


# Affiliate Operating Agreement

- 🔊 Use this sample agreement when establishing a program for Affiliate referral sales.
- 🔊 It can also easily be configured as a web-based agreement to be posted on a page linked to your affiliate sign-up page.
  - Remove the following memo, and delete the agreement header where you would otherwise insert both company's contact information **highlighted in gray**.
- 🔊 To become a JIAN affiliate, click here: <http://www.jian.com/AFFILIATES/index.html>

Date: **[Date]**

To: **[Name of Affiliate]**



From: **[Owner/Founder]**  
**[Company]**

Subject: **Affiliate Operating Agreement**

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Attached is our "Affiliate Operating" Agreement in order to establish the terms and conditions for paying you for sales referrals from your web site or emails.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

# From JIAN

## NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🔊 **Do Not Use This Agreement 'As-Is.'**
- 🔊 **This Agreement Is Not Legal Advice.**
- 🔊 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🔊 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🔊 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

## Free Access to Attorneys, Accountants & Consultants in Your Area

We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our Site you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


- Please visit our website under [Expert Referral Network](#).

## Ongoing Update Service Keeps You Current


Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: [www.JIAN.com](http://www.JIAN.com)

## Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[ ]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[ ]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

# Affiliate Operating Agreement

Important: Your application will not be accepted without a signed operating agreement

☞ This introductory paragraph lists the date and the parties to this Agreement. We formatted this agreement uniquely to make it easy on others (judge, arbitrator(s), etc. God forbid) to readily understand who is involved, when the agreement begins and some basic summary background information.

☞ Remember the gray highlighted text can be removed if you want to use this agreement online with your website.

Effective Date [Date]

between [Company Legal Name], (“[Company]”)

a [State] [Corporation/Partnership/Sole Proprietorship/Resident],

located at [Address]

[City], [State] [Zip Code]

and [Affiliate Name], (“Affiliate”)

a [State] [Corporation/Partnership/Sole Proprietorship/Resident]

located at [Address].

## Operating Agreement

This Affiliate Program Agreement (“Agreement”) contains the complete terms and conditions that apply to you participating in the [Company] Affiliate Program.

The purpose of this Agreement is to enable you to link between a web Site or email owned and controlled by you (the “Affiliate”) and the [Company] website(s) (the “[Company] Site”). This Agreement will become effective upon our acceptance of your signed and completed agreement.

This Agreement contains the complete terms and conditions that apply to an individual's or entity's participation in the [Company] Affiliate Program (the “Program”) sponsored by [Company] as used in this Agreement, and including the following definitions.

### 1. Definitions

As used in this Agreement, the terms listed below shall have the following meanings:

- “[Company] Marks” means the trademarks, trade names, service marks and logos owned by [Company] that may be made available to you hereunder.
- “Affiliate Tracking Link” means (i) graphical links, text links, logos and other promotions that are offered by [Company] now or in the future that link directly from the Affiliate's Web Site to the [Company] Sites and (ii) other links within email promotions that are offered by you now or in the future and link directly to the [Company] Sites. By definition, the Affiliate Tracking Link will incorporate a unique identifying tag that will identify the origin of a user as coming directly from the Affiliate's Site or email.

- “Qualified Subscriber” means a user that registers as a Subscriber for the first time, who is over 18 years old, enters a valid credit card
- “Referral Fee” means fees paid to you for each Qualified Subscriber who comes to the [Company] Site by way of an Affiliate Tracking Link on the Affiliate's Web Site who is not already a Subscriber.
- "Site" means a World Wide Web site and, depending on the context, refers either to [Company]'s site or to the site that you will link to our site.
- “Subscriber” means a user of the [Company] Site who has completed [Company]'s registration process in order to use any [Company] product or service.
- “User Data” means data regarding a user provided by such user on the [Company] Site, including without limitation the user's name, email address, telephone number and other information about the user.
- "We" means [Company].
- "You" means the Affiliate.

## 1. Enrollment in the Program

To begin the enrollment process, you will submit a complete Program Application via our Site. We will evaluate your application in good faith and will notify you of your acceptance or rejection. We may reject your application if we determine (at our sole discretion) that your site is unsuitable for the Program.

