

Target.com Marketer Specific Terms

Please read this document carefully.

These Marketer Specific Terms (the “Agreement”) contains terms and conditions that apply to your participation as an Affiliate in Target.com’s Affiliate Program through Performics Inc. (“the Program”), and the establishment of links from your Web site to our Web site at www.target.com. As used in this Agreement, “we” and “our” mean Target.com, a division of Target Corporation, and its parent and related entities (collectively, “Target”), and “you” and “your” mean the Affiliate applicant. By submitting your Affiliate Application and participating in the Program you are confirming that you have read this Agreement and you agree to be bound by these terms and conditions. This Agreement supplements the agreement you have previously executed with Performics Inc. To the extent that any of the terms or conditions set forth in this Agreement conflict with those set forth in your agreement with Performics, this Agreement shall control.

1. Enrollment in the Program. To begin the enrollment process, you must submit a complete Affiliate Application via our site through the Performics Inc. performance-based marketing network of online distribution channels (the “Performics Network”). We will evaluate your application and will notify you of your acceptance or rejection for participation in the Program. We may reject your application if we determine (in our sole discretion) that your site is unsuitable for the Program for any reason. Unsuitable sites include, but are not limited to, those that:

- Contain or promote materials that are sexually explicit or that could be deemed obscene, pornographic or excessively violent;
- Promote violence or hate toward any persons or groups;
- Promote discrimination based on race, sex, age, religion, nationality, disability or sexual orientation;
- Promote illegal activities;
- Promote the sale or use of tobacco products, alcohol products or gambling;
- Violate any federal, state or local law (including privacy and “spam” laws);
- Contain material that, in our sole judgment, is defamatory, fraudulent or harassing;
- Misrepresent themselves as a Target Web site by using the “look and feel” of or text from our site;
- Include “Target” or variations or misspellings thereof in their domain names;
- Otherwise violate intellectual property rights of Target or its affiliates;
- Do not clearly state an online privacy policy to their visitors;
- Require a user name and password to access;
- Are non-US based sites or are sites that primarily serve a non-US based audience;
- Are unable to direct a reasonable amount of traffic by way of sales volume, clicks and page views to our site;
- Otherwise are considered (in our sole judgment) offensive or inappropriate;
- Excessively use pop-ups;
- Require downloads and/or unknowingly download software to visitors’ computers;
- Link to or provide a portion of their commission or affiliate benefits to sites or organizations that violate any of the above criteria;
- Are under construction; or
- Do not have a clear focus on e-commerce (sites that do not sell products or feature merchants will need to submit a business plan describing how they will drive revenue for Target.com).

Employees, family members of employees, or any entities directly or indirectly owned or controlled by employees or family members of Target Corporation or its subsidiaries, suppliers of Target and advertising, promotion and fulfillment agencies of Target are not permitted to be affiliates.

Our acceptance criteria are subject to change at any time without prior notice.

If your Application is not accepted, you may reapply to the Program at any time; however, you may not link to our site unless you are approved for the Program. If you are accepted into the Program, you will be able to participate in the Program subject to the terms and conditions of this Agreement as well as your

agreement with Performics. You should also note that if you are accepted to participate in the Program and your site is thereafter determined (in our sole discretion) to be unsuitable based on our criteria for the Program, we may terminate this Agreement and you may no longer link to our site. You must notify us if the nature of your site changes in any material way.

2. Offers.

a. From time to time, we may post on the Performics Network specific offers (“Offers”) to pay members of the Performics Network a specified referral fee on sales of Qualifying Products (as defined below) to third parties through a Qualifying Link. “Qualifying Link” means a link from your site to our site using one of the URLs or graphic links specified in the Offer and provided by Target (through the Performics Network) for use in the Program if it is the last link to our site that the Customer uses before purchasing a product on our site.

b. The terms of an Offer, as posted on the Performics Network or otherwise communicated to you, shall be governed by the terms and conditions of this Agreement. However, in the event of any inconsistency between the terms of the specific Offer and the terms of this Agreement, the terms of the Offer shall govern.

c. At any time prior to you providing a Qualifying Link, we may with or without notice (a) change, suspend or discontinue any aspect of an Offer or (b) remove, alter, or modify any graphic or banner ad provided to you pursuant to an Offer. You agree to promptly implement any request from Target to remove, alter or modify any graphic or banner ad submitted by you that is being used in connection with an Offer.

d. You are only allowed to use Target promotion codes that are communicated specifically to you via the Performics Network on behalf of Target. If you use Target promotion codes from other sources (e.g., Target e-mails or other partner communications), we may terminate this Agreement and remove you from the Program.

