



## AFFILIATE PROGRAM AGREEMENT

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**BETWEEN:** **Digital Pacific Pty Ltd** (the "Owner"), a corporation organised and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

World Tower Sydney

**AND:** **You** (the "Recipient"), a corporation organised and existing under the laws of the state of NSW.

In consideration of the terms and covenants of this agreement, and other valuable consideration, the parties agree as follows:

### RECITALS

- a. The name of this affiliate program is the Digital Pacific Affiliate Program (the "Affiliate Program").
- b. The Recipient represents and warrants to the Owner that the Recipient has read and understand the Privacy Policies and agree to the terms set forth therein.
- c. For purposes of this Agreement, the term "the Recipient" refers to the individual or legal entity who applies for and is accepted into the Affiliate Program. The term "the Owner" refers to the sponsor of the Affiliate Program. The term "the Owner's website" refers to the website that the Owner maintains. The term "the Recipient's website" refers to the website on which the Recipient agrees to place a link to the Owner's website as specified in the Exhibit B hereof. "Merchandise" means all products, merchandise and stock that is offered by the Owner for sale through its website.

### 1. AFFILIATE PROGRAM REGISTRATION

To register for the Affiliate Program, the Recipient must complete and submit to the Owner an Affiliate Program Application Form. The Affiliate Program Application Form is included on the Owner's website and can be completed and submitted via our Affiliates section.

### 2. APPROVAL OR REJECTION OF AFFILIATE PROGRAM APPLICATION

The Owner reserves the right to approve or reject ANY Affiliate Program Application in its sole and absolute discretion. The Recipient will have no legal recourse against the Owner for the rejection of the Recipient Affiliate Program Application.



### **3. REASONS FOR REJECTION**

Without limiting the right to reject any application for any reason whatsoever in the Owner's absolute discretion, the Recipient application will be rejected if it is non complete, if the Recipient's website contains images or content that is not acceptable to Owner or is inconsistent with the image that the Owner wishes to create in association with its website, or if the Recipient's website contains any illegal, immoral, repulsive, defamatory, derogatory, harassing, harmful, threatening, obscene, vulgar, pornographic, racial or ethnic objectionable materials, depicts sexual situations, promotes discrimination on the basis of race, sex, sexual preference, national origin, ethnicity, nationality, disability, religious preference, or if the Recipient's site contains any material that appears to Owner to violate any patent, trademark, copyright, trade secret, confidential information, or other property rights of any other party.

### **4. TERMINATION AFTER ACCEPTANCE**

Even after the Owner has accepted the Recipient as an Affiliate Program member, the Owner reserves the absolute right to rescind or terminate the Recipient affiliate status for any reason in its sole and absolute discretion, including but not limited to the reasons set forth above.

### **5. FINANCIAL RESPONSIBILITIES**

The Recipient will be fully responsible for all costs and expenses of maintaining and marketing the Affiliate Program, including but not limited to all costs associated with the creations, hosting, modification, and improvements to the Recipient's website, costs of search engine placement and other Internet marketing, costs of inserting the Owner's links into its website, offline marketing costs, postage costs, and all other costs and expenses, and the Recipient hereby holds the Owner harmless from or against the same.

### **6. NO REPRESENTATIONS REGARDING INCOME POTENTIAL**

The Owner makes no representations and warranties regarding potential income that may result from participation in this Affiliate Program and specifically disclaims any and all warranties relative to earning potential from the Recipient affiliate status.



## 7. RESPONSIBILITY TO LINK TO THE OWNER'S SITE

- a. As a Program Affiliate, the Recipient will have the obligations to place links on its site directing users to the Owner's site. The Owner will make available to the Recipient button links, text links, and banner advertisements to be placed on the Recipient's website which will direct users to Owner's website via hypertext link. As a Program Affiliate, the Recipient is given a limited term license, during the term of the Recipient active participation as a Program Affiliate, to utilise the Owner's logo images provided to the Recipient on the website that the Recipient designates in the Recipient Affiliate Program Application.
  
- b. The Owner makes available to its Affiliates, links, banners, and other information advertising its site to be used subject to the terms of this Agreement. These materials will contain its trademarks and other proprietary property. The Recipient may display these materials on the Recipient's website for the purpose of promoting the Owner's site and participating in this Affiliate Program. If the Recipient discontinues the Affiliate Program or if the Recipient participation is terminated for any reason, the Recipient will immediately cease using these materials and will delete all such materials from its website and from its computer. The Recipient must obtain the Owner approval of all links to the Owner's site that the Recipient place on its website. The Recipient will cooperate with the Owner in the establishment and placement of links on the Recipient's website.
  
