



## Merchant - Terms and Conditions

Merchant Advertisers are required to accept this Agreement before account activation can occur. Please read the Agreement.

### Summary

These Terms and Conditions apply to the merchant campaign agreement / insertion order, amendments, and contracts entered into by these parties. Throughout this agreement the binding agreements, amendments, and contracts will be referred to as the "contract". These terms and conditions will be referred to as the "agreement", and the party contracting with Affilisearch herein shall be referred to as the "Advertiser" or the "Merchant". "Publisher" or "Affiliate" refers to the website and publishing company that Affilisearch has contracted with to publish or post the advertising Contents on behalf of Affilisearch and the merchant.

Affilisearch reserves the right to change any conditions of this contract at any time. Merchants are responsible for complying with any changes to the Merchant Agreement within 7 business days from the date of change. Affilisearch will post any changes to this Agreement in the Merchant area of the Affilisearch Website.

### 1. Acceptance

This contract constitutes the rules, terms, and conditions of doing business with Affilisearch and the Affilisearch affiliate program. These rules are in place to protect Advertisers/Merchants within our network.

- i) Acceptance of a Product or Merchant in the Network is subject to prior approval by the Affilisearch staff.
- ii) Affilisearch reserves the right to refuse service to any new or existing Merchant, in its sole discretion, with or without cause.
- iii) Affilisearch reserves the right to withhold approval of membership to the Network.
- iv) Affilisearch reserves the right, in its sole discretion and without liability, to reject, omit or exclude any Merchant or Website for any reason at any time, with or without notice to the Merchant and regardless of whether such Merchant or Website was previously accepted.

### 2. Representation

Merchant represents and warrants that:

(i) it is the owner or is licensed to use or market the product or service and/or its entire contents and/or the subject matter contained in the Website;

(ii) the product offering does not violate any law or regulation governing false or deceptive advertising, sweepstakes or trade disparagement;

(iii) the product offering does not contain any misrepresentation, or content that is defamatory or violates any rights of privacy or publicity;

(iv) Merchant is generally familiar with the nature of the Internet and will comply with all laws and regulations that may apply;

(v) the product offering does not and will not infringe any copyright, trademark, patent or other proprietary right. Merchant grants Affilisearch and its approved affiliates the right and license to transmit the Content to affiliates' Websites, and opt-in emails.



### **3. Content**

Affilisearch does not accept any adult, pornographic, or sites that link to adult orientated material whatsoever. Affilisearch DOES NOT accept any sites that are of any illegal nature--libellous or defamatory sites, hacking sites, software copying/piracy, hate, or racial hate sites. Should Affilisearch make payment and find that this payment was made to an agent through or as a result of illegal or fraudulent action by the agent, we reserve the right to stop payment of commissions and we may also take civil or criminal action against the company or individual. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the parties and neither Affilisearch nor Merchant shall hold itself out as the agent of the other, except for that specified in this Agreement.

### **4. Deposit (public)**

Merchants agree to make an initial deposit of £1000 GBP. Merchants that pay by cheque will not be activated at least until payment has cleared. This payment is a deposit for the agreed upon commission. Each sale that is tracked through the Affilisearch Network system will be automatically deducted from the deposit. During the campaign Affilisearch has the right to give notification of a minimum threshold (usually 20-35% of Deposit). Notification will be sent via e-mail to Merchant primary e-mail account informing Merchant of the need to deposit more funds in order to perpetuate the campaign. If the account reaches a shut off amount specified by Affilisearch, Affilisearch reserves the right to remove Merchant offer from the network. If the Merchant chooses to close their account, the remaining balance in their account will be refunded no less than 60 days after termination date. Any set up fees or costs specified in the contract will not be refunded.

### **5. Distribution**

The merchant agrees and understands that advertising contents will appear on Affilisearch's Network of contracted affiliates' site and their distribution networks. The Advertiser is irrevocably granting the right to distribute and publish the Advertising Contents to contracted sites and their partners and affiliate distribution networks. Therefore, the distribution network may change during the course of the contract. A change of distribution may occur without any notice given to the advertiser. We reserve the right to enrol or suspend any publishing or affiliate partners with or without notice to the merchants.

