

# Best Buy Canada Terms and Conditions for Publishers

These Best Buy Canada Terms and Conditions for Publishers (collectively referred to as the "Agreement") are by and between you and Best Buy Canada Ltd. and apply to your participation in the Program as administered by the Program Manager. This Agreement is effective as of the date Best Buy accepts your application into the Program, and sets forth the terms and conditions governing the establishment of Links from your Properties to certain Best Buy Authorized Properties as further described below.

**THIS IS A LEGALLY BINDING AGREEMENT. BY COMPLETING AND SUBMITTING THE ONLINE APPLICATION, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT.**

## Definitions

"Best Buy", "we", "us", or "our" means Best Buy Canada Ltd.

"Best Buy Authorized Properties" means the Best Buy Properties that Best Buy in its sole discretion determines to be eligible for the Program as communicated to you through the Program Manager or the Dashboard.

"Best Buy Content" means the file of data (including but not limited to certain copy, images, banners, brand features, and other features) that is made available to you in connection with the Program subject to the terms and conditions of this Agreement.

"Best Buy Offers" means Best Buy offers, deals, coupons and promotions that Best Buy has expressly authorized you to promote on your Properties with Licensed Materials.

"Best Buy Properties", a "Best Buy Property", or "our Properties" means Best Buy's connected properties, including mobile websites and applications. Such properties may include but are not limited to, [www.bestbuy.ca](http://www.bestbuy.ca), [GeekSquad.ca](http://GeekSquad.ca), and any other additional, successor, or replacement Best Buy properties agreed upon by Best Buy in writing.

"Customers" are persons or entities (other than Publisher or the Publisher's agent) that are not robots, automated programming, or similar technology that enables clicks through certain links.

"Dashboard" means the website or other online resource made available by the Program Manager to provide information relating to the Program to the Publisher.

"Deductions" are the amounts we deduct from Monthly Net Sales. This includes but is not limited to the amounts we collect for sales, use, excise, or similar taxes; duties; shipping, handling, and similar charges; amounts due to credit card fraud and bad debt; and credits for cancelled orders, refunds, and returned goods. This also includes any sales, use, excise or similar taxes that we are required to withhold from any payments we make to you.

"Eligible Product(s)" means the list of Best Buy products and/or services that Best Buy has approved for commission payments under this Agreement which you may obtain through the Dashboard.

"Information" means Program customer information and Program business and sales information related to us, you, or our suppliers, including, without limitation, information relating to sale pricing, promotions and weekly specials.

"Licensed Materials" means the Best Buy trademark and logo, Links, Best Buy Content, and similar identifying material relating to us, but only in the forms that we provide to you.

"Links" or "Link" means the graphic and textual links that Best Buy makes available to you.

"Monthly Net Sales" means for each calendar month during the term of this Agreement, the aggregate amount actually paid by Customers to Best Buy for Qualifying Purchases, less Deductions.

"Product Category" or "Product Categories" means the applicable product or service category for each Eligible Product as set forth in the Dashboard. Best Buy may determine in its sole discretion which Product Category is applicable to the Eligible Products.

"Program" or "the Program" means Best Buy's affiliate marketing program.

"Program Manager" means the person or entity that is appointed by Best Buy to manage the Program for Best Buy, or if no such person or entity is appointed, Best Buy. The Program Manager is currently Best Buy or Impact Tech Inc., or both entities acting together.

"Publisher", "you" or "your" means the person or entity that is enrolled in and accepted by Best Buy as a participant in the Program and bound by the terms of this Agreement.

"Publisher Properties" or "your Properties" means your website or other presence (including, without

limitation, mobile applications, forums and apps) owned, operated, used, or distributed by and preapproved by Best Buy to link to one or more Best Buy Authorized Properties. Publisher Properties will only include your email marketing or presences on any Social Communities if written permission has been obtained from Best Buy in accordance with Section 2.e.

"Qualifying Link" means an internet connection between any of your Properties and a Best Buy Authorized Property that is provided or authorized by Best Buy to be displayed, distributed or placed by you pursuant to this Agreement in a manner that drives completion of Qualifying Purchases.