**Unsuitable Sites.** Unsuitable sites include those that:

- Promote sexually explicit materials.
- Promote violence.
- Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Promote illegal activities.
- Violate intellectual property rights.

[Company] prohibits certain forms of advertising on the [Company] Site or using any Affiliate Tracking Link(s) or other [Company] marks. Advertising commonly referred to as “spamming” could damage [Company]'s goodwill. You shall not undertake any spamming referring to the [Company] Sites, or using any Affiliate Tracking Link(s) or other [Company] marks. You shall not refer to the [Company] Site, or use any Affiliate Tracking Link(s) or other [Company] marks in any unsolicited commercial email (UCE), postings to non-commercial newsgroups and cross-posting to multiple newsgroups at once. In addition, you shall not advertise in any way that effectively conceals or misrepresents your identity, domain name, or return email address.

Although [Company] always requires that its written consent be given for the uses above, [Company] generally approves mailings so long as the recipient is already a customer or subscriber of your services, and recipients have the option to remove themselves from future mailings. [Company] generally approves newsgroup postings so long as the news group specifically welcomes commercial messages. In all cases, you must always clearly represent yourself and the Affiliate's Web Site as independent from [Company].

[Company] reserves the right, at its full discretion, to disqualify any individual it suspects of undermining or manipulating the registration and/or qualifying process, the operation of the affiliate program or to be acting in violation of this agreement. If we determine, in our sole discretion that the this affiliate program is compromised by virus, bug, robot entries, or other corruption of the administration, security or proper management of the program, then at our sole discretion, we can cancel this program. In the event of your non-compliance with any requirement stated herein, [Company] may withhold any payments due to you until resolution of all disputes. If we reject your application, you are welcome to reapply to the Program at any time.

## 2. Links on Your Site

**Link to [Company] Site.** You will display on your site a short description, review, or other reference to [Company] web pages depending upon the Affiliate Tracking Link(s) used. You will link from each product reference on your site to the corresponding [Company] home page or product description page, using an Affiliate Tracking Link format that we give you.

**Maintenance and Monitoring of Affiliate Tracking Link(s):** You agree to link only to those specific banner ads, HTML-web pages that [Company] designates in the Affiliate Tracking Link(s), and to use only the Affiliate Tracking Link(s) provided for such purpose. You shall not modify or alter the Affiliate Tracking Link(s) provided by [Company] in any way. You agree not to “frame” or “mirror” any part of the [Company] Site without the prior written authorization of [Company].

[Company] has the right to monitor the content on Affiliate's Web Site in a commercially reasonable manner as [Company] believes necessary to monitor use of the Affiliate Tracking Link(s) and for compliance with the terms of this Agreement. [Company] has the right to notify you of any reasonable changes you need to make to comply with the [Company] guidelines for the use of the Affiliate Tracking Link(s), and to otherwise comply with the terms of this Agreement, and you agree to promptly make such changes.

You shall cooperate with [Company] in order to establish and maintain any Affiliate Tracking Link(s) between the [Company] Site and Affiliate's Web Site. You shall not display any link or mark pertaining to [Company], for use as a link or otherwise, other than the Affiliate Tracking Link(s) that [Company] provides to you. If [Company] updates the Affiliate Tracking Link(s), you will replace the old Affiliate Tracking Link(s) with the new ones within a 48 hour period.

🔊 You may want to establish within your Affiliate Tracking Link(s) code that all graphics and text, etc. 'live' on your web site so when you make any changes, they are automatically reflected in all affiliate's sites. All the affiliate needs to do is paste your chunk of HTML on their site and the rest is automatic.

You agree that [Company] will be allowed to place an identifying tag in each Affiliate Tracking Link that will identify the origin of a user that arrives directly at the [Company] Site by clicking on the Affiliate Tracking Link.

## 3. Order Processing

We will process product orders placed by customers who follow special links from your site to the [Company] site. We reserve the right to reject orders that do not comply with any requirements that we periodically may establish. 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 products using special links from your site to our site and will make available reports summarizing this sales activity. The form, content, and frequency of the reports may vary from time to time at our discretion. To permit accurate tracking, reporting, and fee accrual, you must ensure that the special links between your site and our site are properly formatted.

