for any reason upon thirty (30) days written notice to ClickBank.
 - ii. **Termination by ClickBank.** ClickBank may terminate these Terms for any reason at any time upon seventy-two (72) hours written notice to Advertiser.
 - c. **Effect of Termination.** During the period of time after a party has given written notice of termination to the other party under the terms of these Terms until the effective date of termination, the rights, duties, obligations and liabilities of the parties pursuant to these Terms shall continue in full

force and effect. Upon termination or expiration of these Terms, the parties shall be relieved of their respective obligations, except for the following: (i) Advertiser shall pay ClickBank at the rates set forth in all applicable Insertion Orders for all services performed by ClickBank through the effective date of termination; (ii) ClickBank shall refund all monies paid by Advertiser, less payment properly due ClickBank for appearances of Advertiser's advertisement on the ClickBank network ("**Impressions**"), unless the fees due for such Impressions exceed the monies paid or unless ClickBank terminated these Terms in connection with a breach of these Terms by Advertiser (as described below); and (iii) all rights and licenses granted by Advertiser and ClickBank to each other under these Terms shall immediately terminate. Notwithstanding the foregoing, if ClickBank terminates these Terms as a result of Advertiser's breach of these Terms, Advertiser agrees to pay ClickBank at the rates set forth in all applicable Insertion Orders for the remainder of the term of such Insertion Orders. Each party shall cease using the other party's intellectual property, and shall immediately return or destroy all originals and copies thereof to the respective intellectual property owner. Sections 4(c), 10, 11, 12, 13 and 14 will survive any termination of these Terms.

5. **PAYMENT.** Advertiser agrees to pay ClickBank the fees set forth in the applicable Insertion Order. ClickBank reserves the right to pause, cancel or remove any and all Advertisements if Advertiser fails to make timely payments of any amounts owing under an Insertion Order or if Advertiser's ClickBank account is deactivated for any reason. Advertiser acknowledges and agrees that any credit card and related billing and payment information that Advertiser provides to ClickBank may be shared by ClickBank with service providers who work on ClickBank's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to ClickBank and servicing Advertiser's account. ClickBank may also provide information in response to any valid legal process or to establish, exercise, or defend its legal rights without any liability for such use or disclosure to third parties.

6. **ADVERTISEMENT REVIEW AND APPROVAL PROCESS.**
 - a. **Insertion Order.** Advertiser shall submit a written and signed Insertion Order for each Advertisement it wishes to place on the ClickBank network.

 - b. **Advertising Content.** At least seven (7) business days before the first day of the period upon which the advertisement(s) will be displayed on the ClickBank Network (the "**Display Period**"), Advertiser shall provide to ClickBank all design, content, text, graphics, images, or other relevant information (the "**Advertising Content**") necessary to perform the services contemplated by these Terms.

 - c. **Acceptance of Advertising Content.** Upon acceptance of an Insertion Order, ClickBank shall reserve the location of the specific advertising space on which the advertisement(s) will be displayed (the "**Ad Space**") during the requested Display Period until payment is received up to a maximum of three (3) days prior to the first day of the Display Period.

 - d. **Right to Refuse Advertising Content or Provide Online Links.** ClickBank may, but is under no obligation to, review the Advertising Content. ClickBank reserves the right to reject any Advertising Content or to provide links to any website, for any reason at any time, including if it determines that the Advertising Content:
 - i. violates any terms and conditions set forth in the ClickBank Policies;
 - ii. fails to conform to the Ad Specifications and Guidelines, accessible at

www.partners.clickback.com/advertisingguides.com;

- iii. may constitute or is the subject of a notice or claim of any Lanham Act violation, false designation of origin, false advertising or unfair competition under the laws of any jurisdiction;
 - iv. is factually inaccurate, misleading or deceptive;
 - v. contains, or is alleged to contain, any content, work, name, mark, designation, or materials that actually or potentially violate any applicable law or regulation or infringe any proprietary, copyright, trademark, patent, intellectual property, contract or tort right of any person;
 - vi. contains any content, work, name, mark, designation, materials or link that, to a reasonable person, may be abusive, obscene, pornographic, defamatory, harassing, offensive, vulgar, threatening, malicious, illegal, or misleading;
 - vii. facilitates or promotes gambling, or the sale or use of liquor, tobacco products or illicit drugs;
 - viii. facilitates, promotes or forwards illegal contests, pyramid schemes or chain letter;
 - ix. promotes or contains viruses, worms, corrupted files, cracks or other materials that are intended to or may damage or render inoperable software, hardware, or security measures of ClickBank, subscribers, or any third party; or
 - x. contains any programs, application, interfaces or other functions that, given the nature of the ClickBank's network of Internet services and in ClickBank's reasonable judgment would have a deleterious effect on any ClickBank user's experience. In determining whether any materials on the Advertiser's site or Content would have a deleterious effect on a ClickBank user's experience, ClickBank shall use standards consistent with those ClickBank uses to determine quality standards for its partners and clients. ClickBank may test Advertiser's URLs, and in ClickBank's sole discretion may remove any URLs at any time that fail to comply with the requirements of these Terms if Advertiser has not cured such failure within forty-eight (48) hours of notification.
- e. **Changes to Insertion Orders.** All terms in the Insertion Order, once accepted by the parties, are non-amendable by the Advertiser; provided, however, that ClickBank may, in its sole discretion, permit changes to the Ad Space and/or the Display Period upon written request from the Advertiser, if such requests are (i) received upon no less than sixty (60) days prior to the first day of the Display Period, and (ii) subject to space availability and any adjustment for rates/locations/traffic shall be based on the new requested Display Period and/or Ad Space. In the event that the ClickBank cannot accommodate a timely request to change the Ad Space and/or Display Period because of availability issues, then the Advertiser shall have the option to: (i) retain the original Display Period and Ad Space, or (ii) receive a credit for the value of the applicable Insertion Order, which must be used by the Advertiser within six (6) months from the date of issuance or which credit shall be forfeited in its entirety.
- f. **72 Hour Opt Out.** In the event advertisement placement adjustments become necessary or technology issues arise under and Insertion Order, each party shall make reasonably necessary changes to ensure that both parties are satisfied. After three (3) business days, if any advertisement placement adjustments or technology issues are not resolved to the satisfaction of both parties, the Insertion Order will be cancelled and a new Insertion Order will be created.

