

## CO-OP ADVERTISING AGREEMENT

Before participating in this program, YOU must read and sign where indicated this Co-Op Advertising Agreement (the AGREEMENT). This AGREEMENT is an agreement between YOU (“You” or “Advertiser”) and eBay Inc. (EBAY) for participation in the Co-Op Advertising program. If YOU disagree with any part, you will not be allowed to participate in the Co-Op Advertising program. If you accept the terms and conditions of this AGREEMENT, you have certain rights and obligations as follow:

### RECITALS

**WHEREAS**, eBay owns the marks EBAY, the eBay Trading Assistants logo and the eBay Stores logo for person-to-person trading services and related promotional products and services, and certain content located on the eBay web site located at [www.ebay.com](http://www.ebay.com) (“eBay Site”).

**WHEREAS**, Advertiser is either 1) an existing eBay PowerSeller with an eBay Store or 2) an existing eBay PowerSeller and a Trading Assistant, and is in good standing at the time of execution of this Agreement and at the time the Advertisement runs.

**WHEREAS**, subject to the terms and conditions of this Agreement, eBay desires to license use of eBay’s Marks (defined below) in print advertisements to promote usage of the eBay Site and/or services.

**NOW THEREFORE**, in consideration of the foregoing promises and the mutual covenants and obligations contained herein, the parties agree as follows:

### DEFINITIONS.

**“Advertisements”** means print advertisements which incorporates either: 1) the eBay Stores logo, Advertiser’s eBay Stores URL, and appropriate legal disclaimer: “The goods and/or services described above are those of an eBay Stores seller, not eBay Inc. eBay and the eBay Stores logo are trademarks of eBay Inc.”; or 2) the eBay Trading Assistants logo and phone number and email address, and the appropriate legal disclaimer: “Trading Assistants are experienced eBay users available to help you sell your items on eBay. Trading Assistants operate their own independent businesses. They are not employees, consultants, or independent contractors of eBay Inc. They are not endorsed or approved by eBay”; or 3) a pre-approved, unaltered template provided by eBay, including Advertiser’s eBay Store URL (when using an eBay Store template).

**“eBay Marks”** means the (i) the eBay Stores logo, provided by eBay to Advertiser, (ii) the eBay Trading Assistants logo, provided by eBay to Advertiser, and (iii) any other branding elements provided by eBay to Advertiser.

### 1. GRANT AND SCOPE OF LICENSE.

**1.1 Grant of License.** Subject to the limitations set forth below, eBay grants to Advertiser, and Advertiser accepts a non-exclusive, non-transferable, limited license to use the eBay Marks solely in the United States and solely in Advertisements placed by Advertiser in accordance with this Agreement.

**1.2 Form of Use.** Advertiser shall use the eBay Marks and template(s) only in the form(s) supplied to Advertiser by eBay, or otherwise designated or approved in writing by eBay, and pursuant to the terms set forth in this Agreement.

**1.3 Ownership.** Except as otherwise provided in this Agreement, as between eBay and Advertiser: (i) eBay retains all rights, title and interest in and to all intellectual property rights embodied in or associated with the eBay Marks, eBay Site and any and all eBay services and any content created or derived therefrom, and (ii) Advertiser and Advertiser's suppliers retain all rights, title and interest in and to all intellectual property rights embodied in or associated with Advertiser's marks and materials, excluding any intellectual property rights owned by eBay. There are no implied licenses under this Agreement, and any rights not expressly granted to Advertiser hereunder are reserved by eBay or its suppliers. Advertiser shall not take any action inconsistent with eBay's ownership of the eBay Marks. Neither party shall exceed the scope of the licenses granted hereunder.

## **2. ADVERTISER'S RESPONSIBILITIES.**

**2.1 Authorized Media.** To qualify for reimbursement, Advertisements must be placed in the following authorized media:

**2.1.1 Newspapers and Magazines.** Newspapers and magazines which are net-paid, general circulation whose retail rates and current circulation are verifiable through independent audit. For all media, a published rate card including circulation (10,000 minimum) must be submitted with the advertisement as part of the reimbursement process.

**2.1.2 Catalogs, Newsletters and Other Printed Materials.** Catalogs, newspaper inserts or supplements, newsletters and direct mail pieces qualify when pre-approved by eBay and unduplicated circulation is a minimum of ten thousand (10,000).

**2.2. Excluded Media.** Online and electronic versions of advertising do not qualify for reimbursement under this Agreement.