- c. The Recipient will only be permitted to use the links that the Owner provided to the Recipient on the website that the Recipient designate in the Affiliate Program Application. Any additional websites or entities will require additional submissions of Affiliate Program Applications and approval by the Owner.
  
- d. The Recipient will not modify the links or other materials that the Owner provided to the Recipient or the placement of the links on the Recipient's page. The Recipient consent to the Owner monitoring the Recipient's website to determine continued compliance with this Agreement.
  
- e. The Recipient consent to the Owner including information relative to traffic from the Recipient's site in the Owner reports. This information may be provided to outside parties.
  
- f. You may not place links to the Owner's website or website content in newsgroups, message boards, unsolicited email and other types of spam, banner networks, counters, chat rooms, guest books, IRC channels or through similar Internet resources.



## 8. ANTI-SPAM POLICY

The Owner strictly forbid the use of unsolicited commercial email (UCE) or SPAM campaigns. The Owner maintain a Zero-Tolerance policy against SPAM, be it direct, third party or any affiliate (Recipient) or similar agent acting on the Recipient's behalf. As such, the Owner reserves the right to terminate any violating Recipient's account or any part thereof, without notice or compensation.

Any Recipient's found to be involved in a SPAM/UCE campaign, including flooding newsgroups, distributing messages to recipients that do not want the information or any other abuse contravening UCE legislation will be met as follows:

- a. The Recipient's account will be closed immediately, without burden of notice or compensation.
- b. A AU\$500.00 administration fee will be incurred against the offending Recipient.
- c. Our Privacy Policy becomes forfeit, and all pertinent information will be provided to any investigating authorities or anti-Spam organisations.
- d. The Recipient will be held accountable for any monetary damages suffered by the Owner, sustained through contravention of this Affiliate Program Agreement. This will include, but not limit to punitive damages related to lost clients and brand deterioration.

## 9. CUSTOMER SERVICE

- a. The Owner will be responsible for handling all customer inquiries, product orders, customer billing and collection, product shipment relative to customers that enter the Owner's site through the links from the Recipient's site. Pricing of the Owner products and services is totally within its discretion and the Owner reserves the right to change the pricing structure, terminate any special offers, discontinue products or services, or change the terms under which products or services are offered at any time, without any advanced notice to the Recipient or users accessing the Owner's site. The Owner's only responsibility to the Recipient in this regard is to track customer orders that occur through links from the Recipient's website and make reports to the Recipient of the commissions due to the Recipient as a result thereof. All such reports shall be un-audited. The Owner will have no obligation to provide the Recipient with any specific information relative to any customer, regardless of whether they access the Owner's site through the link from the Recipient's site.
- b. The Owner is not responsible for the failure to assign any sale or commissions to the Recipient if the same results from the improper formatting of the link from the Recipient's website. The Recipient should assure at all times that the link is appropriately formatted and report any problems that the Recipient may have with the same to the Owner immediately.



## 10. COMPENSATION

- a. Commissions will be paid to the Recipient based upon a percentage of sales made to users who access the Owner's site through the Recipient's site. Commissions will be calculated based upon the gross sales price, but not including any shipping and handling, sales tax, special service fees such as gift wrapping or packaging, late charges, collection costs, imports/export duties, and any other payment made to the Owner that is not the purchase price for the product that is purchased. Commissions will not be calculated based upon amounts that are attributable to credit card fraud, credits given to customers, bad debt right-off and returned goods. The Owner reserve the right to deduct in subsequent months for any commission that the Owner paid that is for a product that is subsequently returned or refunded, or for any other reason if the previous monthly commission was overpaid or later subject to reduction.
- b. The percentages to be paid as commissions hereunder are currently as set forth in Schedule A at the end of this Agreement. The Owner reserves the right to change and amend the commission rate structure at any time, in the Owner's sole discretion.
- c. Commissions will only be paid on sales that are tracked through the Owner's online tracking system and indicate the Recipient's website's link as the source. There is no right to commissions if a user later returns to the Owner's site and makes a purchase through another link or source other than through the Recipient's website. The Recipient has no right to commissions based upon subsequent sales, even if the customer first arrived at the Owner's site through the link from the Recipient's site. Commissions will only be tracked and paid when the user makes a purchase on the same visit that the user visits the Owner's site from the link to its site on the Recipient's site.
- d. The Owner will pay commission only upon collection by the Owner. The Recipient has no right to commissions until the applicable customer has paid the Owner in full. Only purchases that are made through the Owner's online ordering process will count towards commission calculations. For example, if a customer visits the Owner's website through the link from the Recipient's website and instead of placing an online order calls and places an order via telephone, the Recipient will have no right to any commission from that sale.
- e. Commissions will be paid to the Recipient on a monthly basis on or about the 1st of the subsequent month for amounts received by the Owner during the previous month. The Owner does not guarantee an exact date of calculation of commissions or payments. All payments will be made either via direct deposit or company cheque sent to the address that the Recipient supplied in the Affiliate Program Application. The Owner does not send payment if the total commission due to the Recipient is not at least \$100. Amounts below \$100 will accrue to the Recipient account and payment will be made for the month when the Recipient's total commissions achieve the minimum \$100. The Owner reserves the right to amend the minimum commission payment amount at any time.



