

## AFFILIATE TERMS AND CONDITIONS

### 1. Application of terms and conditions

By applying to be an affiliate on this website, [www.dinabehrman.com](http://www.dinabehrman.com) (“**site**”) as operated by Dina Behrman of 3 Bullhead Road, Borehamwood, WD6 1HW (“**we**” or “**us**”), you agree to the following terms and conditions (“**Terms**”) and that these shall prevail over any other terms, industry practice and course of dealing.

### 2. Term and termination

- 2.1 The term of our agreement will begin upon our acceptance of your application to be an affiliate and will end when terminated by either party in accordance with clause 7 below.
- 2.2 We are under no obligation to accept an application to be an affiliate.

### 3. Obligations

- 3.1 On completing the registration form to be an affiliate, you will be automatically sent a unique ‘tagged’ link to our site (“**Link**”) from our third party service provider. We may also send you Links in the form of graphic or textual images.
- 3.2 In being an affiliate, you shall display one or more Links in a prominent position in [relevant sections of your website(s), promotional emails, newsletter and other media] that is approved by us (together “**Marketing Materials**”) in such form as we may notify you from time to time.
- 3.3 In utilising the Link, you will cooperate fully with us in order to establish and maintain such Link. You may only use graphic or textual images (indicating a Link) that are either provided by or approved in advance by us. If requested, you will substitute any images with any new images provided by us from time to time throughout the term of this agreement.
- 3.4 We will track the sales and listings derived from each Link. You will ensure that each Link remains tagged at all times and that each Link is not modified in any way.
- 3.5 We will also from time to time provide you with promotional text should you wish to provide further information on our services. You may display other promotional content about our products and services only with our prior written consent.
- 3.6 Once you are accepted as an affiliate, you will be able to access your own affiliate panel so that you can view detailed traffic statistics and your earnings. You will be provided with a username and password for the affiliate panel which you must treat as confidential and you must not disclose it to any third party. The affiliate panel is provided by our third party provider and you use it subject to their terms and conditions.
- 3.7 You agree that it is your responsibility to integrate each Link into your website(s) and other Marketing Materials properly in accordance with our instructions and that we shall not be liable

to you in relation to your failure properly to integrate the Link into your website(s) and other Marketing Materials, including to the extent such failure may result in any reductions of commission payments that would otherwise be paid.

- 3.8 You must have an active Paypal account in order to be paid commission.
- 3.9 We are responsible for all aspects of order processing and fulfilment and the contract formed as a result of customer making a Qualifying Purchase (as defined below) shall be between us and the customer and you shall not be a party to that contract.
- 3.10 You shall not use any HTML code, IFRAME, JavaScript, or other systems to cause a user's computer to invoke a Link, or to otherwise set a tracking cookie on a user's computer, except at a user's specific request by specifically clicking on a Link from your website or other Collateral.
- 3.11 You may not cause your website to invoke Links automatically, e.g. via pop-ups or pop-unders, as users enter, browse, or exit your website nor cause your website page to invoke Links in hidden, invisible, or minimally visible windows.
- 3.12 You shall not act as a reseller of our products or services nor hold yourself out as our agent in any way.

#### **4. Fees**

- 4.1 Where a customer purchases on our site during the term of our agreement as a direct result of accessing our site via a Link from your website(s) or your other Marketing Materials ("**Qualifying Purchase**"), we shall pay you the commission as agreed according to your affiliate programme, of the value of the Qualifying Purchase actually received by us (excluding VAT where VAT is payable) provided that we shall be entitled to deduct from such commission any tax which may arise thereon and which we are obliged by law to deduct and account to HMRC.
- 4.2 We reserve the right to reject applications from potential customers and to vary our prices and terms of and related products at any time in our absolute discretion.
- 4.3 For commissions on on-going membership, these shall be payable to you on the Qualifying Purchase until the customer terminates the initial contract with us (so for example if a customer signs up for membership via a Link from your website and remains a member for 6 months, you will be paid commission on the aggregate payment received by us from that customer for the entire 6 month period).
- 4.4 If a customer re-subscribes for membership (after having previously terminated a membership purchased via a Link from your website or other Marketing Materials), upgrades their membership or purchases any other products or services other than as a direct result of accessing our site via a Link from your website(s) or your other Marketing Materials, we shall not be obliged to pay you a commission fee on such payments received by us from such customer.

- 4.5 We shall within 60 days of the end of the relevant promotion/offer period, pay directly to your Paypal account the amount of the commission fee earned by you in arrears, set out according to your affiliate referral calculations. You have access to these calculations at all times via your affiliate panel.
- 4.6 For the avoidance of doubt, commission shall cease to be payable on you ceasing to be our affiliate including in relation to ongoing subscriptions or renewal fees on Qualifying Purchases.
- 4.7 The purchase must be completed on our site and must be completed during a Session (as defined below) in order for you to earn a commission fee on such purchase.
- 4.8 "Session" means the period beginning upon a user's entry to our site via a Link (regardless of whether the visitor leaves and then returns to the site) from your site and ending 365 days thereafter if the user accepts cookies from our site.
- 4.9 To keep track of the Session, we use a small text file called a "cookie" that is placed on the hard drive of the user's computer. Some web browsers permit users to elect not to receive cookies and users may of their own volition delete cookies. Only users who accept cookies can be tracked for commission fees. Commission fees will not be paid for any purchase made by a user who does not accept "cookies" or who has deleted our "cookies" during a Session. Any Session in progress will automatically terminate upon the expiration or termination of this Agreement or upon the visitor deleting our cookie.
- 4.10 If a user accesses our website through a Link from your website but the Qualifying Purchase is made through a Link from another website or other collateral, you will not be paid a commission fee in relation to this purchase ("last click wins") in order to avoid us having to pay double commission.
- 4.11 No commission shall be payable in respect of:
- (a) any payment received by us which is made by the fraudulent and/or criminal use of a credit card; or
  - (b) any payment on a credit card being declined or a cheque being returned; or
  - (c) if a customer receives a refund for a product or service
- and where a commission fee has been made in relation to such payments, the amount of such commission shall be deducted from the commission payable in subsequent months and if the agreement is terminated you shall repay such commission fee to us.
- 4.12 Commission fees shall not be paid on purchases of our services and/or products made by you.

