

DISCLAIMER

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LINKING AGREEMENT

THIS AGREEMENT ("**Linking Agreement**") is made as of _____, _____ between LinkedFromSiteOwner ("**Site1**"), a _____ corporation with offices at _____ and LinkedToSiteOwner ("**Site2**"), located at _____.

WHEREAS

- A. Site1 is the owner or provider of certain Internet services and content accessible through the Uniform Resource Locator ("**URL**") [*insert URL of linked-from site*] (together with any replacement or successor URL, the "**Site1 Site**");
- B. Site2 is the owner or provider of certain Internet services through which items are offered for sale and which are accessible through the URL [*insert URL of linked-to site*] (together with any replacement or successor URL, the "**Site2 Site**");
- C. Site2 desires that Site1 integrate a link from the Site1 Site to the Site2 Site so that Site1 users may conveniently access the Site2 Site and Site1 desires to provide such a link;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each party, the parties hereby agree as follows:

1 The Link.

1.1. **Site1 to Post Link.** Site1 will post one link (the "**Link**") from the Site1 Site to the Site2 Site using one of the URLs specified in Exhibit A (each a "**Site2 URL**"). If more than one Site2 URL is provided, Site1 will have the right to choose among them as it sees fit in establishing the Link. While Site1 will attempt to accommodate Site2's needs and concerns regarding the characteristics of the Link, the Link's position, prominence and nature on the Site1 Site will be determined in Site1's sole discretion.

1.2. **Site2 to Supply Link Graphics.** Site2 will supply electronic versions of graphics and/or text illustrated in Exhibit B (the "**Link Graphics**"), which will be used by Site1 in the Link. Site2 may update the Link Graphics from time to time by supplying new Link Graphics to Site1, which Site1 will incorporate into the Link within a commercially reasonable period of time after receipt. Site1 may change the size of any Link Graphics supplied by Site2 prior to incorporating such Link Graphics into the Link.

1.3. **Site2 URL Malfunctions.** Site1 will notify Site2 of any malfunction of the Site2 URLs of which Site1 is aware. Site2 will respond promptly to all concerns upon notification by Site1, and if Site2 fails to reasonably resolve the concerns of Site1 within 7 days of such notification,

Site1 will have the right to terminate this Linking Agreement immediately despite any other term of this Linking Agreement.

2 Commissions.

2.1. Commission Calculation. Site2 agrees to pay to Site1 commissions as specified in Exhibit C for any sale completed by Site2 (a "**Qualifying Sale**") of a product or service to a visitor to the Site2 Site (a "**Customer**") provided that Customer has accessed the Site2 Site and purchased the product or service via a Qualifying Link (as defined below). Commissions will be determined on the basis of aggregate amounts collected by Site2 on account of Qualifying Sales, excluding amounts collected for sales taxes, duties, gift-wrapping, shipping, handling, and similar charges, amounts due to credit card fraud and bad debt, and credits for returned goods. In the case of any of these excluded amounts, Site2 will promptly provide complete documentation to Site1 for review, if so requested.

2.2. Definitions. For the purposes of this Linking Agreement:

- (a) A "**Qualifying Link**" is a link from the Site1 Site to the Site2 Site using the Link provided that the Link is the last link to the Site2 Site that the Customer uses during a Session, as defined below, in which a sale of a product or a service to Customer occurs.
- (b) A "**Session**" is the period of time beginning with a Customer's initial contact with the Site2 Site via the Link and terminating when the Customer returns to the Site2 Site by any method other than the Link (or any successor link to the Link on the Site1 Site) or (if earlier) when this Linking Agreement expires or is terminated.

2.3. Order Processing, Customer Contracts and Pricing. Site2 will have the sole right and responsibility for processing all orders made by Customers. Site1 acknowledges that all agreements relating to sales to Customers will be between Site2 and the Customer, and that all prices for the Site2 products will be set solely by Site2 in its discretion.

2.4. Commission Reporting; Timing of Commission Payment. Within 21 days of the last day of each calendar month, Site2 will deliver to Site1 at its address for notice hereunder a report detailing all:

- (a) Qualifying Sales which occurred in the particular calendar month, including prices charged for items sold and number of items sold;
- (b) amounts payable by Customers to Site2 on account of such Qualifying Sales,
- (c) amounts deducted from that total amount on account of exclusions listed in section 2.1, including specific descriptions of the reasons for and amounts of such deductions, and
- (d) all commissions owing by Site2 to Site1 hereunder taking into account such Qualifying Sales and excluded amounts.

If the amount under (d) above is less than \$_____, then Site2 may withhold such commissions until a total of at least \$_____ is payable; otherwise, Site2 will deliver to Site1 along with the report described above a check in the amount of the total commissions payable as described under (d). Commissions payable (other than amounts less than the minimum

amount described in this paragraph) and not paid on time under this paragraph will accrue interest at a rate of 1 ½% per month, compounded monthly.

2.5. Link Formatting for Reporting. Site1 and Site2 will cooperate to ensure that the Link is properly formatted to allow for an accurate determination of the number of, and other details regarding, Qualifying Links.

2.6. Site2 Record Keeping; Audits on behalf of Site1. Site2 will maintain complete and accurate records in accordance with U.S. Generally Accepted Accounting Principles for all transactions which are the subject of this Linking Agreement for not less than three (3) years after the last payment is due under this Linking Agreement. Site2 will permit an independent accounting firm retained by Site1 access to such records, upon reasonable notice but at most on an annual basis, for the purposes of audit during normal business hours, for so long as such records are required to be maintained. If such accounting firm determines that any additional payment is due to Site1 by Site2, and such payment is not at the time the subject of a good faith dispute between the parties, then Site2 will promptly make payment of such amount to Site1 plus interest on that amount at a rate of 1 ½% per month compounded monthly from the date of each such insufficient payment, and if the amount of such payment is greater than \$_____, Site2 will also promptly pay the reasonable costs of such audit. If such audit shows that Site2 has overpaid Site1, then Site2 will be entitled to a credit against the next payment due to Site1 in the amount of the overpayment, unless such overpayment is the subject of a good faith dispute between the parties at that time or no further payments are due under this Linking Agreement, in which case Site1 will promptly refund to Site2 the amount of the overpayment.

3 Ownership and Licenses.

3.1. Each Party Retains Rights. Each party owns (or has the right to use and sublicense) and will retain all right, title and interest in its names, logos, trademarks, service marks, trade dress, copyrights and proprietary technology, which will be used in connection with links to the other party's site, as provided for in this Linking Agreement, 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.

3.2. Site2 Grants License to Site1. Site2 grants Site1 a revocable, non-exclusive, worldwide, royalty-free license to use, reproduce and transmit the name, logos, trademarks, service marks, trade dress and proprietary technology, as designated herein, on the Site1 Site solely for the purpose of creating the Link. Except as expressly set forth in this Linking Agreement or permitted by applicable law, Site1 may not copy, distribute, modify, reverse engineer, or create derivative works from the such property of Site2. Site1 may not sublicense, assign or transfer any such licenses for the use of such property of Site2, and any attempt at such sublicense, assignment or transfer is void. Site1 will promptly remove such name, logos, trademarks, service marks, trade dress and proprietary technology from the Site1 Site upon the termination of this Linking Agreement.

3.3. Site1 Grants License to Site2. Site1 grants Site2 a revocable, non-exclusive, worldwide, royalty-free license to use, reproduce and transmit any graphic or banner ad submitted by Site1 solely for use as a return link from the Site2 Site to the Site1 Site. Site2 will promptly remove such graphic or banner ad upon the request of Site1.

4 Termination.

4.1. **Either Party may Terminate.** Either party may terminate this Linking Agreement at any time, for any reason, provided that they provide at least ten (10) business days' prior written notice of such termination to the other party. However, all rights to payment, causes of action and any provisions which by their terms are intended to survive termination, including but not limited to the ownership provisions, representations and indemnification provisions, will survive termination of this Linking Agreement.

5 Representations.

5.1. **Bilateral Representation.** Each party represents to the other that to the best of the representing party's knowledge:

- (a) it has the authority to enter into this Linking Agreement and sufficient rights to grant any licenses granted hereby, and
- (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, anti-discrimination 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 computer programming routines.

5.2. **NO OTHER REPRESENTATIONS.** EXCEPT FOR THE REPRESENTATIONS IN SECTION 5.1 AND THE REPRESENTATIONS AS TO OWNERSHIP OR RIGHTS TO USE IN SECTION 3.1, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OR CONDITIONS TO THE OTHER PARTY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6 Indemnification.

6.1. **Each Party will Indemnify Other.** 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, provided that the indemnifying party is promptly notified in writing of any such claims. The indemnifying party will have the sole right and obligation to defend such claims at its own expense. The indemnified party will

provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request.

7 Limitation of Liability.

7.1. **ABSOLUTE LIMITATION.** IN NO EVENT, EXCEPT AS EXPRESSLY PROVIDED FOR IN SECTION 7.1 OF THIS LINKING AGREEMENT, WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR OBLIGATED UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, EXCEPT AS EXPRESSLY PROVIDED FOR IN SECTION 7.1 OF THIS LINKING AGREEMENT, THE AGGREGATE LIABILITY OF EITHER PARTY ARISING WITH RESPECT TO THIS LINKING AGREEMENT WILL NOT EXCEED THE TOTAL COMMISSIONS PAID OR PAYABLE TO SITE1 UNDER THIS LINKING AGREEMENT.

8 General.

8.1. **No Other Links or Unauthorized Deep-Linking.** Site1 will not create any link from the Site1 Site to any Site2 web site other than a Site2 URL.

8.2. **Site1 Will Not Make Representations.** Site1 agrees not to make any representations or warranties concerning Site2, the Site2 Site, any of Site2's products or services, or Site2 Site policies, except as expressly authorized by Site2.

8.3. **Currency.** All dollar amounts in this Linking Agreement are in U.S. dollars.

8.4. **No Waiver.** Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege under this Linking Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence or as a waiver of any other right, remedy, power or privilege.

8.5. **Independent Contractors.** The relationship of the parties hereto is that of independent contractors and neither party will have any authority to obligate or bind the other in any respect. Notwithstanding anything to the contrary, this Linking Agreement does not and will not be deemed to constitute a partnership or joint venture between the parties and neither party nor any of their respective directors, officers, employees or agents will, by virtue of the performance of their obligations under this Linking Agreement, be deemed to be an agent or employee of the other.

8.6. **Applicable Law.** This Linking Agreement has been made in and will be construed and enforced in accordance with the laws of the state of _____ without regard to the conflict of laws provisions thereof, and the parties hereto hereby irrevocably attorn to the jurisdiction of the courts thereof. Any action to enforce this Linking Agreement will be brought in the federal or state courts located in that state.

8.7. **Notice.** All official correspondence, notices, requests, demands, and other communications required or permitted under this Linking Agreement will be in writing and will be deemed to have been duly given, made and received when delivered against receipt,

five (5) days after deposit in the United States mail, or when sent via United States registered mail, return receipt requested, postage prepaid, to the respective addresses as set forth above. Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address to the other party in the manner set forth herein.

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

8.9. **Severability.** The provisions of this Linking Agreement are independent of and separable from each other, and no provision will 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. If any portion of this Linking Agreement is invalid or unenforceable, such portion(s) will be limited or excluded from this Linking Agreement to the minimum extent required and the balance of this Linking Agreement will remain in full force and effect.

8.10. **Assignment.** Neither party may assign, transfer, or sublicense any obligations or benefit under this Linking Agreement without the prior written consent of the other party and any such attempt will be void, except that a party may assign and transfer this Linking Agreement and its right and obligations hereunder to any third party who succeeds to substantially all of its business or assets relating to the Site1 Site or Site2 Site as appropriate.

8.11. **Entire Agreement.** This Linking Agreement contains the entire understanding of the parties regarding its subject matter and can only be modified or waived by a subsequent written agreement signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Linking Agreement to be executed by their duly authorized officers as of the date first above-written.

LINKEDFROMSITEOWNER by its
authorized signatory:

LINKEDTOSITEOWNER by its authorized
signatory:

Signature

Signature

Print name

Print name

Print Title

Print Title

**EXHIBIT A.
SITE2 URLS**

SITE1 WILL LINK THE SITE1 SITE TO THE SITE2 SITE USING ONE OF THE FOLLOWING
SITE2 URLS:

EXHIBIT B

LINK GRAPHICS TO BE USED IN THE LINK TO SITE2 SITE

GRAPHICAL IMAGES AND/OR TEXT TO BE USED IN THE LINK FROM THE SITE1 SITE TO THE SITE2 SITE ARE AS FOLLOWS:

**EXHIBIT C
COMMISSIONS**

Type or category of item(s)	Applicable commission per item