



Affiliate Terms

Version 1.1 – July 2011

Affiliate Terms

Please read these Affiliate Terms carefully before applying to become an Affiliate, as they set out our and your legal rights and obligations in relation our Affiliate Programme. You will be asked to agree to these Affiliate Terms before becoming an Affiliate.

You should print a copy of these Affiliate Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our website in future.

These Affiliate Terms are available in the English language only.

If you have any questions or complaints about our Affiliate Programme please contact us by writing to Imagitech Ltd, Ethos, King's Rd, Swansea, SA1 8AS or by email to reseller@imagitech.co.uk.

1. Definitions and interpretation

1.1 In the Agreement:

"Acceptance Email" means an email sent by the Company to an Affiliate in accordance with Clause 2.3 confirming that the applicant has been accepted into the Affiliate Programme;

"Affiliate or as may be referred to on the Website - Reseller" means the person (natural or legal) specified as the applicant for our Affiliate Programme on the Registration Form;

"Affiliate Programme" means the Company's Online Learning Facility affiliate programme detailed in the Agreement and on the Online Learning Facility;

"Affiliate Website" means the website or websites owned and operated by the Affiliate and specified on the Registration Form;

"Agreement" means the agreement between the Company and the Affiliate incorporating these Affiliate Terms, the Registration Form and the Acceptance Email, and any amendments to it from time to time;

"Company" means Imagitech a limited company incorporated in England and Wales (registration number 3117065) having its registered office at Ethos, King's Rd, Swansea, SA1 8AS.

"Effective Date" means the date the Agreement comes into force as specified in Clause 2.3;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software infections or attacks, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Link" means a hyperlink (whether embedded in text or an image or otherwise) from the Affiliate Website to the Online Learning Facility in such position on the Affiliate Website as may be determined by the Affiliate and in such form and design as the Company may approve in writing;

"Payments" means payments of a percentage of the relevant sale price (determined by the number of

monthly units sold) (excluding tax and any delivery charges on the sale), as defined in Appendix 1, to be made by the Company to the Affiliate in respect of each Payment Trigger during the Term (subject to the provisions of the Agreement);

“Payment Trigger” means a purchase of the Company's goods or services on the Online Learning Facility made by a user who first visited the Online Learning Facility by means of a Link and who made such purchase.

“Prohibited Materials” means content, works or other materials that the Company determines (acting reasonably) constitute:

- (a) indecent, obscene, pornographic or lewd material;
- (b) material that breaches any applicable laws, regulations or legally binding codes;
- (c) material that infringes any third party intellectual property rights or other rights;
- (d) material that is offensive or abusive, or is likely to cause annoyance, inconvenience or anxiety to another internet user;
- (e) computer viruses, spyware, trojan horses or other malicious or harmful routines, programs or software; and/or
- (f) spam or bulk unsolicited email.

“Registration Form” means the HTML form on the Online Learning Facility enabling users to apply to become Affiliates;

“Term” means the term of the Agreement; and

“Online Learning Facility” means the website accessible via the Affiliate's URL.

“Company Website” means a website as maintained and managed by the Company.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

2. The Agreement

2.1 In order to apply to become an Affiliate, the applicant must complete and submit the Registration Form.

2.2 If the applicant makes any input errors during the order process, these may be identified and corrected by the applicant before the Registration Form is submitted by the Affiliate.

2.3 The Agreement will come into force if and when the Company sends to the Affiliate the Acceptance Email,

following the submission of a completed Registration Form by the Affiliate.

2.4 The Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause 11.

3. Affiliate Programme

3.1 The Affiliate will within 10 working days following the Effective Date include one or more Links on the Affiliate Website, and will maintain those Links on the Affiliate Website during the Term.

3.2 The Company may from time to time during the Term request amendments to the Links and/or the Affiliate Website for the purpose of ensuring consistency and quality in the use of the Company's trademarks and branding, and to the extent that such requests are reasonable the Affiliate will make such amendments within 10 working days of the request.

3.3 The Affiliate will be granted access to an Affiliate control panel on the Online Learning Facility during the Term, from which the Affiliate will be able to:

- (a) alter the Affiliate's account preferences; and
- (b) download HTML code to use as Links.