## **5. Intellectual Property**

- 5.1 We grant you a limited, non-exclusive, non-transferable, non-sub licensable, revocable right to use the graphic images and text provided by us solely for the purpose of creating the Links and displaying promotional text and material about our products and services in accordance with these terms and conditions. We may revoke this license at any time by giving you written notice and this license terminated automatically on you ceasing to be an affiliate.
- 5.2 We reserve all rights in all graphics, images, text and other content provided to you together with all rights in our trade names, trademarks, domain names, copyrights and any other intellectual property rights owned by us.
- 5.3 You shall not present the Links or any images or other content including the Links 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.

## **6. Liability**

- 6.1 Our aggregate liability arising with respect to this agreement will not exceed the total commission fees paid to you under this agreement. 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, even if such damages were in the contemplation of either or both of us.
- 6.2 We make no express or implied warranties or representations with respect to the products or services sold through the site (including, without limitation, warranties of fitness, merchantability, non-infringement or any implied warranties arising out of a course of performance, dealing, or trade usage).
- 6.3 We make no representation that the operation of the site or the Links will be uninterrupted or error-free, or will not be re-routed or "black holed." We may at times be unable to capture information regarding the Links and shall not be liable for the consequences of any such interruptions or errors.
- 6.4 We make no representation or warranty that the site, our trademarks and all content or other materials contained or displayed on any portion of the site do not and will not infringe upon or violate any rights of any third party, including without limitation any copyrights, trademarks, trade secrets, contract rights or privacy rights.
- 6.5 You are solely responsible for the development, operation and maintenance of your website and for all materials that appear on your website and you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, reasonable professional fees) relating to the development, operation, maintenance, and contents of your website.

7. The affiliate panel is provided by our third party provide and as such we shall not be responsible for any error, defect, bug, fault, non-availability, delay or any other matter relating to the affiliate panel. We shall not be liable in any way for any loss, damage, claim, expense or any other liability suffered or incurred by you in relation to the affiliate panel.

## **8. Termination**

8.1 Either you or we may terminate this Agreement at any time, with or without cause, by giving the other party 30 day's written notice.

8.2 We may terminate this Agreement at any time without notice if:

(a) we deem your website or other Marketing Materials unsuitable for our affiliate program;

(b) you have breached these terms and conditions in any way;

(c) you are in our opinion transmitting or otherwise connected with any 'spam' or any other form of unsolicited bulk email communication;

(d) your continued association with us may in our reasonable opinion adversely affect our goodwill or reputation; or

(e) you or us cease to carry on business, are declared bankrupt or enter into an insolvency or administration procedure.

8.3 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, all of our trademarks and logos and all other materials provided by or on behalf of us to you.

## **9. Data Protection and regulations**

9.1 You consent to us holding and processing data relating to you for legal, personnel, administrative and management purposes ("**Affiliate Data**").

9.2 You consent to us making the Affiliate Data available to those who provide products or services to us (such as advisers), regulatory authorities, governmental or quasi governmental organisations and potential purchasers of us or any part of our business.

9.3 You consent to the transfer of the Affiliate Data to our business contacts outside the European Economic Area.

9.4 You shall, in being an affiliate, comply with all provisions of the Data Protection Act 1998 and in particular the 8 data protection principles.

9.5 You shall in all circumstances comply with the provisions of the CAP Code in relation to any Marketing Materials (in particular as to not making any misleading or exaggerated statements about the products or the services that you are promoting as part of this agreement).

## **10. Status**

10.1 We and you are independent contractors, and nothing in this agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us.

10.2 You have no authority to make or accept any offers or representations on our behalf and all sales by us are transactions solely between us and the purchasing customer.

#### **11. Severance**

If any provision of these terms and conditions and the resulting agreement between us (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force unless, in our reasonable opinion, the purpose of this agreement is frustrated as a result.

#### **12. Variation**

We may vary these terms and conditions at any time. The latest version of these terms and conditions shall be as posted on our site or (provided that you have provided us with a valid up-to-date email address for you) emailed to you. Your continued acting as an affiliate constitutes your acceptance of any new or updated or amended terms and conditions.

#### **13. Waiver**

No failure or delay by us to exercise any right or remedy provided under this these terms and conditions and the resulting agreement between us or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

#### **14. Assignment**

The agreement between us is personal to you and you may not, without our prior written consent, assign, transfer, sub-contract, delegate or deal in any other manner with such agreement. We may assign our agreement with you at our discretion and without providing you with notice.

#### **15. Entire Agreement**

These terms and conditions and the resulting agreement between us constitutes the entire agreement between us and supersedes all prior agreements, communications and proposals.

#### **16. Third party rights**

A person who is not a party to the agreement between us shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **17. Governing law and jurisdiction**

These terms and conditions and the agreement between us and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. We each irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).