

# RegNow Affiliate Network Membership Agreement

**EFFECTIVE JANUARY 23, 2007**

To participate in the RegNow Affiliate Network, You must first agree to the terms and conditions of this Membership Agreement (the "Agreement"). By checking the "By checking this box, you agree to the terms and conditions in our contract" and pressing the "Sign Up" button on the RegNow Affiliate Network Affiliate sign-up page on RegNow's website, You submit your application to become an Affiliate in the RegNow Affiliate Network, which is Your offer to enter into an agreement with RegNow under the terms described in this Agreement. If RegNow accepts Your offer, You will become an Affiliate, subject to the terms of this Agreement. So, it is important for you to carefully review this Agreement prior to accepting it. If you do not wish to apply to become an Affiliate in the RegNow Affiliate Network, then do not check the "By checking this box, you agree to the terms and conditions in our contract" or press the "Sign Up" button, but that will mean that you will not be able to participate in the RegNow Affiliate Network. Your continued participation in the RegNow Affiliate Network constitutes Your continuing acceptance of the terms of this Agreement. The parties agree as follows:

## **I. WHAT DO CERTAIN WORDS MEAN?**

A. Definitions. Certain terms in this Agreement have special definitions, which either appear below or are defined in the body of the Agreement itself.

1. "Affiliate" means those persons or other entities referring business to Sellers' Stores through the RegNow Affiliate Network.
2. "Chargeback" means an amount of money: (i) which has been deemed to have been refunded by or returned by a Seller or RegNow to a Customer based on a Referral Sale which has been voided, retracted, subject to returns, been reversed due to fraud, or otherwise rescinded for any reason under the terms of the terms of sale on the Store; or (ii) which has been retrieved from, reserved against and/or or charged against RegNow or RegNow's credit card/debit card merchant accounts under the terms of any applicable credit card merchant account agreements; or (iii) which has been retrieved from, reserved against and/or or charged against RegNow, RegNow's bank accounts or RegNow's credit card merchant accounts because of government actions including but not limited to embargo, court order, levy, security interest or other form of lien, reclamation, escheat or civil forfeiture.
3. "Customers" means the purchasers and potential purchasers of a Seller's products.
4. "RegNow" means RegNow, Inc., a Delaware corporation.
5. "RegNow Affiliate Network" means the affiliate network provided by RegNow and/or its subcontractor(s) as described in this Agreement in which RegNow (in its sole discretion) has granted You the right to participate as an Affiliate.
6. "Payouts" means financial compensation earned by an Affiliate from a Seller for Referral Sales.
7. "Program" means a marketing program offered by a Seller to Affiliates for the referral of potential customers to a Seller's Store.
8. "Seller" means an organization or entity participating in the RegNow Affiliate Network whose products and/or services are sold through the RegNow service. If expressly stated in the Program Terms, RegNow may assume the obligations of the Seller with respect to a

particular Program.

9. "Store" means an online commerce site hosted on one of RegNow's electronic commerce sales platform.

10. "Referral Link" means an Internet URL, intended for use as a hyperlink to direct a Customer to a particular Seller's Store which identifies You as the Affiliate who referred that Customer to the Store.

11. "Referral Sale" means the purchase of certain of a Seller's products and/or services by a Customer referred to Seller through a Referral Link during the term of this Agreement which is in accordance with the Seller Program Terms for that Seller's Program.

12. "Regulated Business" means any activity conducted by You which, due to being subject to special laws and/or regulations that ordinarily do not apply to commercial establishments generally, causes or could reasonably be likely to cause RegNow or any Seller to be subject to those laws and/or regulations if promoted, solicited or otherwise marketed through Your activities (examples of Regulated Businesses include selling or providing insurance, securities, mortgages, loans or other extensions of credit, banking services such as the maintenance of deposit accounts, investment advice or investment advisory services, prescription drugs or firearms, conducting sweepstakes or games of chance, or acting as a broker, agent or finder for any person engaged in any of the above).

13. "You" means the person or business that is shown as the Affiliate on the RegNow Affiliate Network Affiliate's sign-up page.

14. "Your" or "yours" refers to things that You own.

## **II. WHAT DOES THIS AGREEMENT COVER?**

- A. In General. RegNow will allow You to apply to participate in Programs through the RegNow Affiliate Network, as described in this Agreement.
- B. Program Terms. Many Sellers within the RegNow Affiliate Network will accept Your application to promote their software titles through their Program automatically. You may apply to promote the software titles of Sellers through a Program by clicking the "JOIN NOW" button or equivalent after having reviewed their products and/or services through the Affiliate interface. Some Sellers will only allow You to participate in their Programs if they approve Your application. If a Seller approves Your application, (a) You will be notified of such acceptance via the RegNow Affiliate Network web site and/or via e-mail; (b) You will be considered an approved Affiliate for that Program and may promote that Seller's software titles in accordance with the Seller Program Terms for that Program; and (c) Your acceptance (automatically or by approval) to participate in a Seller's Program shall mean that You and the applicable Seller have entered into a direct contractual relationship under the terms governing that Program available through the Affiliate interface (the "Seller Program Terms"), which may include without limitation a description of product sales commissions, contact information, product information, Sales Links (banners, referral links, images, etc.) made available by the Seller, and any Special Seller Terms as described below. You are solely responsible for understanding and complying with all Seller Program Terms. To the extent a term in this Agreement conflicts with a term in the Seller Program Terms, the term in the Seller Program Terms controls.

On occasion, a Seller may have special terms of use that are product- or situation-specific, or impose restrictions on how you may promote that Seller's products and/or services ("Special Seller Terms"). These terms will be presented via hyperlink and must be accepted by You in order for You to promote that Seller's products. These terms and

conditions will be considered part of the Seller Program Terms, and may replace, limit, clarify or otherwise supersede the Seller Program Terms. To the extent a term in the Special Seller Terms conflicts with a term in the Seller Program Terms, the term in the Special Seller Terms controls. You agree that RegNow and/or the Seller may alter or replace any Special Seller Terms at any time, with or without notice by posting the new Special Seller Terms on the RegNow Affiliate Network web site, and any changes will become effective upon their posting. You should review the Special Seller Terms regularly to ensure you are familiar with the latest terms.

For each Seller who has accepted you to promote their products and/or services (whether automatically or otherwise), unless prohibited by the Seller Program Terms or Special Seller Terms You may describe Yourself as having received approval to act as a non-exclusive affiliate marketing participant with each such Seller.

- C. What You Can And Can't Do. As an approved Affiliate for a Program, You may post Referral Links on Your web site or through other acceptable means in compliance with all laws, rules and regulations applicable to You and Your business. If a Seller has made any additional marketing materials (e.g., banner ads, logos or other artwork or branding) ("Marketing Support Materials") available via the RegNow Affiliate Network, You may use these Marketing Support Materials in Your promotional activities. However, a Seller may, through Special Seller Terms, limit how You may use, distribute or display any Referral Link or Marketing Support Materials. Without limiting the foregoing, You also agree that:
1. You shall not place Referral Links or Marketing Support Materials in newsgroups, message boards, unsolicited email and other types of spam, banner networks, counters, chatrooms, guestbooks, Internet relay chat channels or through similar Internet resources.
  2. You shall not place Referral Links in any manner which may (intentionally or unintentionally) mislead any Customer.
  3. You shall not cause any use of a Referral Link, or any subsequent Referral Sales, to be made in bad faith or through fraudulent means, including, but not limited to, using any device, program, robot, inline frames, hidden frames, or redirects.
  4. You may be restricted (via Special Seller Terms) from receiving Payouts for Referral Sales made directly by You or on Your behalf by Your agent.
  5. You shall only be entitled to Payouts that are a direct result of a Customer completing a Referral Sale directly through the use of Your Referral Link.
  6. Either Sellers or RegNow may impose time limits in which a Referral Sale must be completed after the Customer has used Your Referral Link.
- D. Tracking and Reporting. RegNow shall provide You with access to tracking and reporting tools regarding Your participation in the RegNow Affiliate Network, to the extent those tools are then-currently described and are generally available to Affiliates via the RegNow Affiliate Network web site.
- E. Provision of Service. You and RegNow each agree to use commercially reasonable efforts to keep its web site operational at all times. However, both parties acknowledge that downtime due to force majeure events (i.e., events outside of a party's control) and scheduled maintenance will occur from time to time. Neither party will be liable to the other for any interruption to its service for any reason.
- F. Support. On-line support is available through the Help section of the RegNow Affiliate Network web site. US-based Email support is available between 9 a.m. and 5 p.m. Central

Time Monday through Friday, excluding holidays, and European-based email support is available through [affiliateseurope@regnow.com](mailto:affiliateseurope@regnow.com) (or such other email address as may be specified through the Affiliate interface) during normal local business hours excluding bank holidays, or on such other schedule as RegNow may determine from time to time.