"Qualifying Purchase" means a completed sale of an Eligible Product to a Customer through a Qualifying Link on a Publisher Property in accordance with the criteria specified in Section 5 of this Agreement.

"Reconciliation Period" means, in the case of termination of this Agreement, the ninety (90) day period following the end of the calendar month in which the Agreement was terminated.

"Related Party" means (a) the Program Manager (b) any service provider or agency doing business with Best Buy and receiving compensation based on share of revenue or "cost per click" or similar type arrangement relating to sales, advertising or search engine results on the internet, (c) each subsidiary and affiliate of any of the foregoing, and (d) each employee of any of the foregoing, and the immediate family members of such employee.

"Return Days" means the permitted latency period for purposes of defining a Session which is set forth in the Dashboard. If no such period is specified in the Dashboard, the period will be deemed to be 30 days unless stated otherwise.

"Session" means the time period that begins when a Customer clicks a Qualifying Link and continues until the earlier of (1) the time that the Customer, after having exited a Best Buy Property, returns to a Best Buy Property using a Qualifying Link other than the original Qualifying Link or a Link from a third party publisher's website or property that is not your Qualifying Link, (2) the permitted latency period (Return Days) has expired or lapsed, or (3) the expiration or termination of your participation in the Program.

"Social Communities" means social media or social networking tools and sites, including but not limited to Facebook, Twitter, Instagram, LinkedIn, Tumblr, Pinterest, Vine, SnapChat and YouTube.

"Term" means the term of this Agreement which will begin upon our acceptance of your Program application and will end when terminated by either party as permitted hereunder.

## **1. Enrollment**

a. To begin the enrollment process, you must submit a complete Program application to the Program Manager. We or the Program Manager will evaluate your application and will notify you of your acceptance or rejection in a timely manner. We may reject your application if we determine (in our sole discretion) that your Properties are unsuitable for the Program for any or no reason, including, but not limited to, inclusion of content, or links to content that is in any way unlawful, harmful, threatening, harassing, defamatory, obscene, violent or that:

- promotes or depicts violence (i.e., murder, selling weapons, cruelty, abuse, etc.);
- promotes pornographic or sexually explicit materials;
- promotes discrimination based on gender, race, religion, nationality, disability, sexual orientation or age;
- promotes or offers peer to peer file sharing methodologies that may allow consumers to infringe the intellectual property rights of others;
- violates copyrights, trademarks, or any other intellectual property rights of Best Buy, its parents, subsidiaries, or affiliates or any other person or entity;
- displays or contains spyware, malware, viruses, Trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines; or
- includes "Best Buy" or any variations or misspellings thereof in the domain name or other HTML tags, including page titles, metatags, or HTML comment tags.

b. Related Parties are not allowed to participate in the Program. Employees of Best Buy and employees of any product or service vendor or supplier doing business with us who are not Related Parties may participate in the Program provided they adhere to any rules or policies of Best Buy or such vendor or supplier, as applicable, concerning participation in such programs.

If we reject your initial application, you may reapply by modifying or resubmitting a new application for review and acceptance into the Program.

## **2. Promotion of Affiliation**

a. We will make available to you, as a Publisher in the Program, a variety of Links and Licensed Materials which, subject to the terms and conditions of this Agreement, you may

display as often and in as many areas on your Properties as you desire. The Links and Licensed Materials will serve to identify one or more of your Properties as a member of our Program and will establish a link from your Properties to certain Best Buy Properties.

b. In utilizing the Links and Licensed Materials, you will cooperate fully with us in order to establish and maintain the Links and Licensed Materials. You will not alter Links (or their content) or Licensed Materials in any way. You will display in your Properties only those graphic or textual images (indicating a Link) and Licensed Materials that are provided by us, and you will immediately substitute such images with any new images that we provide from time to time throughout the term of this Agreement. You must ensure that each Link connecting your Properties to the pertinent area of our Properties will in no way alter the look, feel or functionality of our Properties.

