

Affiliate Agreement

Last Updated: April 6, 2022

This affiliate agreement is between **EASY ONLINE SOLUTIONS, LTD.** d/b/a MOJOHOST (“**MojoHost**”), and you, regarding your application to and participation in, the MojoHost Affiliate Program (“**Affiliate Program**”) as an affiliate of Mojohost (an “**Affiliate**”), and the establishment of links from your website to our website, www.mojohost.com.

By submitting an application to join or by participating in the Affiliate Program, you are confirming that you have read this agreement and the MojoHost [Terms of Use](#) and [Master Services Agreement](#), and that you agree to be bound by this agreement and MojoHost’s Terms of Use and Master Services Agreement.

1. Definitions

“**Affiliate**” means the business, individual, or entity applying to or participating in the Affiliate Program or that displays MojoHost’s Products and Services and promotions on its website or other means using an affiliate tracking code in exchange for receiving a commission from MojoHost for sales directly resulting from that display.

“**Affiliate Site**” means the Affiliate’s website that displays MojoHost’s Products and Services and promotions.

“**Commission Fees**” means the amount you will be paid for each Qualified Purchase by a Referred Customer that you refer to MojoHost subject to the Commission Threshold and under the terms of this agreement.

“**Commission Threshold**” means the amount of Commission Fees an Affiliate must accrue before receiving a payment from MojoHost.

“**MojoHost’s Products and Services**” means web hosting and related products and services that are available for purchase from MojoHost.

“**Qualified Purchase**” means a sale of MojoHost’s Products and Services by MojoHost, with a term of 12-months or longer, to a Referred Customer that is not excluded under section 7.

“**Referred Customer**” means each new and unique customer referred from Affiliate through a Link that provides valid account and billing information.

“**Registration Form**” means any order forms or other signup or acceptance form submitted by a customer to purchase MojoHost’s Products and Services.

2. Enrollment in the Affiliate Program

2.1 To begin the enrollment process, you must submit a completed Affiliate Program signup form. The signup form can be found at <https://cs.mojohost.com/register.php>.

2.2 We will evaluate your application and will notify you of your acceptance or rejection in a

timely manner. We may reject your application if we determine (in our sole discretion) that your website or promotional method is not suitable for the Affiliate Program for any reason, including, but not limited to, its inclusion of content that is unlawful or otherwise violates our [Acceptable Use Policy](#), as determined in our sole discretion.

- 2.3 If we rejected your application for any reason, you must not reapply to the Affiliate Program using the same domain name/URL or reapply using a different domain name/URL and then add the previously rejected domain name/URL to your affiliate account. MojoHost may reject or remove any prospective affiliate from the Affiliate Program at any time, with or without notice.

3. **Promotion of Our Affiliate Relationship**

- 3.1 **Use of Links.** If you qualify and agree to participate as an Affiliate, we will make a variety of graphic and textual links available to you (each referred to as a “**Link**” or collectively, as “**Links**”). The Links will serve to identify your website as a member of the Affiliate Program and will establish a link from your website or email to MojoHost’s website. Unless expressly permitted by MojoHost, the Links are to be used on your website and you shall not distribute the Links to nonparties to be posted on websites that you do not own. You shall cooperate with us to establish, display, and maintain those Links. Your use of the Links must comply with this agreement at all times. MojoHost may modify the Links from time to time in its sole discretion. You must not use graphic or textual images (indicating a Link) or text messages to promote MojoHost that MojoHost has not approved in advance. All Affiliate Sites shall display the Links prominently in relevant sections of their website. Further, you must not use cookie stuffing techniques that set the affiliate tracking cookie without the Referred Customer’s knowledge (e.g., iframe). Any information about MojoHost that is going to be displayed on the Affiliate Site must be preapproved by MojoHost in writing.

- 3.2 **Prohibited Activities.** Except as permitted in this agreement, you shall not and are not authorized to (a) use MojoHost’s trademarks or other intellectual property, including without limitation, the Links (collectively, “**MojoHost IP**”) without MojoHost’s express prior written permission; (b) use MojoHost’s name (or any variation or misspelling of it or other terms that are confusingly similar to any of the preceding) in a domain name, any metatags, advertising, search terms, code, or otherwise; or (c) act in any way that causes or creates or could cause or create any “initial interest confusion” over the use of the MojoHost IP on the Internet or in any search engine advertising. Using the MojoHost IP other than as expressly permitted under this agreement constitutes unlawful infringement of MojoHost’s intellectual property rights and may subject you to liability (including potential treble damages for knowing or willful infringement) and obligate you to pay MojoHost’s legal fees and costs for MojoHost’s enforcement of its rights.