### **6. Affiliate Agents**

The affiliates are agents and independent contractors. Affilisearch owners do not provide any legal, accounting, or professional advice. The agent is responsible for the agent's company and/or individual tax obligations. The agent is not an employee, partner, shareholder, or director of the Affilisearch program, and shall not enter into any agreement on behalf of the Affilisearch Network. Affilisearch be held responsible for the actions of the agents.

### **7. Public Release**

Affilisearch shall not release any information regarding Campaigns, Creatives, or Merchants relationship with Affilisearch or its customers, including, without limitation, in press releases or promotional or merchandising materials, without the prior written consent of merchants. However, Affilisearch shall have the right to reference and refer to its work for, and relationship with, Merchant for marketing and promotional purposes with affiliate publisher and prospective publishers.

### **8. Advertising**

Affilisearch will provide all marketing material to agent on behalf of the merchant. Code will be placed on the post transaction page of the merchant. Under no circumstances should the Merchant modify the marketing material or tracking tags/code on the post-transaction page provided unless otherwise noted. If the code is altered, removed, or not served due to fraud, mistake, or any reason, the historical average click-through rate and average conversion rate plus a 10% penalty will be applied to the traffic delivered in order to assign the amount due to Affilisearch.



Affilsearch makes no warranties, guarantees, or representations regarding the revenue or profit an agent or merchant can make from the Affilsearch program. Affilsearch program makes no guarantees or representations regarding any information contained in any promotional material or oral communications made by any Affilsearch representative, its employees, or agents.

## 9. Email Distribution

The affiliate agent is required to adhere to all the legal email Compliance legislation. The affiliate agent is strictly prohibited from sending bulk Unsolicited or Unauthorized Email to individuals. As used in this agreement:

(a) the "Affilsearch Service(s)" shall mean any offer, advertisement, or product being represented or brokered through the Affilsearch network and

(b) the term "you" shall refer to you the 'Merchant', your agents, affiliates, and representatives.

Merchants are required to keep central opt out lists and supply current opt out lists to Affilsearch at least weekly. The format must be approved by Affilsearch prior to campaign launch. It is the merchant's duty to supply the list to Affilsearch, without solicitation.

## 10. Term

If the term of this contract is not specified in writing prior to this agreement's commencement, then the contract shall continue indefinitely until 30 days from the receipt of written cancellation. Either party may cancel the agreement after the first 30 days:

- (i) unless the contract specifies otherwise;
- (ii) contracted delivery is complete;
- (iii) one party creates a material breach which is uncured for at least 30 days
- (iv) either party become insolvent or bankrupt;
- (v) any other valid invoice is not paid within the time specified on the invoice. Upon receipt of written cancellation notice, Affilsearch must cease the perpetuation of publicising the relevant advertising contents within the time period specified in the contract. If an out-clause is not specified on the contract, Affilsearch must cease the publication of contract 30 days after receipt of specific written notice.

## 11. Billing, Payment, Credit

A £1000 deposit is required prior to launch, the deposit will be applied to the actual contracted traffic or sales or leads received. It may be necessary to replenish the deposit prior to the perpetuation of the campaign. If for any reason Affilsearch exercises its right to terminate the publication of advertisements, any remaining funds after campaign costs and set up fees will be refunded.

Billing is based upon the numbers of the Affilsearch tracking technology. In case of discrepancy, Affilsearch's numbers will be used for billing purposes. Affilsearch reserves the right to adjust numbers prior to invoicing in the event of fraud, robotic clicks, or technical error. For all forms of payment other than credit card, there may be up to a 14-day delay in depositing funds into the Merchant's account or issuing payment.

## 12. Tracking and Traffic Audits

For purposes of reporting, all sales shall be based upon one of three methods of measurement and shall be defined as follows unless otherwise documented in surrounding agreement.

(i) Cost Per Sale / Action (CPA) - campaign measured by the number of transactions made by consumers for a campaign's designated product(s). The transaction or sale will constitute a single conversion or sale regardless of the number of items purchased and will only be applied to the products which have a specified commission or payout in the affiliate system.

(ii) Cost Per Lead (CPL) - campaign measured by the number of sign ups or transfer of information made by consumers for campaigns designated offering or information sign up. The transaction or sale will constitute a



single conversion or sale regardless of the number of times the same user transfers information. The Merchant will only be allowed to question the legitimacy of the leads for 5 days following the consumer's submission. All disputed leads must have a transaction ID transmitted in the post transaction tag at the time the consumer submits the form. Also, the information submitted must be supplied to Affilsearch within the 5 days so that adjustment and correlation can be made.

(iii) Revenue Share (%) – campaign measured by the amount consumers spend in transactions created from a particular campaign. Revenue Shares will be based upon the total charged to the consumer less shipping and tax unless specified in other written documentation prior to the commencement of the agreement.

(iv) Cost Per Click (CPC) – campaign measured by the number of clicks made by unique users to a website or banner expressing interest in a particular product / service. The click will constitute a single conversion or sale regardless of the number of times the same user transfers information. This is restricted by the consumer's IP address of their computer.

### **13. Code**

Affilsearch codes must not be modified from original format without consent from Affilsearch. Merchant agrees to use the Affilsearch code provided for impression, click, lead, or sale tracking. Merchant cannot alter, copy, modify, take, sell, reuse, or divulge any Affilsearch computer code. The merchant also agrees not to engage in any reverse engineering of any technology Affilsearch is using or owns.

Merchant agrees NEVER to remove Affilsearch tracking codes from the Merchant website or confirmation page without giving Affilsearch 30 days written notice of cancellation upon which full payment of account if any shall be due.

### **14. Banking and Processing**

Merchants are responsible for maintaining the correct payment information associated with each individual order generated by Affilsearch and or its affiliates. Affilsearch is not responsible for returns, merchant account charge backs and any complaint that may occur as a result of consumer fraud or dissatisfaction with Merchant product or service. Merchants are also responsible for insuring that the post-transaction tags are not shown when non-legitimate transactions are processed (with the exception of Affilsearch authorized tests). Leads or Sales with incorrect information including incorrect credit card numbers must not display and populate the Affilsearch tracking tag. If the tag is displayed and/or populated on a non valid sale, Affilsearch is due the agreed commission, payout, or revenue share.

### **15. Disputes**

Merchant disagrees with any such calculation, a written request should be sent immediately to Affilsearch. Affilsearch will provide Merchant with an explanation or adjustment of the numbers which shall be final and binding. Merchant must report any disputes within 10 days after the end of the previous month (except in Cost Per Lead Campaigns – See Section 12).

Affilsearch shall have the sole responsibility for calculation of Merchant earnings, including Impressions and click-through numbers, leads, and sales. In the event Merchant disagrees with any such calculation, a written request should be sent immediately to Affilsearch. Affilsearch will provide Merchant with an explanation or adjustment of the numbers which shall be final and binding. Merchant must report any disputes within 10 days after the end of the previous month. Merchant agrees to provide any requested database or reporting information with 10 days of request to Affilsearch when requested for any dispute resolution.

### **16. Fraud**

Affilsearch shall maintain software for a fraud control system, which monitors all agents' and merchants sites constantly, for compliance including false registration. Affilsearch will verify all sites for legitimacy. Affilsearch has the right to conduct sales, leads, conversions, or transaction periodically to insure code placed properly. Any company or Individual that alters or tries to alter traffic counts, revenue, sales, or conversions by any means including the use of any device or robot or program will be reported to the appropriate authorities for fraud. The Merchant will also be immediately disqualified from future participation or access to the Affilsearch Affiliate System. The Merchant in violation will also be immediately disqualified for any funds owed.