c. You will comply with our requirements for removing Links and Licensed Materials on a timely basis. Any Links or Licensed Materials that promote deals or prices with an expiration date or that are time sensitive must be removed from your Properties upon expiration of the promotion or time period. We are not required to pay you any commission for sales made via a Link referencing an expired promotion or other deal. Failure to remove expired Links or Licensed Materials may lead to your termination as a Publisher in our sole discretion.

d. You may only promote those Best Buy Offers that Best Buy has made available to you via the Dashboard or Program Manager. You may not promote any other Best Buy offers (e.g. offers in Best Buy emails, other publishers' offers, or those in other partner communications) unless you first obtain written permission from Best Buy.

e. You may not include Licensed Materials or promote Best Buy Offers or other offers or information of any kind relating to Best Buy in any email marketing or on any Social Communities regardless of whether such Social Communities are created by you, by us, or a third party, without first obtaining written permission from Best Buy, on such terms and conditions as required by Best Buy.

f. You may not act as or present yourself as a reseller of any product sold or otherwise acquired from Best Buy, and you may not publicize Links or Licensed Materials on third party or reseller sites unless you have the necessary license, right, or permission to do so from such site and you have also obtained our express written pre-approval. If Best Buy suspects any order was made with the intent to resell, we may determine it is not a Qualified Purchase under Section 5.d.

- g. You will not post any promotional offers, advertised prices or any other information generated by or relating to Best Buy (regardless of origination of such information) for posting on Publisher Properties prior to the date and/or time identified by Best Buy as the start date/time for the posting of such information, or keep any such information posted on your Properties after the end date and/or time identified by Best Buy.
- h. If you donate any portion of your commission to any school, foundation, charity or other non-profit organization you may not state or imply that Best Buy endorses such organization or its activities or is in any way responsible for the inclusion or donation of funds to any schools, foundations, charities or non-profit organizations associated with you.
- i. Failure to abide by the terms set forth in this Section 2 will be a material breach of this Agreement which may result in commission payment reductions as set forth in Section 5.e, or termination of this Agreement.

### **3. Publisher Identification**

As a participating Publisher in the Program, you must display a graphic (which we will provide via the Dashboard or Program Manager) indicating your relationship to Best Buy.

### **4. Our Responsibilities**

We will provide the information necessary to allow you to make appropriate Links from your Properties to our Properties. We will be responsible for: (i) processing every order placed by a Customer following a special Link from your Properties; (ii) tracking the volume and amount of sales of Eligible Products generated by your Properties; and (iii) providing information to you regarding sales statistics via the Dashboard. Any information we provide to you will be provided through the Dashboard or using the contact details you provided at the time you enrolled in the Program. Our order processing obligations will include order entry, payment processing, shipping of products, performance of services, cancellations, returns and related customer service.

### **5. Commission Determination**

- a. You are only eligible to earn commissions on Qualifying Purchases occurring during the Term subject to the terms of this Agreement that are: (i) made via the intentional click by a Customer of a Qualifying Link during an active Session that can be tracked and reported on through the use of the Program Manager's tracking technology and/or methodology; (ii)

actually shipped by a Best Buy Property to a Canadian shipping address and billed to a Canadian billing address; or in the case of services, if included as an Eligible Product, are performed by Geek Squad in Canada; and (iii) for which Best Buy has received full payment that is not subject to bad debt or other chargebacks. We will not owe you any commissions for orders that are cancelled or returned, and we may deduct and exclude these returns and cancellations from commissions calculations on an ongoing basis, at least monthly.

b. Best Buy may in its sole discretion modify the list of Eligible Products, Product Categories (including associated commission percentage rates), and the number of permitted Return Days at any time. The changes will be effective as of the date they are posted within the Dashboard.

c. We do not guarantee a minimum or maximum monthly commission payment amount. We will calculate commission payment(s) based on (i) Monthly Net Sales; multiplied by (ii) the commission percentage rate for each applicable Product Category as set forth in the Dashboard.

d. All determinations of Qualifying Purchases and whether a commission payment is payable will be made by Best Buy in consultation with the Program Manager and will be final and binding.

e. In the event you fail to abide by the terms set forth in this Agreement governing the use of Links and Licensed Materials (including but not limited to the posting of certain information to the disadvantage of Best Buy on your Properties), we may reduce unpaid commissions otherwise payable under this section as follows:

- (i) Best Buy is not required to pay any commissions on sales of any product or service where the sale was completed through an error or anomaly on a Best Buy Property related to any information posted on the website or property associated with the Qualifying Link.