- 3.3 **Paid Search Policy.** You are required to comply with the following rules when bidding on keywords on any paid search engine or social media site, including without limitation, Google, Yahoo, Bing, Twitter, and Facebook:

- (a) You are prohibited from bidding on any MojoHost trademarks or any variations and misspellings of them without MojoHost’s prior written approval. Examples of

prohibited keywords are “mojohost,” “that’s good mojo,” “mojocloud,” “mojocdn,” “mojoshield,” “mojohost.com,” “www.mojohost.com,” “mojo host,” “mojohost reviews,” “host mojo,” “mojohost hosting,” “mojocloud.com,” “www.mojocloud.com,” “mojo cloud,” “mojocloud reviews,” “cloud mojo,” “mojocdn.com,” “www.mojocdn.com,” “mojo cdn,” “mojocdn reviews,” “cdn mojo,” “mojoshield.com,” “www.mojoshield.com,” “mojo shield,” “mojoshield reviews,” “shield mojo,” and “thatsgoodmojo.com.”

- (b) You are prohibited from bidding on keywords containing MojoHost’s trademarks plus an additional term including “mojohost coupons,” “mojohost promotions,” and “mojohost promos.” Further, Affiliates shall not [broad or phrase match](#) any of these keywords.
- (c) You are prohibited from outranking MojoHost’s internal paid search ad on any keywords.
- (d) You are prohibited from direct linking to MojoHost.com from any paid search ads.
- (e) You are prohibited from using MojoHost.com as a display URL.

All materials, including without limitation, ad copy, coupons, and promotions on your Affiliate Site must accurately represent active and valid promotions. For example, you must not display an ad on your Affiliate Site for a promotion that has expired. We continue to monitor all paid search landscapes. If we find you in violation of this section, we may terminate your participation in the Affiliate Program. For more information on match types, please visit Google’s overview of [match types](#).

- 3.4 **Discounts and Coupons.** You must not post any refunds, credits, or discounts on MojoHost’s Products and Services or other content about MojoHost without MojoHost’s prior written consent in each instance. Affiliates must only use active coupons and discounts that are provided exclusively through the Affiliate Program using banners and links. Each Link connecting users of the Affiliate Site to the pertinent are of the MojoHost website will in no way alter the look, feel, or functionality of the MojoHost website. Any violations of the terms surrounding links, coupons, refunds, credits, or discounts will constitute a material breach of this agreement and may result in your termination from the Affiliate Program or the withholding of Commission Fees.

4. **FTC Endorsement Compliance**

- 4.1 It is MojoHost’s intent to treat all our customers fairly. Accordingly, we require all MojoHost Affiliates to comply with laws, regulations, and guidelines concerning advertising and marketing, including without limitation, the [Federal Trade Commission \(FTC\) Endorsement Guides](#), which require that material connections between advertisers and endorsers be disclosed. This means that all Affiliate Sites (e.g., directories, review/rating websites, blogs, and other websites) and any email or collateral that provide an endorsement or assessment of MojoHost’s Products and Services must prominently disclose the fact that you receive compensation for Referred Customers.
- 4.2 For more information and suggestions about how to comply with these guidelines, please

visit "[Affiliate Disclosure Requirements and Examples](#)." Please note that this page is only intended to provide guidance. It does not purport to provide legal advice and it does not guarantee that you will be in compliance with FTC regulations should you follow the suggestions presented. You are advised to seek and obtain your own legal advice on how these rules apply to your website or other promotional activities for which you receive compensation.

4.3 MojoHost may withhold Commission Fees and cancel your participation in the Affiliate Program if we determine, in our sole discretion, that you are not complying with the previously mentioned guide or other FTC regulations or guides that we consider relevant.

5. **Data Security**

Besides the obligations set out in section 4 (FTC Endorsement Compliance), Affiliate shall comply with all data protection laws regarding the transmission of data exported to or from the United States or the county in which Affiliate resides, including without limitation, the General Data Protection Regulation 2016/679 of European Parliament and of the Council of 27 April 2016 ("GDPR"). Affiliate, as a controller under the GDPR, shall also implement appropriate technical measures to ensure a level of security appropriate to the risk, taking into account the nature, scope, context, and purpose of processing any personal data. Affiliate shall promptly assist MojoHost in complying with any data subject rights request under the GDPR that MojoHost might receive from any individuals referred to MojoHost by Affiliate. Affiliate further shall promptly assist MojoHost in complying with any duties to cooperate with supervisory authorities under the GDPR.

