

Affiliate Advertising Agreement

The undersigned ("Affiliate"), by submitting the Affiliate Application and this Affiliate Advertising Agreement (collectively, the "Agreement") to Performics Inc., an Illinois corporation ("Performics"), acknowledges that it wishes to become an Affiliate, and in consideration of Performics' approving Affiliate's Application, agrees to be bound by the terms and conditions of this Agreement as well as any specific terms and conditions required by any Marketer (as defined below) to participate in such Marketer's affiliate program ("Marketer Specific Terms"). This Agreement as well as any Marketer Specific Terms, supersede and replace any and all prior agreements entered into by and between Performics and Affiliate. To the extent that any Marketer Specific Terms conflict with this Agreement, the Marketer Specific Terms shall control. Affiliate warrants that all information provided in the Affiliate Application is true and accurate. Affiliate understands that Performics has sole discretion over whether to accept or reject Affiliate's Application, and that this Agreement will not be binding unless Affiliate has been notified of such acceptance.

RECITALS:

A. Affiliate is the owner or authorized operator or representative of the Internet web site(s), email lists, other segments or spaces on such web site(s) and web-based services upon which Marketer's Offers (as defined below) may be displayed in connection with and pursuant to the terms of this Agreement (collectively, the "Distribution Media" and individually, a "Distribution Medium"). Affiliate may be referred to as Distribution Partner, Publisher or Web Publisher in other agreements entered into by Performics.

B. Performics operates a performance-based marketing network of online distribution channels owned and/or operated by various entities with whom Performics has contracted ("Affiliates") (which includes the Distribution Media, other web sites, email lists, desktop applications and wireless services) in order to arrange for the display of Offers (as defined below). Performics has also contracted with various entities (including, but not limited to advertisers, advertising agencies or others) ("Marketers") to place performance-based advertising offers ("Offers") in the form of banners, textual links, data feeds, transactional ads or other relevant media with respect to each Marketer's products and services ("Products"). Marketer may sometimes be referred to as Client or Advertiser in other agreements entered into by Performics.

C. This Agreement governs Affiliate's inclusion in the Network and the display of Marketer's Offer on the Distribution Media.

1. Term

Performics reserves the right to terminate this Agreement at any time upon notice to Affiliate via e-mail or via Performics' Web site. Performics may immediately terminate this Agreement without notice if Affiliate is in breach of any representation, warranty or covenant in this

Agreement or any other agreement to which Affiliate and Performics are a party. Affiliate may terminate this Agreement upon thirty (30) days written notice to Performics. The rights and obligations contained in Sections 3, 5, 6, 7, 8 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

2. Acceptance

(a) Affiliate at its discretion, and upon approval by Performics and each applicable Marketer, shall determine which Offers it will display through its Distribution Media. Any Offer displayed by Affiliate shall be displayed on the terms and conditions set forth in this Agreement and in accordance with all applicable Marketer Specific Terms. Affiliate shall not alter or modify the Offer as provided by Performics or Marketer. Affiliate agrees and acknowledges that Affiliate's contact information, including but not limited to Affiliate's Name and Email Address, will be made available to Marketers and potential Marketers via the ConnectCommerce(sm) interface. Affiliate further agrees and acknowledges that Marketer may, in its sole discretion, direct Affiliate to immediately cease the display of any Offer. Upon receiving such notice in writing (which may be via email), Affiliate shall immediately remove the Offer from its Distribution Media. In the event that any Marketer (or Performics on behalf of any Marketer) directs Affiliate to cease display of that Marketer's Offers, Affiliate may not subsequently display any of that Marketer's Offers directly through Performics or indirectly through another Performics Affiliate without express written approval from the Marketer and/or Performics.