## 11. CUSTOMERS' PROVENANCE

All parties who make purchases through the Owner's website, regardless of whether they may have reached its website through the link from the Recipient's website, are deemed to be the Owner's customers and not the Recipient's customers relative to the Owner's products and services. The Owner will have the right to contact these customers and send future marketing offers to them. The Recipient will have no right to commissions on subsequent purchases that may be made by these customers, except for subsequent purchases that may be traced at the time of purchase through a link from the Recipient's website. Additionally, all such customers and purchases will be subject to the Owner policies, procedures, rules and regulations and the Recipient has no right or authority to amend or offer any different offers relative to the purchase of products from the Owner's website. The Owner however, reserves the right to amend any of its terms, conditions, policies, procedures, pricing, payment policies, collection policies, and all other items relative to the Owner's business and sale of products at any time in its sole discretion.

## 12. TRADEMARKS AND COPYRIGHTS

- a. The Recipient will have a non-exclusive, limited term license to use the trademarks, logos, and copyrighted material that the Owner provided to the Recipient for use solely on the home page that the Recipient designate in the Recipient Affiliate Program Application. The Recipient may only use the images that the Owner specifically makes available to the Owner Affiliate Members at the area of its website that is specifically designated as approved images for Affiliate Program Members. The Recipient may not distribute, reproduce, modify, amend, these images in any way. The Recipient may use these images only for the purposes of promoting the Owner's website and products on the Recipient's website in compliance with the Affiliate Program policies and procedures and the terms of this Agreement. The license so granted is subject to complete compliance with all terms and conditions of this Agreement and any policies the Owner may create and amend from time to time regarding the Affiliate Program.
- b. The Recipient will only use such items in the form, size, content, and appearance that the Owner provided them to the Recipient. The Recipient is not permitted to modify them. The Recipient agrees to display these items prominently on its website. These items may only be used in if they contain a hypertext link to the Owner's website. This license shall immediately terminate upon the termination from the Affiliate Program. The Owner may also terminate this license upon notice to the Recipient in the event that the Recipient's use of these items is contrary to or does not conform with its standards, such standards to be determined in its sole and absolute discretion. The Recipient agrees that the Owner retains all right, title and interest in and to all such materials. The Owner will retain all goodwill and other value associated with any of these materials. The Recipient will not gain any trademark, copyright or other proprietary rights to such materials. The Recipient agrees not to take any action that is contrary to or inconsistent with the Owner rights to these materials. The Recipient will not use these materials in any way that is damaging, defamatory, disparaging, derogatory, or negative to the Owner or that paints the Owner in a false or negative light. The Owner may revoke the limited license granted hereunder at any time in writing to the Recipient. Upon termination or revocation, the Recipient will immediately cease from any use this material.
- c. The Recipient is not permitted to use any other proprietary materials, including but not limited to trademarks, copyrights, logos, text, and any other materials that belong to the Owner or to any other party and which may appear on the Owner's website.



- d. The Recipient grants to the Owner a non-exclusive right and license to use the Recipient's trademarks, trade names, service marks, business names, web page titles, slogans, logos, and copyrighted materials for the purposes of promoting, advertising, announcing, or marketing the Recipient participation in the Owner Affiliate Program. The Recipient represents and warrants to the Owner that no other party has any rights in and to any of these materials and that these materials do not infringe upon or otherwise interfere with the rights of any other party. The Recipient represents and warrants to be the absolute, sole and exclusive owner of all such materials and the owner of all trademark rights, copyrights, and other proprietary rights in and to the same. The Recipient represents to have the right, power, and authority to license said materials to the Owner as aforesaid and that the Recipient is not under any legal or contractually limitation on the right to so license these materials. The Owner has no obligation to announce, advertise, market, or promote the Recipient participation in the Owner Affiliate Program, but reserves the right to do the same at its sole discretion.

### **13. PRODUCT AVAILABILITY**

The Owner cannot guarantee product availability or the term of any price or special promotion or offer.