6. **Order Processing**

MojoHost will process orders placed by Referred Customers who follow the Links from an Affiliate Site to MojoHost. We may, in our sole discretion, reject orders that do not comply with certain requirements that we may establish from time to time. All aspects of order processing and fulfillment, including MojoHost's services, cancellation, processing, refunds, and payment processing will be our responsibility. We will track the Qualified Purchases generated by your Affiliate Site and will make this information available to you through our website. To permit accurate tracking, reporting, and commission accrual, you must ensure that the Links between your website and our website are properly formatted.

7. **Commission Determination; Qualified Purchases**

7.1 Commission Fees will be calculated based on the commission rates stated on the MojoHost website for each Qualified Purchase subject to commission accruing under section 8. If the MojoHost website does not set out the commission rates, the commission rate will equal 8% of the net revenues that MojoHost earns from each Qualified Purchase. A "Qualified Purchase" does **not** include any of the following:

- (a) A purchase by a Referred Customer that has transferred from any MojoHost partner or entity that owns, is owned by, or is under common ownership with MojoHost.
- (b) A purchase by a Referred Customer who is also associated with any MojoHost

reseller, referral, or other program.

- (c) A purchase by a Referred Customer that is not up to date on its payments or is subject to a refund, referral, or other program.
- (d) A purchase that was completed before the Affiliate joining the Affiliate Program or was not tracked properly through an Affiliate Link.
- (e) A purchase by a Referred Customer that has not been in good standing for at least 30 days or is in violation of MojoHost's [Master Services Agreement](#), [Acceptable Use Policy](#), or other policies when the Commission Fees accrue.
- (f) A purchase that MojoHost suspects, in its sole discretion, is the result of fraud, which includes but is not limited to, using software that generates real and fictitious information, multiple accounts from the same customer, or the referral of accounts that do not comply with this agreement.
- (g) A purchase referred by an Affiliate that has an excessive cancellation rate as determined in MojoHost's sole discretion.
- (h) A purchase by a Referred Customer if the Referred Customer was offered or received coupons, refunds, credits, or discounts from the Affiliate.
- (i) A purchase by a Referred Customer if the Affiliate or Referred Customer is in or is promoting a business-opportunity program, as determined in MojoHost's sole discretion.
- (j) A purchase by a Referred Customer who received a popup with a discounted offer, while leaving MojoHost's website during their purchase.
- (k) A purchase by a Referred Customer engaging in "Domain Speculation," which is determined by the identification of two web hosting accounts with the same Referred Customer's name, email address, or other identifying characteristics as determined by MojoHost or the identification of two or more web hosting accounts that have no content on their websites or have similar content, templates, or formatting, as determined in MojoHost's sole discretion.
- (l) A purchase by a Referred Customer who, before that purchase, clicked through a Link established by another affiliate under this Affiliate Program.
- (m) A purchase by a Referred Customer more than 90 days after clicking through the Affiliate Link.

7.2 MojoHost may withhold paying Commission Fees to Affiliates who are new to the Affiliate Program, or who have referrals that are potentially the result of fraud as determined in MojoHost's sole discretion, to determine the legitimacy and cancellation rates of Referred Customers.

7.3 MojoHost may suspend paying Commission Fees at any time and indefinitely if it suspects

fraud or other improper activity or a potential breach of this agreement by the Affiliate or a Referred Customer. MojoHost may deduct from Affiliate's current and future Commission Fees all Commission Fees corresponding to any fraudulent, questionable, and cancelled purchases. If no subsequent Commission Fees are due, MojoHost may send Affiliate a bill for the balance of that refunded purchase on termination of Affiliate's participation in the Affiliate Program or termination of the Referred Customer.