3. Links on Your Site.

a. Links Provided by Target. If you are accepted into the Program, we will make available to you Qualifying Links that, subject to the terms and conditions of this Agreement, you may display as often and in as many areas on your site as you desire. The Qualifying Links will serve to identify your site as a member of the Program and will establish a link from your site to ours. All Qualifying Links that you will use in the Program will be provided to you from the Performics Network’s or Target’s network servers or by other means selected by us. You also agree that you will display in your site only those graphic images (indicating a Qualifying Link) that are provided by us, and you will substitute such images with any new images provided by us from time to time throughout the term of this Agreement. Only valid Qualifying Links generated by the Performics Network will be tracked for purposes of determining referral fees that you may be eligible to receive on sales of Qualifying Products generated through your site.

b. Additional Requirements. As a condition to your acceptance and participation in the Program, you agree to not undertake or engage in the following practices, and any violation of this Section shall be deemed a material breach of this Agreement and may result in immediate termination from the Program:

- use the Target name, or any variation thereof, in any manner not expressly authorized by this Agreement;
- use or otherwise incorporate the word “Target” or variations or misspellings thereof in the domain name(s) of your site(s), on any meta tags of Web pages comprising your site(s), in hidden text or source code, or in searchable keywords;
- bid on Target brand keywords or keyword strings (e.g., ‘target’, ‘target.com’, ‘target clearance’, ‘target weekly ad’, ‘target baby’, ‘target store’) in pay-per-click search engines;
- engineer your site in such a manner that pulls Internet traffic away from Target.com;
- use Target’s merchandiser datafeed on a site other than the site we have approved pursuant to the Program;

- distribute Target’s merchandiser datafeed to a third party shopping site (e.g., Yahoo!, MSN, eBay, Froogle, AOL) regardless of whether or not we are already advertising our products on that site;
- attempt to modify or alter our site in any way;
- make any representations, either express or implied, or create an appearance that a visitor to your site is visiting our site, e.g., “framing” the Target.com site, without our prior written approval; or
- “scrape” or “spider” the Target.com site or any other Target Web site for content (such as images, logos or text).

If your site donates any portion of its referral fees to any school, foundation or other charitable organization, you may not state or imply that Target endorses such activities or is responsible in any way for the inclusion and donation of funds to any of the schools, foundations or charities associated with your site.

c. Compliance with the Agreement. We have the right in our sole and absolute discretion to monitor your site at any time and from time to time to determine if you are in compliance with the terms of this Agreement, and you agree to provide us with unrestricted access to your site for such purpose.

4. Your Responsibilities. You will be solely responsible for the development, operation and maintenance of your site and for all content that appears on your site. For example, you will be solely responsible for:

- the technical operation of your site and all related equipment;
- the accuracy, timeliness and appropriateness of content posted on your site (including, among other things, all product-related materials);
- ensuring that your site complies with all applicable copyright and other laws;
- ensuring that your site does not to employ the use of any type of software download or technology that intercepts or re-directs traffic or referral fees to or from any other website without the written consent of merchant;
- ensuring that materials posted on your site do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights);
- ensuring that content posted on your site is not libelous or otherwise illegal;
- ensuring that your e-mails and newsletters, if any, fully comply with all applicable laws and regulations, including the CAN-SPAM Act (affiliates must receive prior approval from us before including Target logos or materials within e-mails); and
- notifying us and the Performics Network of any malfunctioning of the Qualifying Links or other problems with your participation in the Program in accordance with the terms of the Offer and this Agreement.

We disclaim all liability for all such matters. Further, you agree to defend, indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, attorneys fees) relating to the development, operation, maintenance or content of your site.

5. Order Processing. We will process product orders placed by customers who follow special links from your site to the Target.com site in accordance with applicable legal requirements. We reserve the right to reject orders that do not comply with any reasonable requirements that we periodically may establish. We will be responsible for all aspects of order processing and fulfillment. Among other things, we will (i) prepare order forms, (ii) process payments, cancellations and returns, and (iii) handle customer service. We will track sales made to customers who purchase products using Qualified Links that you will generate using the Performics Network’s technology, from your site to our site, and reports summarizing this sales activity will be available to you through the Performics Network. The form, content, and frequency of the reports are limited to those reports and capabilities available through the Performics Network and may vary from time to time in our and/or the Performics Network’s reasonable discretion. Target is not responsible for any changes that the Performics Network may make in reporting format, timing, or types of reports available to members of the Performics Network and Target’s Affiliates. To permit accurate tracking, reporting and fee accrual, you must ensure that the links between your site and our site are properly

formatted. Target will not be responsible for improperly formatted links regardless of whether you have made amendments to the code or not. In addition, we are unable to track or provide credit for sales from customers that are referred to us with browsers that do not have their cookies setting enabled.