- (ii) Commissions otherwise payable to a Publisher for any month will be forfeited where information prohibited by this Agreement is posted to the website or property associated with the Qualifying Link, regardless of whether any Qualifying Purchases occurred, and we may, in our sole discretion, terminate your account immediately.

## **6. Commission Payments**

a. The Program Manager will pay to you all commission payments owed by us to you, which payment will be made in accordance with your Publisher Agreement entered into between

you and the Program Manager. In the event the Program Manager makes a payment to you that did not take into account all applicable Deductions or that was otherwise incorrect, we may offset the Deductions against any commission payments we owe you from the next monthly payment schedule. If no future monthly commission payment is due, you will pay to Best Buy all amounts you owe within thirty (30) days of receiving written notification thereof. We, or the Program Manager on our behalf, may provide such written notice.

b. You agree that you will report and pay when due all income and other taxes payable by you in connection with the commission payments.

## **7. Policies/Pricing/Product/Service Descriptions**

a. Customers who buy products or services from a Best Buy Property through the Program will be deemed to be customers of Best Buy. Accordingly, all of our rules, policies, and operating procedures concerning customer orders, customer service, privacy, and Best Buy product and service sales will apply to those customers.

b. We may change our policies and operating procedures at any time. For example, we may determine the prices to be charged for products and services sold through a Best Buy Property under the Program in accordance with our own pricing policies. Prices and availability of products or services on a Best Buy Property may vary from time to time, and we do not guarantee the availability and price of any particular product or service. EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS AGREEMENT, YOU MAY NOT PLACE INDIVIDUAL PRODUCT OR SERVICE PRICING OR LOGOS, IMAGES, OR DESCRIPTIONS RELATED TO PRODUCTS OR SERVICES ON YOUR PROPERTIES WITHOUT OUR EXPRESS PRIOR WRITTEN PERMISSION.

## **8. Publicity**

Except as expressly authorized in this Agreement, you will not create, publish, distribute, or permit any written material that makes reference to Best Buy without first submitting such material to us and receiving our written consent.

## **9. License**

a. We grant you a non-exclusive, non-transferable, revocable right during the Term, solely in accordance with the terms of this Agreement, (i) to access one or more of our Properties through the Links, and (ii) solely in connection with such Links, to use the Best Buy Content and the applicable Licensed Materials, for the sole purpose of linking one or more of your



Properties to one or more of our Properties, where your users can purchase products or services from our Properties. YOU MAY NOT ALTER, MODIFY, OR CHANGE THE LICENSED MATERIALS OR THE BEST BUY CONTENT IN ANY WAY. WE RESERVE ALL OF OUR RIGHTS IN THE LICENSED MATERIALS AND THE BEST BUY CONTENT. YOU ACCEPT THESE RIGHTS AND LICENSES SUBJECT TO THE TERMS AND CONDITIONS IN THIS AGREEMENT.

b. We may instruct the Program Manager to make certain Best Buy Content, including all associated updates, available to you. As a condition of using any Best Buy Content or Licensed Materials, you must comply with all applicable Best Buy terms and conditions relating to the use of such Best Buy Content and Licensed Materials.

c. You acknowledge Best Buy's ownership or license rights in its Licensed Materials, agree that you will not do anything inconsistent with Best Buy's rights and that all of your use of the Licensed Materials will inure to the benefit of and be on behalf of Best Buy, and agree to assist Best Buy in recording this Agreement with appropriate government authorities, if requested by Best Buy. You agree that nothing in this Agreement gives you any right, title or interest in the Licensed Materials other than the right to use the Licensed Materials in accordance with this Agreement. You also agree that you will not attack the title or rights of Best Buy to the Licensed Materials or the validity of the Licensed Materials or this Agreement.