- 7.4 MojoHost may immediately cancel or withhold for later review any Commission Fees that do not meet the criteria of a "Qualified Purchase." Affiliate is responsible for monitoring the payment, denial, and withholding of Commission Fees; MojoHost is not obligated to actively notify Affiliate of the status of Commission Fees. If Affiliate has a question about a Commission Fee that has been cancelled or withheld, Affiliate has 30 days from the day the payment would have been due to contact MojoHost to request that the Commission Fee be paid. Any changes to decisions about cancelled or withheld Commission Fees are made in MojoHost's sole discretion.
- 7.5 Commissions for any Referred Customer who is associated with any MojoHost reseller, referral, or other program will not be considered a Qualified Purchase. In other words, you will not receive double commissions or compensation.
- 7.6 If the Referred Customers that are referred to MojoHost by an Affiliate are determined to have an excessive cancellation rate, as MojoHost determines in its sole discretion, MojoHost may withhold or decline pending and future Commission Fees to that Affiliate.
- 7.7 Any attempt by an Affiliate to manipulate, falsify, or inflate Referred Customers, Qualified Purchases, or Commission Fees to intentionally defraud MojoHost or any violation of this agreement constitutes immediate grounds for MojoHost to terminate the Affiliate's participation in the Affiliate Program and will result in the Affiliate forfeiting any Commission Fees due.

8. **Commission Payments**

- 8.1 Subject to this agreement, Commission Fees will be calculated according to the specified percentage or dollar amount set out in the commission report in your Affiliate console for each Qualified Purchase that accrues during the period for which those Commission Fees are being calculated.
- 8.2 Commission Fees will be processed 15 to 30 days after the end of the month or other period in which a Referred Customer enters into a binding agreement for one or more MojoHost Products and Services. MojoHost is not required to pay you any other compensation for referring customers to MojoHost other than Commission Fees under this agreement. MojoHost will only compensate you for Qualified Purchases made according to this agreement.
- 8.3 Commission Fees will be paid based on the current information in your Affiliate profile. You are required to notify us promptly of any change in your address or email address by updating your profile information in the Affiliate console. You are responsible for informing us of your requested payment method. You can update or change your requested payment method at any time by updating your affiliate profile located in the

Affiliate console. Any changes to your requested payment method might take up to two payout cycles to take effect.

- 8.4 You may view the currently available payment methods by logging into your Affiliate console. If we offer PayPal as a payment method, please refer to [PayPal's policy](#) to ensure you are eligible to receive payment if you reside outside of the United States.
- 8.5 MojoHost, in its sole discretion, reserves the right to modify the available commission payment methods or payment schedule at any time. Those changes will take effect when posted.
- 8.6 **Disputes:** Affiliate has access to MojoHost's real-time Affiliate Program statistics and must file any disputes within 30 days after the end of the month in which the sale or event that is disputed occurred. MojoHost will not accept disputes filed after 30 days of the date on which the disputed sale or event occurred, and Affiliate forfeits any rights to a potential claim.
- 8.7 Commission Fees will accrue and only become payable once you provide all relevant tax and address documentation under this section 8. It is solely your responsibility to provide MojoHost with accurate tax and payment information that is necessary to issue a Commission Fee to you. If MojoHost does not receive the necessary tax or payment information within 90 days of a Qualified Purchase that would otherwise trigger Commission Fees, the applicable commissions will not accrue, and no Commission Fees will be owed for that Qualified Purchase.
- 8.8 Each Affiliate may be required to submit a W8/W9 tax form to MojoHost before any Commission Fees will accrue. You are responsible for paying all taxes related to the commissions you receive under this agreement. In compliance with US tax laws, MojoHost will issue a Form 1099 to Affiliates whose earnings meet or exceed the applicable threshold.
- 8.9 Any address change must be made in the Affiliate profile in the Affiliate console.
- 8.10 MojoHost is not responsible for paying any third-party fees, including any fees charged by PayPal, for you to receive Commission Fees.

9. **Reports of Qualified Purchases**

You may log into your Affiliate account to review your click-through and Qualified Purchases statistics daily. The potential Qualified Purchases shown in this report have not been reviewed to confirm they meet all criteria for Qualified Purchases. Thus, Commission Fees might not be issued for all Referred Customers that appear in your Affiliate account.

10. **Obligations Regarding Your Affiliate Site**

- 10.1 You are solely responsible for developing, operating, and maintaining your Affiliate Site and for all materials that appear on your Affiliate Site. Those responsibilities include, but are not limited to, the technical operation of your Affiliate Site and all related equipment; creating and posting product reviews, descriptions, and references on your Affiliate Site

and linking those descriptions to our website; the accuracy of materials posted on your Affiliate Site (including, but not limited to, all materials related to MojoHost's Products and Services); and ensuring that materials posted on your Affiliate Site do not violate or infringe on the rights of anyone and are not libelous or otherwise illegal. We will not be liable or responsible for those matters.

