



MERCHANT AGREEMENT
Version 1.1, effective April 25, 2006

THIS AGREEMENT is between prybuy.com, LLC, a Wisconsin limited liability company ("prybuy.com"), and the person or entity who accepts this Agreement as a Merchant. In this Agreement, the terms "Merchant," "you" and "your" mean and refer to the Merchant.

BACKGROUND

prybuy.com intends to operate an on-line marketplace for merchant coupons and other discount offerings (collectively, "Coupons") through a commercial web site located at www.prybuy.com (the "Site"). The Site is to feature Coupons and general business information about participating Merchants. Merchant desires to participate in this on-line marketplace by furnishing its Coupons and business information for posting on the Site in accordance with the terms and conditions of this Agreement.

AGREEMENT

1. Definitions.

- 1.1 "First Year Subscription" is the initial one-year prybuy.com subscription.
- 1.2 "Payment Account" is the Merchant's account from which subscription payments will be deducted.
- 1.3 "Quarterly Subscription" is a three-month prybuy.com subscription, a series of which will follow the First Year Subscription.
- 1.4 "System" is the entire plan and method to offer Merchant Coupons to customers through the Site.

2. Pricing, Billing and Payment.

- 2.1 Pricing. The price of the First Year Subscription is \$297.00 until 5/15/06.

The price of the First Year Subscription is \$396.00 after 5/15/06

Quarterly Subscriptions are \$99.00 per quarter.

The Quarterly Subscription rate for the second and all additional locations or additional coupons of the same merchant will be \$99.00 per year*. * Any additional coupons/locations purchased will expire upon the expiration of the main subscription.

- 2.2 Price changes. prybuy.com reserves the right to adjust the rates of Quarterly Subscriptions upon with sixty (60) days notice.
- 2.3 Billing and payment. The First Year Subscription will be paid in advance. Thereafter, your Payment Account will be charged \$99.00 per three-month period commencing on the one-year anniversary of the beginning of your First Year Subscription, and continuing every three months thereafter until you cancel your subscription. Each Quarterly Subscription will be paid in advance.
- 2.4 Payment Terms. Any payment which not received when due shall bear interest at a rate of one and one-half percent (1½ %) per month, or the maximum amount of interest allowable under law, whichever is less, from the date due.

3. Merchant's Obligations.

- 3.1 Application Information. Merchant shall provide complete and accurate information upon applying for a prybuy.com subscription, and shall inform prybuy.com of any material change in its application information.

- 3.2 Email Address. Merchant shall at all times during the term of this Agreement maintain and actively monitor an email account for the purpose of receiving notices and other communications from prybuy.com. Merchant shall immediately inform prybuy.com of any change in the Merchant's email address of record.
 - 3.3 Coupons. Merchant shall create its own Coupons on the Site at such intervals and in such format, size and design as may be specified by prybuy.com from time to time. Merchant shall be solely responsible for ensuring that all Coupons created have been formatted to include the expiration dates if desired and all such other conditions for redemption as Merchant desires to impose upon presentment by future customers. prybuy.com reserves the right to require compliance with such other administrative and technical specifications for Merchant's creation of Coupons as prybuy.com may determine are necessary for the efficient and effective operation of the Site, and prybuy.com reserves the right to reject coupons that do not comply with these specifications. Subject to reasonable space limitations that may be imposed by prybuy.com pursuant to section 4 below, Merchant may offer as many Coupons during the term of this Agreement as Merchant deems appropriate.
 - 3.4 License to Display Merchant Material. During the term of this Agreement, Merchant hereby grants prybuy.com a license to post Merchant's Coupons and to display Merchant's general business information on the Site for the purposes contemplated in this Agreement. This license shall be exclusive with respect to Merchant's Coupons in electronic media, in that Merchant shall not distribute or permit the distribution of any coupons or discount offers in any other electronic medium during the term of this Agreement.
 - 3.5 Redemption of Coupons. Merchant shall honor and redeem all Coupons that are obtained from the Site and presented by customers at Merchant's places of business, provided the customer has complied with all requirements for redemption that have been expressly identified on the Coupons.
4. prybuy.com's Obligations.
 - 4.1 Site Design. prybuy.com (or its designee) shall be responsible for initial design of the Site and any subsequent design modifications. Consistent with the terms of this Agreement, prybuy.com shall design the Site and locate Merchant's Coupons and Information on the Site in a manner it reasonably believes will promote the collective interests of all Merchants and customers participating in or visiting the Site.
 - 4.2 Site Maintenance. prybuy.com (or its designee) shall be responsible for hosting the Site and maintaining the functionality and operation of the Site. Consistent with the terms of this Agreement, prybuy.com shall host, maintain and operate the Site in a manner it reasonably believes will promote the collective interests of all merchants and customers participating in or visiting the Site.
 - 4.3 Use of Merchant Information. prybuy.com will not use or disclose information concerning the Merchant's Payment Account for any purpose other than securing payments from Merchant under this Agreement.
5. Term, Termination and Default.
 - 5.1 Termination by Merchant. You may terminate your subscription for any reason by submitting a Notice of Termination through the unsubscribe page of the Site, or by submitting written notice to prybuy.com. If the Notice of Termination is received at least thirty days before the expiration of the current subscription period, your termination will be effective at the end of the current subscription period. If the Notice of Termination is received less than thirty days before the expiration of the current subscription period, your termination will be effective at the end of the next subscription period, and you will be charged for the next Quarterly Subscription. You will not be entitled to any refund of unused subscription fees.
 - 5.2 Termination by prybuy.com. prybuy.com may terminate your subscription for any reason, effective immediately upon providing notice to you at the email address you provide in your subscription application, or such other email address as you may later provide to prybuy.com. If your subscription is terminated by prybuy.com because you have breached this Agreement, you will not be entitled to any refund of unused subscription fees. In the event of termination for any other reason, you will receive a pro-rated refund of unused subscription fees.

