

ONLINE ADVERTISING AGREEMENT

This Online Advertising Agreement (the "Agreement") is entered into as of _____, 20____ (the "Effective Date") by and between _____, (the "Advertiser"), and Heres My Gear (the "Publisher," and together with the Advertiser, the "Parties").

RECITALS

WHEREAS, the Advertiser is engaged in _____
[briefly describe Advertiser's business];

WHEREAS, the Publisher publishes advertisements for third-party websites on the Publisher's website ---www.HeresMyGear.com (the "Website");

WHEREAS, the Advertiser wishes to engage the Publisher for the purpose of publishing an advertisement on the Website on the Advertiser's behalf (the "Advertisement") on the terms and conditions set forth below;

WHEREAS, the Publisher wishes to publish the Advertisement on the Website and agrees to do so under the terms and conditions of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. PURPOSE.

The Advertiser hereby engages the Publisher, and the Publisher hereby accepts such engagement, to perform the services described in this Agreement and more particularly in Exhibit A attached hereto and made a part hereof, in connection with placing and publishing the Advertisement on the Website (the "Services").

2. COMPENSATION.

The total compensation for the Services shall be as set forth in Exhibit A hereto. Payments shall be made according to the payment schedule set forth in Exhibit A hereto.

3. TERM.

This Agreement is effective as of the Effective Date and shall continue in force, unless otherwise terminated in accordance with the provisions of Section 4 of this Agreement, for a period of _____ month[s] (the "Term"). [The Agreement will renew automatically for the same term listed above. unless either Party provides a (30) days' written notice of its intent not to renew.]

4. TERMINATION.

- (a) Types of Termination. This Agreement may be terminated:

- (i) By either Party on provision of _____ (____) days' written notice to the other Party.
 - (ii) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within _____ (____) days of receipt of written notice thereof.
 - (iii) By either Party at any time and without prior notice, if the other Party is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the other Party, or is guilty of serious misconduct in connection with its performance under this Agreement.
 - (iv) By either Party, in accordance with the provisions set forth in Section 10(d)(ii) below.
- (b) Responsibilities after Termination. Following the termination of this Agreement for any reason, the Advertiser shall promptly pay the Publisher according to the terms of Exhibit A for Services rendered before the effective date of the termination (the "Termination Date"). The Publisher acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement. The Publisher shall return to the Advertiser[, at no cost,] all materials and information the Advertiser has provided to the Publisher in connection with this Agreement, no later than _____ (____) days after the Termination Date.

5. RESPONSIBILITIES.

- (a) Of the Publisher. The Publisher agrees to do each of the following:
- (i) Place and publish the Advertisement on the Website as detailed in this Agreement and Exhibit A.
 - (ii) Perform the Services in a workmanlike manner and with professional diligence and skill, using fully-trained, skilled, competent, and experienced personnel.
 - (iii) Use best efforts to maintain the Website and to minimize any Website downtime or errors that affect or the constant display of the Advertisement during the Term.
 - (iv) Maintain a commercially reasonable method for collecting information and data relating to the use and performance of the Advertisement, and report such information to the Advertiser as detailed in Exhibit A.
- (b) Of the Advertiser. The Advertiser agrees to do each of the following:
- (i) Provide all assistance and cooperation to the Publisher in order to enable the Publisher to place and publish the Advertisement on the Website.
 - (ii) Provide initial information and deliver the Advertisement within (30) days of the Effective Date (the "Initial Advertisement").

- (iii) Submit to the Publisher a complete Advertisement of acceptable quality, content, and format, as further detailed in Section 9 below and in Exhibit B attached hereto and made a part hereof.
- (iv) Make a good faith effort to provide customers with the products and/or services advertised in the Advertisement.