### **14. RESPONSIBILITIES**

The Recipient is responsible for all matters pertaining to the Recipient own website including its development, maintenance, operation and placing links on the Recipient's site in compliance with the terms of the Affiliate Program. The Recipient is completely responsible for all items that appear on its site and for assuring that such items do not infringe upon or violate the rights of any other party. The Owner is not responsible for any matter pertaining to the Recipient's site or the content thereof and the Recipient holds the Owner harmless and indemnifies the Owner from any and all claims, suits, threats, demands, liabilities, actions, causes of action related in any way to the Recipient's website and business. Such indemnity includes the Owner costs and attorney fees in defending any such matter. The Recipient represents and warrants to the Owner that its site does not and will not contain any materials that are illegal and that the Recipient's site is not operated for an illegal purpose or in an illegal manner.

### **15. REPRESENTATIONS AND WARRANTIES**

The Recipient hereby represents and warrants to the Owner to have the complete power and authority to enter into this Agreement and that this Agreement constitutes a valid and legally enforceable agreement. The entry of this Agreement has been duly and validly authorised by all necessary corporate or other organisational actions and approvals. The Recipient's entry of this Agreement is not prohibited by the terms of any document, is not contrary to any law, rule or regulations, and is not in violation of any court or administrative order.



## **16. TERM**

The effectiveness of this Agreement shall not commence until the Recipient Affiliate Program Application is accepted by the Owner. The effectiveness hereof and binding effect shall occur upon the Owner acceptance of the Recipient Affiliate Program Application. This Agreement shall remain in full force and effect until terminated by the Recipient or by the Owner. Either the Owner or the Recipient may terminate this Agreement at any time, with or without cause, by giving the other party written notice of termination in compliance with this Agreement. Notices sent hereunder shall be via Email to the Recipient at the Email address indicated in the Recipient Affiliate Program Application. Any and all notices to the Recipient via Email at such address shall be deemed to be effective notice to the Recipient for all purposes.

## **17. TERMINATION**

The Recipient will forfeit all right to receive past commissions that may have accrued to the Recipient if this Agreement is terminated as a result of the Recipient failure to comply with the terms of this Agreement or any policies and procedures of Affiliate Program that may be established and amended by the Owner in its discretion from time to time. If this Agreement is terminated for any other reason, the Recipient will have a right to receive its accrued commissions through the effective date of termination; provided, that if the Recipient total commissions due hereunder do not exceed \$200, such accrued commission shall be forfeited. The Owner has the right to withhold final commission payments for sufficient time in order to assure that the amount paid to the Recipient is accurate and not subject to later adjustment for returns or any other reason. If following final payment the Owner determines that the amount of commissions that the Recipient were paid was too high, as a result of subsequent returns or any other adjustment or reason, the differential shall be a debt from the Recipient to the Owner and the Owner shall have all legal right to receive a refund of such overpaid commission from the Recipient.

## **18. MODIFICATIONS**

The Owner reserves the right in its sole and absolute discretion, to modify any terms and conditions of the Affiliate Program and the terms and conditions of this Agreement upon notice to the Recipient. Notice of any changes may be given via Email to the Recipient or by posting such changes in the Affiliate Program sections of the Owner's website. Such changes and modifications will take effect upon transmission of Email or posting on the Owner's website. The Recipient may terminate participation in the Affiliate Program in the event that any of these modifications are unacceptable to the Recipient and such termination shall be the Recipient sole and exclusive remedy. In the event that the Recipient continues to participate in the Affiliate Program following such modifications, the Recipient will be deemed by the Recipient continued participation to accept any and all such changes.



## 19. LIABILITIES

- a. THE OWNER HEREBY DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY RELATED TO ANY DOWNTIME OR FAILURE FOR USERS TO BE ABLE TO ACCESS ITS WEBSITE OR TO ACCESS ITS WEBSITE USING THE LINK FROM THE RECIPIENT'S WEBSITE. FURTHERMORE, THE OWNER SHALL NOT BE RESPONSIBLE FOR AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES RELATED TO ITS WEBSITE, THE AFFILIATE PROGRAM, THE RECIPIENT PARTICIPATION IN THE AFFILIATE PROGRAM, THE RECIPIENT ABILITY TO MAKE ANY COMMISSIONS OR OTHERWISE PROFIT THROUGH PARTICIPATION IN THIS AFFILIATE PROGRAM, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY, NON-INFRINGEMENT, OR ANY CLAIM MADE BASED UPON THE OWNER'S COURSE OF DEALING OR USAGE OF TRADE. THE OWNER DOES NOT REPRESENT OR WARRANT THAT ITS WEBSITE OR ANY APPLICATION, INCLUDING BUT NOT LIMITED TO ITS LINK TRACKING FEATURES, WILL BE ERROR FREE OR THAT THEY WILL FUNCTION WITHOUT INTERRUPTION.
- b. THE OWNER SHALL NOT BE RESPONSIBLE FOR ANY DIRECT OR INDIRECT DAMAGES OR LIABILITIES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, LOSS PROFITS, LOST BUSINESS OPPORTUNITY OR ANY OTHER DAMAGES; REGARDLESS OF WHETHER THE OWNER WAS OR HAVE BEEN ADVISED OF THE POSSIBILITY OF THE SAME AND TOOK NO ACTION TO PREVENT THE SAME.
- c. Without limiting the forgoing, the Owner total liability for any damages arising hereunder shall never exceed the total commissions paid and payable by the Owner pursuant to the terms hereof.