### **2.3 Use of Logos.**

**2.3.1 Use of the eBay Stores Logo and Storefront URL.** All uses of the eBay Marks must be in compliance with this Agreement and must comply with eBay's then current guidelines, including but not limited to: (a) the eBay Stores logo must not be used in such a manner as to imply the endorsement, sponsorship or approval of Advertiser by eBay; (b) the eBay Stores logo and eBay Stores URL must be located in the bottom of the Advertisement in the appropriate size (as provided by eBay for the given sized ad) with the appropriate legal disclaimer; (c) every effort should be made to use the eBay Stores logo and eBay Stores URL in the exact size and manner in which it is supplied; any re-sizing of the eBay Stores logo must be done proportionally; no stretching of the logo is allowed; (d) color use of the eBay Stores logo must used exactly as provided; (e) the eBay Stores logo cannot be used without the appropriate <sup>TM</sup> designator; (f) the standard eBay logo (as opposed to the eBay Stores logo) cannot be used; (g) the eBay Stores logo cannot be placed on or directly next to any other object on the Advertisement; as part of this, a minimum of a 10% blank trapping must border the eBay Stores logo and storefront URL; (h) the eBay Stores logo and

eBay Stores URL cannot be larger than 1/4th of the overall Advertisement and cannot be smaller than 1/8th of the Advertisement; (i) both the eBay Stores logo and eBay Stores URL must be clearly legible. Any use not in compliance with the foregoing guidelines will be considered a breach of this Agreement and Advertiser's non-complying Advertisement will not qualify for reimbursement.

**2.3.2 Use of the eBay Trading Assistants Logo.** All uses of the eBay Marks must be in compliance with this Agreement and must comply with eBay's then current guidelines, including but not limited to: (a) the eBay Trading Assistants logo must not be used in such a manner as to imply the endorsement, sponsorship or approval of Advertiser by eBay; (b) the eBay Trading Assistants logo must be located in the bottom of the Advertisement; (c) every effort should be made to use the eBay Trading Assistants logo in the exact size and manner in which it is supplied; any re-sizing of the eBay Trading Assistants logo must be done proportionally; no stretching of the logo is allowed; (d) color use of the eBay Trading Assistants logo must be in accordance with the supplied PMS chart; (e) the eBay Trading Assistants logo cannot be used without the appropriate <sup>TM</sup> designator; (f) the standard eBay logo (as opposed to the eBay Trading Assistants logo) cannot be used; (g) the eBay Trading Assistants logo must be clearly legible.

## 2.4

**Quality Control.** All uses by Advertiser of the eBay Marks shall conform to eBay's trademark usage guidelines and standards set forth in this Agreement, including, but not limited to: (a) no Advertisement may be used on or in connection with any material that is pornographic, associated with the sale of cigarettes, firearms or alcohol, or is morally offensive or otherwise objectionable in light of eBay's reputation for providing a safe online environment for trading; (b) no Advertisement may be used on or in connection with any material that libels or defames eBay or any third party; (c) no Advertisement may be used on or in connection with any material that violates any state, federal or foreign law or regulation or any eBay policy; (d) no Advertisement will promote the sale of any item that infringes the intellectual property right of any third party or that is prohibited by any eBay policy; (e) Advertiser may not alter the eBay Marks or template(s) as provided to Advertiser in any manner, including proportions, colors, elements, type or in any other respect, or animate, morph or otherwise distort its perspective or dimensional appearance.

**2.5 Account in good standing.** In order for an Advertisement to qualify for reimbursement, Advertiser's eBay account must be in good standing at the time that Advertisement is published, as determined by eBay in its sole discretion. This includes, but is not limited to, Advertiser's compliance at all times with the terms of the User Agreement contained on the Site, and with all applicable laws, statutes, ordinances and regulations.

## 3. REIMBURSEMENT.

**3.1 PROCEDURES.** Advertiser must submit claims for reimbursement after the Advertisement runs, but in no event later than thirty (30) days after the end of the month in which the Advertisement ran. Advertiser must include in their request for reimbursement the following documentation: (i) an original tear sheet of the Advertisement as it appeared in the publication (the entire tear sheet, not just your Advertisement); (ii) copy of the invoice from the publisher and any subsequent volume discount documentation; (iii) copy of check; (iv) for Catalogs, Newsletters and

other qualifying printed materials, a published rate card including circulation (minimum 10,000) and proof of mailing; and (v) a completed reimbursement request form. All documentation must be submitted to: Co-op Advertising Program P.O. Box 3900, Dana Point, CA 92629. Payment shall be made to Advertiser via PayPal within forty five (45) days after receipt of all required documentation.

**3.2 REIMBURSEMENT RATES AND CAPS.** Advertiser will be reimbursed at the rates indicated at <http://pages.ebay.com/co-op>. Rates may be changed at any time during the term of this Agreement, at eBay's sole discretion. eBay reserves the right to refuse payment for any advertisements that do not comply with the terms and conditions of this Agreement. For purposes of determining maximum reimbursement amounts, Advertiser's designation as an eBay PowerSeller at the time of entering into this Agreement will govern. Advertiser must be an existing eBay PowerSeller in good standing at the time of Advertisement.

**3.3 AUDIT RIGHTS.** During the term of this Agreement and for two (2) years thereafter, Advertiser shall maintain proper records and books of account relating to the reimbursement amounts owed by eBay. No more frequently than once every six (6) months, eBay's designated auditing professional may inspect such records to verify Advertiser's reimbursement requests to eBay. Any such inspection will be conducted in a manner that does not interfere with Advertiser's regular business activities. Advertiser shall immediately reimburse any over payments made by eBay to Advertiser disclosed by the audit plus applicable interest. Such inspection shall be at eBay's expense; however, if the audit reveals overdue payments in excess of ten percent (10%) of the payments owed to date, Advertiser shall immediately pay the cost of such audit, plus any unpaid amounts due to eBay.

**4. INDEMNIFICATION.** eBay shall indemnify, defend and hold Advertiser harmless from and against any and all losses, claims, damages, costs, expense or liability (including but not limited to attorneys' fees) ("Claims") which Advertiser may incur as a result of a third party action arising out of, or in connection with, any claim that the eBay Marks used in the Advertisement infringe any copyright, trademark right or other intellectual property right of a third party, except where an eBay Mark has been modified without authorization. Advertiser shall indemnify, defend and hold eBay harmless from and against any and all Claims which eBay may incur as a result of a third party action arising out of or in connection with the Advertisements. The foregoing obligation is conditioned on the indemnified party: (i) giving the indemnifying party notice of the relevant claim, (ii) cooperating with the indemnifying party, at the indemnifying party's expense, in the defense of such claim, and (iii) giving the indemnifying party the right to control the investigation, defense and settlement of any such claim, except that the indemnifying party will not enter into any settlement that affects the indemnified party's rights or interest without the indemnified party's prior written approval. The indemnified party will have the right to participate in the defense at its expense.

**5. CONFUSINGLY SIMILAR AND/OR COMBINATION MARKS.** Advertiser agrees not to adopt or use any other trademark, word, symbol, letter, design or mark (i) in combination with the eBay Marks in a manner that would create a combination mark or (ii) that is confusingly similar to the eBay Marks; provided, however, that Advertiser may use the eBay Marks with other marks or names if such other marks or names are sufficiently separated from the eBay Marks and sufficiently distinctive to avoid the consumer impression that such other marks or their owners are associated with eBay.

## **6. OWNERSHIP OF MARKS; DISCLAIMER; LIMITATION OF LIABILITY.**

**6.1 Ownership of eBay Mark.** Advertiser acknowledges that it has no interest in the eBay Marks other than the license granted under this Agreement and that eBay is the sole and exclusive owner of all right, title and interest in the eBay Marks. Advertiser agrees that activities by Advertiser under the eBay Marks shall be deemed made by eBay for the purposes of trademark registration and that Advertiser's use of the eBay Marks shall inure solely to the benefit of eBay and shall not create any right, title or interest for Advertiser in the eBay Marks other than the license granted under this Agreement.

**6.2 No Contest.** Advertiser agrees that Advertiser shall not contest, oppose or challenge eBay's ownership of the eBay Marks. Advertiser agrees that it shall do nothing to impair eBay's ownership or rights in the eBay Marks. In particular, Advertiser shall not register or attempt to register the eBay Marks or any variation thereof in any jurisdiction and shall not oppose eBay's registration of the eBay Marks, alone or with other words or designs, in any jurisdiction. If Advertiser uses, registers or applies to register a mark that violates its obligations under this section, Advertiser agrees, at eBay's request, to abandon the use of such mark and any application or registration for such mark.

**6.3 Assistance.** Advertiser shall assist eBay in complying with any formalities to protect the eBay Marks including execution of any documents reasonably requested by eBay.

**6.4 Disclaimer of Warranty.** eBay licenses the eBay Marks on an "AS IS" basis. eBay makes no warranties of any kind respecting the eBay Marks, including the validity of eBay's rights in the eBay Marks in any country or jurisdiction and all representations and warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement of the eBay Marks are hereby disclaimed.

**6.5 Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Each party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein.

**6.6 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT WILL EBAY BE LIABLE TO ADVERTISER IN AN AMOUNT GREATER THAN AMOUNTS PAID UNDER THIS AGREEMENT.

## **7. TERM AND TERMINATION.**

**7.1 Term of Use.** This Agreement shall begin on July 1, 2003 and shall continue through June 30, 2004 ("Initial Term"), unless earlier terminated as provided under this Agreement. At the end of the Initial Term, this Agreement will automatically renew for additional one (1) year terms, unless notice of non-renewal is given at least fifteen (15) days prior to the expiration of the

term. eBay may terminate this Agreement at any time with fifteen (15) days written notice to Advertiser.

**7.2 Termination for Breach.** In the event Advertiser breaches any of its material obligations under this Agreement, eBay may terminate this Agreement and the licenses granted hereunder by giving notice in writing to Advertiser of the default. In the event Advertiser does not correct or eliminate the default within five (5) days from the date of receipt of such notice, this Agreement, including the license to use the eBay Marks, shall terminate at the end of such five (5) day period.

**7.3 Consequences of Termination.** In the event of any termination or expiration of this Agreement, Advertiser agrees to discontinue immediately all use of the eBay Marks. In the event of such termination or expiration, Advertiser shall promptly destroy or return to eBay, at Advertiser's expense, all advertising, promotional materials and other materials that bear the eBay Marks.

## **8. MISCELLANEOUS.**

**8.1 Updates.** eBay may update the eBay Marks in its sole discretion.

**8.2 Governing Law.** This Agreement shall be governed by and construed in accordance with federal laws as they apply to trademark matters and in accordance with the laws of the State of California as applied to contracts entered into and to be performed entirely within the State of California.

**8.3 Notices.** Any notice given to eBay under this Agreement shall be in writing and shall be delivered to 2145 Hamilton Avenue, San Jose, CA 95125, "Attention Legal Department", unless eBay changes its address by written notice to the Advertiser. Notices shall be deemed effectively given upon five (5) days following being mailed by certified or registered mail, return receipt requested, upon the next business day following being sent by U.S. Express Mail or by a major U.S. express document courier, or upon receipt of confirmation following transmission by facsimile machine or email.

**8.4 Entire Agreement.** This Agreement constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior oral or written representations, conditions, warranties, understandings, proposals or agreements between the parties regarding the subject matter hereof.

**8.5 Amendment.** eBay may amend this Agreement at any time by posting the amended terms on the eBay Site. All amended terms shall automatically be effective seven (7) days after they are initially posted on the Site. Additionally, we will notify you via email of the amended terms. This Agreement may not be otherwise amended except in a writing signed by both parties.

**8.6 Severability.** Any invalidity, in whole or in part, of one provision of this Agreement shall not affect the validity of any other provision of this Agreement.

**8.7 Survival.** In the event of termination of this Agreement, Advertiser's obligations set forth in Sections 6 ("Confusingly Similar and/or Combination Marks"), 7 ("Ownership; Disclaimer;

Limitation of Liability”), 8.3 (“Consequences of Termination”) and 9 (“Miscellaneous”) shall remain in full force and effect.

**8.8 Successors.** Subject to the prohibitions against assignment contained herein, this Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and permitted assigns.

**8.9 Equitable Relief.** Advertiser acknowledges and agrees that any breach of its obligations under this Agreement with respect to limitations upon its use of the eBay Marks shall result in irreparable harm to eBay which cannot be reasonably or adequately compensated in damages, and, therefore, eBay shall be entitled to injunctive and/or equitable relief to prevent a breach and to secure enforcement thereof, in addition to any other relief or award to which eBay may be entitled.

**8.10 Non-Assignability; Non-Transferability.** This Agreement may not be assigned or transferred in any manner by Advertiser without the prior written consent of eBay. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Advertiser’s assets or business shall have the right to continue this Agreement or to exploit or in any way use the eBay Marks if this Agreement terminates pursuant to Section 7.3 (“Consequences of Termination”) above.

Advertiser:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

eBay User ID: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Please fax the executed and completed signature page of this Co-Op Advertising Agreement to (949) 253-5808. If you do not have access to a fax machine, you may also mail a hard copy of the executed and completed signature page to:

**eBay Co-Op Advertising Program**

**P.O. Box 3900**

**Dana Point, CA 92629**