3. Payment For Services

(a) Performics agrees to remit to Affiliate an Advertising Fee ("Advertising Fees") payable in the amounts and on the terms as set forth in this Agreement as well as in accordance with all applicable Marketer Specific Terms for all Offers placed with Affiliate which result in the sale of Products to Qualified Customers (as defined below) or other specified actions completed by Qualified Customers upon the Marketer's Web site. All payment obligations will be based upon tracking and reporting provided by Performics.

(b) As used in this Agreement and in any applicable Marketer Specific Terms: (i) "Net Monthly Sales" means the net dollar amount of Products sold to Qualified Customers during a calendar month. Net Monthly Sales are calculated exclusive of fraudulently placed orders, returned orders, transportation and packaging costs, insurance, duties, taxes and other governmental charges, and discounts or rebates actually granted by Marketer; (ii) "Qualified Customer" means any individual or entity that is tracked by Performics' proprietary technology, ConnectCommerce™, and who, within the period of time as set forth in ConnectCommerce™ and/or any applicable Marketer Specific Terms, clicks through to the Marketer's Site via hyperlinks contained within any Offer displayed in accordance with this Agreement and either (i) purchases Products from the Marketer Site or (ii) submits a completed registration form which contains information previously unknown to Marketer and which is approved by Marketer.

(c) In the event an individual or entity visited more than one Affiliate of Performics prior to purchasing Products from or undertaking some other specified action on a Marketer's Web site, the Affiliate operating the last Distribution Medium from which such individual or entity clicked through to the Marketer's Web site shall be the only party entitled to receive an Advertising Fee.

(d) Performics shall pay the Advertising Fees to Affiliate within thirty (30) days after the end of the month in which Performics has received payment from each applicable Marketer for such Advertising Fees. Performics shall not be obligated to make any payment of Advertising Fees to Affiliate until (1) it has received payment for such Advertising Fees from the Marketer and (2) the aggregate amount of Advertising Fees due to Affiliate from a specific Marketer equals or exceeds fifty dollars (\$50.00). Performics does not aggregate payments remitted to it from different Marketers for the benefit of Affiliate. Any earned but unpaid Advertising Fees shall carry over to the next regularly scheduled payment period.

(e) Performics will only remit payment to Affiliate if Affiliate has been accepted by Performics as an Affiliate and has provided Performics with a correct mailing address and a tax identification number (W-9 form).

(f) Regardless of the timing of any payment made by Performics to Affiliate hereunder, Performics shall be authorized to chargeback any Fee paid to Affiliate that specifically relates to (i) Products returned by Qualified Customers within ninety (90) days from the date of purchase; (ii) refunds or credits issued to Qualified Customers within ninety (90) days from the date of purchase; or (iii) overpayments to Affiliate, duplicate entries or other clear bona-fide errors. Performics shall deduct the amount of the chargeback from and offset such amounts against any monies owed by Performics to Affiliate. In the event that Performics has not fully recouped, via offset, any chargeback within sixty (60) days from the date of the chargeback, Affiliate shall issue payment to Performics for the outstanding amount of the chargeback.

(g) Amounts credited to Affiliate's account will not bear interest.

(h) Affiliate hereby authorizes Performics to electronically transfer (via an automated clearing house or other means) amounts owed to Affiliate to Affiliate's account at the financial institution set forth in the Affiliate Application ("Bank"). Affiliate authorizes Bank to accept and to credit any payments transferred by Performics to Affiliate's account. In the event that Performics erroneously deposits funds into Affiliate's account, Affiliate authorizes Performics to debit Affiliate's account in an amount not to exceed the amount of the erroneous credit. This authorization is to remain in full force and effect until Performics and Bank have received written notice from Affiliate of its termination. If Affiliate changes bank accounts, it agrees to immediately notify Performics of such change in order to allow Performics to update its records accordingly.

4. Responsibilities of Performics

Performics covenants and agrees to use its commercially reasonable best efforts: (a) to provide, monitor and maintain the necessary technology applications required to link Affiliate to each Marketer's Web sites ("Performics Technology") and track the relevant actions as set forth in the Marketer Specific Terms. Performics Technology shall include the use of tags in HTML/Java or other appropriate languages to enable Performics to serve or provide Offers to Affiliate; (b) to provide Affiliate with product descriptions, GIF or JPEG Images, other product attributes (including the SKU's), product availability, order status, and shipment confirmation (each in a mutually acceptable format) for each Marketer that agrees to provide Performics and Affiliate with such information; (c) to provide Affiliate with real-time access to records that will allow it to monitor the volume of Offers delivered by Affiliate and the revenue produced thereby (subject to billing corrections and adjustments) in accordance with Section 3. All such records, including data, statistical information or other traffic analysis, produced or provided by either party in connection with the performance of this Agreement shall be the sole property of Performics.

5. Responsibilities of Affiliate

(a) Affiliate agrees and warrants that it shall: (i) only place Offers on Affiliate's Distribution Medium and (including Web pages where any Offer appears) in accordance with the terms set forth in this Agreement and in accordance with all applicable Marketer Specific Terms; (ii) maintain its customer list in a manner that conforms with best practices of permission based solicitation and privacy policies; (iii) position the Offers on each Distribution Media (including any Web page where any Offer appears) in such a manner to assure that the Offers are fully and clearly visible; (iv) upon notification, update Offers in accordance with each Marketer's program specifications.

(b) Affiliate agrees and warrants that it shall not engage in any of the following prohibited activities: (i) violate any applicable law or regulation; (ii) promote or conduct any illegal or fraudulent activity through the Distribution Media or any site linked to the Distribution Media; (iii) send or cause to be sent unsolicited advertising e-mails; (iv) display obscene, offensive, violent or misleading content on the Distribution Media or any site linked to the Distribution Media; (v) provide or allow any incentive based promotion that provides compensation to Qualified Customers, unless specifically authorized by Marketer; (vi) engage in any pop-up or pop-under advertising provided, supported or involving any third party to generate impressions, clicks, or transactions; (vii) use any cookie, device, program, robot, iframes, hidden frames, popup windows or any other operation or process that interferes with Performics' ability to properly identify and track Qualified Customers; (viii) interfere with or seek to improperly influence the referral of an end user to a Marketer's Web site; (ix) automatically replace or alter any component of the Performics Technology that results in a reduction of compensation earned by Performics or another Affiliate; (x) use invisible methods to generate impressions, clicks, or transactions that are not initiated by the affirmative action of the end user; (xi) utilize the Performics Technology in any manner that alters, changes, substitutes or modifies the content of another Affiliate's Web site; (xii) use the Performics Technology with other software, whereby

the installation and de-installation is not obvious, easy or complete. Licensing and terms of all software downloads and applications of any type must be clearly presented to and accepted by the end user. Software that utilizes the Performics Technology must be clearly marked in such a manner that the end user can identify the Affiliate's software with an associated behavior that occurs on the end user's computer, and receive visible notification of such behavior. In addition to any other remedies that may be available, in the event that Affiliate engages in any such prohibited activities, Performics or Marketer may immediately terminate this Agreement or Affiliate's display of any particular Offer.

(c) Affiliate shall not reproduce, distribute, republish, sub-license or otherwise make the Offers available to any third party ("Third Party Distribution") for display on any web site not owned or exclusively operated by Affiliate other than as approved in writing by Performics or the applicable Marketer. An Affiliate seeking approval for such Third Party Distribution shall submit to Performics in writing (i) notice of its intent to broker/redistribute Marketer's Offers on third party sites, (ii) a list of all such third party sites (identified by complete URL) to which Affiliate intends to broker/redistribute the Offers, and (iii) any additional information reasonably requested by Performics regarding Affiliate's business practices, privacy policies, etc. If Affiliate is generally approved into a Marketer's program, Affiliate shall only engage in Third Party Distribution with web sites approved in writing by Performics. Any website upon which an Offer is displayed, including Offers displayed in connection with approved Third Party Distribution, shall be included within the definition of Distribution Media.

(d) Affiliate agrees never to alter any Performics tags so as to include any personally identifiable or sensitive information of any visitors in such tags.

(e) Affiliate further agrees and warrants that it will comply with all local, state and federal laws and regulations (including, but not limited to, the "CAN-SPAM" Act, effective January 1, 2004, as may be amended from time to time).

(f) Performics or Marketer shall notify Affiliate of any complaint received by Performics or any Marketer regarding the email practices of Affiliate or any alleged violation by Affiliate of the above warranties. Within forty-eight (48) hours of such notification, Affiliate shall respond to Performics and provide source information as to any questionable emails including, but not limited to, the time, date, IP address and content of the questionable emails. Additionally, as to each individual that agrees to be included in Affiliate's outbound email solicitations, Affiliate shall maintain the information establishing the time and date that each individual granted such permission. If Affiliate fails to provide source information satisfactory to Performics to demonstrate that Affiliate did not send SPAM email or otherwise breach the above warranties, then, in addition to any and all other remedies available pursuant to this Agreement and under existing law, Performics shall have the right to immediately suspend payment to and further performance of any services by Affiliate.

6. Indemnification; Limitation of Liability

(a) Affiliate agrees to indemnify, defend and hold harmless Performics and each applicable Marketer (and their respective officers, directors, employees, shareholders and agents) from and against any and all liability, claims, losses, damages, injuries or expenses (including reasonable attorneys' fees) directly or indirectly arising from or relating to (i) any breach of this Agreement or any applicable law or regulation by Affiliate, (ii) the actual or alleged violation by Affiliate of any person's or entity's intellectual property or privacy rights or (iii) the operation and content of the Distribution Media. Affiliate acknowledges that each Marketer who displays or allows to be displayed any Offer on Affiliate's Web site or through any of Affiliate's Distribution Medium is an intended third party beneficiary of these indemnities. Affiliate agrees that it will not assert a defense based upon lack of privity against any Marketer seeking to enforce these indemnities.

(b) Performics agrees to indemnify, defend and hold harmless Affiliate (and its respective officers, directors, employees, shareholders and agents) from and against any and all liability claims, losses, damages, injuries or expenses (including reasonable attorneys' fees) directly or indirectly arising from or relating to any breach of this Agreement or any applicable law or regulation by Performics.

(c) Neither Affiliate, Performics nor any Marketer shall be liable to one another for any special, consequential (even if a party has been informed of the possibility of such damages), incidental, punitive or indirect damages, losses, costs or expenses or any lost or imputed profits of any kind arising out of this Agreement or its termination, however caused, and whether based in contract, tort (including negligence), products liability or any other theory of liability regardless of whether such party has been advised of the possibility of such damages, losses, costs or expenses. Each party hereto waives any claims that these exclusions deprive such party of an adequate remedy. Except for liabilities resulting from Performics' willful misconduct or recklessness, the liability of Performics shall not exceed the total amount of the Advertising Fees actually paid by Performics to Affiliate under this Agreement and each applicable Marketer Specific Terms. Affiliate shall not be liable for any errors or omissions included in the Offers received from Performics. Performics shall not be liable to Affiliate or any other person or entity for (i) any information provided to any person or entity by any Marketer or any illegal, inappropriate act or act of misconduct on the part of any Marketer; (ii) system downtime of Performics or any Marketer; (iii) unauthorized access to, or alteration, theft or destruction of Affiliate's Distribution Media, data files or systems or programs through accident, fraudulent means or device; or (iv) any claim attributable to errors, omissions or other inaccuracies in the Offers.

7. Confidentiality

In connection with the business relationship contemplated by this Agreement, each party may receive or have access to commercially valuable technical and non-technical confidential or proprietary information of the other party, including information in whatever form, relating to

the business of such party that is not generally known or available to others, including source code and documentation for software, trade secrets, know how, customer lists, pricing strategies, marketing and business plans, information concerning a party's vendors, and such party's contemplated plans, strategies and prospects ("Confidential Information"). Each party acknowledges and agrees that any Confidential Information received or obtained from the other party will be the sole and exclusive property of the other party and may not be used, disseminated or disclosed except as may be necessary to perform the obligations required under this Agreement or as may be required by law. If disclosure is required by law, the party required to disclose Confidential Information shall reasonably cooperate with the other party (at the other party's request and expense) so that the other party may preserve the confidentiality of the Confidential Information to the extent reasonably possible. Notwithstanding the foregoing, Confidential Information shall not include, and neither party will be liable for disclosure of, any information received by the receiving party under this Agreement if the information: (a) is or becomes generally available to or known to the public through no wrongful act of the receiving party; (b) was previously known by the receiving party through no wrongful act of receiving party; (c) was independently developed by the receiving party without reference to the Confidential Information; or (d) was lawfully disclosed to the receiving party by a third party under no obligation of confidentiality to the other party.

8. Trademarks and Proprietary Rights

(a) Performics, on behalf of each applicable Marketer, grants Affiliate a limited, non-exclusive, non-transferable, revocable license to use, reproduce and display on the Distribution Media the Offers in accordance with the terms of this Agreement. Performics specifically does not grant Affiliate any right to use any Marketer's trade name without the express written consent of Performics. Performics grants Affiliate a limited, non-exclusive, non-transferable license for the term of this Agreement to use the Performics Technology solely in accordance with the terms of this Agreement. Affiliate grants Performics a limited, non-exclusive, non-transferable, revocable license to use, reproduce and distribute its company name and logo for use in Performics' promotional materials. Each license granted in this Section 8(a) is hereinafter referred to individually as "Licensed Property."

(b) Neither party shall use the other party's Licensed Property in a manner that disparages the other party or its products or services, blurs, dilutes or otherwise diminishes the other party's tradenames, trademarks, servicemarks or other intellectual property, or portrays the other party or its products or services in a false, competitively adverse or poor light. Each party shall comply with the other party's requests as to the use of the other party's Licensed Property and will avoid any action that diminishes the value of such marks. Without limiting the foregoing, Affiliate shall not, without written permission from Marketer, (i) use any of Marketer's brand names, keywords or derivations of either of the above for any purpose; or (ii) purchase any URL containing any of Marketer's brand names, keywords or derivations of either of the above.

(c) Subject to the limited licenses granted to Performics and Affiliate under Section 8(a), each party and each Marketer owns and shall retain all right, title and interest in its tradenames, logos, trademarks, service marks, trade dress, Internet domain names, copyrights, patents, trade secrets, know how and proprietary technology, including, without limitation, those trade names, logos, trademarks, service marks, trade dress, copyrights, patents, testimonials, endorsements, know how, trade secrets and proprietary technology currently used or which may be developed and/or used by it in the future ("Intellectual Property"). Except as provided in this Agreement, neither party may distribute, sell, reproduce, publish, display, perform, prepare derivative works or otherwise use any of the Intellectual Property of the other party without the express written consent of such party. All data that is collected by Performics while performing its obligations under this Agreement is the property of Performics. Performics currently uses and plans to continue to use data that it collects in an aggregate manner (i.e. that information which is gathered as a group of demographic data, and is not personally or company identifiable).

9. General Provisions

(a) Representations and Warranties. Each party represents and warrants to the other party that: (i) such party has all necessary right, power and authority to enter into this Agreement and to perform its obligations under this Agreement; and (ii) nothing contained in this Agreement or required by such party's performance hereunder will place such party in breach of any other contract or agreement to which it is bound or violate any applicable law, including obscenity, privacy and defamation laws and (iii) the performance of this Agreement shall not infringe or violate upon the Intellectual Property or privacy rights of any third party. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9(A), NEITHER Performics NOR AFFILIATE MAKE, AND EACH SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE DISTRIBUTION MEDIUM, PRODUCTS AND SERVICES CONTEMPLATED BY THIS AGREEMENT, AND NON-INFRINGEMENT.

(b) Privacy. Affiliate's use of the Services (including, without limitation, its utilization of the Distribution Media in connection therewith) (i) shall comply with all applicable laws, rules and regulations and (ii) shall not violate the terms or conditions of (x) any other agreement pursuant to which tags are delivered to the Distribution Media or (y) any Marketer Specific Terms. Each of the Distribution Media shall feature a privacy policy that covers Affiliate's use of the Services and complies with all applicable laws, rules and regulations.

(c) Jurisdiction and Governing Law. Affiliate consents to the exclusive personal jurisdiction of the state and federal courts located in Illinois and agrees that any claim against Performics shall be brought in the state or federal courts located in Cook County, Illinois. The rights and obligations of the parties under this Agreement shall be governed by and construed under the laws of the State of Illinois without reference to conflict of laws principles. Affiliate consents to the personal jurisdiction of the state and federal courts located in Cook County, Illinois, and agrees that any lawsuit between Affiliate and Performics shall be filed in this venue.

(d) Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, shortage of materials or supplies, or any other cause beyond the reasonable control of such party; provided, that the party whose performance is affected by any such event gives the other party written notice thereof within three (3) business days of such event or occurrence.

(e) Relationship. The relationship of Performics and Affiliate established by this Agreement is that of independent contractors, and neither party is an employee, agent, partner or joint venture of the other. The detailed operations of Performics under this Agreement are subject to the sole control and management of Performics. The parties acknowledge that, except as set forth in Section 5 hereto, this Agreement sets forth a non-exclusive relationship between the parties. The parties acknowledge that this Agreement sets forth a non-exclusive relationship between the parties. Affiliate acknowledges that each Marketer that displays or allows to be displayed any Offer on Affiliate's site or through any of Affiliate's Distribution Media is an intended third party beneficiary of this Agreement. Affiliate agrees that it will not assert a defense based upon lack of privity against any Marketer for claims arising in connection with this Agreement or in connection with Marketer's enforcement of the indemnity obligations set forth in Section 6(a) above.

(f) Notice. Any notice, communication or statement relating to this Agreement shall be in writing and deemed effective: (i) upon delivery when delivered in person; (ii) upon transmission when delivered by verified facsimile transmission; or (iii) when delivered by registered or certified mail, postage prepaid, return receipt requested or by nationally-recognized overnight courier service to the address of the respective parties as follows. To Performics at the address listed on its Web site; to Affiliate at the address set forth in the Affiliate Application; and to Marketer at its principal business address. Each party shall be responsible to ensure that their respective contact information provided in ConnectCommerce, including e-mail address and phone number, is updated, current and correct.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

(h) Amendments and Waivers. The failure of either party to insist upon or enforce strict performance by the other or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance, and the same shall be and remain in full force and effect. Performics reserves the right to modify this Agreement at any time. Any such modification shall be immediately effective upon the posting of the modified Agreement upon the Performics' Web Site, or the ConnectCommerce™ Web site, or any successor Web site.

Affiliates continued display of Offers pursuant to this Agreement after the posting of such modifications shall constitute acceptance and ratification of all such modifications.

(i) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and merges all prior discussions and writings between them with respect to the contents of this Agreement. If any provision (or part thereof) of this Agreement is determined by a court of competent jurisdiction as part of a final non-appealable ruling, government action or binding arbitration, to be invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms.

The individual clicking on this link and submitting this application certifies that she/he is authorized to act on behalf of Affiliate and that she/he, on behalf of Affiliate, has read and accepted the terms, conditions and disclosures associated with this Agreement.