7. **REMOVAL OF CONTENT.** In addition to the rights set forth in Section 5 and any other remedies provided for herein, if ClickBank receives a claim of infringement concerning Advertising Content or a claim which alleges a breach of these Terms, ClickBank may immediately remove such Advertising Content from the ClickBank network, pending receipt of a non-infringing replacement link or satisfactory resolution of the claim, and any such removal shall not constitute a breach of these Terms. Advertiser must provide non-infringing replacement Advertising Content or resolve the claim to ClickBank's satisfaction within forty-eight (48) hours of notification.

8. **INTELLECTUAL PROPERTY**

a. **License Grant.** Advertiser hereby grants to ClickBank a limited, nonexclusive, nontransferable, worldwide, royalty free license during the Term of these Terms, to use, copy, reproduce, electronically distribute, publicly display, transmit, and otherwise publicly use the Advertising Content and Advertiser's trademarks, service marks, logos, brands and trade names on the ClickBank network, to the extent necessary to provide the services hereunder.

b. **Ownership.** As between the parties, ClickBank acknowledges that Advertiser owns all right, title and interest in and to the Advertising Content, and Advertiser's trademarks, service marks, logos, brands and trade names, and Advertiser acknowledges that ClickBank owns all rights, title and interest in and to the ClickBank network and all intellectual property therein and related thereto. Each party acknowledges and agrees that it does not have any claim, right, title or interest in or to the other party's content, trademarks and/or other intellectual property, except as expressly provided herein. Further, each party acknowledges and agrees that it shall use the other party's content, trademarks and other intellectual property solely as expressly permitted under these Terms and in a manner consistent with the terms and conditions of these Terms and applicable Insertion Orders. Nothing contained in these Terms will give either party any right, title or interest in or to any trademarks, service marks, logos, brands, trade names or other intellectual property of the other party (including but not limited to the Web Site), except for the limited rights expressly granted hereunder.

9. **REPRESENTATIONS AND WARRANTIES.**

a. **Advertiser's Representations and Warranties.** Advertiser represents and warrants the following:

- i. it has the full corporate rights, power and authority to enter into these Terms and to perform the acts required of it hereunder;
- ii. the Advertising Content is Advertiser's own original work or Advertiser has obtained the necessary rights to use it as contemplated by these Terms and applicable Insertion Order(s);
- iii. its execution of these Terms does not and will not violate any agreement to which Advertiser is a party or by which Advertiser is otherwise bound, or any applicable law, rule or regulation (including those regulating the use and distribution of content on the Internet and protection of personal privacy);
- iv. each Internet site identified by URLs in advertisements is in compliance with Advertising Content limitations set forth in Section 6(d);
- v. Advertising Content and all products and/or services offered, sold or otherwise provided as part of Advertiser's site do not and will not violate any third party intellectual property rights (including, but not limited to, copyrights, trademarks, service marks or any other proprietary, publicity or privacy right) or give rise to any obligation for the payment of any sums to any third party by ClickBank or ClickBank's successors in interest;
- vi. it will not willfully or knowingly provide Advertising Content which promotes or contains

viruses, worms, corrupted files, cracks or other materials that are intended to or may damage or render inoperable software, hardware or security measures of ClickBank, subscribers or any third party;

- vii. the Advertising Content does not and will not violate the terms set forth in these Terms; and
- viii. it has in effect a privacy policy that is available online that is in compliance with applicable law and it will adhere to the information gathering, dissemination, privacy protection and other practices performed in such privacy policy.

- b. **ClickBank's Representations and Warranties.** ClickBank represents and warrants that it has the full corporate rights, power and authority to enter into these Terms and to perform the acts required of it hereunder.