- G. Confidential Information. Either RegNow or You may provide the other with information that is confidential and/or proprietary to the discloser or its partners ("Confidential Information"). Each party agrees to maintain the confidentiality of such information using the same degree of care as it does with your own information of similar importance (but in no case less than reasonable care). Confidential Information shall not include information to the extent such information (a) is or becomes part of the public domain through no act or omission of the recipient, or (b) is lawfully received by the recipient from a third party without restriction on use or disclosure and without breach of this Agreement or any other confidentiality or legal obligation, or (c) was in its possession of the recipient on a non-confidential basis prior to the date of this Agreement (except to the extent unlawfully misappropriated).

You expressly agree that notwithstanding the foregoing RegNow may provide Sellers with Your email address(es) and basic Affiliate account detail (including but not limited to Your address, phone and fax number, web site name (if applicable), date You first entered into operation or under this Agreement, and visitor demographics to Your web sites).

In the event a third party seeks to compel disclosure of a disclosing party's Confidential Information from a recipient by judicial, governmental or administrative process, requirement or order, the recipient shall promptly notify the discloser of such occurrence and furnish to the discloser a copy of the demand, summons, subpoena or other process served upon the recipient to compel such disclosure, and will permit the discloser to assume, at its expense, but with the recipient's cooperation, defense of such disclosure demand. In the event that the discloser fails or refuses to contest such a third-party disclosure demand, or a final judicial order is issued compelling disclosure of Confidential Information by the recipient, the recipient shall be entitled to disclose such Confidential Information as is (in the opinion of the recipient's legal counsel) legally required to be disclosed in compliance with the terms of such process, requirement or order, provided that such Confidential Information so disclosed shall otherwise remain subject to the terms of this Agreement.

- H. ID and Password. You will be given a password and User ID to access certain parts of the RegNow Affiliate Network web site, including the tracking tools. You shall be responsible for all usage and activity on Your User ID account and for loss, theft or unauthorized disclosure of Your password (other than through RegNow's grossly negligent or willful conduct or omission). You shall immediately notify RegNow in writing of any known or suspected unauthorized use of Your User ID account.
- I. Privacy Policies. Any privacy policy posted by a Seller in association with its Store, as well as RegNow's privacy policy accessible via the RegNow Affiliate Network web site, including any subsequent versions posted by a Seller or RegNow, is hereby incorporated by reference into this Agreement. You agree that You will not act in any manner that would violate any such privacy policy, or could reasonably be deemed to cause RegNow or any Seller to be non-compliant with its own privacy policy. You will fully comply with any of Your own privacy policies that You may post to potential Customers on Your web sites or in Your other publicly accessible documents or materials.

### **III. WHAT RIGHTS ARE GRANTED TO YOU AND TO REGNOW?**

- A. Grant of Rights by RegNow. For each Seller into whose Program You have been accepted, RegNow grants to You a revocable, non-transferable, non-assignable, non-sublicensable, royalty free, worldwide, limited right to display Referral Links as well as any applicable Marketing Support Materials provided by Sellers, in all cases for the limited purposes of promoting the Seller's Program, and in any event subject to the terms and conditions of

this Agreement and the Seller Program Terms for each Program. This grant of rights is conditioned upon You: (a) not otherwise copying nor modifying, in any way, any Marketing Support Materials or other materials made available to You through the RegNow Affiliate Network; and (b) not removing or altering any copyright, trademark, or other notices or legends in any such materials.

- B. Grant of Rights by You. You grant to RegNow (and to each Seller with which You have agreed to Seller Program Terms) a revocable, royalty free, international license to display and distribute Your name, branding and/or logos for the limited purposes of promoting You to Sellers and advertising that You are a participant in the RegNow Affiliate Network and are a member of Seller's Program.
- C. Ownership of Rights. The Referral Links and Marketing Support Materials are owned or licensed solely and exclusively by RegNow or a Seller, as appropriate, and You agree not to challenge any of their respective proprietary rights. Your use of these shall inure to the benefit of RegNow or Sellers, as appropriate. You agree, upon RegNow's demand, to promptly stop or alter any of Your uses of these which RegNow or a Seller deems to be improper or which may have the potential to put the business of RegNow and/or Seller(s) at risk, and/or to increase the risk of liability to RegNow and/or Seller(s).
- D. Restrictions of Use of IP. You may not use RegNow's or any Seller's names, trademarks, service marks or domain names in any manner would reasonably lead a person to believe that You are RegNow or the Seller or that You are acting in any manner other than as a non-exclusive approved Affiliate. Unless expressly allowed in Special Seller Terms for a Program, You may not describe Yourself as an 'authorized dealer,' 'agent,' 'sales representative,' or otherwise through the use of any other term or in any other manner which implies you are anything other than an Affiliate as described in this Agreement. You may not claim that You or Your business has been 'approved' or 'endorsed' by RegNow or any Seller.

#### **IV. HOW DO WE MAKE PAYOUTS?**

- A. How Calculated. RegNow shall determine (where possible) actual Payouts that should be paid to You by Sellers under and pursuant to the terms of the Programs for which You are an approved Affiliate. On a monthly basis, on Sellers' behalf as its payment agent, RegNow will deliver the Payouts that RegNow has calculated that You are owed by those Sellers, provided in each Seller's case that the Seller has an outstanding balance of funds held by RegNow which may be used for Payouts (the "Seller Funds"). Whether or not RegNow is holding any Seller Funds, and how much is being held at any time, is subject to a separate agreement between RegNow and the Seller concerning the operation of the Store. If Seller Funds are insufficient to allow RegNow to make Payouts to You, your Payouts will accrue without interest until RegNow has sufficient Seller Funds to allow RegNow to make such Payouts to You. Your first affiliate payment shall be made in the payment cycle following the sixty (60) day anniversary of Your first non-refunded sale, unless otherwise agreed to by RegNow in writing. The delivery of Payouts will be made via ACH payment and will be no more often than monthly, on a schedule to be determined by RegNow unless otherwise specified. Monthly payments may also be made via wire/check for a fee per payment made as specified in the Affiliate interface. If You qualify and meet certain minimum thresholds set by RegNow, RegNow may (at its sole discretion), provide weekly payments via ACH only, or may make payments to You through its ePassporte debit card program for which there is a separate application process.
- B. RegNow Acting as Payment Agent Only. You agree that any Payout payments delivered to You by RegNow are, in fact, payments to You from the Seller are delivered by RegNow solely as an agent on the Sellers' behalf in satisfaction of the Seller's Payout obligations to You. You agree that RegNow's delivery of Payouts shall in no way create any obligation on RegNow's part to further satisfy these obligations, and that RegNow disclaims any and all liability for these payments. You acknowledge and agree that if at any time the Seller Funds held by RegNow are not adequate to satisfy any Payout obligations You may be

owed by a Seller, or if for any reason RegNow does not payment of earned Payouts to You, You will hold RegNow harmless from and against any failure to pay Payouts to you, and Your sole recourse for any earned Payouts not paid to You shall be to make a claim against the relevant Seller(s).

- C. Payout Threshold. If the total balance of Payouts owed to You in any particular month is less than \$25 USD, RegNow shall withhold the payments for that month and until the month in which the total payments meet or exceed the minimum payment threshold specified above. The balance of Payouts owed to You (even if less than \$25 USD) will be paid to You upon Your request to [affiliates@regnow.com](mailto:affiliates@regnow.com) upon the end of your participation in the RegNow Affiliate Network.
- D. Chargebacks. You acknowledge and agree that your Payouts from a Program are subject to Chargebacks that accrue after the month You have received a Payout, that RegNow will calculate these Chargebacks as charges against any other Payout amounts owed to You in subsequent months, and that You will remain responsible to the applicable Sellers in any event for outstanding negative balances which arise out of Chargebacks related to Your Referral Sales. RegNow is not obligated to pay You any amounts in Your account connected with activities deemed to be fraudulent or criminal by RegNow in its sole and reasonable discretion or for suppressed orders. The existence or possibility of fraud or criminal activity will be determined by RegNow in its reasonable discretion, and RegNow may make any inquiries and investigations RegNow deems appropriate.
- E. Payout Currency. Payouts shall be calculated in US Dollars. If RegNow agrees (in its sole discretion) to make payment to You in another currency, the conversion rate shall be determined in accordance with RegNow's operating standards using the rates prevailing upon the date that payment is made to You, or upon the basis of historical conversion rates if rates are unavailable at that time (RegNow may charge You for reimbursement of any service fees or other fees that RegNow may owe to financial institutions or money transmitters as a result of conversion).
- F. Holdback. In certain circumstances, RegNow may hold back some or all of any Payouts that may be owed to You as a reserve to cover potential future Refunds or Chargebacks that may be charged against Your prior Referral Sales, or other liabilities You may owe to RegNow (any such amounts, the "Reserves"). Any Reserves will be liquidated within one (1) year of the time they are initially held back. RegNow may, in its sole discretion, impose higher than normal Reserves, or extend the holding periods for any Reserves, either temporarily or permanently, in order to reduce RegNow's risk of loss or damage to business under varying circumstances. RegNow is in no way responsible for any losses You sustain, including claims for lost income, profits or interest, on account of the imposition of Reserves for any reason. Regardless of any Reserve RegNow may choose to keep, You agree to pay RegNow, upon demand, for any shortfall owed to RegNow including shortfalls due to Refunds or Chargebacks.

## **V. WHAT DO YOU PROMISE TO US?**

- A. Representations. You make the following representations, warranties and covenants to RegNow:
  - 1. You have and shall have at all times all rights necessary to enter into this Agreement, to grant the licenses You grant hereunder, and to perform your obligations hereunder, and that You are of legal age and otherwise competent to be contractually bound to this Agreement. If You are a corporation or other form of business entity, the person who has entered into this Agreement on Your behalf is authorized to bind You to this Agreement, and the board of directors or others who control the corporation or other business entity have authorized the entity to enter into the Agreement.
  - 2. You are solely responsible for compliance with, and will comply at all times with, all

civil and criminal laws, rules and regulations applicable to You and Your business (including without limitation the CAN-SPAM Act of 2003).

3. Any of Your Content which You in any way associate with RegNow, the RegNow Affiliate Network, or any Seller does not infringe the intellectual property rights of RegNow, a Seller, or any third party.
  4. All of the information You provide to RegNow is correct as of the time You entered it, and You will promptly update any of that information when it has changed.
  5. In all of Your actions as an Affiliate and while associating Yourself with RegNow, the RegNow Affiliate Network and/or any Seller in any way, You shall not do any of the following: (1) engage in deceptive trade practices or any Regulated Business; (2) engage in spamming, indiscriminate advertising or sending of unsolicited commercial email; (3) use third party pop-up or pop-under systems or services to promote Programs; (4) replace, intercept, interfere with, hinder, disrupt or otherwise alter a Customer's access, view or usage of Your web site, a Referred Link or a Seller's web site, including without limitation any click-through or traffic-based transaction; (5) auto-set cookies on a Customer's browser; (6) collect personally identifiable information concerning Customers which is not fully disclosed in your privacy policy; (7) perform any activity that involves, facilitates, advocates or promotes (a) discrimination on the basis of race, ethnicity, gender, religion, sexual orientation, age or disability, (b) libelous, defamatory, obscene, pornographic, sexually explicit or abusive activities or materials, (c) gambling or illegal substances, (d) sedition, unauthorized copying or distribution of copyrights materials (e.g., music, videos, books, etc) or any other illegal activities, or (e) any violation of law or breach of the intellectual property or other rights of any other person, entity or organization; (8) violate the reasonable standards of doing business on the Internet (as determined by RegNow in its sole discretion); or (9) any other activity which may expose RegNow or any Seller to increased business risk or legal liability.
- B. Non-Solicitation. During the term of this Agreement, You may not enter into any agreement with any RegNow Seller which concerns the referral of potential customers of Seller's products and services or would in any manner circumvent or compete against the RegNow Affiliate Network. You acknowledge that Your breach of this paragraph will result in irreparable injury to RegNow for which monetary damages alone would not be an adequate remedy. Therefore, You agree that in the event of a breach or threatened breach of this paragraph, RegNow shall be entitled to injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages. In addition, RegNow shall be entitled to collect its reasonable attorneys' fees and expenses from You in obtaining such injunctive and/or other relief.

## **VI. WHAT RIGHTS DO WE HAVE AND KEEP?**

- A. Use of Data. RegNow reserves the right to be able to utilize any data it derives from use of the Referral Links or Referral Sales, which may include information about Your performance statistics, to analyze RegNow Affiliate Network trends, monitor RegNow Affiliate Network efficiencies, maintain the integrity of the Referral Link code system, promote RegNow Affiliate Network capabilities and efficiencies, and promote You to Sellers. Further, where a particular Customer has authorized release of information to You (for example, as part of a rewards program You operate), RegNow may also disclose data regarding the Customer's Referral Sales transaction to You if You referred the Customer to the Store.
- B. RegNow as Service Provider. The Programs are offered by Sellers and not by RegNow. RegNow is acting solely as a service provider to both You and the Seller to administer the Program and to process Sellers' payment obligations to You. All product sales

commissions are determined by the Seller. You acknowledge and agree that RegNow is in no way responsible for the practices of any Seller and/or the content that a Seller makes available through the RegNow Affiliate Network, the payment of any Payouts that may be owed to You, or the performance of or any damages caused by the products or services sold by the Seller through the Store. RegNow does not guarantee any of the Seller's obligations to You, and You agree that You are not relying on RegNow to ensure the validity or enforceability of any Seller Program Terms.

- C. Nature of Relationship with RegNow. Your relationship with RegNow is non-exclusive, and RegNow may enter into similar relationships with others without regard to competition with You or any of Your other interests. RegNow neither approves nor endorses, nor are you permitted to state that RegNow approves or endorses, Your businesses or other efforts other than approving Your rights to act as an Affiliate in the RegNow Affiliate Network as described in this Agreement, and You shall not in any way imply any other approval or endorsement by RegNow or any Seller.
- D. Other Restrictions. RegNow reserves the right to impose limits on sales of products through Stores in RegNow's sole discretion and to refuse to process transactions to specific Customers for any reason. Specifically, RegNow may limit or restrict sales to a minimum or maximum retail price, impose limits on the amount or number of purchases which may be charged to an individual credit card account during any time period, or refuse to accept orders from Customers with a prior history of questionable charges.

#### **VII. WHAT WARRANTIES DO WE DISCLAIM?**

RegNow makes no promises or warranties to You that Customers will purchase products from a particular Seller, that Referral Links will be functional at all times, or that Sellers' Stores will operate at all times or without error. REGNOW PROVIDES ITS SERVICES TO YOU UNDER THIS AGREEMENT "AS-IS, WITH ALL FAULTS." TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, REGNOW DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WHICH MAY ARISE UNDER LAW OR EQUITY OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ACCURACY OF INFORMATION. Except for any obligations RegNow has to pay You the Payouts as Seller's payment agent, You agree that Your sole and exclusive remedy for any breach of this Agreement by RegNow is for You to terminate this Agreement.

#### **VIII. HOW IS OUR LIABILITY LIMITED?**

RegNow's total aggregate liability to You arising out of or under this Agreement shall be limited to One Hundred Dollars (\$100). You agree that Your sole remedy for any failure to receive Payouts is against the applicable Seller, and not against RegNow.

REGNOW SHALL NOT BE LIABLE TO YOU OR TO ANY THIRD PARTY CLAIMING THROUGH YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY DESCRIPTION (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS), WHETHER BASED ON CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IRRESPECTIVE OF THE NUMBER OR NATURE OF CLAIMS. THE LIMITATIONS UPON DAMAGES AND CLAIMS SET FORTH IN THIS AGREEMENT IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE BEEN HELD TO BE INVALID OR INEFFECTIVE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

THE TERMS OF THIS AGREEMENT REFLECT AN AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES SUPPORTED BY (AMONG OTHER THINGS) THE PRICING AGREED TO BETWEEN THE PARTIES, AND THIS ALLOCATION IS A FUNDAMENTAL PART OF THE BASIS OF THE BARGAIN BETWEEN THEM.

#### **IX. YOU INDEMNIFY US FOR CERTAIN LOSSES**

You and Your successors and assigns shall indemnify, defend, and hold harmless RegNow, its corporate affiliates and subsidiaries and each of their respective directors, officers, employees, agents and subcontractors, and their respective successors and assigns from and against and in respect of any and all third party claims, demands, losses, costs, expenses (including, but not limited to, the cost of obtaining an opinion of counsel in response to a notice of potential infringement of the intellectual property rights of any other person or organization), obligations, liabilities, damages, recoveries and deficiencies, including interest, civil or criminal penalties or fines, reasonable attorneys' fees and costs, that an indemnified party may incur or suffer, which arise, result from, or relate to (a) Your failure to perform, violation or breach of any of Your representations, warranties, covenants and/or obligations under this Agreement; or (b) an actual or alleged breach of any applicable civil or criminal laws by RegNow caused directly or indirectly by Your actions or inactions (other than breaches of law due to RegNow's own knowing and intentional violation); or (c) Your participation in the RegNow Affiliate Network or any Program, including without limitation any taxes, liens, duties or other civil obligations which may be imposed on RegNow directly as a result of Your participation (other than taxes directly imposed on RegNow based on RegNow's own income); or (d) claims arising out of any other activities You perform, services You provide, or products You sell which are associated publicly in any manner with the RegNow Affiliate Network or any of its Sellers; or (e) the assertion of any infringement or other claims alleging that Your Content violates the intellectual property rights of any other person or organization (including those rights held by RegNow or any Seller); or (f) claims relating to the violation of any privacy policies You are required to comply with under this Agreement; or (g) the negligence or willful acts or omissions of You or Your employees or agents.

RegNow will promptly provide You with written notice of any claim for which RegNow seeks indemnification and will tender the defense of that claim to You. You will respond in writing to the tender of defense within twenty (20) business days of Your receipt of this notice, notifying RegNow of any claim, demand, suit or proceeding for which You have agreed to indemnify and hold RegNow harmless, and You will, upon RegNow's written request, will promptly defend and continue the defense of that claim, demand, suit or proceeding at Your expense. A failure by You to respond in writing to the tender of defense within the time specified in this paragraph will be deemed a waiver of any objection to its obligation to defend RegNow, but a reservation of Your rights to object to any subsequent obligation to indemnify or to hold harmless RegNow. In the event You accept the tender of defense with a reservation of rights, reject the tender of defense or fail to respond to a tender of defense, RegNow shall thereafter have the right to control of the defense of that claim, including the right to select which firm defends the claim. In the event You reject the tender of defense, You will be liable for any legal fees and expenses incurred by RegNow to compel You to honor Your indemnification obligations. You will obtain RegNow's express prior written approval to settle any claim if the settlement (i) arises from or is part of any criminal action, suit or proceeding, or (ii) contains a stipulation to or admission or acknowledgment of any liability or wrongdoing on the part of RegNow, or (iii) requires any specific performance or non pecuniary remedy by RegNow. If You fail to undertake and continue the defense or fail (in RegNow's sole and reasonable opinion) to adequately pursue or conduct the defense, RegNow will have the right (but not the obligation) to make and continue the defense as it considers appropriate, and the expenses and costs thereof (including without limitation the amounts of any judgment rendered against RegNow) will be paid by You. You further agree that You shall indemnify RegNow for any reasonable attorneys' fees or other costs incurred by RegNow in investigating or enforcing its rights under this Agreement.

#### **X. HOW LONG DOES THIS AGREEMENT LAST?**

- A. Term. This Agreement starts on the date You acknowledge Your agreement with its terms to RegNow, and will last until the day either of us should provide notice to the other terminate this Agreement by email (if to You, to the email address you have provided to RegNow, and if to RegNow, to [affiliates@regnow.com](mailto:affiliates@regnow.com)). Neither You nor RegNow are obligated to continue under this Agreement for any period of time, and You should not rely upon whether or not Your participation in the RegNow Affiliate Network will continue for any period of time.

- B. Termination of Program Participation. Either RegNow or a Seller may terminate Your agreement to participate in a particular Program with that Seller, or this Agreement in its entirety, at any time with or without cause upon notice to You.
- C. Breach. If You are in breach of any provision of this Agreement, RegNow may provide You with notice of Your breach, and RegNow may (at its sole option) either provide You with an opportunity to cure, suspend Your use of RegNow's services, or terminate this Agreement with or without notice to You.

If RegNow believes You have engaged or are engaging in fraudulent activities or are otherwise in breach of any of the terms of this Agreement, RegNow may (without notice to you) suspend any of your pending Payout payments, and suspend the tracking of any new Referral Sales (without discontinuing tracking of Chargebacks) in which event RegNow shall not be obligated to pay you for Referral Sales made during such suspension of tracking. Such temporary conditions may continue for so long as reasonably required by RegNow to investigate the circumstances, until You cure Your breach to RegNow's reasonable satisfaction, or until this Agreement has been otherwise terminated. If RegNow believes that You are engaging any suspected fraudulent, abusive or otherwise illegal activity, RegNow may also refer this knowledge to the appropriate law enforcement agencies (as RegNow deems appropriate).

- D. Events Upon Termination. With respect to RegNow and all Sellers once this Agreement has been terminated, or with respect to a particular seller in the event your participation in a particular Program (but not the Agreement) is terminated, RegNow and You agree to the following:
  - 1. You will no longer be credited for Referral Sales arising out of any transactions on any of Sellers' Stores that occur on or after the termination date.
  - 2. Your obligation to pay RegNow for any shortfall in Your account (e.g., any obligations You may have arising out of Chargebacks) survives the termination of the Agreement. Without limiting the foregoing, You will satisfy any obligations You may have regarding Chargebacks to RegNow upon RegNow's or any applicable Seller's demand, or within 30 days of the effective date of termination, whichever comes sooner.
  - 3. RegNow will continue to make Payout payments to You as per this Agreement.
  - 4. All grants of rights to You under by Sellers or otherwise under this Agreement will terminate, and You will immediately remove references to RegNow's name and those of Sellers, and any Referral Links and Marketing Support Materials, from Your web site, as well as from any other marketing materials which You distribute, publish or broadcast after the date of the termination.
  - 5. You will continue to be responsible for any liability that might arise out of Your participation in the RegNow Affiliate Network (including without limitation fraudulent transactions, any infringement of intellectual property rights, and any other violation of law that may have occurred as a result of that participation). The provisions of this Agreement which contemplate their survival past the term of this Agreement shall survive the termination of this Agreement, including but not limited to RegNow's reserve rights and all of Your indemnity obligations.
  - 6. RegNow's exercise of any of its rights under this Agreement shall be non-exclusive, and RegNow may also exercise its rights to obtain any other remedies available to it at law or in equity.

#### **XI. ANYTHING ELSE WE AGREE UPON?**

- A. Entire Agreement. This Agreement is a valid and enforceable agreement between RegNow and You that sets forth the entire understanding between the parties with respect to the subject matter hereof, there being no terms, conditions, warranties, or representations other than those contained in this Agreement.
- B. Amendments. RegNow may amend this Agreement at any time by publishing a new version on the RegNow Affiliate Network web site. You will be required to agree to the modified version upon your next log-in to the Affiliate interface. However, regardless of when you may log into the Affiliate interface, Your continued participation in the RegNow Affiliate Network following the effective date of a new version (including without limitation any use, display or distribution by You of any Referral Link) will constitute Your acceptance of the new version, and all amendments to the prior forms of this Agreement, as of the effective date of their publication by RegNow. If any amendment made by RegNow in this manner is unacceptable to you, your only recourse is to terminate this Agreement. No other amendments to this Agreement shall be valid unless made in writing and signed by both You and RegNow.
- C. Assignment. You may not assign this Agreement, or any of Your rights under this Agreement, without the prior express written permission of RegNow, and any attempt to assign in violation of the preceding shall, at RegNow's option, render this Agreement null and void. However, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. RegNow may assign this Agreement or delegate its duties under this Agreement without Your permission. RegNow may engage the services of subcontractors to assist RegNow in the performance of its obligations pursuant to the provisions of this Agreement.
- D. Force Majeure. RegNow is relieved of any obligation to perform under this Agreement if it is unable to perform as a result of natural disaster, war, emergency conditions, labor strike, acts of terrorism, the substantial inoperability of the Internet, the inability to obtain supplies, or other reasons or conditions beyond RegNow's reasonable control.
- E. Jurisdiction and Venue. This Agreement shall be governed by and interpreted under the laws of the State of Minnesota, United States of America. The parties specifically disclaim application of the United Nations Convention on the International Sale of Goods. Any disputes or conflicts related to or arising out of this Agreement will take place exclusively in the state or federal courts located in Hennepin County, Minnesota, USA, and You expressly agree that any of these courts has personal jurisdiction over You. You waive all defenses of lack of personal jurisdiction and forum non-conveniens. A party that primarily prevails in an action brought under this Agreement is entitled to recover from the other party its reasonable attorneys fees and costs.
- F. Rules and Regulations. RegNow may from time to time establish and revise rules and regulations regarding Your use of the RegNow Affiliate Network by posting them on the RegNow Affiliate Network web site. Any of these rules or regulations (or revisions of the same) shall be deemed incorporated within and made a part of this Agreement as of the time they are posted.
- G. Notices. If You are obligated under this Agreement to tell RegNow something or You wish to give RegNow legal notice of any kind, You must do so in writing and deliver it by certified mail, postage pre-paid and return receipt requested, OR by nationally recognized overnight courier which provides a written proof of delivery (e.g., FedEx, UPS, DHL, etc.), to RegNow, Inc., ATTN: General Counsel, 9625 76th Street, Eden Prairie, MN 55344, phone: 952-253-1234. If RegNow is obligated under this Agreement to tell You something or RegNow wishes to give You legal notice of any kind, RegNow may choose to do so either (a) by use of any of the addresses You gave to RegNow during Your registration as an Affiliate, including postal mail or e-mail, or (b) by posting such notice on the RegNow Affiliate Network web site. If any notice fails to reach You because You gave RegNow inaccurate address information, RegNow's notice shall nonetheless be deemed to have

been delivered to You.

- H. Other Terms. No waiver or breach of any provision of this Agreement (a) will be effective unless made in writing, or (b) will operate as or be construed to be a continuing waiver of such provision or breach. In the event any portion of this Agreement is held to be invalid, the same will not affect in any respect whatsoever the remainder of the Agreement. The provisions of this Agreement will not in any respect whatsoever be deemed to create a partnership, joint venture, or other business combination between RegNow and the Company. Notwithstanding any applicable statute of limitations, the Parties agree that any claims for breach of this Agreement will be brought by a Party within two (2) years of the date that Party first has notice of the existence of such breach. No provisions in either Party's purchase orders or other business forms will modify, supersede or otherwise alter the terms of this Agreement. This Agreement has been negotiated by the Parties and their respective counsel, and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of the Agreement or otherwise. Headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Any reference to a section will refer to all subsections of that section. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which will be one and the same document. A copy (including PDF) or facsimile of a signature will be binding upon the signatory as if it were an original signature. This Agreement will not become binding on either Party until each Party has received a counterpart executed by the other Party.
- I. Electronic Signatures. YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THE REGNOW AFFILIATE NETWORK PROVIDED BY RegNow. Further, You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means.

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