6. Referral Fees. We will pay you referral fees on certain product sales to third parties generated from our Target.com Web site only. For a product sale to generate a referral fee, the customer must

- use a browser that has its cookies setting enabled;
- follow a Qualifying Link (in the format specified by us) from your site to the Target.com site (if it is the last link to our site that the customer uses before making the purchase);
- purchase the product using our automated online ordering system;
- accept delivery of the product at the shipping destination; and
- remit full payment to us.

Service invoice adjustments, reorders, gift certificates, Gift Cards, pharmacy products, Amazon.com products, and products listed under the “Target Company Store” portion of our web site are not eligible to earn referral fees. We will not pay referral fees on any products that are added to a customer’s Shopping Cart after the customer has re-entered our site (other than through a Qualifying Link from your site), even if the customer previously followed a link from your site to our site. We also will not pay referral fees on product sales resulting from your violation of this Agreement (e.g., sales generated from the use of brand keyword bidding). Products that are entitled to earn referral fees under the rules set forth above are hereinafter referred to as “Qualifying Products.”

7. Referral Fee Schedule. You will earn referral fees based on the Net Price of Qualifying Products, according to fee schedules to be established by us and communicated to you upon acceptance of the Agreement. “Net Price” means the sale price listed online on our site (less any coupon or customer discount) and excludes amounts collected by us for taxes, shipping, handling, rebates, gift-wrapping and similar ancillary services, and amounts due to credit card fraud and bad debt.

8. Referral Fee Payment. We will pay you referral fees on a monthly basis through the Performics Network as set forth in this paragraph. Following the end of each calendar month, you will receive a check for the referral fees earned on products that were shipped during the previous month, less any taxes that we are required by law to withhold. If a customer returns a Qualifying Product that generated a referral fee, we will deduct the corresponding referral fee from your next monthly payment; if there is no subsequent payment, we will send you an invoice for the referral fee, which invoice shall be payable by you within thirty (30) days of your receipt of the invoice. All determinations of Qualifying Links and whether a referral fee is payable will be made by the Performics Network and will be final and binding.

9. Policies and Pricing. Customers who buy products through the Program will be deemed to be customers of Target, without affecting their status as your customer. Accordingly, all of our rules, policies and operating procedures concerning customer orders, customer service and sales will apply to those customers when using our site. We may change our policies and operating procedures at any time in our sole discretion. For example, we will determine the prices to be charged for products sold under the Program in accordance with our own pricing policies. Product prices and availability may vary from time to time. Because price changes may affect products that you already have listed on your site, you may not include price information in your site unless it is used as part of Target’s Merchandiser datafeed from the Performics Network. We will use commercially reasonable efforts to present accurate information, but we cannot guarantee the availability or price of any particular product or the error-free or uninterrupted operation of our site.

10. Term and Termination.

a. The term of this Agreement will begin upon our acceptance of your Program application and will end when terminated by either party. Either you or we may terminate this Agreement at any time, with or without cause, by giving the other party five (5) days prior written notice of termination. In addition, we shall be entitled to terminate this Agreement immediately if you materially breach or violate any terms or conditions of this Agreement, or if we determine, in our sole discretion, that there are technical or

operational issues (e.g. interruptions caused by or shifts in online/Internet technology) that adversely affect the implementation of the Program, or the orders/referrals were obtained fraudulently or through misrepresentation, in which case we reserve the right to withhold payment of associated referral fees pending an investigation of the suspected fraud or misrepresentation. Termination of this Agreement shall also terminate any outstanding Offer. However, all rights to payment, causes of action and any provisions that by their terms are intended to survive termination, shall survive termination of this Agreement.

b. Either party may terminate an Offer at any time by deleting its acceptance of the Offer through the Performics Network. Termination of a specific Offer shall not be deemed to terminate any other Offers.

c. Upon termination of this Agreement, you will immediately cease use of, and remove from your site, all links to our site and all Target related content.

d. You are only eligible to earn referral fees on sales of Qualifying Products occurring during the term of this Agreement, and referral fees earned through the date of termination will remain payable only if the related orders are not canceled or returned by a customer. In addition, we may invoice you for referral fees that were paid to you prior to termination if those referral fees relate to Qualifying Products that are subsequently canceled or returned by a customer. In the event any other overpayment is made by us, you agree to promptly remit such excess payment upon notification by us. We may withhold your final payment for a reasonable time to ensure that the correct amount is paid.