6. CONFIDENTIAL INFORMATION.

Each Party agrees, during the Term and [for a period of 20 years] thereafter, to hold in strictest confidence and not to use, except for the benefit of the Parties or as required by law, or to disclose to any person, firm, or corporation without the prior written authorization of the other Party, any Confidential Information. “Confidential Information” means any of the Parties’ proprietary information, technical data, trade secrets, or know-how, including, but not limited to, reports, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information disclosed to one Party by the other Party, either directly or indirectly. Each Party may use the Confidential Information to the extent necessary for negotiations, discussions, and consultations with the other Party’s personnel or authorized representatives or for any other purpose each Party may hereafter authorize in writing. At the request of either Party, the other Party must promptly return all copies of Confidential Information received from such Party, and must promptly destroy all other Confidential Information prepared by it in connection with this Agreement, including, without limitation, any notes, reports, or other documents.

7. PARTIES’ REPRESENTATIONS AND WARRANTIES.

- (a) The Parties each represent and warrant as follows:
 - (i) Each Party has full power, authority, and right to perform its obligations under the Agreement.
 - (ii) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors’ rights generally and equitable remedies).
 - (iii) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.
- (b) The Publisher hereby represents and warrants as follows:
 - (i) The Services shall be performed in accordance with and shall not violate any applicable laws, rules, or regulations, and the Publisher shall obtain all permits or permissions required to comply with such laws, rules, or regulations.
 - (ii) The Publisher shall notify the Advertiser of any changes to the Website that would [materially] change its target audience or the size and/or

placement of the Advertisement at least 3 days prior to implementing such changes.

(iii) The Services required by this Agreement shall be performed by the Publisher or the Publisher's staff, and the Advertiser shall not be required to hire, supervise, or pay any assistants to help the Publisher perform such Services.

(iv) The Publisher is responsible for paying all ordinary and necessary expenses of its staff.

(c) The Advertiser hereby represents and warrants as follows:

(i) The Advertiser will make timely payments of amounts earned by the Publisher under this Agreement and as detailed in Exhibit A hereto.

(ii) The Advertiser shall notify the Publisher of any changes to its procedures affecting the Publisher's obligations under this Agreement at least 30 days prior to implementing such changes.

(iii) The Advertiser shall provide such other assistance to the Publisher as it deems reasonable and appropriate.

(iv) The content comprising each Advertisement and any website advertised by such Advertisement (each, an "Advertised Website") is not defamatory, discriminatory, violent, or obscene, does not constitute false advertising, solicit unlawful behavior, or violate any applicable laws, rules, or regulations.

(v) The Advertiser has the right to sell the products or services contained within the content of the Advertisement.

8. INTELLECTUAL PROPERTY.

(a) No Intellectual Property Infringement by Advertiser. The Advertiser represents to the Publisher and unconditionally guarantees that all text, graphics, photos, designs, trademarks, hyperlinks, or other content comprising any (i) Advertisement and (ii) Advertised Website are owned by the Advertiser, or that the Advertiser has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify, and defend the Publisher and its subcontractors from any liability (including attorneys' fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by the Advertiser. The Advertiser further represents to the Publisher that any domain names or URL listing for any Advertised Website does not infringe, dilute, or otherwise violate third-party rights or trademarks.

(b) No Intellectual Property Infringement by Publisher. The Publisher represents to the Advertiser and unconditionally guarantees that all text, graphics, photos, designs, trademarks, hyperlinks, or other content on the Website are owned by the Publisher, or that the Publisher has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify,

and defend the Advertiser and its subcontractors from any liability (including attorneys' fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by the Publisher. The Publisher further represents to the Advertiser that the Website's domain name or URL listing does not infringe, dilute, or otherwise violate third-party rights or trademarks.

