

## **MASTER AGREEMENT**

This Master Agreement ("Agreement") is made between \_\_\_\_\_  
[insert name of Merchant] ("Merchant") and \_\_\_\_\_ [insert name of Partner]  
("Partner").

## **BACKGROUND**

Partner and Merchant are each enrolled in the The LinkShare Network(tm).

Partner and Merchant each desire to establish the general terms and conditions which shall govern advertising and commission arrangements between Partner and Merchant which result from their participation in The LinkShare Network(tm).

## **TERMS AND CONDITIONS**

In consideration of the promises set forth below, we agree as follows:

### **1. Offers and Engagements.**

1.1. From time to time, Merchant may post on The LinkShare Network(tm) offers to pay to other participants a specified commission in return for certain advertising services leading to a Qualifying Link (defined below). If such offers receive an identification number from The LinkShare Network(tm) they shall be deemed to be an "Offer" for purposes of this Agreement. The term "Offer" shall also include any counter-offers resulting from an Offer.

1.2. If an Offer made by one party is accepted by the other party in accordance with the Offer's terms via The LinkShare Network(tm), an "Engagement" will have been formed. Each Engagement shall have the same identification number as the original Offer that lead to the Engagement and shall be governed by the terms and conditions of this Agreement. However, in the event of any inconsistency between the terms of the specific Engagement and the terms of this Agreement, the terms of the Engagement shall govern.

1.3. At any time prior to Partner providing a Qualifying Link, Merchant may with or without notice (a) change, suspend or discontinue any aspect of an Offer or an Engagement or (b) remove, alter, or modify any graphic or banner ad submitted by Merchant for an Offer or an Engagement. Partner agrees to promptly implement any request from Merchant to remove, alter or modify any graphic or banner ad submitted by Merchant that is being used by Partner as part of an Engagement.

### **2. Partner's Responsibilities.**

2.1. Partner will link its site to areas within Merchant's site using special URLs specified in the Engagement (the "Required URLs"). Partner may post as many links to the Required URLs and the rest of Merchant's site as it likes on Partner's site. The position,

prominence and nature of links on the Partner's site shall comply with any requirements specified in the Engagement, but otherwise will be in the discretion of Partner.

2.2. Partner agrees not to make any representations, warranties or other statements concerning Merchant, Merchant's site, any of Merchant's products or services, or Merchant's site policies, except as expressly authorized by the Engagement.

2.3. Partner is responsible for notifying Merchant and The LinkShare Network(tm) of any malfunctioning of the Required URLs or other problems with Partner's participation in the Engagement. Merchant will respond promptly to all concerns upon notification by Partner.

2.4 Partner agrees that it will not promote Merchant, including, without limitation, through use any of Merchant's links, graphics, banner ads or other creative, in any electronic mail ("e-mail") format or e-mail campaign without Merchant's prior written approval of the proposed campaign and e-mail message (including the subject line), which approval must be sought at least three (3) business days in advance of the proposed mailing. If Merchant grants such consent, then Partner further agrees that: (a) it will promote Merchant in e-mails sent only to recipients who have expressly agreed to receive commercial e-mail messages from Partner and who have not subsequently revoked such consent; (b) each e-mail message will be truthful, not misleading and capable of substantiation; (c) Partner's e-mail transmissions will fully comply with the U.S. federal CAN SPAM Act and all other applicable laws and regulations.

2.5 Partner agrees that, during the term of this Agreement, or at any time thereafter, it will not, directly or indirectly, outbid Merchant on the purchase of any Keyword Advertisement using any Merchant Mark on any internet service providers' Keyword Advertisement program, except for Google. Partner agrees that specifically and only for Google, it will not purchase any Keyword Advertisement using any Enterprise Mark during the term of this Agreement or at any time thereafter. For purposes of this Section 2.5, the term "Keyword Advertisement" means any text, graphic, hyperlink, web page or other item that is displayed in response to, or as a result of, entering a certain word or phrase into a third party on-line search engine, utility or service including, without limitation, a web page banner advertisement, a search result feature placement, and a search result sponsored placement. Each Keyword Advertisement purchased by Partner using any Merchant Mark must clearly identify Partner as a Merchant affiliate. For purposes of this Section 2, "Merchant Mark" means any of Merchant's trademarks, service marks, trade dress, trade names, corporate names, proprietary logos or indicia, icons, domain names, including misspellings, and other sources or business identifiers. Nothing in this Agreement shall be deemed to waive any rights or claims Merchant may have against Partner, whether at law, in equity, or otherwise, arising out of, or relating to, Partner's placement, purchase, bid, use or acquisition of any Keyword Advertisement using any Merchant Mark.

2.6 Partner agrees that it will not use any Merchant Mark in any way that would result in the appearance of a pop-up advertisement, pop-under advertisement or any other

advertisement that would in any way obscure all or any part of Merchant's site or that would have the effect of distracting from Merchant's site in any way.

2.7 Partner agrees that it will not redirect any Customer (as defined below) for the purpose of generating commissions to which Partner might otherwise not be entitled.

### 3. Commissions.

3.1. Merchant agrees to pay Partner the commission specified in the Engagement if Merchant sells to a visitor to Merchant's site (a "Customer") a product or service that is the subject of the Engagement and if that Customer has accessed Merchant's site and purchased the product or service via a Qualifying Link.

3.2. A "Qualifying Link" is a link from Partner's site to Merchant's using one of the Required URLs or any other URL provided by Merchant for use in The LinkShare Network(tm) if it is the last link to the Merchant's site that the Customer uses during a Session where a sale of a product or a service to Customer occurs. A "Session" is the period of time beginning from a Customer's initial contact with Merchant's site via a link from the Partner's site and terminating when the Customer either returns to the Merchant's site via a link from a site other than Partner's site or the Engagement expires or is terminated.

3.3. The commission specified in the Engagement will be based on the Qualifying Rental Revenue for each sale. The "Qualifying Rental Revenue" is the base rental revenue from each rental reserved, completed and paid for in full referred from the Qualifying Link, as defined above, equaling the lesser of the *quoted* base rate and length of rental reserved or the *contract* base rate and length of rental completed ("Base Rental Revenue"). Merchant agrees to pay Partner the commission percent, specified in the Engagement, of Qualifying Rental Revenue only. No fuel, personal accident protection, collision damage waiver, supplemental liability protection, mileage, taxes, surcharges, access fees or any other charges or expenses shall be included in Base Rental Revenue.

3.4 Merchant shall have the sole right and responsibility for processing all orders made by Customers. Partner acknowledges that all agreements relating to sales to Customers shall be between Merchant and the Customer.

3.5. All determinations of Qualifying Links and whether a commission is payable will be made by The LinkShare Network(tm) and will be final and binding on both Merchant and Partner. Prices for the products will be set solely by Merchant in its discretion.

### 4. Ownership and Licenses.

4.1. Each party owns and shall retain all right, title and interest in its names, logos, trademarks, service marks, trade dress, copyrights and proprietary technology, including, without limitation, those names, logos, trademarks, service marks, trade dress, copyrights

and proprietary technology currently used or which may be developed and/or used by it in the future.

4.2. Merchant grants Partner a revocable, non-exclusive, personal, non-assignable and non-transferable worldwide license to use, reproduce and transmit the name, logos, banner ads, creative works, trademarks, service marks, and trade dress (hereinafter collectively referred to as "Merchant Property"), as designated in the Engagement, during the registration process in The LinkShare Network(tm) or as otherwise provided to Partner by Merchant or approved by Merchant, on Partner's site solely for the purpose of creating links from Partner's site to Merchant's site during Engagements. Except as expressly set forth in this Agreement or permitted by applicable law, Partner may not copy, distribute, modify, reverse engineer, or create derivative works from the same. Partner may not sublicense, assign or transfer any such licenses for the use of the same, and any attempt at such sublicense, assignment or transfer is void. Partner shall not in any manner represent that it has any ownership of any of the Merchant Property, and Partner acknowledges that all use of the Merchant Property (including, for the avoidance of doubt, any and all goodwill developed and/or associated with the Merchant Property) shall inure solely to the benefit of Merchant and/or Merchant's affiliates. Links from Partner's site to Merchant's site shall not bypass the home page of Merchant's site to link directly to any other page of Merchant's site or any of Merchant's other internet web site(s), unless expressly agreed to in a writing signed by Merchant. Partner agrees that the materials on its site shall not imply in any way that information or content from Merchant's site is maintained within Partner's site and, in particular, shall not "frame" (nor permit to be "framed") any part of Merchant's site within any part of Partner's site.

4.3. In order to preserve the reputation and integrity of the Merchant Property, Partner agrees that it will maintain a high quality standard for any goods and services it provides in connection its permitted use of the Merchant Property hereunder (including, for the avoidance of doubt, but without limitation, Partner's site), in compliance with all applicable laws and governmental regulations and in accordance with best industry practice. Merchant shall have the right to inspect the quality of goods and services provided by Partner in connection its permitted use of the Merchant Property hereunder to ensure that such quality standards are maintained. Partner will follow all instructions of Merchant with respect to the use and display of the Merchant Property as permitted hereunder. In particular (but without limitation) Partner shall: (i) immediately cease to use the Merchant Property upon written request by Merchant; (ii) follow any branding guidelines issued to Partner by Merchant (from time to time); and, (iii) shall not make any warranty or representation in relation to or on behalf of Merchant (or any of its affiliates) including (but without limitation) any warranty or representation that Merchant (or any of its affiliates) endorses or recommends the Partner, or its products and/or services (including, for the avoidance of doubt, but without limitation, Partner's site).

4.4 Partner grants Merchant a non-exclusive, worldwide, royalty-free license to use, reproduce and transmit any graphic or banner ad submitted by Partner solely for co-branding purposes or as a return link from Merchant's site to Partner's site. Merchant will remove such graphic or banner ad upon Partner's request.