11. Publicity. You shall not create, publish, distribute, or permit any written material (e.g., press releases, marketing material or screen shots) that makes reference to us without first submitting such material to us and receiving our prior written consent, which we may withhold in our sole discretion.

12. Licenses and Use of the Target Logos and Trademarks.

a. We grant you a non-exclusive, non-transferable, revocable license to (i) access our site through the Qualifying Links solely in accordance with the terms of this Agreement and (ii) solely in connection with such links, to use our logos, trade names, trademarks and similar identifying material designated in the Offer (collectively, the "Licensed Materials"), only as provided to you through the Performics Network and solely for the purpose of generating the sale of Target products from your site. You acknowledge that this Agreement does not provide you with any intellectual property rights in the Licensed Materials other than the limited rights contained herein. We reserve all of our rights in the Licensed Materials and all of our other proprietary rights. You may not sublicense, assign or transfer any such licenses for the use of the Licensed Materials, and any attempt at such sublicense, assignment or transfer is void. We may terminate your license to use the Licensed Materials for any reason at any time in our sole and absolute discretion.

b. You shall not make any specific use of any Licensed Materials for purposes other than generating the sale of Target products from your site without first submitting a sample of such use to us and obtaining our prior written consent, which we may withhold in our sole and absolute discretion. Without limiting the foregoing, you may not use any Licensed Materials in direct mail or e-mail without first submitting a sample of such use to us and obtaining our prior written consent, which we may withhold in our sole and absolute discretion.

c. Your license to use the Licensed Materials is also subject to the following guidelines:

- You may use the Licensed Materials only for purposes expressly authorized by us.
- You may not alter, modify, or change the Licensed Materials in any way; for example, you may not change the proportion, color, or font of any trademark.
- You may not display the Licensed Materials in any manner that implies our sponsorship or endorsement of your products, services or site outside of your involvement in the Program.
- You may not use the Licensed Materials to disparage Target, its products or services, or in a manner that, in our sole judgment, may diminish or otherwise damage the goodwill in our name and the Licensed Materials.

- Each Target trademark must appear by itself and must be surrounded by sufficient empty space on all sides in order to avoid unintended associations with any other objects (including, without limitation, type, photography, borders and edges).
- You may not use the Licensed Materials as a feature or design element of any other logo.
- Your use of the “Target” name or logo shall be in a manner that is clearly less prominent than that of your products, trademarks, logos and/or site name.
- You must include the following notice on any materials you create that include the “Target” logo: The Bullseye Design and Target are registered trademarks of Target Brands, Inc.
- You may only include Licensed Materials in e-mails and newsletters that are approved in advance by us and are fully compliant with all applicable laws and regulations, including the CAN-SPAM Act.
- You may not copy any image on our site except for those links specifically provided to you under this Agreement.

We reserve the right in our sole discretion to modify these guidelines at any time upon prior written notice and the right to take action against any use that does not conform to these guidelines.

d. You understand and agree that Target Brands, Inc., a related company of Target, owns the Licensed Materials and may be a necessary party in any undertaking to enforce this Agreement.

13. Disclaimers. WE MAKE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROGRAM OR ANY PRODUCTS SOLD THROUGH THE PROGRAM (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS, MERCHANTABILITY, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, DEALING OR TRADE USAGE). IN ADDITION, WE MAKE NO REPRESENTATION THAT THE OPERATION OF OUR SITE WILL BE UNINTERRUPTED OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.

14. Representations and Warranties. You hereby represent and warrant to us as follows:

a. This Agreement constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms, and you agree not to contest the validity or enforceability of this Agreement under the provisions of applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby.

b. Any material displayed on your site will not: (i) infringe on any third party’s copyright, patent, trademark, trade secret or other proprietary rights or right of publicity or privacy; (ii) violate any applicable law, statute, ordinance or regulation; (iii) be defamatory or libelous; (iv) be lewd, pornographic or obscene; (v) violate any laws regarding unfair competition, anti-discrimination or false advertising; (vi) promote violence or contain hate speech; (vii) promote discrimination based on race, age, sex, religion, nationality, sexual orientation or disability; or (viii) contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines.

