

## LINKSHARE AGREEMENT

The terms and conditions outlined in this LinkShare Agreement ("Agreement") shall apply to your participation in the Sierra Club LinkShare Program (the "Program") as maintained by and through the LinkShare Network™, as described below. If you do not agree to the terms and conditions contained herein, do not register for or submit an application to Sierra Club for enrollment in the Program. As used in this Agreement, "you" means the participating web affiliate.

### I. DEFINED TERMS

As used in this Agreement, the following terms shall have the following meanings: "LinkShare Site" means the Web Site maintained by the LinkShare Network™, located at the domain [www.linkshare.com](http://www.linkshare.com), where Offers will be posted.

"Offer" means a specific offer posted by the Sierra Club on the LinkShare Site that receives an identification number from the LinkShare Network™ and specifies a Required URL.

"Product" means a Sierra Club product, service or membership that is the subject of an Offer.

"Qualified Customer" means any user who accesses the Sierra Club Web Site from your Web Site by means of a Required URL, purchases a Product and remits full payment to Sierra Club.

"Qualified Transactions" means any transaction that takes place between a Qualified Customer and the Sierra Club within fourteen (14) days of that Qualified Customer's first access, during the term of an Offer, to the Sierra Club Site by means of the Sierra Club Link.

"Required URLs" means the specific URL(s) specified in an Offer to be used to link from your site to the Sierra Club Site.

"Sales Origination Fee(s)" means the amount payable based on a percentage or flat fee commission specified in an Offer for any Qualified Transaction.

"Sierra Club Link" means a link from your Site to Sierra Club's Site using a Required URL specified in an Offer.

"Web Site" means, collectively, all points of presence and/or services maintained by a party on that portion of the Internet known as the World Wide Web.

"Web Page" means a location contained within a party's Web Site which is accessible to the general public.

### II. ENROLLMENT & ELIGIBILITY

A. If you are a member of The LinkShare Network™, you only need to read and agree to this Agreement in order to submit an application to enroll in the Program. Acceptance by the Sierra Club, in its sole discretion, is a condition precedent to enrollment in the Program. If you are not a member of the LinkShare Network™, you must complete a registration form to join the LinkShare Network™ at [www.linkshare.com](http://www.linkshare.com).

B. To join the Program, your Web Site must not violate any intellectual property rights, promote violence, gambling or pornography, contain defamatory or libelous content, be maintained by an oil company, timber company, tobacco company or other incompatible organization, as determined by Sierra Club in its sole discretion, promote illegal activities, discrimination based on race, sex, religion, nationality, disability, sexual orientation or age. Further, to participate in the Program, your Web Site must contain a privacy statement, a copy of which shall be sent by you to Sierra Club for evaluation as soon as possible after you submit your application to join the Program. Failure to satisfy any of these restrictions may result in the rejection of an application or termination of this Agreement, if enrollment has already been granted.

C. Sierra Club will evaluate your application to join the Program and will notify you of your acceptance or rejection. Sierra Club may reject your application in its sole discretion. If you are accepted into the Program, you will be able to participate in the Program subject to the terms and conditions of this Agreement. Your enrollment in the Program is effective upon dispatch of Sierra Club's notice of acceptance. If you are accepted to participate in the Program and your Web Site is thereafter determined by Sierra Club in its sole discretion to be unsuitable for the Program, Sierra Club may terminate this Agreement in our sole discretion pursuant to the terms herein. If Sierra Club rejects the application, you are welcome to reapply to the Program at any time.

### III. OFFERS

A. From time to time, Sierra Club may post Offers on The LinkShare Network™ to pay members of The LinkShare Network a specified Sales Origination Fee on certain Qualified Transactions.

B. The terms of an Offer, as posted on The LinkShare Network™, shall be governed by the terms and conditions of this Agreement. In the event of any inconsistency between the terms of the specific Offer and the terms of this Agreement, the terms of this Agreement shall govern.

C. At any time prior to you posting a Sierra Club Link, Sierra Club may, with or without notice, (a) change, suspend, or discontinue any aspect of an Offer or (b) remove, alter, or modify any graphic, text or banner ad submitted to you pursuant to an Offer. You agree to promptly implement any request from Sierra Club to remove, alter, or modify any graphic, text or banner ad submitted to you that is being used in connection with an Offer.

D. When a user activates the Required URL, the user shall be connected to such Web Page as may be designated by Sierra Club in the Offer.

### IV. ORDER PROCESSING & REPORTING

A. Sierra Club will sell, serve, invoice, and collect for all Product orders placed by customers accessing our Web Site, including all Qualified Transactions. Sierra Club reserves the right to reject orders or membership applications that do not comply with any Sierra Club requirements as exist from time to time. At Sierra Club's sole discretion, Sierra Club will be responsible for all aspects of order and membership processing and fulfillment, including preparing order forms; processing payments, cancellations, and returns; and handling customer service.

B. Sierra Club will use technically and commercially reasonable means to track any and all Qualified Transactions, such as use of software provided by the LinkShare Network™ to track any and all Qualified Transactions in the LinkShare Network™. To permit accurate tracking, reporting, and fee accrual, you must ensure that the Required URL(s) is formatted and operating properly.

#### V. SALE(S) ORIGINATION FEES; PAYMENT TERMS

A. In order to generate a Sales Origination Fee, a new customer must become a Qualified Customer by entering into a Qualified Transaction pursuant to an Offer. Sierra Club will pay Sales Origination Fees on any Qualified Transactions. If (a) a Product that generated a Sales Origination Fee is returned by a customer; (b) or if Sierra Club does not receive payment for the sale, Sierra Club will deduct the corresponding Sales Origination Fee from the next monthly payment. If there is no subsequent payment, Sierra Club will send you a bill for the fee.

B. Unless otherwise agreed to by the parties hereto in an Offer, Sierra Club will pay you Sales Origination Fees on a monthly basis. Approximately sixty (60) days following the end of each month, Sierra Club (or our designee, The LinkShare Network™) will send you a check for the Sales Origination Fees earned on Qualified Transactions. However, if the Sales Origination Fee payable to you for any calendar month is less than \$50.00, Sierra Club will hold those sales origination fees until the total amount due is at least \$50.00, or (if earlier) until this Agreement is terminated and the Sierra Club is notified.

C. If you are accepted into the Program less than thirty (30) days prior to the end of a month, then any and all Sales Origination Fees generated during that initial period shall be included in the next month for purposes of payment of those fees by us. Payment will not be made until we have received a completed form W-9 from you.

#### VI. POLICIES AND PRICING

Customers who buy Products through the Program will be deemed to be customers of the Sierra Club. Accordingly, all Sierra Club's rules, policies, and operating procedures concerning membership, customer orders, customer service, customer data apply to this Agreement. Sierra Club may change such policies and operating procedures at any time in our sole discretion. Product prices and availability may vary from time to time. Sierra Club will use commercially reasonable efforts to present accurate information, but cannot guarantee the availability or price of any Product.

#### VII. LIMITED LICENSES

A. Sierra Club grants you a nonexclusive, revocable, worldwide license to use and transmit the Sierra Club logo and such other images or text (collectively the "Marks") for which Sierra Club grants express permission in an Offer, solely for the purpose of creating and maintaining the Sierra Club Link(s); provided that, any such use of the Marks follows Sierra Club's intellectual property guidelines, as those guidelines may exist from time to time. You may not modify the Marks or the Sierra Club Link(s) in any way. Except as expressly set forth in this Agreement or permitted by applicable law, you may not copy, distribute, modify, reverse engineer or create derivative works of the Marks, and may not sublicense, assign or transfer any such licenses for

the use of the Marks, and any attempt at such sublicense, assignment or transfer is void. Sierra Club reserves all rights in the Marks, the Sierra Club Link, and all other intellectual property rights currently used or which may be developed and/or used by Sierra Club in the future. Sierra Club may revoke such license at any time by giving you written notice, at which time you will remove all Sierra Club Link(s) from your Web Site. If your license is revoked, you will not receive any outstanding compensation for Sales Origination Fees.

B. As a condition to your acceptance and participation in the Program, you shall not undertake or engage in the following practices, and any violation of this Section shall be deemed a material breach of this Agreement: (a) Use or otherwise incorporate the words "Sierra Club" or variations or misspellings in the domain name(s) of your Web Site(s), unless expressly and explicitly authorized in writing by Sierra Club; (b) Modify or alter our Web Site in any way; (c) Make any representations, either express or implied, or create an appearance that a visitor to your Web Site is visiting our Web Site; e.g., "framing" the Sierra Club Web Site; or (d) During the term of or after the expiration or termination of this Agreement, use any mark, name or domain name of any type which is confusingly similar to "Sierra Club" or other Sierra Club trademarks."

#### VIII. RESPONSIBILITY FOR YOUR WEB SITE

A. You will be solely responsible for the development, operation and maintenance of your Web Site and all materials that appear on your Web Site. For example, you will be solely responsible for (a) maintaining the technical operation of your Web Site and all related equipment, (b) creating and posting product descriptions on your Web Site, (c) verifying the accuracy and appropriateness of materials posted on your Web Site (including, among other things, all product-related materials), (d) ensuring that materials posted on your Web Site do not violate or infringe upon any rights, including intellectual property rights, of any third party and (e) ensuring that materials posted on your Web Site are not libelous or otherwise illegal.

