

AFFILIATE AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND VECTOR MAGIC, INC. BY APPLYING FOR AN AFFILIATE ACCOUNT YOU ARE AGREEING THAT YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT YOU AGREE TO BE LEGALLY RESPONSIBLE FOR EACH AND EVERY TERM AND CONDITION.

1. Overview

This Agreement contains the complete terms and conditions that apply to you becoming an affiliate in Vector Magic's Affiliate Program. The purpose of this Agreement is to allow HTML linking between your Web site and the Vector Magic Web site. Please note that throughout this Agreement, "we," "us," and "our" will mean Vector Magic, and "you," "your," and "yours" will mean you, the affiliate.

2. As an Affiliate: What You Have to Do:

(a) *Link to Our Site:*

- (i) As a member of Vector Magic's Affiliate Program, you will have access to the Affiliate Center, located at <http://vectormagic.com/affiliates>. At this site you will be able to download i) HTML code that allows you to link your Web site to particular pages within the Vector Magic Web site and ii) graphics that we have made available for use only as a button to link your Web site to particular pages within the Vector Magic Web site ("Link(s)"). You are only allowed to link to those specific web pages that we designate in the Links. Further, in order for us to accurately keep track of guest visits from your Web site to ours, you must use the Links that we provide.
- (ii) We have the right to monitor your Web site as we feel necessary to make sure that your use of the Links are appropriate and to notify you of any changes that we feel should be made. Any failure by you to use our Links, or to follow our instructions in their use, or attempt to modify the Links will be a material breach of this Agreement.

(b) *Give Us Your Full Cooperation:* You agree to cooperate with us fully to establish and maintain the Links between the Vector Magic Web site and your Web site. You also agree that any graphic images that you display pertaining to Vector Magic or its Web site, for use as a link or otherwise, will only be the Links that we provide to you. If we update the Links, you will download the updated versions and replace the old graphics and links respectively with the new ones.

(c) *Maintain Your Site:* The maintenance and the updating of your Web site will be your responsibility. Because you are a member of Vector Magic's Affiliate Program and the information within Vector Magic is updated often, it will be necessary for you to update the content of your Web site on a regular basis to maintain consistency and accuracy

between the Vector Magic Web site and your Web site. We may monitor your Web site as we feel necessary to make sure it is up-to-date and to notify you of any changes we feel should be made.

- (d) *Follow All Copyright Laws:* It is entirely your responsibility to follow all applicable copyright and other laws that pertain to your Web site. You must have express permission to use any person's copyrighted material, whether it be a writing, an image, or any other copyrightable work. We will not be responsible if you use another person's copyrighted material in violation of the law.

3. As an Affiliate: What You Need to Know and Understand

- (a) *We Can Monitor Your Site:* You give us the right to monitor your Web site at any time to determine if you are following the terms and conditions of this Agreement, and to notify you of any changes we feel you should make to remain in compliance. Failure to comply is a violation of this Agreement and grounds for termination.
- (b) *We Determine the Policies for the Purchases:* Customers who purchase products through Vector Magic's Affiliate Program will be considered customers of Vector Magic. All our rules, policies, and operating procedures concerning customer orders and customer service will apply to those customers. We may change our policies and operating procedures at any time.
- (c) *Starting Date of this Agreement:* This Agreement will begin upon our acceptance of your Affiliate application.
- (d) *How this Agreement can be Ended:* Either you or we may end this Agreement AT ANY TIME, with or without cause, by giving the other party written notice. Written notice can be in the form of mail, email or fax.
- (e) *We Can Modify this Agreement:* We may modify any of the terms and conditions in this Agreement, at any time in our sole discretion. You will be notified by email and a change notice will be posted on <http://vectormagic.com/affiliates/agreement>. Modifications may include, but are not limited to, changes in the scope of Advertising Fees, payment procedures, and Vector Magic's Affiliate Program rules. If any modification is unacceptable to you, your only option is to end this Agreement. Your continued participation in Vector Magic's Affiliate Program following the posting of the change notice or new agreement on our site will indicate your agreement to the changes.