#### **17. Credit Card Payment**

If a credit card is given for initial deposit and prepayment is specified in the terms of the contract, the advertiser authorises Affilisearch to charge their credit card to replenish the deposit in the amount of the initial deposit. Affilisearch has reserved the right to impose daily, weekly and monthly limits on the amount that the advertisers can charge to their credit card, as specified in the contract or by writing during fulfilment of the contract.

#### **18. Refunds**

Merchant agrees that after the execution of this contract no refunds will be given.

#### **19. Online Account**

Merchant will be given access to password protected reporting to their campaign delivery upon request. Affilisearch will take reasonable means to insure the security of the information throughout the affiliate system. Affilisearch is not responsible for any information distribution as the result neglect on the agent's part.

#### **20. Indemnification**

Merchant agrees to indemnify, defend and hold harmless Affilisearch, and its partners, subsidiaries, affiliates, officers, directors, shareholders, employees and agents, from any claim or demand, including reasonable solicitor's fees, arising from any third-party claim, demand, action or proceeding, if resulting from or arising out of any alleged violation of this agreement or any alleged violation of any rights of others or resulting from or arising out of the service or Merchant's use thereof or listing therein or the acceptance or rejection of the site submitted by Merchant. Affilisearch has the right (but not the obligation), at its own expense, to assume the exclusive defence and control of any matter subject to indemnification by Merchant, which shall not otherwise excuse Merchant's indemnity obligations.

#### **21. Limitation of Liability**

Under no circumstances will Affilisearch be liable to the agent by contract or tort or law for incidental, consequential, or special damages, even if the damages are foreseeable, if the damages exceed the total amount of this contract.

#### **22. Applicability**

In This Agreement, including all attachments which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter. Applicable sections shall survive expiration or early termination of this Agreement. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the parties and neither Affilisearch nor Merchant shall hold itself out as the agent of the other, except for that specified in this Agreement. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement. In addition to terms that are negotiated and documented separately from this Agreement, terms that are automatically generated through the interactive use of the Affilisearch website, Merchant interfaces are explicitly bound by this Agreement.

#### **23. Data Usage**

Merchant acknowledges and agrees that Affilisearch may use the information about Merchant on its servers and any registration information submitted by Merchant in aggregate form for research and product development, marketing, or other promotional purposes. Merchant hereby agrees that Affilisearch has the right (but not the obligation) to disclose any such information if Affilisearch believes such disclosure is needed to comply with the law or legal process or to protect the rights and interests of Affilisearch or others, including enforcing this Agreement. Affilisearch will have the right to change any portion of its privacy statement at anytime so long as notice is given of the change at least 10 days prior to the revision. Merchant shall support Affilisearch's



commitment to protect the privacy of the online community; such commitment is set forth in Affilisearch's Privacy Policy.

**24. Governing Law and Venue**

THIS AGREEMENT AND THE PARTIES' RELATIONSHIP WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE UK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES. THE VENUE FOR ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR BASED UPON THIS AGREEMENT OR ANY ASPECT OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, APPLICANT'S USE OF OR INABILITY TO USE THE SERVICE OR ACCEPTANCE, REJECTION OR REMOVAL OF APPLICANT'S SUGGESTED SITE, SHALL BE THE APPROPRIATE LAW COURTS LOCATED IN THE UK. ACCORDINGLY, THE MERCHANT AND AFFILISEARCH AGREE THAT ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR BASED UPON THIS AGREEMENT SHALL BE COMMENCED IN AND DETERMINED BY THOSE APPROPRIATE UK COURTS LOCATED IN THE UK. AGENT AND AFFILISEARCH ARE BOUND TO THE JURISDICTION OF THE APPROPRIATE UK COURTS LOCATED IN THE UK.

**25. Provision Solely for Agencies**

In addition to the general terms and conditions of this contract, the following provisions shall apply only to Merchants who are acting as an Agency for the purposes of this agreement: Unless amended to this contract, Affilisearch holds the Agency responsible for any payments due as the result of this contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date