## 20. CONFIDENTIALITY

In the event that any information is disclosed to the Recipient through the Recipient participation in the Affiliate Program related in any way to the Owner company and business which the Owner deem to be confidential and proprietary, the Recipient agrees to hold such information in the strictest of confidence and not to disclose such information to any other party or to use any such information for the Recipient own purposes. Confidential information will include any information regarding the Owner changes or modifications to this Agreement or this Affiliate Program (which the Owner shall have no obligation to make) or any special treatment that the Recipient may receive (which the Owner reserves the right to provide in its sole discretion to any affiliate). Confidential information shall also include any and all information related to the Owner's business, business plans, marketing plans, user statistics, financial information, pricing, profits, membership information, affiliations, sales information, and all other information which the Owner considers to be confidential and proprietary.

## 21. INDEMNIFICATION

The Recipient hereby indemnifies and holds the Owner, and all of the Owner stockholders, officers, directors, employees, contractors, affiliates, agents, successors and assigns harmless from and against any and all claims, liabilities, damages, actions, causes of action, suits, threats, demands, settlements, including all costs and attorney fees related thereto, that the Owner may incur and which are based in whole or in part upon the Recipient participation in the Affiliate Program, any claims that any of the Recipient trademarks and other proprietary material infringe upon the rights of any other party, the Recipient breach of any term, covenants, condition, representation or warranty contained in this



Agreement or any policies of participation in the Affiliate Program, or any claim related directly or indirectly to the Recipient use, operation or the content of the Recipient's website.

## **22. GOVERNING LAW**

This Agreement shall be interpreted under the laws of the NSW of Australia. Any and all legal actions relative hereto shall be in the courts of NSW of Sydney, Australia.

## **23. RELATIONSHIP OF THE PARTIES**

The parties hereto are independent contractors and nothing contained herein shall be interpreted as creating any relationship other than that of independent contracting parties. The parties shall not be construed as being partners, joint ventures, shareholders, employer/employee, agent/servant. The Recipient has no power or authority to bind the Owner to any obligation, agreement, debt or liability. The Recipient shall not hold itself out as an agent or representative of the Owner.

## **24. NOTICES**

Notices to the Owner shall be by certified mail, return receipt requested addressed to the address contained in this Agreement, or such other address that the Owner provide notice of to the Recipient via Email or by posting the same on the Affiliates section of the Owner website. Notices to the Recipient shall be by Email addressed to the Email address that the Recipient provided to the Owner in the Recipient Affiliate Program Application or by posting such notices on the Affiliate section of the Owner's website. It shall be the Recipient responsibility to check the Affiliate section of the Owner website periodically to monitor all notices set forth thereon.

## **25. ASSIGNMENT**

This Agreement is only for the benefit of the party that the Recipient list in the Affiliate Program Application. The Recipient shall have not right to assign this Agreement or any benefits or obligation hereunder to any other party or legal entity. Any attempted assignment shall be void.

## **26. ENTIRE AGREEMENT**

This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof and supercedes any and all prior discussions, understandings, agreements, representations, warranties or covenants between the parties related to the subject matter hereof. This Agreement may only be amended by a writing signed by the authorised representative of each of the parties, except as otherwise set forth herein. Any waiver of a breach or default under this Agreement shall not constitute a waiver of any subsequent or other breach or default and shall not serve to modify the agreements set forth herein.

If any provision or term of this Agreement is held to be invalid for any reason, it shall not effect the enforceability of the remainder of this Agreement or any other term or condition of this Agreement.



**SCHEDULE A**  
**COMMISSION RATE STRUCTURE**

Please visit [www.digitalpacific.com.au/affiliate](http://www.digitalpacific.com.au/affiliate) for more information