4. Restrictions

You are prohibited from engaging in any of the following types of activities that are listed below (collectively, "Prohibited Activity"):

- (a) *Absolutely prohibited:*
 - (i) Sending Links in unsolicited e-mails.

- (ii) Creating a Web site that copies, resembles the look and feel of, or otherwise creates the impression that your Web site is a Vector Magic Web site.
 - (iii) Offering rebates, gift certificates, points or other rewards to end-users who submit orders through Links, unless you take adequate steps to avoid creating the impression that Vector Magic is offering them or has any responsibility for same.
 - (iv) Purchasing or bidding for placement of “Vector Magic” or any variation or misspelling thereof, within any third party search engine or portal, including but not limited to aol.com, yahoo.com, msn.com, google.com, netscape.com, excite.com, overture.com, ask.com, looksmart.com, findwhat.com, lycos.com, metacrawler.com and altavista.com.
 - (v) Causing any Link that Vector Magic provides to link to any page other than the URL provided with the Link.
 - (vi) Submitting or encouraging others to submit orders to Vector Magic in bad faith, such as (but not limited to) placing orders with intent to return the merchandise after Vector Magic has paid a Commission on the order.
 - (vii) Taking any action that could reasonably cause any customer confusion as to Vector Magic’s relationship with you.
 - (viii) Employing any technology, including, but not limited to, pop-ups, pop-unders and pop-overs, to serve messages to shoppers on the Vector Magic Web site or on Vector Magic-branded pages of any third party Web site, designed to divert them to your Web site or to pull them away from the Web site on which the end-user is shopping.
 - (ix) Employing any technology to read, intercept, record, redirect, interpret, or fill in the contents of any electronic form or other materials that we serve to customers who click through Links to the Vector Magic Web sites.
 - (x) Assisting any third party to take any action that would be Prohibited Activity if you engaged in it.
- (b) *Prohibited unless Vector Magic gives its prior written consent as to the specifics:*
- (i) Placing Links in newsgroups, message boards, banner networks, chatrooms, guest books, popups, popunders or popovers.
 - (ii) Using “Vector Magic” or any misspelling thereof in any URL for any page of the your Web site, or in any other technological means of diverting end-users to your Web site or links controlled by you when they search for the Vector Magic Web sites.
 - (iii) In any way modifying, redirecting, suppressing, or substituting the operation of any button, link, or other interactive feature of the Vector Magic Web sites.

- (iv) Posting or serving any advertisements or promotional content around or in conjunction with the display of pages of the Vector Magic Web sites or Vector Magic-branded pages of third party Web sites (such as through framing technology or pop-ups).
- (v) Issuing any press release, announcement, or promotional material that uses Vector Magic's name or trademarks.
- (vi) Making any warranty or representation concerning Vector Magic's products or services except those expressly stated by Vector Magic on the Vector Magic Web sites.
- (vii) Sublicensing or assisting any third party to display Links on its Web site.

5. As an Affiliate: What You Receive

- (a) *You Earn Affiliate Fees:* Except in states in which such a transaction is not permitted, you are eligible to earn Affiliate Fees during the term of this Agreement. We may withhold your final payment for a reasonable time to ensure that the correct amount is paid. The exact amount of Affiliate Fee due to you in any given month will be calculated in the following manner:
 - (i) The Affiliate Fee will be calculated as twelve percent (12%) of net revenues actually recognized and received by us from any end-user for a six (6) month period after such end-user links from your Web site through the Links and first creates an account on the Vector Magic Web Site, less taxes, withholdings, bad debts, returns, credits, shipping, and the like. Final determination as to whether to accept an end-user as a customer is at our sole determination.
 - (ii) Payment of your Affiliate Fee will be made on a monthly calendar basis, 30 days after the end of the month. There is no minimum payout. If this Agreement terminates, any Affiliate Fee due at the time of termination will be paid 30 days after the end of the month following termination.
 - (iii) If we determine that payment of Affiliate Fees to you in any jurisdiction is illegal under any laws, then we may reserve the right to not pay Affiliate Fees for any sales made in that jurisdiction.
 - (iv) To discourage frivolous signups, payment of Affiliate Fees will be withheld until at least three transactions generating Affiliate Fees have been completed.
- (b) *You Will Be Given a Password to Access Specific Affiliate Information:* You will be given a password so that you may enter our secure Affiliate Center. From this Web site you will be able to download the Links and receive your reports that will describe our calculation of the Affiliate Fee due to you.

6. Grant of Licenses

- (a) Subject to all the terms and conditions of, and only during the term of, this Agreement, we grant to you a non-exclusive, non-transferable, revocable right to: (i) grant your end-users access to our site solely through the Links and (ii) solely in connection with such activities, to use the Links on your Web site. You may not alter, modify, or change the Links in any way. You are only entitled to use the Links to the extent that you are a member in good standing of Vector Magic's Affiliate Program.
- (b) You grant to us a non-exclusive, non-transferable, revocable right to use your names, titles, and logos in the advertising, marketing, promoting, and publicizing in any manner of our rights under this Agreement. However, we are under no obligation to so advertise, market, promote, or publicize.
- (c) Each party agrees not to use the other's proprietary materials 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 covered by this license. Either party may revoke this license at any time by giving the other party written notice. Other than the license granted in this Agreement, each party retains all right, title, and interest to its respective rights and no right, title, or interest is transferred to the other.

7. As An Affiliate: More Things You Need To Know and Understand

- (a) *Disclaimer:* WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING VECTOR MAGIC. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, WE MAKE NO REPRESENTATION THAT THE OPERATION OF OUR WEB SITE WILL BE UNINTERRUPTED OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.
- (b) *Representations and Warranties:* You represent and warrant to us that:
 - (i) This Agreement has been duly and validly executed and delivered by you and constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms;
 - (ii) You have the 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;
 - (iii) You have sufficient right, title, and interest in and to the rights granted to us in this Agreement; and,
 - (iv) You do not advertise or promote your Web site, and will not promote the use of the Vector Magic Web Site, for any purpose that is infringing, libelous,

defamatory, obscene, pornographic, abusive, offensive or otherwise violates any law or right of any third party.

- (c) *Limitations of Liability:* WE 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 REVENUE OR GOODWILL OR ANTICIPATED PROFITS OR LOST BUSINESS), EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL OUR CUMULATIVE LIABILITY TO YOU ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL ADVERTISING FEES PAID TO YOU UNDER THIS AGREEMENT.
- (d) *Indemnification:* You agree to indemnify and hold harmless Vector Magic and its employees, representatives, agents, and affiliates, against any and all claims, suits, actions, or other proceedings brought against Vector Magic based on or arising from any claim resulting from your breach of this Agreement. You will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Vector Magic in connection with or arising from any such claim, suit, action, or proceeding.
- (e) *Miscellaneous:*
 - (i) Each party shall be deemed to be independent contractors with respect to the subject matter of this Agreement, and nothing contained in this Agreement shall be deemed or construed in any manner as creating any partnership, joint venture, employment, agency, fiduciary, or other similar relationship.
 - (ii) You may not assign your rights or obligations under this Agreement to any party, and any attempt to do so will be void and without effect. We are free to assign this Agreement.
 - (iii) This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to the conflicts of laws and principles thereof.
 - (iv) You may not amend or waive any provision of this Agreement unless in writing and signed by both parties.
 - (v) This Agreement represents the entire agreement between us and you, and shall supersede all prior agreements and communications of the parties, oral or written.
 - (vi) The headings and titles contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.

- (vii) If any provision of this Agreement is held to be invalid or unenforceable, that provision shall be eliminated or limited to the minimum extent necessary such that the intent of the parties is effectuated, and the remainder of this agreement shall have full force and effect.
- (viii) YOU HAVE READ AND TAKEN INTO ACCOUNT THE LIMITATION OF LIABILITY AND WARRANTY DISCLAIM PROVISIONS OF THIS AGREEMENT PRIOR TO ACCEPTING THIS AGREEMENT.