10. **INDEMNIFICATION.** Advertiser agrees to defend, indemnify and hold ClickBank and its officers, directors, shareholders, employees, licensees, agents and representatives from any and all third-party claims, demands, causes of action, liabilities, costs or expenses, including reasonable attorney's fees resulting from (a) Advertiser's breach of its representation and warranties under these Terms; and (b) the actions taken by Advertiser in the performance of its obligations hereunder. ClickBank agrees to defend, indemnify and hold Advertiser and its officers, directors, shareholders, employees, licensees, agents and representatives from any and all third-party claims, demands, causes of action, liabilities, costs or expenses, including reasonable attorney's fees resulting solely from (a) ClickBank's breach of its representation and warranties under these Terms; and (b) the actions taken by ClickBank in the performance of its obligations hereunder. Each party will notify the other of any claim which may require indemnification hereunder promptly after such party learns of such claim. In the case of an indemnified claim or action, the indemnifying party, at its sole expense, will provide counsel acceptable to the indemnified party, in its reasonable judgment.

11. **CONFIDENTIALITY. "Confidential Information"** means any technical or business information disclosed by one party to the other party that: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; or (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information does not include information that: (i) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of the receiving party; (ii) was known by the receiving party prior to receiving such information from the disclosing party and without restriction as to use or disclosure; (iii) is rightfully acquired by the receiving party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the receiving party without access to any Confidential Information of the disclosing party. Each party agrees: (i) to maintain the other party's Confidential Information in strict confidence; (ii) not to disclose such Confidential Information to any third parties; and (iii) not to use any such Confidential Information except for the purposes set forth herein. Each party may disclose the Confidential Information of the other party to its employees and consultants who have a bona fide need to know such Confidential Information for the purposes set forth herein; provided that each such employee and consultant first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the other party's Confidential Information as those set forth in this Agreement.

The provisions of this Section will not restrict a party from disclosing the other party's Confidential Information to the extent required by any law or regulation; provided that the party required to make such a disclosure uses reasonable efforts to give the other party reasonable advance notice of such required disclosure in order to enable the other party to prevent or limit such disclosure.

12. **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9(B), CLICKBANK MAKES NO REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED WITH REGARD TO THE AD SPACE, THE CLICKBANK NETWORK AND RELATED CLICKBANK SERVICES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE. THE AD SPACE, THE CLICKBANK NETWORK AND RELATED CLICKBANK SERVICES ARE PROVIDED BY CLICKBANK "AS IS" AND "AS AVAILABLE" AND SOLELY AT ADVERTISER'S OWN RISK. ADVERTISER ACKNOWLEDGES THAT ANY ADVERTISEMENT IS PROVIDED SOLELY BY ADVERTISER AND CLICKBANK DOES NOT ENDORSE, APPROVE OR OTHERWISE MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO THE ACCURACY, TRUTH, QUALITY, SUITABILITY OR RELIABILITY OF ANY PROMISE, CLAIM OR STATEMENT CONTAINED IN ANY ADVERTISEMENT AND SHALL NOT BE RESPONSIBLE FOR ANY ERRORS, OMISSIONS, OR INACCURACIES CONTAINED IN ANY ADVERTISEMENT.
13. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF OR UNAUTHORIZED ACCESS TO INFORMATION INCURRED BY THE OTHER PARTY ARISING OUT OF THESE TERMS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CLICKBANK'S AGGREGATE LIABILITY TO ADVERTISER AND ANY THIRD PARTY IN CONNECTION WITH THESE TERMS, THE AD SPACE, THE CLICKBANK NETWORK AND RELATED SERVICES EXCEED THE AMOUNTS ACTUALLY PAID AND/OR OWING TO CLICKBANK PURSUANT THESE TERMS AND ANY RELATED INSERTION ORDERS IN THE SIX (6) MONTH PERIOD PRIOR TO THE CLAIM GIVING RISE TO LIABILITY, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION.
14. **GENERAL.** These Terms, together all executed Insertion Orders, constitute the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of these Terms will be effective only if in writing and signed by duly authorized representatives of both parties. In the event of any inconsistency between the Insertion Order and these Terms, the Insertion Order will control with respect to the Insertion Order only and will not constitute an amendment to these Terms with respect to prior or subsequent Insertion Orders. These Terms will be governed by and construed in accordance with the laws of the State of Idaho excluding that body of laws known as conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under these Terms will be brought exclusively in the federal or state courts located in the Ada County, Idaho and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. Advertiser will have no right to assign these Terms, in whole or in part, by operation of law or otherwise, without ClickBank's express prior written consent. Any attempt to assign these Terms, without such consent, will be null and of no effect. ClickBank may assign these Terms at any time without Advertiser's consent. Subject to the foregoing, these Terms will bind and inure to the benefit of each party's successors and permitted assigns.

All notices required or permitted under these Terms will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt at the addresses set forth in the applicable Insertion Order. Either party may change its address for notices under these Terms by giving written notice to the other party. The parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

15. **MODIFICATIONS TO THESE TERMS.** ClickBank may modify these Terms at any time, in its sole discretion. If ClickBank modifies these Terms, ClickBank will provide notice of such update via the ClickBank website (and will update the "Last Updated Date" above) or will notify Advertiser via email. Continued participation in the ClickBank advertising program after ClickBank provides notice that these Terms have been updated constitutes Advertiser's agreement to the amended Terms.