Customers who purchase products and services through the Affiliate Program will be deemed to be customers of [Company]. Accordingly, all [Company] rules, policies, and operating procedures concerning customer orders and service will apply to those customers. We may change our policies and operating procedures at any time.

[Company] policies will always determine the price paid by the customer. Prices and availability of our products and services may vary from time to time.

Affiliates must have an active link from their Site to the [Company] site to qualify for commissions.

## 4. Referral Fees

We will pay you referral fees on certain [Company] sales to third parties. For a sale to generate an affiliate referral fee, the customer must follow an affiliate tracking link (in the format specified by [Company] from your Site or email to the [Company] Site; purchase a [Company] product (Qualifying Products) using our automated ordering system; accept delivery of the product online; and remit full payment to us through our secure online payment process. [Company] reserves the right to specify and change which products qualify for referral fees for the purposes of the Program.

🔊 Here are a few options to play with:

Business Service Package: 20% of the initial sign-up fee & 20% of the annual renewal fee.

The current Referral Fee is set at a sliding scale as follows for each calendar year:

- 1-99 Profiles: 15%
- 100-199 Profiles: 20%
- 200-299 Profiles: 25%
- 300-399 Profiles: 30%
- 400-plus profiles: 35%

🔊 ~ OR ~



[Company] will pay an on-going Referral Fee as follows for each Qualified Subscriber who [fully enrolls (each year) in [Company]'s [xxx program / purchases from any Subscriber who enters the [Company] Sites directly from (banner ad) Affiliate Tracking Link(s) on Affiliate's Web Site or in its email newsletters.]

🔊 ~ OR ~

[Company] & Sales Agent Service Package: 20% of the initial sign-up fee & 20% of the annual renewal fee.

🔊 ~ OR ~

Projected at \$500 a Year = \$100 Referral Fee per subscriber to the Master Agent and the revenue from this commission increases or decreases as to the final determination of the optimum annual service fee.

Projected at \$50 a month per county, two county minimum = \$1,200 Referral Fee per year with a 20% initial commission = \$240 Referral Fee per year and 25% on renewals at \$1,200 a year = \$240 per subscriber to the Master Agent. If a subscriber chooses to secure all the counties in their specific DMA(s) – Designated Market Area(s), the commission plan is the same as outlined herein for the total of initial sign-up fee and annual renewal fees.

🔊 ~ OR ~

[Company] also pays extended customer Referral Fee s as follows:

- Return and purchase within seven days including the first visit: 100% of Referral Fee;
- Return and purchase within 8-30 days from first visit: 50% of Referral Fee.

🔊 ~ OR ~

The Referral Fee refers to the percentage of [Company] Net Receipts. Net Receipts shall mean the amount collected by [Company] in connection with sales of Qualifying Products made through the special link, less shipping costs, taxes, returns or charge-backs on such Qualifying Products.

🔊 If you have this technical capability, this enables you to have affiliates sign-up other affiliates, or organizations establish their field offices as commission generating sites, or individuals working to sign on multiple affiliates, etc. For these reasons, we use and recommend: [TrackingSoft: http://affiliatetracking.com/az/a/36453](http://affiliatetracking.com/az/a/36453)

🔊 To become a JIAN affiliate, click here: <http://www.jian.com/AFFILIATES/index.html>

### **Override Commissions to Original Affiliates for Sales Channel Referrals**

In the event that the Original Affiliate refers another Affiliate to whom [Company] pays commissions to, the Original Affiliate will be paid a 5% Referral Fee of the total Referral Fee commissions paid to all Affiliates referred to [Company] and registered as a [Company] Affiliate.

## **5. Payment Terms**

For accounting workload purposes, you may want to limit paying very small payments; however, to keep your affiliate alive and interested, even the smallest amounts may be inspirational.

We will pay you Referral Fees on a quarterly basis. Approximately 30 days following the end of each calendar quarter, we will send you a check for the referral fees earned on products that were shipped during that quarter, less any taxes that we are required by law to withhold. However, if the Referral Fees payable to you for any calendar quarter are less than \$100.00, we will hold those fees until the total amount due is at least \$100.00 or (if earlier) until this Agreement is terminated. If a product that generated a Referral Fee is returned by the customer, we will deduct the corresponding fee from your next quarterly payment.