- (c) Advertiser Property Rights. All text, graphics, photos, designs, trademarks, service marks, trade names, hyperlinks, or other content comprising any Advertisement provided, leased, or licensed to the Publisher with respect to the Publisher's performance of the Services are the sole property of the Advertiser, and the Publisher has no ownership or other intellectual property rights in or to such items. Without the prior written consent of the Advertiser, the Publisher will not use or mention the Advertiser's name, or publish or distribute any materials provided, leased, or licensed to the Publisher, for any purpose not specified in this Agreement.
- (d) Publisher Property Rights. All text, graphics, photos, designs, trademarks, hyperlinks, or other content on the Website are the property of the Publisher and the Advertiser has no ownership rights or other intellectual property rights in or to

9. **ADVERTISEMENT SUBMISSION.**

- (a) Delivery of Advertisement. The materials comprising the Initial Advertisement [and any Replacement Advertisement, as such term is defined in Section 9**Error! Reference source not found.** below,] must be delivered to the Publisher electronically via email to info@heresmygear.com [or, if the files are too large for electronic delivery, on a CD via US Mail].
- (b) Format of Advertisement. The Initial Advertisement [and any Replacement Advertisement, as such term is defined in Section 9**Error! Reference source not found.** below,] shall be in the form set forth in Exhibit B hereto.
- (c) Publishing of the Initial Advertisement. Except as provided in Section 10 below, the Publisher will publish the Initial Advertisement on the Website no later than 3 days after the Publisher's receipt thereof.

10. **REVIEW OF ADVERTISEMENT; REJECTION AND REMOVAL.**

- (a) Right to Review. The Publisher has the right, but not the duty, to review the Initial Advertisement [and any Replacement Advertisement] but does not accept responsibility or liability for any errors, inaccuracies, or inappropriate content in any Advertisement.
- (b) Right to Reject, Remove or Modify. The Publisher has the right, but not the duty, to reasonably reject or remove from the Website any Advertisement that it in good faith believes:
 - (i) is not submitted in accordance with Sections 9(a) and/or (b), or Exhibit B of this Agreement;

- (ii) is not functional on or compatible with the Website through no fault of the Publisher;
 - (iii) contains or links the Website to any pornographic, hate-related, violent, or other content that the Publisher reasonably deems objectionable;
 - (iv) violates any applicable laws, rules, and/or regulations [or any of the Publisher's policies]; and/or
 - (v) breaches the Advertiser's representations made under this Agreement.
- (c) Notice. The Publisher will notify the Advertiser in writing of any rejection or removal of any Advertisement made pursuant to Section 10(b) above and the reason therefore within days of [[immediately following][promptly after] such rejection or removal (the "Advertisement Rejection Notice"). Whenever possible, the Advertisement Rejection Notice shall also specify in sufficient detail any modification, including any additions, deletions, or other changes, the Publisher reasonably requests in order to enable the publishing of such Advertisement on the Website.
- (d) Resubmission; Alternate Submission.
- (i) Following receipt of an Advertisement Rejection Notice, the Advertiser may promptly either (i) modify the Advertisement and resubmit it to the Publisher or (ii) submit an alternate Advertisement for publication on the Website[; provided, however, that the resubmission of such Advertisement or submission of an alternate Advertisement will not be counted against the number of Replacement Advertisements permitted in Section **Error! Reference source not found.** of this Agreement].
 - (ii) If, within 3 days of such resubmission or alternate submission, the Parties are unable to agree in good faith on a modified or alternate Advertisement to publish on the Website, either Party may terminate the Agreement immediately by giving written notice to the other Party.

11. INDEMNIFICATION.

- (a) Of Advertiser by Publisher. The Publisher shall indemnify and hold harmless the Advertiser and its officers, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any gross negligence or willful misconduct of the Publisher arising from or connected with the Publisher's carrying out of its duties under this Agreement, or (ii) the Publisher's breach of any of its obligations, agreements, or duties under this Agreement.
- (b) Of Publisher by Advertiser. The Advertiser shall indemnify and hold harmless the Publisher from and against any and all Claims that it may suffer from or incur and that arise or result primarily from (i) its publication of the Advertisements on the Website pursuant to this Agreement or (ii) the Advertiser's

breach of any of its obligations, agreements, or duties under this Agreement; provided, however, none of the foregoing result from or arise out of the actions or inactions of the Publisher. (*Optional*) [The Advertiser shall maintain liability insurance sufficient to satisfy the foregoing obligations to the Publisher.]