10.2 We may monitor signups through your Affiliate Site from time to time to determine if you are complying with this agreement. If you are not complying, we may terminate your participation in the Affiliate Program effective immediately.

11. **MojoHost Responsibilities**

We will provide all the information necessary for you to make Links from your Affiliate Site to our website. MojoHost will be solely responsible for order processing (including payment processing, cancellations, and refunds) for orders for MojoHost Products and Services placed by a Referred Customer, for tracking the volume and amount of Qualified Purchases generated by your Affiliate Site, for providing information to Affiliates regarding Qualified Purchase statistics, and for providing Referred Customers with the services purchased.

12. **Policies and Pricing**

Referred Customers who buy MojoHost Products and Services through our affiliate network are considered to be MojoHost customers. MojoHost's Master Services Agreement, rules, policies, and operating procedures will apply to those customers. We may change our policies, pricing, and operating procedures at any time. For example, MojoHost determines the prices to be charged for MojoHost Products and Services sold through the affiliate network in accordance with our own pricing policies. Pricing and availability of MojoHost Products and Services may vary from time to time, from affiliate to affiliate, and from region to region. Because price changes might affect products that you have listed on your Affiliate Site, you might or might not be able to include price information in your product descriptions. We will use reasonable efforts to present accurate information on our website, but we cannot guarantee the availability or price of any particular MojoHost Product or Service.

13. **Emails and Publicity**

You shall not create, publish, transmit, or distribute, under any circumstances, any bulk email messages without MojoHost's prior written consent, to be granted or denied in MojoHost's sole discretion, in each instance. Additionally, you shall only send emails containing a MojoHost affiliate link or a message regarding MojoHost or the Affiliate Program to people who have previously consented to receiving that communication from you. Your failure to comply with this section 13, the CAN-SPAM Act of 2003, our [Anti-SPAM Policy](#), and all laws relating to email communications will constitute a material breach of this agreement by you and will result in your forfeiture of all rights you may have to any Commission Fees and the termination of your participation in the Affiliate Program. Further, if your account has excessive clicks in a very short period as determined by MojoHost in its sole discretion, the Affiliate relationship may be terminated.

14. IP Licenses and Use

- 14.1 Subject to the limitations set out in section 3 and otherwise in this agreement, we hereby grant you a nonexclusive, nontransferable, revocable license to (a) access our website through the Links solely in accordance with this agreement, and (b) use the MojoHost IP solely to promote MojoHost's Products and Services on your Affiliate Site. You shall not alter, modify, or change the MojoHost IP in any way. You shall only use the MojoHost IP while you are an Affiliate in good standing and in compliance with this agreement.
- 14.2 You shall not use the MojoHost IP for any purposes other than sell MojoHost's Products and Services, without first submitting a sample to us and obtaining MojoHost's express prior written consent in each instance. You shall not use the MojoHost IP in any manner that is disparaging or that otherwise portrays MojoHost, any MojoHost employee, representative, or customer in a negative light. We reserve all our rights in the MojoHost IP and your license to use the MojoHost IP is limited to the manner described in this agreement. MojoHost may revoke your license at any time by giving you written notice. If not previously revoked, this license will terminate on the termination of your participation in the Affiliate Program. MojoHost may review the Affiliate Site to ensure compliance with this agreement at any time.
- 14.3 You hereby grant us a nonexclusive license to use your name, title, trademarks, and logo ("**Affiliate Trademarks**") in any advertisement or other materials used to promote MojoHost and the Affiliate Program. MojoHost is not required to use the Affiliate Trademarks and any use is at its sole discretion. This license terminates on the termination of your participation in the Affiliate Program.

15. Term and Termination

- 15.1 This agreement is effective on your submission of an application to the Affiliate Program and will remain in effect until either party terminates your participation in the Affiliate Program ("**Term**"). Your participation in the Affiliate Program may be terminated at any time by either party, with or without notice or cause.
- 15.2 You are only eligible to earn Commission Fees on Qualified Purchases occurring during the Term. Commission Fees earned before the termination date will be eligible for Commission Fees only if the orders for the related MojoHost Products and Services are not cancelled within 90 days and comply with this agreement. We may withhold your final payment of Commission Fees for a reasonable time to ensure that all Qualified Purchases are valid and payment from Referred Customers are legitimate as MojoHost determines in its sole discretion.
- 15.3 Any Affiliate who violates this agreement, MojoHost's [Terms of Use](#), MojoHost's [Master Services Agreement](#), or any law or regulation will immediately forfeit any right to all accrued, but not yet received, Commission Fees and will be immediately removed from the Affiliate Program.
- 15.4 MojoHost may remove an Affiliate from the Affiliate Program or terminate or suspend this agreement at any time for any reason in MojoHost's sole discretion.