- 5.3 Remedies for Non-payment. prybuy.com shall be entitled to recover all expenses of enforcing the Merchant's obligation to pay amounts due under this Agreement, which shall include, without limitation, reasonable attorney fees.
- 5.4 Obligations after Termination. [fill in as necessary]. The following provisions shall survive termination of this Agreement: Section 7, Section 6.2.

6. Representations, Warranties and Acknowledgments.

- 6.1 Merchant's warranties. Merchant represents and warrants as follows:
- 6.1.1 Merchant has, prior to the execution of this Agreement, reviewed the Site and understands its operation;
- 6.1.2 All materials submitted to prybuy.com for display on the Site are either owned by the Merchant or used by the Merchant with the permission of the owner;
- 6.1.3 The display of the Merchants Coupons and information on the Site will not violate the copyright, trademark, patent, trade secret or other rights of any third party.
- 6.2 Indemnification. Merchant shall defend, indemnify and hold harmless prybuy.com (including its employees, officers, directors, agents and insurers) from and against all liability, loss, damage, cost and expense (including reasonable attorneys' fees and disbursements) associated, in whole or in part, directly or indirectly, with any allegation, claim, action, suit or threat thereof, arising out of Merchant's breach of any representation or warranty given in this Agreement or the failure to perform any obligation under this Agreement.
- 6.3 Multiple Vendors. Merchant acknowledges that the Site is intended to operate as a marketplace of discount offerings from multiple vendors, some of whom may compete with the Merchant. The ability of the Site to offer Coupons from multiple vendors is an important reason why customers would view the site. Accordingly, Merchant agrees that prybuy.com and its agents may solicit and secure Coupons from other merchants regardless of whether such merchants compete with Merchant. Furthermore, prybuy.com reserves the right to limit the space allocated on the Site for Merchant's Coupons so as to accommodate placement of other merchant Coupons as deemed appropriate or desirable by prybuy.com.
- 6.4 Corporate Formalities. prybuy.com and Merchant each warrant, represent and covenant as follows:
- 6.4.1 Each is a corporation or limited liability entity duly organized, validly existing and in good standing under the laws of the state of its incorporation;
- 6.4.2 The execution, delivery and performance of this Agreement has been authorized by all requisite corporate action; and
- 6.4.3 This Agreement has been validly and duly executed and delivered by it and this Agreement constitutes a binding obligation, enforceable against it in accordance with the terms of this Agreement, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally or equitable principles governing the availability of the remedy of specific performance.
- 6.5 Corporate Representative. The person entering this Agreement signing in a representative capacity warrants and represents that (s)he is duly authorized by such party to do so and all consents and approvals necessary to make this Agreement binding upon such party have been obtained.
- 6.6 Limited Warranty of Operation. prybuy.com represents and warrants that it will use commercially reasonable efforts to maintain and operate the Site in a manner consistent with the terms of this Agreement. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, prybuy.com MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM OR USAGE IN TRADE) REGARDING THE SITE OR THE SERVICES TO BE PROVIDED BY prybuy.com. IN CONNECTION WITH THE SITE prybuy.com MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING UPTIME OF THE SITE, AVAILABILITY OF THE SITE, SECURITY OF THE SITE OR CONTENT LOCATED ON THE SITE, VOLUME OF VISITOR TRAFFIC TO THE SITE OR THE FINANCIAL PROFITABILITY OF MERCHANT'S PARTICIPATION IN THE SITE.

- 6.7 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, prybuy.com SHALL NOT BE LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW OR EQUITY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO MERCHANT'S EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF MERCHANT'S PROPERTY, PLANT, EQUIPMENT OR SYSTEM, DOWNTIME COSTS OR CLAIMS OF MERCHANT'S CUSTOMERS. prybuy.com'S TOTAL AGGREGATE LIABILITY TO MERCHANT UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY MERCHANT TO prybuy.com DURING THE FIRST YEAR OF THIS AGREEMENT.
- 6.8 Basis of the Bargain. prybuy.com has set its fees and has entered into this Agreement in reliance upon the enforceability of the Limited Warranty of Operation, the Limitation of Liability, and the indemnification provided by the Merchant in this Agreement, and these form an essential basis of the bargain between the parties. The Limited Warranty of Operation, the Limitation of Liability, and the indemnification shall survive and apply even if this Agreement is found to have failed of its essential purpose.

7. Confidentiality.

- 7.1 Nondisclosure. Except as otherwise provided in this Agreement, neither party shall use or disclose to any third party any financial terms of this Agreement, and any technical and copyrighted information and/or trade secrets relating to the other party's business, business plan or marketing strategy (collectively, "Confidential Information"). Each party shall instruct its personnel to keep such information confidential by using the same care and discretion that it uses for its own Confidential Information. This confidentiality obligation shall survive termination of this Agreement. This provision, however, shall not apply to disclosures of information by prybuy.com as part of an assignment of prybuy.com's rights under this Agreement.
- 7.2 Exceptions. The obligations set forth in this Article shall not apply to any information which (i) is published or otherwise becomes available to the general public through no fault of the receiving party; (ii) has been furnished or made known by a third party without breach by that third party of any obligation to the disclosing party; (iii) was in the receiving party's possession without proprietary restrictions prior to the date of disclosure; or (iv) the receiving party establishes that the information was developed independent of the Confidential Information.

8. Intellectual Property.

- 8.1 Property of prybuy.com. Merchant concedes and recognizes that prybuy.com is the owner of the Site and the System of which the Site is a part, and of any patent, trademark, trade name, copyright, domain name and any other intellectual property embodied in the Site and the System (collectively, "prybuy.com Intellectual Property"). Merchant has no right or interest in to the prybuy.com Intellectual Property, and shall acquire no such right or interest under this Agreement or through the use of the Site or the System.
- 8.2 Property of Merchant. prybuy.com concedes and recognizes Merchant's ownership of the materials submitted by the Merchant to prybuy.com, and of any patent, trademark, trade name, copyright, domain name and any other intellectual property embodied in those materials (collectively, "Merchant Intellectual Property"). prybuy.com has no right or interest in to the Merchant Intellectual Property, and shall acquire no such right or interest under this Agreement or through the Merchant's use of the Site or the System.

9. General Provisions.

- 9.1 Force Majeure. prybuy.com shall not be liable for loss, damage or delay due to causes beyond prybuy.com's reasonable control. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary under the circumstances.
- 9.2 Notices. All notices to either party may shall be sent to the email address of record provided by the party or to the party's physical address of record. Notice to a physical address of record shall be personally delivered or sent to by United States mail, postage prepaid. Notice shall be deemed sent on the day of emailing, personal delivery, or deposit in the United States mail. prybuy.com's physical address is:
- prybuy.com
320 West Grand Avenue, Suite 303
Wisconsin Rapids, WI 54495
- 9.3 Sale, Assignment or Other Transfer. This Agreement is entered into in reliance upon and in consideration of the character, qualifications and representations of Merchant. Neither this Agreement nor any of its rights or privileges, shall be assigned, transferred or divided in any manner by Merchant or its principals without the prior written approval of prybuy.com. prybuy.com may freely assign its rights under this Agreement without the consent of the Merchant.
- 9.4 Scope of Agreement. This Agreement supersedes and terminates any and all prior agreements or contracts concerning the subject matter hereof, whether oral or in writing, which have been entered into between prybuy.com and the Merchant prior to the date hereof. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof.
- 9.5 Amendment. This Agreement may be amended by prybuy.com upon sixty days written notice, and upon such notice, Merchant shall have thirty days to elect to terminate this Agreement as of the effective date of the amended Agreement. Such an election to terminate upon amendment of this Agreement shall be treated as a termination by prybuy.com other than for a breach, and you shall be entitled to a pro-rata refund of your unused subscription fees.
- 9.6 Severability & Headings. If any section, paragraph, sentence, clause or other provision of this Agreement is held by a court of competent jurisdiction to be illegal, null and void or unenforceable, such determination shall not affect the remainder of this Agreement, and such remainder shall remain in full force and effect. The headings and captions used in this Agreement are for convenience only and shall not be considered part of the subject matter hereunder or used to interpret or construe any provision hereof.
- 9.7 Waiver. Any waiver by prybuy.com of any right or remedy hereunder shall be effective only if it is in writing and signed by prybuy.com. No delay or omission by prybuy.com to exercise any right or remedy hereunder, whether on, before, or after the happening of any breach or default, will impair any such right or remedy or will operate as a waiver thereof or as a waiver of any such breach or default. No single or partial exercise by the prybuy.com of any right or remedy will preclude any other or further exercise thereof, or preclude any other right or remedy.
- 9.8 Applicable Law and Choice of Forum. This Agreement and the rights and obligations of the parties hereto shall be construed in accordance with the laws of the State of Wisconsin and the United States, and any proceedings to enforce this Agreement shall be brought in the state or federal courts in Dane County, Wisconsin.
- 9.9 Relationship of Parties. The parties are independent contractors and nothing in this Agreement creates or implies an agency relationship between the parties, nor shall the Agreement be deemed to constitute a joint venture or partnership between the parties. Except as provided in this Agreement, neither party has the authority to bind or otherwise obligate the other in any manner whatsoever.