B. Sierra Club disclaims all liability for these matters and all materials on your Web Site. Further, you will indemnify, defend and hold Sierra Club and our affiliates, directors, officers, employees and agents harmless from all third party claims, damages, and expenses (including without limitation, attorneys' fees) relating to the development, operation, maintenance, and contents of your Web Site.

#### IX. TERM OF THE AGREEMENT

A. This Agreement shall be effective as of the date Sierra Club communicates notice of acceptance into the Program and shall remain in full force and effect until terminated by either party as stated herein.

B. Either party may terminate this Agreement at any time, for any reason in their sole discretion upon written notice of such termination to the other party and The LinkShare Network™. Termination of this Agreement shall also terminate any outstanding Offer. 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.

C. Upon termination of this Agreement for any reason, you will immediately cease use of, and remove from your Web Site, all links to Sierra Club's Web Site, including

the Sierra Club Link, and all Marks and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the Program.

D. The licenses granted herein shall terminate upon the termination of this Agreement. The provisions of Sections XI (Indemnification), XIII (Limitation of Liability), and XIV (Representations and Warranties) shall survive the termination of this Agreement.

#### X. MODIFICATION

Sierra Club may modify any of the terms and conditions contained in this Agreement and/or any Offer, at any time and in its sole discretion, by providing written notice by email to you. Modifications may include, for example, changes in scope of available Sale Origination Fees, fee schedules, payment procedures, and Program rules. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING RECEIPT OF SIERRA CLUB'S EMAIL NOTICE OF MODIFICATIONS WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.

#### XI. RELATIONSHIP OF PARTIES

Nothing contained in this Agreement is intended implicitly, or is to be construed, to constitute you and Sierra Club as partners or joint venturers in a legal sense. Neither party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party. You will not make any statement, whether on your Web Site or otherwise, that reasonably would contradict anything in this Section.

#### XII. INDEMNIFICATION

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.

#### XIII. LIMITATION OF LIABILITY

NEITHER PARTY WILL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES (OR ANY LOSS OF REVENUE, PROFITS, OR DATA) ARISING IN CONNECTION WITH THIS AGREEMENT OR PROGRAM, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT AND THE PROGRAM WILL NOT EXCEED THE TOTAL SALE ORIGINATION FEES PAID OR PAYABLE TO YOU UNDER THIS AGREEMENT.

#### XIV. REPRESENTATIONS AND WARRANTIES

A. Each party, to the best of their knowledge, represents to the other that (1) it has the authority to enter into this Agreement and sufficient rights to grant any licenses granted hereby, and (2) any material which is provided to the other party and displayed on the other party's Web Site shall (a) not infringe on any third party's

copyright, patent, trademark, trade secret or other proprietary rights or right of publicity or privacy, (b) not violate any applicable law, statute, ordinance or regulation; (c) be defamatory or libelous; (d) be lewd, pornographic, or obscene; (e) violate any laws regarding unfair competition, anti-discrimination or false advertising; (f) promote violence or contain hate speech; (g) promote discrimination, based on race, age, sex, religion, nationality, sexual orientation, or disability; or (h) contain viruses, trojan horses, worms, time bombs, cancelbots, or other similarly harmful or deleterious programming routines.

B. Sierra Club makes no representation that the operation of its Web Site will be uninterrupted or error-free, and Sierra Club will not be liable for the consequences of any interruptions or errors. You acknowledge that Sierra Club's and LinkShare's servers, equipment, and services (e.g., tracking and reporting) may be subject to temporary modifications or shutdowns due to causes beyond Sierra Club's and LinkShare's reasonable control. Such temporary service interruptions will not constitute a material breach of this Agreement. Sierra Club and LinkShare will use commercially reasonable efforts to provide the services contemplated under this Agreement and to remedy any temporary interruptions or other problems that adversely affect the Program.

C. EXCEPT FOR THOSE REPRESENTATIONS EXPRESSLY PROVIDED HEREIN, SIERRA CLUB MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PROGRAM OR ANY PRODUCTS SOLD THROUGH THE PROGRAM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF A COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE.

#### XV. INDEPENDENT INVESTIGATION

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

#### XVI. MISCELLANEOUS

A. This agreement will be governed by the laws of the United States and the state of California, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in San Francisco, California, and you irrevocably consent to the jurisdiction of such courts.

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

C. Our failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such provision or any other provisions of this Agreement.

D. 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.

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