16. **Modification**

We may modify this agreement at any time in our sole discretion, on condition that the change solely applies to events occurring after the date on which you accept those modifications unless you otherwise agree in this agreement. Those modifications will take effect when posted on our website. Modifications may include, but are not limited to, changes in the scope of available Commission Fees, commission amounts or percentages, payment procedures, Commission Fee payment schedules, and Affiliate Program rules. If any modification is unacceptable to you, your only recourse is to terminate this agreement, in which event you will be entitled to your rights under the unmodified agreement before the date of the applicable modification. Your continued participation in the Affiliate Program after our posting any modification on our website will constitute binding acceptance of the change.

17. **Disclaimers**

We are not making any express or implied warranties or representations about the Affiliate Program or any MojoHost Products and Services sold through the Affiliate Program (including, without limitation, **warranties of fitness for a particular purpose, merchantability, noninfringement, or any implied warranties arising out of course of performance, dealing, or trade usage**). In addition, MojoHost is not making any representation that the operation of our website will be uninterrupted or error free, and we will not be liable for the consequences of any interruptions or errors, including the tracking of information concerning Referred Customers during any period of interruption.

18. **Relationship of Parties**

You and MojoHost are independent contractors, and nothing in this agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations for us. You will not make any statement, whether on your Affiliate Site or otherwise, that contradicts anything in this section.

19. **Representations and Warranties**

You state to us that the following facts are accurate:

- 19.1 You have reviewed and understand this agreement and agree to be bound by its terms.
- 19.2 Your acceptance of this agreement and participation in the Affiliate Program will not violate (a) any provision of law, rule, or regulation to which you are subject; (b) any order, judgment, or decree applicable to you or binding on your assets or properties; (c) any provision of your bylaws or certificate of incorporation; or (d) any agreement or other document applicable to you or binding on your assets or properties.
- 19.3 You are the sole owner of the Affiliate Trademarks and have the power to grant to MojoHost the license to use those marks in the way contemplated in this agreement and that grant will not (a) breach, conflict with, or constitute a default under any agreement or other document applicable to you or binding on your assets or properties; or (b) infringe on any trademark, trade name, service mark, copyright, or other proprietary right

of any person or entity.

- 19.4 You are not required to obtain consent, approval, or authorization of, or exemption by, or filing with, any governmental authority or any nonparty with your entrance into this agreement.
- 19.5 There is no pending or threatened claim, action, or proceeding against you or any affiliate of yours for the Affiliate Trademarks, and, to the best of your knowledge, there is no grounds for any such claim, action, or proceeding.
- 19.6 During the Term, you will not include in your Affiliate Site content that is, in our opinion, unlawful; harmful; threatening; defamatory; obscene; harassing; racially, ethnically, or otherwise objectionable; or are in violation of our [Terms of Use](#), [Master Services Agreement](#), or [Acceptable Use Policy](#).
- 19.7 You are at least 18-years old.
- 19.8 Each Referred Customer is valid, genuine, and unique and meets the criteria of a Qualified Purchase for generating a Commission Fee as provided in this agreement.

20. **Limitation of Liability**

We will not be liable for any indirect, special, incidental, or consequential damages, or any loss of revenue, profits, or data, arising under this agreement or the Affiliate Program, even if we have been advised of the possibility of those damages. Further, our aggregate liability arising under this agreement and the Affiliate Program will not exceed the total commissions paid or payable to you under this agreement during the three-month period immediately preceding the event giving rise to that liability.

21. **Indemnification**

You shall indemnify MojoHost and its subsidiaries and affiliates, and their directors, officers, employees, agents, shareholders, partners, members, and other owners, against all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable legal fees) (collectively, "**Losses**") arising out of or relating to (a) any claim that our use of the Affiliate Trademarks infringe on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of anyone; (b) any misrepresentation of a representation or warranty or breach of a covenant and agreement made by you in this agreement; or (c) any claim related to your Affiliate Site, including, without limitation, its development, operation, maintenance, and content in it not attributable to us.