12. NATURE OF RELATIONSHIP.

The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. Nothing in this Agreement shall create any obligation between either Party and a third party.

13. AMENDMENTS.

No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

14. ASSIGNMENT.

Neither Party may, without the prior written consent of the other Party, assign, subcontract, or delegate its obligations under this Agreement, except that the Publisher may transfer the right to receive any amounts that may be payable to it for its Services under this Agreement, which transfer will be effective only after receipt by the Advertiser of written notice of such assignment or transfer.

15. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

16. FORCE MAJEURE.

A Party shall be not be considered in breach of or in default under this Agreement on account of, and shall not be liable to the other Party for, any delay or failure to perform its obligations hereunder by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar event beyond that Party's reasonable control (each a "Force Majeure Event"); provided, however, if a Force Majeure Event occurs, the affected Party shall, as soon as practicable:

- (a) notify the other Party of the Force Majeure Event and its impact on performance under this Agreement; and
- (b) use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations hereunder.

17. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

18. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the Advertiser:

If to the Publisher:

info@heresmygear.com

19. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of Minnesota. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

20. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

21. SEVERABILITY.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

22. ENTIRE AGREEMENT.

This Agreement, together with all Exhibits hereto, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

23. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

ADVERTISER

[ADVERTISER NAME]

By: _____
Name:
Title:

PUBLISHER

[HERES MY GEAR]

By: _____
Name:
Title:

EXHIBIT A

DUTIES, SPECIFICATIONS, AND COMPENSATION [SAMPLE]

1. SERVICES.

In exchange for the Publishing Fee (as such term is defined in Section 2 below), the Publisher will provide the following services (collectively, the “Services”):

- (a) Advertisement Publishing.
 - (i) As set forth in the Agreement, publish the Initial Advertisement [and any Replacement Advertisement(s)] on the Website on the all website pages, displaying randomly as visitors click through the site and
 - (ii) Use best efforts to make the Advertisement available on the Website at all times, except during any limited downtime required for the routine maintenance of the Website.
 - (iii) Maintain a high-speed, reliable Internet connection capable of handling the Advertisement’s content and supporting concurrent users on the Website.
- (b) Tracking of Advertisement.
 - (i) Record the number of valid ad impressions for the Advertisement on a Monthly basis as follows: *[if impressions will be counted, describe in detail how and when valid impressions will be counted by the ad server (e.g., after the retrieval of underlying page content, an impression will be counted each time an ad counter receives and responds to an HTTP request for the advertisement from the user’s browser, or by a specific application, etc.)]*
 - (ii) Use commercially reasonable procedures to minimize the potential of caching on an ongoing basis.
- (c) Reports and Records.
 - (i) Provide reports and/or logs of the Impression Record Data upon request
 - (ii) Maintain accurate records in accordance with generally accepted methods of accounting, including but not limited to, for all information that comprises the Publishing Fee, as such term is defined in Section 2 below.
- (d) [OTHER AGREED-ON SPECIFICATIONS.]

2. COMPENSATION.

As compensation for the Services, the Advertiser agrees to pay the Publisher,

Bronze Ad: \$ _____

Silver Ad: \$ _____

Gold Ad: \$ _____

3. PAYMENT SCHEDULE.

The Publisher will invoice the Advertiser the Publishing Fee on a per ad basis, paid in full for the term agreed. Payment in full is required before ad is displayed on website.

[SIGNATURE PAGE FOLLOWS]

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Dated: _____

ADVERTISER

[ADVERTISER NAME]

By: _____

Name:

Title:

PUBLISHER

[PUBLISHER NAME]

By: _____

Name:

Title: