

PSS Affiliate Agreement

This Agreement contains the complete terms and conditions that apply to your participation in our PSS Affiliate Program. As used in this Agreement, "we" or "us" refers to Performance Support Systems, Inc. (PSS), P.O. Box 1655, Newport News, VA 23601 and "you" or "your" refers to you, the applicant. You must be 18 years of age or older to enter into this Agreement with us.

This Agreement covers all Products (refers to PSS products and services) offered through the PSS Affiliate Program.

1. **Enrollment.** To begin the enrollment process you must submit a completed PSS Affiliate Program application. After we receive your application we'll evaluate it and notify you whether it has been accepted. We reserve the right to reject applications for any reason. For example, we may reject your application if we determine that your site is unsuitable for the Program, including if it:
 - o Contains sexually explicit materials
 - o Promotes violence
 - o Promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age
 - o Promotes illegal activities
 - o Incorporates any materials which infringe or assist others to violate the law or infringe on any copyright, trademark or other intellectual property rights
 - o Is otherwise in any way unlawful, harmful, threatening, defamatory, libelous, threatening, abusive, hateful, obscene, harassing, or racially, ethnically or otherwise objectionable to us in our sole discretion

If we accept your application, we'll provide you with an affiliate handbook, marketing information, instructions on how to use the PSS Affiliate Center, and instructions describing how to include and maintain links to our site.

If we reject your application, you are welcome to reapply to the Program at any time. You should also note that if we accept your application and your site is later determined (in our sole discretion) to be unsuitable for the Program, we may terminate this Agreement at any time. We will not be liable to you for any costs, damages or lost profits as a result of our termination of this Agreement.

2. **Linking to site.** Once we notify you that your application has been accepted, you will receive an email with your affiliate username, password and affiliate link. We will also make available to you banner advertisements, buttons and/or text links to our site.

The links we may make available could be in the form of:

- A logo that links your home page to ours
- A picture of one or more of our products that links your site to the page on our site where such products are offered

These links will allow your visitors to enter our site and enable us to keep track of the commissions you earn when they purchase products from us. To permit accurate tracking and reporting, the links we provide you are in a special "tagged" link format, or "Tagged Links." You are responsible for ensuring that each of the links between your site and our site is a Tagged Link. You agree not to modify the Tagged Links in any way.

3. **Order processing.** PSS shall establish the procedures of selling the Products including, without limitation, the placement of orders, pricing, payment terms, processing, delivery, returns, etc. Without restricting the generality of the foregoing, PSS shall have the right to cancel, suspend or delay any order for the Products, including the right to discontinue to sell the Products at any time.

We will process orders placed by customers who enter our site via Tagged Links or who order Products via phone call or email to PSS. We reserve the right to reject any orders that do not comply with our policies or conditions at the time of the order. We will be responsible for all aspects of order processing and fulfillment. Among other things, we will prepare order forms, process payments, cancellations and returns and handle customer service. We will track sales made to customers who purchase using Tagged Links or phone or email and will make available to you reports summarizing this sales activity. The form, content, frequency and method of delivery of the reports may vary from time to time in our sole discretion.

4. **Two-Tiered Program.** We have two types of affiliate commissions: sales you personally make and sales made by other affiliates you've sponsored. When you sign up other PSS Affiliates, you will be paid a percentage of their qualifying purchases.

Commissions are calculated based on "Net Sales" from "Qualifying Purchases." "Net Sales" shall mean gross sales from Qualifying Purchases less: returns/refunds; postage (if applicable); shipping charges (if applicable) and sales, use or other like taxes. "Qualifying Purchases" shall mean purchases completed on our site, via a valid credit card, or purchases placed by phone or email to PSS via a valid credit card or purchase order number.

- o 1st Tier. We will pay you a 40% commission on all qualifying purchases made with your affiliate link, including your own.
- o 2nd Tier. We will pay you 6% of all qualifying purchases of affiliates you sponsored.

5. Payments to affiliates. All affiliate payments are made through PayPal.

- a. We will pay you for all purchases made when visitors from your site or your sponsored affiliates' sites purchase products on our site, via a valid credit card. The tagged link the visitor uses contains your affiliate code or the affiliate code of your sponsored affiliate.

Sales will be tracked in two ways: "cookies" and internal procedures. The first time a visitor clicks your tagged link, a "cookie" is placed on their computer. The cookie has no expiration date and will remain on their computer indefinitely. All subsequent purchases will be credited to you, as long as the visitor doesn't delete the "cookie" manually. The second way sales are tracked is through PSS internal procedures. Before issuing affiliate payments, PSS will backwards-track all purchases, and use best efforts to ensure you receive credit for purchases made by your customers.

- b. We will pay you for all purchases made when you, your referred customers or your sponsored affiliates and their customers purchase products by phone or email through PSS using a valid credit card or purchase order number. Commissions for purchases made using a purchase order number will be paid after payment is received by PSS.

Phone or email sales will be tracked by PSS at time of purchase following internal procedures. Before issuing affiliate payments, PSS will backwards-track all phone or email purchases, and use best efforts to ensure you receive credit for purchases made by you or your customers.

6. **Policies and pricing.** Customers who buy products through this Program will be deemed to be our customers. Accordingly, all rules, policies, and operating procedures concerning customer orders, customer service and product sales from and by PSS will apply to those customers. Also, the terms, conditions and policies of our site will apply to the visitors' conduct and their rights and obligations while visiting our site. We have the right to change our policies and operating procedures at any time. For example, we will determine the prices to be charged for products sold under this Program in accordance with our own pricing policies. Because product prices and availability may vary from time to time, you may not include pricing or product descriptions on your site that are not provided by PSS. We will use commercially reasonable efforts to present accurate information. You are responsible for periodically visiting, reviewing and becoming familiar with the terms and conditions sections of the affiliate program site, which are incorporated into this Agreement by reference.
7. **Ownership and license.** We hereby grant you a limited, non-exclusive, nontransferable, non-sub-licensable, revocable right to use the graphic images and text we are providing to you solely for the purpose of creating links from your site to ours. You may not modify the graphic image or text, or any other of our images, in any way, or engage in "site framing" or similar processes. We reserve all of our rights in the graphic image and text, any of our trade names, trademarks, domain names, copyrights trade dress and any other intellectual property rights. You agree to follow our guidelines for use of our trademarks, as those guidelines may change from time to time. In addition, you agree not to use our trademarks in any search engine keyword optimization. We may revoke your license at any time by giving you written notice. You also agree that you shall use the Tagged Links only in order to link to our site and to promote your ability to do so pursuant to this Agreement. You agree that you shall not present the Tagged Links or any images comprising them in combination with any other name or mark in connection with your own goods or services, or in any manner that may suggest or imply that you or your goods or services are supplied by, sponsored by, endorsed by or affiliated with us.
8. **You are responsible for your site.** You will be solely responsible for the development, operation and maintenance of your site and for all materials that appear on your site. For example, you will be solely responsible for:

- a. The technical operation of your site and all related equipment, posting and maintaining links to our site
 - b. The accuracy and appropriateness of materials posted on your site
 - c. Ensuring that materials posted on your site do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights)
 - d. Ensuring that materials posted on your site are not libelous or otherwise illegal. We disclaim all liability for these matters
 - e. Further, you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, reasonable attorneys' fees) relating to the development, operation, maintenance, and contents of your site.
9. **No spam.** You may not promote PSS products via unsolicited email at any time. You may not promote PSS products via any form of spam including spam email, spam forum posts, instant message spam, social networking site spam, comment spam on blogs and social networking sites, help desk spam, IP to IP message spam, and any other method that is not authorized by the recipient.

Email advertising is strictly prohibited except to subscribers who have specifically opted into an email newsletter, announcement system, service, or other subscriber management system that is owned and controlled by you or a company owned by you and only when the subscriber has specifically opted in to a subscriber or customer relationship with you and authorized you to send them information including promotional offers.

You must comply with all state, local, federal, and international bulk email, email communication, commercial email, and privacy laws and must be CANSPAM compliant. You may not promote PSS products via email to any group of email subscribers that was purchased or obtained from a third party such as leads, co-op, and bulk email lists. If you are found to be in violation of these terms you may be held liable for civil damages and you will be reported to the proper government and legal agencies.

10. **Term of this Agreement.** The term of this Agreement will begin upon our acceptance of your application and will end when terminated by either party. Either you or we may terminate this Agreement at any time, with or without cause, by giving the other party notice of termination in accordance with the notice provision of this Agreement. Upon the

termination of this Agreement for any reason you will immediately cease use of, and remove from your site, all links to our site, and all our trademarks, trade dress and logos, and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the Program. You are only eligible to earn commissions on Qualifying Purchases occurring during the term, and commissions earned through the date of termination will remain payable only if the related orders are not canceled or returned. We may withhold your final payment for a reasonable time to ensure that the correct amount is paid.

11. **Modifying this Agreement.** We may modify any of the terms and conditions contained in this Agreement, at any time and in our sole discretion, by posting a change notice or a new agreement on our site. Modifications may include, for example, changes in the scope of available commissions, commission 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 THREE DAYS AFTER OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON OUR SITE WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.
12. **Independent contractors.** You and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your site or otherwise, that reasonably would contradict anything in this Section. This is a binding contract between you and us. By completing the application and by clicking on the "Agree" button below, you indicate your willingness to be bound by this Agreement.
13. **Limited liability.** We will not be liable for indirect, special, or consequential damages (or any loss of revenue, profits, or data) arising in connection with this Agreement or the Program, even if we have 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 commissions paid or payable to you under this Agreement.
14. **General.** We make no express or implied warranties or representations with respect to the Program or any products sold through the Program (including, without limitation, warranties of fitness, merchantability, non-infringement or any implied warranties arising out of a course of

performance, dealing, or trade usage). In addition, we make no representation that the operation of our site or the links or Tagged Links will be uninterrupted or error-free, or will not be re-routed or "black holed." As a result, we might temporarily be unable to capture information regarding Tagged Links. We will not be liable for the consequences of any such interruptions or errors. The Program is intended for commercial use only. YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS OR MAINTAIN AFFILIATES ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEB SITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEB SITE. 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. Notices to you are effective if provided in writing to the postal addresses, electronically to the e-mail address set forth in the application or if posted on our website. Notice to us may be given in writing to Performance Support Systems, Inc., P.O. Box 1655, Newport News, VA 23606 or info@pssaffiliates.com. This Agreement will be governed by the laws of the Commonwealth of Virginia 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 Newport News, VA and you irrevocably consent to the jurisdiction of such courts. 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 be enforceable against the parties and their respective successors and assigns. Our failure to enforce performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such provision or any other provision of this Agreement.