15. Confidentiality. Except as otherwise provided in this Agreement or with our prior written consent, you agree that all information including, without limitation, the terms of this Agreement, our business and financial information, our customer lists, and our pricing and sales information, shall remain strictly confidential and shall not be utilized, directly or indirectly, by you for your own business purposes or for any other purpose except and solely to the extent that any such information is generally known or available to the public through a source or sources other than you or your affiliates. Notwithstanding the foregoing, you may deliver a copy of any such information (a) pursuant to a subpoena issued by any court or administrative agency, (b) to your accountants, attorneys, or other agents on a confidential basis, and (c) otherwise as required by applicable law, rule, regulation or legal process.

16. Limitation of Liability. We will not be liable for indirect, special, exemplary, consequential or incidental damages, or any loss of revenue, profits or data, arising in connection with this Agreement, the Program or the Performics Network, even if we have been advised of the possibility of such damages.

Further, our aggregate liability arising with respect to this Agreement and the Program will not exceed the total referral fees paid or payable to you under this Agreement.

17. Indemnification. You acknowledge that by entering into this Agreement, we do not assume and should not be exposed to the business and operational risks associated with your business, or any aspects of the operation or content of your Web site(s). Accordingly, you hereby agree to indemnify and hold harmless us and our respective directors, officers, employees, agents, shareholders and members, from and against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs and expenses (including court costs and reasonable attorneys fees) even if such claims are groundless, fraudulent or false (any or all of the foregoing hereinafter referred to as “Losses”) insofar as such Losses (or actions in respect thereof) arise out of or are based on (i) any breach or alleged breach of any representation or warranty or breach of a covenant or agreement made by you herein, (ii) any claim arising from or connected with any of the content or activities of your site (including without limitation any activities or aspects thereof or commerce conducted thereon) or related business, or (iii) your misuse, unauthorized modification or unauthorized use of the services or materials provided by us or Performics hereunder.

18. Modification. We may modify any of the terms and conditions contained in this Agreement, at any time and in our sole discretion, by posting a change notice or a new agreement on the Performics Network or otherwise communicating such change to you. Modifications may include, for example, changes in the scope of available referral fees, fee schedules, payment procedures or Program rules. **IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON THE PERFORMICS NETWORK WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.**

19. Independent Investigation. YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT. You understand that we may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement or operate Web sites that are similar to or compete with your Web site. You have independently evaluated the desirability of participating in the program and are not relying on any representation, guarantee or statement other than as set forth in this Agreement.

20. General.

a. No Agency. You and Target are independent contractors, and nothing in this Agreement (including any Offer) will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your site or otherwise, that reasonably would contradict anything in this Section.

b. Governing Law; Venue. This Agreement has been made in and shall be construed and enforced in accordance with the laws of the United States and the State of Minnesota, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in Hennepin County, Minnesota, and you irrevocably consent to the jurisdiction of such courts.

c. Notice. Any notices required or permitted by this Agreement must be delivered to Target via registered mail to:

Target.com
33 South Sixth Street
CC - 2213
Minneapolis, MN 55402
Attention: Affiliates Program Manager

with a copy to:

Target Corporation
1000 Nicollet Mall, TPS-3155
Minneapolis, MN 55403
Attention: Vice President, Law.

Any notices required or permitted by this Agreement or communications in connection with the Program will be sent to you by Target via e-mail at the address you provided in your Affiliate Application.

d. Severability; Interpretation. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other provision may be invalid or unenforceable in whole or in part. In the event of an inconsistency between the terms of this Agreement and the Performics Insertion Order Terms and Conditions, the terms of this Agreement shall govern.

e. Assignment. You may not assign this Agreement, by operation of law or otherwise, without our prior written consent, which may be withheld in our sole discretion. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and enforceable against the parties and their respective successors and assigns.

f. Waiver. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such provision or any other provision of this Agreement.

g. Equitable Relief. The parties agree that any breach of either of the party's obligations regarding trademarks, service marks, trade names, confidentiality, links or the removal of links, and/or user data may result in irreparable injury for which there may be no adequate remedy at law. Therefore, in the event of any breach or threatened breach of a party's obligations regarding trademarks, service marks, trade names, confidentiality, links or the removal of links, and/or user data, the aggrieved party will be entitled to seek equitable relief in addition to its other available legal remedies in a court of competent jurisdiction.

h. Force Majeure. You acknowledge that Target's and the Performics Network's servers, equipment, and services (e.g., tracking and reporting) may be subject to temporary modifications or shutdowns due to causes beyond Target's and the Performics Network's reasonable control. Such temporary service interruptions will not constitute a material breach of this Agreement.

i. Survival. Section 10 (Term), 15 (Confidentiality), 16 (Limitation of Liability), 17 (Indemnification) and 20 (General), including all subsections thereof, shall survive any termination of this Agreement.

Last update: March 1, 2007