d. You agree that the nature and quality of all your Properties used by you in connection with this Agreement and all related advertising and promotions will conform to high standards of quality and will not impugn the goodwill of Best Buy or the Licensed Materials. You agree not to use the Licensed Materials in any manner that is disparaging or that otherwise portrays us in a negative light.

e. You will use the Licensed Materials only in the form and manner and with appropriate legends as provided from time to time by Best Buy, and will not use any other trademark or service mark in combination with the Licensed Materials.

f. You will not use, register or seek to register any trademark, service mark or domain name that contains any words that may be confusingly similar to any Best Buy Property (for avoidance of doubt, including the properties of any Best Buy parent, subsidiaries, or affiliates), including, but not limited to, the words "BestBuy.ca", "BestBuy.com", "Best Buy", "bb.com", "bby.com", "best" and "buy", "geeksquad.ca", "geeksquad.com", "gs.com", "Support.GeekSquad.com", "Geek Squad", "Geek," and "Squad", or any variations or misspelling of them, or in any way confusingly similar to "Best Buy" or "Geek Squad". If you

do, you will transfer the registrations, at your expense, to Best Buy, Geek Squad, or Best Buy's parents, subsidiaries or affiliates at the request of Best Buy, Geek Squad, or Best Buy's parents, subsidiaries or affiliates and will cooperate by providing any information, signing any documents and providing appropriate authorizations necessary to accomplish the transfer.

g. You may only use the Licensed Materials and the Best Buy Content to the extent that you are a Publisher in good standing of the Program. We may revoke your license at any time in our sole discretion, by terminating the relationship between you and Best Buy via the Dashboard. If we give you such notice, you must immediately discontinue all use of the Licensed Materials, including without limitation all Links and Best Buy Content, and remove all Licensed Materials, including without limitation all Links and Best Buy Content, from your Properties.

h. You will ensure you are using the most current and up to date version of Licensed Materials at all times. Except as used on your Properties under the terms of this Agreement, you will not otherwise save or store copies of Licensed Materials.

i. You grant to us a non-exclusive license, for the term of this Agreement, to utilize your names, titles, and logos, as the same may be amended from time to time to advertise, market, promote, and publicize in any manner our rights hereunder; provided, however, that we are not required to so advertise, market, promote, or publicize.

## **10. Obligations Regarding Your Properties**

a. You are solely responsible for, and we have no liability for, the development, operation, or maintenance of your Properties, or for any materials contained on your Properties.

b. You agree that your Properties will not, in any way, copy or resemble the look and feel of our Properties, nor will you create the impression that your Properties are our Properties or are a part of our Properties, nor will you frame any page on a Best Buy Property being viewed by a user of your Properties who links to the Best Buy Property through a Link.

c. You agree that your Properties do not currently contain and will not contain any content, or links to any content, that is in any way unlawful, harmful, threatening, harassing, defamatory, obscene, or violent as more fully set forth in Section 1 (Enrollment).

d. You also agree that your Properties will not contain any content from our Properties or any materials that are proprietary to Best Buy, except with our prior written permission, or to

the extent that materials are obtained by you strictly in accordance with the provisions of this Agreement. You agree not to purchase or otherwise contract with any third party to exploit any of the Best Buy marks for the purpose of causing your Properties to appear as a search result in any search engine or for any other reason.

e. You agree that your Properties will not use any form of mass email communication ("spam") as a marketing tool for any purpose related to this Agreement, and that any other mass email generated by you or your Properties will conform in all respects with all applicable local, provincial, territorial, state and federal laws, regulations and rules including without limitation Canada's anti-spam legislation and regulations.

f. You must clearly state an online privacy policy on your Properties that complies with applicable Canadian federal, provincial and territorial privacy laws and accurately and adequately explains how you collect, use, store, and disclose data collected from visitors, including, where applicable, that third parties (including Best Buy and other advertisers) may serve content and advertisements, collect information directly from visitors, and place or recognize cookies on visitors' browsers.

g. You may not use any downloadable software to initiate tracking in connection with the Program; this includes, but is not limited to, toolbars, add-ons, and plug-ins. You may not redirect links to hide or manipulate their original source. You may not install any computer program, including without limitation, spyware on another person's computer, cause spyware to be installed on another person's computer, or use a context based triggering mechanism to display an advertisement that partially or wholly covers or obscures paid advertising or other content on a website in a way that interferes with a person's ability to view that website. You may not use software to overtake a referral through a paid search engine advertisement, regardless of whether or not the advertisement was related to another publisher in connection with the Program.

h. You may not scrape data from or spider any Best Buy Property without the prior written approval of Best Buy.

i. When promoting Best Buy or your Properties via external paid search engines, which may include, but are not limited to, entities such as Google, Yahoo! and Bing, you will comply with the following: (i) you must not give the impression that you are, or represent, Best Buy, through use of phrases such as 'Official Site'; (ii) you must not bid on select trademarks and brand names designated by Best Buy, including but not limited to: "Best Buy", "BestBuy.com" and "BestBuy.ca"; (iii) you must not outbid Best Buy for top placement on

select trademarks and trade names designated by Best Buy, including but not limited to: "Geek Squad"; (iv) you must not target the brand names of any entities that are direct competitors of Best Buy, or otherwise engage in marketing practices that are illegal or violate the rights of any third party; and (v) you must ensure that all copy used for search and keyword purposes is appropriate and 100% accurate and does not contain any claims that could be construed to be false or misleading. In addition you agree to add "BestBuy.com", "BestBuy.ca", "Best Buy", "bb.com", "bby.com", "bby.ca", "best" and "buy", "geeksquad.com", "geeksquad.ca", "gs.com", "Support.GeekSquad.com", "Geek Squad", "Geek" and "Squad", as negative matches in your search campaigns and to avoid phrase matching. You agree that, following notice from Best Buy or the Program Manager, you will promptly remove any search listing containing copy and/or creative components that Best Buy or the Program Manager, in its sole discretion, deems inappropriate for any reason.

j. You agree that your Properties, and any other properties operated by you or related to your Properties, will not, and will not permit users to, post on such properties any information relating to a Best Buy Property that may be used by others to take advantage of errors or anomalies discovered on a Best Buy Property (e.g., pricing errors, shopping cart errors, discount calculations, workarounds to the requirements of any Best Buy offer, deals, coupons or promotion) to the disadvantage of Best Buy. In the event any such information is posted to your Properties or related properties, you agree to remove it (or if necessary, cause a third party to remove it) promptly upon becoming aware of such information and take steps to discourage your users from posting such information. In addition, you agree that you have an affirmative duty, as a Publisher, to inform the Program Manager promptly upon discovering any errors or anomalies on a Best Buy Property. Failure to abide by these terms may lead to a loss of unpaid commissions from Best Buy to you, or termination, as provided in this Agreement. Further, failure to honour the start and/or end date/time for posting promotional and pricing material as described in this Agreement will be considered a failure subject to loss of commission payments or termination as set forth in this Agreement.

## **11. Termination**

- a. You may terminate this Agreement at any time, with or without cause, by following the termination procedure provided through the Dashboard.
- b. Best Buy may direct the Program Manager to terminate this Agreement immediately at any time for your breach of this Agreement or the Publisher Agreement with the Program

Manager. Best Buy may terminate this Agreement without cause for any reason upon 7 days' notice. Termination will be effective on the earlier of the date that notice of termination is provided to you through the Dashboard or otherwise, or your access to the Dashboard is revoked.

c. Upon termination, for purposes of reconciling commission payments owed to you against Deductions and other amounts owed by you to Best Buy, if applicable, Best Buy may withhold commission payments during the Reconciliation Period. We will pay to you any final commission payments following the close of the Reconciliation Period.

## **12. Modification**

We may modify any of the terms and conditions contained in this Agreement in our sole discretion upon prior notice by posting revised terms and conditions on the Dashboard or otherwise providing you with a copy of the revised terms and conditions. Modifications may include, but are not limited to, changes in the scope of available commissions and Program rules. If the new terms and conditions are unacceptable to you, your only recourse is to terminate this Agreement and your participation in the Program. In order to continue to participate in the Program, you must indicate (by clicking or by such other method as we may request) acceptance of such revised terms and conditions, and such revised terms and conditions shall apply to your continued participation in the Program.