- 🔊 We suggest paying affiliates monthly because it inspires affiliates to want to join your program; however, due to your accounting workload, you may want to change it to quarterly.
- 🔊 Make sure you give yourself (and your customers) enough time to process any returns or cancellations before paying affiliates.

Payment of Referral Fees will be made on a monthly basis. [Company] will send a check for the applicable commissions within approximately 30 days after the end of each calendar month. If the customer returns an order that generated a commission, or if there are any returned checks or charge-backs, the referral fee amount will be deducted from the next payment.

With each payment, [Company] will provide you with reports that will contain all necessary information as required to calculate the Referral Fees due to you.

- 🔊 We had an affiliate feel like he could be terminated at any time and we could live happily ever after on his referrals without paying him... not so, but you should nevertheless include this clause.

All commissions or overrides earned will survive termination and will be paid on a monthly basis for as long as the Subscriber maintains their service with [Company].

## **6. Compliance with Applicable Laws**

You are solely responsible for the accuracy and appropriateness of all materials posted on your, the Affiliate's Web Site, and for ensuring that your activities and materials posted on Affiliate's Web Site are not defamatory, in violation of copyright laws or otherwise illegal. You agree to indemnify and hold [Company] harmless for any violations of the foregoing. [Company] disclaims all liability for these matters.

## **7. Grant of Licenses**

Subject to the terms of this Agreement, you have the nonexclusive, nontransferable and non-sub-licensable right to use and display [Company] trademarks and service marks, only to refer specifically to [Company] services and products in connection with the Affiliate Tracking Link(s), and only in the form which [Company] provides you for such limited purposes. Such referential usage must be truthful, fair and not misleading or disparaging. [Company] trademarks, service marks and logos must be used with a minimum spacing surrounding them and not be incorporated into your own product names, trademarks, service names, logos, company names or DBA's. You shall not adopt marks or logos that are confusingly similar to [Company]'s marks or logos. You grant to [Company] a non-exclusive, non-transferable,



revocable right to utilize your name, title, and logo in the advertising, marketing, promoting, and publicizing, in any manner, related to [Company]'s rights under this Agreement. [Company] is not under any obligation to so advertise, market, promote, or publicize. Each party agrees not to use the other's proprietary materials, marks or other intellectual property in any manner that is disparaging or that otherwise portrays the party in a negative light. Each party reserves all of its respective rights in the proprietary materials and intellectual property covered by this license. Other than the license granted in this Agreement, each party retains all rights, title, and interests to its respective rights and no right, title, or interest is transferred to the other.

## **8. Modification**

[Company] may modify any of the terms and conditions in this Agreement, at any time in its sole discretion and may include, but are not limited to, changes in the scope of Referral Fees, payment procedures, and [Company]'s Affiliate Program rules. If any modification is unacceptable to you, you shall have the right to terminate this Agreement as set forth below. Your continued participation in [Company]'s Affiliate Program following the posting of the change notice or new agreement on [Company]'s site will constitute your agreement to the changes.

## **9. Representations, Warranties & Covenants**

You represent and warrant that 1) you have full right, power, and authority to enter into and be bound by the terms and conditions of this Agreement and to perform your obligations under this Agreement, without the approval or consent of any other party; 2) you have sufficient right, title, and interest in and to the rights granted to [Company] in this Agreement; 3) the material posted on Affiliate's Web Site does not defame any third party or violate or infringe upon the rights of any third party and all applicable copyright and other laws that pertain to it; 4) you shall not to make any representations or warranties regarding the services provided by [Company]; and 5) you shall not make or publicize any statements that are disparaging of [Company] or that otherwise portray [Company] in a negative light.

## **10. Term & Termination**

The term of this Agreement will begin on the Effective Date and will end when terminated by either party with at least thirty days notice by each party.

Each Party shall be entitled terminate this Agreement at any time, for any reason, and in their sole discretion, with or without cause, by giving the other party written notice of termination.

Upon the termination of this Agreement for any reason, all licenses granted hereunder shall immediately terminate and you will immediately cease use of, and remove from Affiliate's Web Site, all links to the [Company] Site, and all [Company] trademarks and logos, and all other materials provided in connection with this Agreement.