4. Affiliate obligations

4.1 The Affiliate will provide the Company with:

- (a) such co-operation as is required by the Company (acting reasonably) in connection with the Affiliate Programme; and
- (b) all information and documents required by the Company (acting reasonably) in connection with the Affiliate Programme.

4.2 The Affiliate must:

- (a) keep the Affiliate Website up-to-date and in good working order;
- (b) ensure that the quality of design, content and functionality on the Affiliate Website does not materially deteriorate during the Term;
- (c) ensure all marketing of or relating to the Affiliate Website (both online and offline) is in accordance with applicable law, any applicable codes of practice, and good industry practice generally.

4.3 The Affiliate must not:

- (a) include any Prohibited Materials on the Affiliate Website, or include any hyperlink to any Prohibited Materials on the Affiliate Website;
- (b) market the Affiliate Website using spam or unsolicited emails or other unsolicited communications, or using any form of spyware, parasiteware, adware or similar software, or using any other antisocial or deceptive methods;
- (c) increase or seek to increase the number of Payment Trigger events using any fraudulent or deceptive method;
- (d) make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the Company;

- (e) include any hyperlink to the Online Learning Facility from the Affiliate Website that is not a Link;
- (f) reproduce any content from the Online Learning Facility on the Affiliate Website without the prior written permission of the Company and the owners of the content (as shown on the Online Learning Facility).

4.4 The Affiliate will not take any action in connection with the Affiliate Programme which might reasonably be expected to lead to the possibility of damage to the reputation and goodwill of the Company and/or the Online Learning Facility.

5. Intellectual Property Rights

5.1 The Company grants to the Affiliate during Term a worldwide, non-exclusive, royalty-free licence to reproduce electronically and publish on the Affiliate Website only the Links.

5.2 The Company does not warrant that the use of the Links by the Affiliate will not infringe any third party Intellectual Property Rights or give rise to any other liability on the Affiliate.

5.3 All Intellectual Property Rights to the Online Learning Facility as well as its content remain the exclusive property of its owners (as shown on the Online Learning Facility).

6. Payments

6.1 In respect of each Payment Trigger which can be verified by the Company (acting reasonably) the Company will make a Payment to the Affiliate.

6.2 The Affiliate will account to the Company for all Payments due in respect of a calendar month at the end of the following calendar month, unless the amount due is less than £30.00, in which case the Payments may be held over to the next payment date.

6.3 All Payments stated in or in relation to the Agreement are stated inclusive of VAT, and the Affiliate is solely responsible for paying VAT.

6.4 If the Company is required by law to deduct withholding tax or any other taxes or duties from any Payments, then the Company will deduct such amounts from the Payments before paying them to the Affiliate.

6.5 Payments to the Affiliate will be made in UK Pounds Sterling by cheque or bank transfer (using such payment details as are provided by the Affiliate on the Registration Form).

6.6 No Payments will be due in respect of:

- (a) any purchases on the Online Learning Facility made by or on behalf of:
 - (i) the Affiliate;
 - (ii) any parent undertaking or subsidiary of the Affiliate;
 - (iii) any employee, agent or officer of the Affiliate or any parent undertaking or subsidiary of the Affiliate;
 - (iv) any natural person related any of the above;
- (b) any amount received by the Company by means of the fraudulent or unlawful use of a credit, debit or other payment card, or by any other fraudulent or unlawful means;

- (c) any purchases on the Online Learning Facility which are subsequently cancelled, refunded, reversed, or charged-back (and the Company will be entitled to require repayment of Payments made as a result of such purchases).

6.7 Both before and after termination, the Company will be entitled to set off any amount owed to the Affiliate against any amount the Affiliate owes to the Company whether under the Agreement or otherwise, and against any loss or damage suffered by the Company whether in relation to the Agreement or otherwise arising out of the Affiliate's acts or omissions.

7 Warranties

7.1 Each party warrants to the other party:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) that it will perform its obligations under the Agreement with reasonable care and skill.

7.2 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

8. Indemnity

The Affiliate will indemnify and keep indemnified the Company, and the Company's officers, employees, representatives, agents and subcontractors, against all damages, losses and expenses (including legal expenses) arising as a result of any breach by the Affiliate of any term of the Agreement.

9. Limitations and exclusions of liability

9.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in the Agreement:

- (a) are subject to Clause 9.1;
- (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- (c) will not limit or exclude / limit and exclude the liability of the parties under the express indemnities set out the Agreement.

9.3 The Company will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

- 9.4 The Company will not be liable for any loss of business, contracts or commercial opportunities.
- 9.5 The Company will not be liable for any loss of or damage to goodwill or reputation.
- 9.6 The Company will not be liable in respect of any loss or corruption of any data, database or software.
- 9.7 The Company will not be liable in respect of any special, indirect or consequential loss or damage.
- 9.8 The Company will not be liable for any losses arising out of a Force Majeure Event.
- 9.9 The Company's liability in relation to any event or series of related events will not exceed the total amount paid or (if greater) payable by the Company to the Affiliate under the Agreement during the month immediately preceding the event or events giving rise to the claim.
- 9.10 The Company's aggregate liability under the Agreement and any collateral contracts will not exceed the total amount paid or (if greater) payable by the Company to the Affiliate under the Agreement.

10. Force Majeure Events

- 10.1 Where a Force Majeure event gives rise to a failure or delay in either party performing its obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure event.
- 10.2 A party who becomes aware of a Force Majeure event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will promptly notify the other.
- 10.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure event.

11. Termination

- 11.1 Either party may terminate the Agreement forthwith at any time by giving 30 days' written notice to the other party.
- 11.2 The Company may terminate the Agreement immediately (with or without giving written notice to the Affiliate) if the Affiliate:
- (a) commits any breach of any term of the Agreement;
 - (b) becomes insolvent or enters into any insolvency process or procedure; or
 - (c) (where the Affiliate is an individual) the Affiliate dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

12. Effects of termination

- 12.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 8, 9, 12 and 13.
- 12.2 If the Agreement is terminated by the Company under Clause 11.2, the Company will not have any obligation to make any further Payments to the Affiliate.
- 12.3 Subject to Clause 12.2:
- (a) the Company will pay to the Affiliate all Payments arising from Payment Triggers activated on or before the date of effective termination of the Agreement in accordance with the terms of the

Agreement; and

- (b) termination of the Agreement will not affect either party's accrued rights as at the date of termination.

13. General

- 13.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by pre-paid first class post, or sent by fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address specified on the Registration Form (in the case of the Affiliate) or the Online Learning Facility or Company Website (in the case of the Company) (or as notified by one party to the other in accordance with this Clause).
- 13.2 A notice will be deemed to have been received at the relevant time set out below:
 - (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice sent by first class post, 48 hours after posting; and
 - (c) where the notice sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 13.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 13.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 13.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties. The Affiliate will not make any statement on the Affiliate Website or otherwise which expressly or impliedly suggest that there is any such relationship between the parties.
- 13.6 The Agreement may be varied by the Company posting a new version of the Agreement on the Online Learning Facility and notifying the Affiliate in writing that the Agreement has been varied. The Affiliate's continued participation in the Affiliate Programme after receipt of such a notice will constitute the Affiliate's acceptance of the varied Agreement.
- 13.7 The Company may freely assign its rights and obligations under the Agreement without the Affiliate's consent to any successor to all or substantial part of the Online Learning Facility or the Company's business from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 13.8 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement is not subject to the consent of any third party.
- 13.9 The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause 9.1, each party acknowledges that no representations or promises not expressly contained in the Agreement have been

made by or on behalf of the other party.

13.10 The Agreement will be governed by and construed in accordance with the laws of England and Wales.

13.11 The courts of England and Wales will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

Appendix 1

Commission Bands

Monthly Sales Needed	Commission
1-99	10.0%
100-299	12.5%
300-499	15.0%
500+	20.0%

For Example:

If 150 units are sold, 99 will attract the 10% of net sales commission rate, with the remaining 51 unit attracting the 12.5% commission rate.