## **13. Relationship of Parties**

You and Best Buy are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any representations regarding the association of the Program Manager or Best Buy with you. If you are an employee of Best Buy you acknowledge and agree that your status and activities as a participant in the Program under this Agreement are independent of your employment relationship and time spent as a participant in the Program will not be considered work performed as an employee of Best Buy.

## **14. Disclaimers**

NEITHER BEST BUY NOR ITS SUPPLIERS OR AFFILIATES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO

THE PROGRAM OR TO ANY BEST BUY PRODUCTS OR SERVICES SOLD BY A BEST BUY PROPERTY THROUGH THE PROGRAM (INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE), ALL OF WHICH ARE EXPRESSLY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. IN ADDITION, NEITHER BEST BUY NOR ITS SUPPLIERS OR AFFILIATES MAKE ANY REPRESENTATION THAT THE OPERATION OF THE BEST BUY PROPERTIES WILL BE UNINTERRUPTED OR ERROR FREE, AND NEITHER BEST BUY NOR ITS SUPPLIERS OR AFFILIATES WILL BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.

## **15. Representations and Warranties**

You represent, warrant and covenant to us that: (i) you have the right and authority to enter into this Agreement and perform your obligations under the Agreement; (ii) you are the sole and exclusive owner of the Publisher trademarks and have the right and power to grant to us the license to use your trademarks in the manner provided for in this Agreement; (iii) if you are an individual, you are an adult of at least the age of majority in the province or territory in which you reside; (iv) you are not a Related Party; (iv) if you are an employee or immediate family member of an employee of a party described in Section 1 b. above that is NOT a Related Party, you have complied with any applicable rules or policies of such party concerning participation in the Program; and (v) you and your Properties do and will comply with all applicable laws, ordinances, rules, regulations, policies, practices and guidelines, whether federal, provincial or local, including without limitation all applicable privacy and anti-spam laws and regulations.

## **16. Confidentiality**

You agree that all customer and business information related to the Program belongs to us. You agree to protect as secret all Information, not to disclose Information to any third parties, and not to use Information for any purpose other than the purposes of this Agreement. You agree to protect Information using methods at least as protective as those you use to protect your own information of a confidential nature, but in no event, using less than a standard of reasonable care.

You will not publish or otherwise disclose or permit to be published or disclosed on your Properties or any affiliated properties by users of your Properties or such other properties

our (i) weekly insert pricing or promotional offers prior to the time such prices or offers become effective on the applicable Best Buy Property or (ii) holiday or special insert pricing or promotional offers, including, without limitation, the insert and promotions for (a) the day after U.S. Thanksgiving until 6:00 a.m. Eastern Standard Time on such day, or (b) the day after Christmas until 6:00 a.m. Eastern Standard Time on such day.

### **17. Limitation of Liability**

NEITHER BEST BUY NOR ITS AFFILIATES WILL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF REVENUE, PROFITS, OR DATA, ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROGRAM, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND YOU WAIVE ALL RIGHTS TO ANY CLAIMS FOR ANY SUCH DAMAGES. FURTHER, THE AGGREGATE LIABILITY OF BEST BUY AND ITS SUPPLIERS WITH RESPECT TO THIS AGREEMENT AND THE PROGRAM WILL NOT EXCEED THE TOTAL COMMISSIONS PAID OR PAYABLE TO YOU UNDER THIS AGREEMENT.

### **18. Indemnification**

You will indemnify, defend and hold harmless Best Buy and its parents, subsidiaries and affiliates, and suppliers, and their directors, officers, employees, and shareholders, against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses, including reasonable attorneys' fees, ("Losses") insofar as such Losses, or actions in respect of Losses, arise out of or are based on (i) any claim that our use of Publisher trademarks infringes on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of any third party; (ii) any misrepresentation or breach of a representation, warranty, covenant or agreement made by you; (iii) any claim related to your Properties, including, without limitation, claims regarding content on your Properties; or (iv) any breach of any applicable law by you.