## **11. Disclaimer**

[Company] provides the [Company] site and all content, information and services available therein, "As-Is" and makes no express or implied representations or warranties regarding [Company] or any services or information provided by any Subscriber of [Company] any implied warranties of merchantability, fitness for a particular purpose, and non-infringement are expressly disclaimed and excluded. In addition, [Company] makes no representation that the operation of our site will be uninterrupted or error free, and [Company] will not be liable for the consequences of any interruptions, downtime or errors.

## **12. Limitations of Liability**

We make no express or implied warranties or representations with respect to the Affiliate Program or your potential to earn income from the Affiliate Program. In addition, we make no representation that the



operation of our site will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

Notwithstanding anything to the contrary contained in this agreement, [Company] will not be liable to you with respect to any subject matter of this agreement under any contract, negligence, tort, strict liability, or other legal or equitable theory for any indirect, incidental, consequential, special, or exemplary damages (including, without limitation, loss of goodwill or actual or anticipated revenue, profits or lost business), even if [Company] has been advised of the possibility of such damages. Further, notwithstanding anything to the contrary contained in this agreement, in no event shall [Company]'s cumulative liability to you arising out of or related to this agreement, whether based in contract, tort (including without limitation negligence and strict liability) or other legal or equitable theory, exceed the total referral fees payable to you under this agreement

### 13. Indemnification

You agree to indemnify and hold harmless [Company] and its employees, directors, representatives, agents, and affiliates, against any and all claims, suits, actions, or other proceedings brought against [Company] based on or arising from any claim resulting from your breach of the warranties and covenants in this Agreement. You agree to pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by the other party in connection with or arising from any such claim, suit, action, or proceeding.

### 14. Confidentiality

🔊 For a web-based agreement, you may need/want to delete this section – you can't really hold an affiliate who signs up on your website to any confidentiality, but if this is a formal written agreement where you will be talking about many things, by all means keep this clause in!

In connection with the activities contemplated by this Agreement, you may acquire confidential technical or business information of [Company] which is not generally known to the public, including without limitation (i) proposals, ideas or research related to possible new products or services; (ii) financial statements and other financial information; (iii) any reporting information required by the Agreement; and (iv) the terms of this Agreement and the relationship between the parties (collectively, "Confidential Information"). You agree not to disclose the Confidential Information or use the Confidential Information for your own benefit or for the benefit of any third party. Your obligations in this Section shall not apply to any information that you can document: (i) was in the public domain at or subsequent to the time it was communicated to you through no fault of yours; (ii) was rightfully in your possession free of any obligation of confidence owed to [Company] at or subsequent to the time it was communicated to you by [Company]; (iii) was in response to a valid order by a court or other governmental body or was otherwise required by law. Upon the termination or expiration of this Agreement, you shall return upon [Company]'s request or otherwise destroy all Confidential Information of [Company] in your possession.

### 15. General Provisions

🔊 The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by defining certain common issues such as notice, assignment, legal remedies, waiver, and attorney fees, etc.

**15.1 Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon

either party.

- ☞ You may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

15.2 **Publicity.** Neither party will make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties.

- ☞ Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

15.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

- ☞ You must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

15.4 **Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereto expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

- ☞ This Agreement is intended to be the only Agreement and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to be included in this Agreement. Otherwise, it is as if it were not agreed to.

15.5 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

- ☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

15.6 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

- ☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

15.7 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

- ☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

15.8 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing

party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

- ☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

**15.9 Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

- ☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

**15.10 Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

- ☞ Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

**15.11 Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

- ☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

**15.12 Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

- ☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.
- ☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.
- ☞ Even if this agreement is web-based, you will want to show in your due-diligence to the potential buyer that your affiliates have signed-up under this agreement.
- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may

transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.

☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...

☞ CHOOSE one or the other of these two following paragraphs.

**15.13 Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

☞ ~ OR ~

☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval. 

**15.13 Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

**15.14 Severability.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

**15.15 Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

**15.16 Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

☞ Every copy shall be just as valid as the original.

**15.17 Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

☞ Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

**15.18 Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

## Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are

executing this Agreement as of the Effective Date above.

🔊 Web-based deal... build in: [ X ] Agreed → web page goes to next web page for completing of the Affiliate Application.

🔊 Delete the section below.

**[Company]**

**Vendor**

\_\_\_\_\_  
[Owner/Founder]

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