## 5. Termination.

5.1. Either party may terminate any Engagement at any time by deleting their acceptance of the Engagement through The LinkShare Network(tm). Termination of an Engagement shall not terminate this Agreement or any other Engagement.

5.2. Either party may terminate this Agreement at any time, for any reason, provided that they provide at least five day's prior written notice of such termination to the other party and The LinkShare Network(tm). Prior written notice shall not be required for termination by Merchant in the event of Partner's breach of Section 2 (Partner's Responsibilities) of this Agreement. Termination of this Agreement shall also terminate any outstanding Engagements. However, all rights to payment, causes of action and any provisions which by their terms are intended to survive termination, shall survive termination of this Agreement.

## 6. Representations.

6.1. Each party represents to the other that (a) it has the authority to enter into this Agreement and sufficient rights to grant any licenses granted hereby; (b) any material which is provided to the other party and displayed on the other party's 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, antidiscrimination or false advertising; (vi) promote violence or contain hate speech; or (vii) contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines; and (c) its provision of services and/or fulfillment of its obligations under this Agreement shall not violate any applicable law or regulation.

Merchant makes no warranties, express or implied, with respect to the Merchant Property, Partner's use of the Merchant Property, the Merchants site or the link(s) from Partner's site to Merchant's site. Merchant shall not be responsible for any technical, hardware, or software failures of any kind, lost or unavailable network connections, or failed, incomplete, garbled, or delayed transmissions from or to Merchant's site.

**6.2. EXCEPT FOR THE ABOVE REPRESENTATIONS NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

## 7. Cross-Indemnification.

7.1. Each party hereby agrees to indemnify, defend and hold harmless the other party and its affiliates, directors, officers, employees and agents, from and against any and all

liability, claims, losses, damages, injuries or expenses (including reasonable attorneys' fees) brought by a third party, arising out of a breach, or alleged breach, of any of its representations or obligations herein.

## 8. LinkShare Required Provisions.

8.1. Merchant and Partner jointly and severally hereby agree to indemnify, defend, and hold harmless The LinkShare Network(tm) and LinkShare Corporation and its affiliates, officers, directors, employees and agents (collectively, "LinkShare") 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 Offer, Engagement, any other matter related to this Agreement or the subject matter hereof any dispute relating thereto.

8.2. The parties agree that LinkShare may rely on any data, notice, instruction or request furnished to LinkShare by either party which is reasonably believed by LinkShare to be genuine and to have been sent or presented by a person reasonably believed by LinkShare to be authorized to act on behalf of one of the parties. In the event of any dispute between the parties, the parties agree that to the extent the parties contact and involve LinkShare, LinkShare may consult with and use counsel of its own choice in connection with such dispute and the reasonable fees and disbursements of LinkShare's counsel shall be within the costs and disbursements covered by the indemnity specified in Section 8.1 above.

8.3. The parties acknowledge and agree that this Agreement and the Engagements are only made possible due to LinkShare and that the parties shall not, for the duration of this Agreement and for twenty-four (24) months thereafter, enter into any advertising, collaborations or other commercial arrangements with each other in connection with their sites on the World Wide Web except via The LinkShare Network(tm).

8.4. Merchant and Partner acknowledge and agree that the nature of the Product is such that in its normal operation it may access and download elements of software data from resources which are external to the computer or device running the Product, such as Product enabled servers. Merchant and Partner acknowledge that LinkShare has not undertaken to provide such external resources or servers and specifically disclaims any representation or warranty as the availability, quality or performance of such resources or whether they may contain any defects which may affect the performance of the Product or Merchant or Partner's computer. LinkShare shall not be responsible for provision of any communications facilities or the costs associated with such communications.

8.5. Merchant and Partner agree that LinkShare is an intended third party beneficiary."

## 9. Limitation of Liability.

9.1. In no event shall either party be liable to the other party for any direct, indirect, special, exemplary, consequential or incidental damages, even if informed of the possibility of such damages.

9.2. The parties agree that The LinkShare Network(tm) and LinkShare Corporation and its affiliates, officers, directors, employees and agents shall not be liable to either party for any direct, indirect, special, exemplary, consequential or incidental damages, even if informed of the possibility of such damages.

10. General.

10.1. Each party shall act as an independent contractor and shall have no authority to obligate or bind the other in any respect.

10.2. The parties agree that The The LinkShare Network(tm) and LinkShare Corporation are intended third party beneficiaries under this Agreement.

10.3. This Agreement has been made in and shall be construed and enforced in accordance with the laws of the state of Merchant's headquarters. Any action to enforce this Agreement shall be brought in the federal or state courts located in that state. If you need to send official correspondence, send it via registered mail to Merchant's headquarters to the attention of Merchant's legal department.

10.4. This Agreement may be agreed to in more than one counterpart, each of which together shall form one and the same instrument. The parties agree that execution may be achieved in any format convenient to the parties.

10.5. 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 or others of them may be invalid or unenforceable in whole or in part.

In Witness whereof, the parties authorized representatives have executed this Master Agreement as of the date of the last signature set forth below.

MERCHANT

PARTNER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date