### **19. Uncontrollable Circumstances**

Best Buy's performance under this Agreement will be excused to the extent that its performance is hindered, delayed or made commercially impractical by causes beyond its reasonable control.

## **20. Independent Investigation**

You acknowledge that you have read this Agreement and agree to all its terms and conditions. You understand that we may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement (subject to the restrictions contained in this Agreement specific to those referrals contemplated herein) or operate ecommerce properties that are similar to or compete with your ecommerce properties. You have independently evaluated the desirability of participating in the Program and are not relying on any representation, warranty, or statement other than as set forth in this Agreement.

## **21. Governing Law, Jurisdiction and Venue; General Provisions**

This Agreement will be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein, without reference to rules governing choice of law. Any action you bring relating to this Agreement must be brought in the courts located in Vancouver, British Columbia, and you irrevocably consent to the jurisdiction of such courts. You may not assign this Agreement or any of your rights under this Agreement, including your right to receive commissions. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such a provision or any other provision of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable for any reason, then the provision will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect.

## **22. Canada's Anti-Spam Law**

You will not send commercial electronic messages ("CEMs"), as such term is defined under Canada's Anti-Spam Legislation (Statutes of Canada 2010, c23) and its association regulations (collectively, "CASL") on behalf of Best Buy unless the form and content of such CEMs has been pre-approved in writing by Best Buy.

To the extent you send CEMs on behalf of Best Buy or you cause or permit the sending of CEMs on behalf of Best Buy for the same purpose, you represent, warrant and covenant to Best Buy that you fully comply, and will cause your permitted contractors or agents to fully comply, with all applicable consent, notice, unsubscribe and other requirements under CASL and applicable federal and provincial privacy legislation including, without limitation:



- (i) the requirements relating to express consent, implied consent, exceptions to the consent requirement, and/or exemptions from CASL, as applicable;
- (ii) the form, content and unsubscribe requirements under CASL for each commercial electronic message;
- (iii) without limiting the foregoing the requirements under CASL that apply when obtaining consent and sending electronic messages on behalf of third parties;
- (iv) the requirements to give effect to the unsubscribe mechanism within the time period required by CASL;
- (v) in circumstances where you are sending (or causing or permitting to be sent) a CEM in reliance upon an express consent obtained by a third party (where you were not specifically named in such consent), the additional notice, unsubscribe and other requirements applicable to you under CASL in these circumstances;
- (vi) ensuring that email or other electronic addresses are not harvested through automated means;
- (vii) ensuring that transmission data in a CEM is not altered so that the message is delivered to a destination other than or in addition to that specified by the sender; and
- (viii) ensuring that the sender information, subject matter information or locator of a CEM, or content within a CEM, sent (or caused or permitted to be sent by) you is not false or misleading in any respect.

You represent, warrant and covenant that you have, and shall ensure that your permitted contractors and agents have, established and will continue to maintain policies, protocols and procedures to ensure you comply with all applicable requirements under CASL. You shall provide copies of such policies, protocols and procedures to Best Buy upon request. You shall maintain appropriate records to demonstrate compliance with CASL, including without limitation evidence of consent and records of unsubscribe requests and actions and you shall provide Best Buy with immediate access to such records to confirm your compliance.

You shall comply with all written instruction and protocol provided by Best Buy to you from time to time in connection with the sending of CEMs or any other matter related to CASL. Without limiting the foregoing, in the event Best Buy provides notice to you of any non-compliance by you of your

obligations under CASL, you agree to promptly take such steps as necessary to remedy such non-compliance.

In addition to the indemnification obligations herein, you shall indemnify and hold Best Buy, and its directors officers and employees harmless from all complaints, claims, actions, investigations, penalties, enquiries, losses, costs and expenses, including without limitation third party claims, reasonable lawyers' fees, consultants' fees and court costs arising from, or in any way attributable to, a breach by you of the foregoing representations, warranties, covenants or obligations.

The parties have expressly requested and required that this Agreement and all other related documents be drawn up in the English language. Les parties conviennent et exigent expressement que ce Contrat et tous les documents qui s'y rapportent soient rediges en anglais.

Last Revision Date: February 2, 2022