22. **Confidentiality**

All information, including, without limitation, the terms of this agreement, business and financial information, MojoHost customer and vendor lists, or pricing and sales information (including without limitation commission rates) will remain confidential and shall not be used for any purpose outside this agreement except and solely if that information is (a) already lawfully known to or independently developed by the receiving party, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from any nonparty not under the obligation

of confidentiality to the disclosure under this agreement. Despite the preceding, each party may deliver a copy of any such information (a) under a valid subpoena or order issued by a court or administrative agency of competent jurisdiction; (b) to its accountants, attorneys, or other agents on a confidential basis; and (c) otherwise as required by law, rule, regulation, or legal process including, without limitation, the Securities Exchange Act of 1933 and the rules and regulations promulgated under it, and the Securities Exchange Act of 1934 and the rules and regulations promulgated under it. If that disclosure, the receiving party shall give the disclosing party prior notice before releasing any information unless giving that notice is prohibited.

23. **Independent Investigation**

You understand that we may at any time (directly or indirectly) solicit MojoHost relationships on terms that might differ from those contained in this agreement. We may also solicit relationships with entities that operate websites that are similar to or compete with your Affiliate Site. You have independently evaluated the desirability of participating in the MojoHost Affiliate Program and are not relying on any representation, guarantee, or statement other than as set out in this agreement.

24. **Miscellaneous**

24.1 **Governing Law.** Michigan law governs all adversarial proceedings arising out of this agreement or your participation in the Affiliate Program.

24.2 **Choice of Forum.** Except for disputes subject to arbitration, as the exclusive means of bringing adversarial proceedings to resolve any dispute arising out of this agreement or the subject matter of this agreement, a party may bring such a proceeding in the United States District Court for the Eastern District of Michigan or in a state court in Michigan. Each party acknowledges that those courts would be a convenient forum. **Each Party hereby waives its right to a trial by jury in any adversarial proceeding arising out of this agreement.**

24.3 **Arbitration.** As the exclusive means of initiating adversarial proceedings to resolve any dispute arising out of this agreement or your participation in the Affiliate Program, a party may demand that the dispute be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and each party hereby consents to any such dispute being so resolved. Judgment on any award rendered in any such arbitration may be entered in any court have jurisdiction. **You agree to arbitration on an individual basis. In any adversarial proceeding, neither you nor MojoHost will join or consolidate claims by or against other affiliates in court or in arbitration or otherwise participate in any adversarial proceeding as a class representative, class member, or in a private attorney general capacity.** The arbitral tribunal will not consolidate more than one person's claims and will not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver will only be raised in a court of competent jurisdiction.

24.4 **Legal Fees.** In any adversarial proceeding between the parties arising out of or relating to the subject matter of this agreement, the prevailing party will recover from the other party, besides any other relief awarded, all expenses that the prevailing party incurs in

that adversarial proceeding (including any appeals), including legal fees and expenses.

- 24.5 **Assignment.** This agreement is personal to you. You shall not transfer to any other person (a) any discretion granted under this agreement, (b) any right to satisfy a condition under this agreement, (c) any remedy under this agreement, or (d) any obligation imposed under this agreement. Any purported transfer by you in violation of this section will be void.
- 24.6 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation. A waiver granted on one occasion will not operate as a waiver on other occasions.
- 24.7 **Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- 24.8 **Notices.** A notice or other communication under this agreement will be effective if it is in writing and received by the party to which it is addressed. It will be deemed to have been received as follows: (a) if a paper copy is delivered by a delivery organization that allows users to track deliveries, on receipt as stated in the tracking system; (b) if a paper copy is delivered by another means, when the intended recipient or a representative of the intended recipient signs for it; (c) if it is delivered by email, when the intended recipient acknowledges by notice under this section (but without need for further acknowledgment) having received that message, except that a read receipt or an automatic reply will not constitute acknowledgment of a message for purposes of this section; and (d) if the intended recipient rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then on that rejection, refusal, or inability to deliver. For a notice under this agreement to be valid, it must be addressed using the information set out on the MojoHost website (if to MojoHost) or using the information set out in your Affiliate account (if to you) or any other information stated by that party in a notice under this section. If a notice addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day at the location specified in the address for that party, then the notice will be deemed to have been received at 9:00 a.m. on the next business day.
- 24.9 **Entire Agreement.** This agreement constitutes the entire understanding between the parties regarding the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties.