

DIGITAL WINDOW LTD (DWL) SERVICE AGREEMENT

Please read this agreement carefully before registering and using the Service. By clicking on the "I have read and accept the Affiliate Window Licence Agreement" box at the bottom of the signup page you indicate your acceptance of this Agreement and its terms and conditions. If you do not accept these terms and conditions you will not be allowed to participate in the Service. In consideration of the promises set forth below, it is agreed as follows:

1. INTRODUCTION AND DEFINITIONS

- 1.1 This Service Membership Agreement (the "Agreement") is made between Digital Window Ltd, 279-283 Greenwich High Road, London, SE10 8NL ("DWL") and you, as user of the "Affiliate Window service" ("Affiliate").
- 1.2 In this Agreement the following words and expressions shall have the following meanings:
 - 1.2.1 "Applicant" means an entity which wishes to become an Affiliate;
 - 1.2.2 "Account" means the account set up for each Affiliate by DWL into which Commission shall be deposited;
 - 1.2.3 "the Commission" means the commission received from Merchants which is paid to Affiliates;
 - 1.2.4 "Links" means the hyperlinks (whether text, a button, a banner or any other acceptable format) to the Merchant Website in the form agreed with the Merchant placed on an Affiliate's site that, when clicked on serves a page on s Merchant's Website to the user's browser;
 - 1.2.5 "Merchant " means the person or entity who has entered into a contract with DWL and will reward Affiliates for placing Links on the Merchant's site;
 - 1.2.6 "Merchant Website" means any website owned or operated by the Merchant which sells goods to end users;
 - 1.2.7 "Service" means this arrangement whereby DWL introduces Affiliates to Merchants so that Merchants can increase sales and DWL arranges for the Affiliate to receive Commissions from the business the Merchant generates from the Affiliates;
 - 1.2.8 "Service Website" means DWL's extranet system which operates the Service;
 - 1.2.9 "Visitor" means any person or entity that clicks on a Link;
 - 1.2.10 "Valid Click" is a click from an Affiliate's site to a Merchant's Website that results in the Merchant's Web page being viewable to the Visitor. A click is deemed valid when it meets certain criteria *as defined* on the Service Website.

2 JOINING DWL

- 2.1 DWL will allow you to direct traffic to its Merchant's Websites but DWL will review the site of each Applicant for possible inclusion into the network.
- 2.2 Each Applicant must submit a valid credit card number as part of the registration process. An Account will be set up and a £5 charge will be debited. If the Applicant becomes an Affiliate this fee will be credited to the Affiliate's Account and can be withdrawn when the Account credit meets the minimum payout level (in accordance with clause 5). If DWL rejects membership to the Applicant to join the network then that charge will be retained by DWL as an administrative fee. DWL will decide at its discretion

whether any Applicant will be authorised to become an Affiliate and no liability shall be incurred in this regard.

3 THE AFFILIATE'S WARRANTIES

- 3.1 The Affiliate confirms that it has read the documentation for the Service and understands its features and rules. As part of the registration process, an email and password combination will be selected enabling each Affiliate to access its specific area where all pertinent information can be accessed in the Service Website.
- 3.2 The Affiliate confirms to DWL that the Affiliate:
 - 3.2.1 if he/she is a private individual then he/she is not under 18 years of age;
 - 3.2.2 will continue to provide DWL with accurate, complete and non-misleading information regarding the Affiliate's identity to enable it to be registered and any other matters relevant to this Agreement;
 - 3.2.3 keep secure the password that the Affiliate selects that (in conjunction with the Affiliate ID) permits the Affiliate access to the Affiliate section of the Service Website;
 - 3.2.4 will not select the name of another person with the intent to impersonate that person or deceive other users as the Affiliate's true identity.
- 3.3 The Affiliate acknowledges that DWL shall act upon any information or instructions that DWL reasonably believes comes from the Affiliate and DWL shall not be liable to the Affiliate.
- 3.4 The Affiliate shall immediately notify DWL by email at admin@affiliatewindow.com if:
 - 3.4.1 the Affiliate believes that any unauthorised use has or may be made of the password referred to in clause 3.2.3;
 - 3.4.2 the Affiliate suspects or is aware of any other actual or possible abuses of the Service.

4 THE AFFILIATE'S OBLIGATIONS

- 4.1 The Affiliate confirms that until this agreement is terminated:
 - 4.1.1 it shall not provide DWL with any information or with any materials that infringe the rights of any other person (including any intellectual property rights) and further acknowledges to at all times respect the intellectual property and other rights of DWL and the Merchants;
 - 4.1.2 it shall not copy or alter the code of any Link and the intellectual property rights of DWL pertaining thereto are acknowledged;
 - 4.1.3 none of the information or materials supplied by the Affiliate to DWL shall be libellous, obscene, or abusive nor shall it breach any law or regulation or give rise to any legal claim of any sort;
 - 4.1.4 it shall not provide, promote, distribute, place or otherwise publish any content which is libelous, defamatory, obscene, pornographic, abusive, or otherwise objectionable, fraudulent or violates any law. As DWL may not review all information provided each Affiliate remains solely responsible for the content of its website;
 - 4.1.5 none of the sites on which the Affiliate places any Links shall be adult sites, or sites that display adult banners, sites that promote or condone violence, bigotry or hatred, or sites that promote any illegal activity including (but not limited to) warez, cracking, rom or emulator sites or hacking;

- 4.1.6 The Affiliate's website or websites shall likewise not display or contain any information or materials of the kind referred to in this clause.
- 4.2 In the context of overseeing and administering the Service DWL may monitor the Affiliates' websites and any links from them.
- 4.3 All content the Affiliate provides to the Service is solely owned by it or (if it is a person) provided with the express authority of the company so represented.
- 4.4 The Affiliate cannot place Links in newsgroups or use unsolicited e-mail. Any Link placed must not mislead any Visitor and be placed with the Intention of delivering Valid Clicks to the related Merchant for that Link.

5 **PAYMENT**

- 5.1 Once any particular purchase by a Visitor has been validated by a Merchant then DWL will endeavour to procure that the Merchant in question will place the appropriate Commission into the Account. The Merchants will be invoiced by DWL twice each month. Accordingly each payment should be made by the end of the month in which validation occurs. If the Merchant makes these payments then payment will be made to the Affiliate during the following month. Time shall not be of the essence regarding these payments and the Affiliate shall not be entitled to receive any interest that accrues on these sums whilst deposited with DWL.
- 5.2 If such payments are not banked by the Affiliate within six months then DWL will be entitled to retain such monies.
- 5.3 Commission shall not be paid to an Affiliate if in any particular month if the balance of the Account is less than (if paid by credit transfer) £25 or (if paid by cheque) £100. The sum in question shall be included into the first month's payment that aggregates the above thresholds.
- 5.4 DWL is a facilitator, arranging payment of the Commission to the Affiliates. If DWL cannot recover monies from the Merchant then DWL will be under no obligation to remit Commission to the Affiliate.
- 5.5 The Affiliate recognises that Merchants may change or discontinue commission payments at any time and the Merchant is responsible for informing the Affiliate of any such changes. DWL will use its reasonable endeavours to provide email support for the Service.

6 **LINKS**

- 6.1 Subject to clause 4, Affiliates may at any time place and remove whatever Links on their site as they so elect.
- 6.2 DWL will pass data about the Affiliates to Merchants and the Affiliate pursuant to the Data Protection Act 1998 gives its consent for such data being disclosed. The Merchants have covenanted to DWL to abide by the provisions of the Data Protection Act 1998 with regard to the data about the Affiliates but DWL will accept no liability in this regard.

7 **RESERVATION OF RIGHTS**

- 7.1 The Affiliate accepts that DWL reserves the right to:
 - 7.1.1 change, modify, add or remove portions of this Agreement at any time and may add to, change, suspend or discontinue any aspect of the Service at any time. In either such case DWL will notify Affiliates via e-mail, newsletter or the

- Service Website of such changes, at which time Affiliates may either agree to such changes or withdraw from the Service;
- 7.1.2 charge a monthly administrative fee if in any six month period no new commissions are earned OR the Affiliate does not log into or access its site. This fee will deducted from the Account and once the Account's balance is zero then DWL will terminate this arrangement;
 - 7.1.3 review the Affiliate's site so it can be certain that the terms of this agreement are being abided by;
 - 7.1.4 DWL reserves the right to deem any site offering the Service inappropriate and close down the site in question or remove the Link (and therefore the Service). In such circumstances DWL has the right to withhold any money earned (or not banked) by the Affiliate from use of the Service prior to termination;
 - 7.1.5 to redirect a Visitor if the Valid Link is initially made to a Merchant Website which has been closed or for any other reason is inaccessible so that the Visitor visits a Merchant Website which is live. This will not affect the payment of any Commissions.

8 LIMITATION OF LIABILITY AND INDEMNITY

- 8.1 The Service, its use and the results of such use are provided "as is" to the fullest extent permissible pursuant to applicable law, DWL disclaims all warranties express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, in relation to the Service, its use and the results of such use. Without limiting the foregoing, DWL specifically disclaims any warranty (a) that the Service will be uninterrupted or error-free, (b) that defects will be corrected, (c) that there are no viruses or other harmful components, (d) that the security methods employed will be sufficient, or (e) regarding correctness, accuracy, or reliability. The Service relies on the performance of third parties which is beyond DWL's control.
- 8.2 DWL shall not be liable for (i) any indirect, special, incidental or consequential loss of any character arising out of the use of or inability to use the Service or any information provided on the DWL website or any other hyper linked website, including, without limitation, damages for loss of goodwill, any lost profits, business interruption, loss of programs or other data on any Affiliate's information handling system or otherwise, even if DWL has been advised of the possibility of such damages or (ii) any claim attributable to errors, omissions or other inaccuracies in the website or any hyper linked website.
- 8.3 DWL is the neutral host of the Service and has no responsibility or liability in relation to the arrangements that are entered into with Merchants as part of the Service. No warranty can be made as to the performance of the Merchants or the number of Visitors any Affiliate's site may receive.
- 8.4 Nothing in this clause 8 excludes liability for fraudulent misrepresentation or death or personal injury caused by DWL's negligence.
- 8.5 The Affiliate will indemnify, defend, and hold harmless DWL and its, officers, directors, employees and agents from and against any and all liability, claims, losses, damages, injuries or expenses (including reasonable solicitor's fees) directly or indirectly arising from or relating to any matter related to this Agreement or the subject matter hereof and any dispute relating thereto.

8.6 DWL makes no representations whatsoever about any other website which may be accessed through the Service. In addition, a link to a non-DWL Website does not mean that DWL endorses or accepts any responsibility for the content or the use of such Website.

9 DISCLOSURE AND COLLECTION OF INFORMATION AND CONFIDENTIALITY

9.1 The Affiliate confirms that the following information may be posted on the Service Website:

9.1.1 the Affiliate's identity as one of the entities that has subscribed to the Service;

9.1.2 any information (other than information expressly marked as being confidential) that is submitted by the Affiliate to DWL.

9.2 The Affiliate confirms that in order to enable DWL to improve and/or in order to promote or market the Service DWL may produce statistics or summaries relating to the use of the Service. None of this information shall identify the Affiliate.

9.3 DWL may contact the Affiliate by email, telephone or post for feedback regarding the Service including any ways in which it might be improved.

9.4 DWL confirms to the Affiliate that it shall keep all information submitted by the Affiliate confidential SAVE THAT it is agreed by the Affiliate that DWL may use the information disclosed by the Affiliate for any purposes that have been specified in this Agreement. The confidentiality obligations in this clause shall not apply to any information specified below:

9.4.1 any information which comes into the recipient party's possession (from someone other than the party disclosing the information in question) with no obligation of confidentiality attached;

9.4.2 any information which is disclosed with the prior approval of the disclosing party;

9.4.3 information which is either in the public domain or comes into the public domain through no act or omission of the party receiving the confidential information.

9.5 The Affiliate shall keep all information disclosed to the Affiliate by DWL relating to DWL's business or affairs or the business or affairs of any Merchant or any potential Merchant strictly confidential unless one of the exceptions stated in clause 9.4 shall apply.

10 TERM AND TERMINATION

10.1 This Agreement shall commence on the date of this Agreement and it may be terminated by either party at any time if five days written notice is given.

10.2 Either party may terminate immediately if the other is in breach of its obligations. In accordance with clause 7.1.4 if the Affiliate is in breach any such monies that would otherwise be due to the Affiliate from DWL (excluding the balance in the Account) shall be retained by DWL.

10.3 If the Affiliate accepts that if it (as a member of the network) acts fraudulently then DWL shall terminate the agreement and in addition to clause 10.2 will also be entitled to retain the balance in the Account.

10.4 The termination of this Agreement shall not limit the enforceability of any of the rights or obligations of the parties that accrued before the termination date.

11 **CONSEQUENCES OF TERMINATION**

- 11.1 Upon the termination of the Agreement the Affiliate shall immediately remove all the Links from its sites and (for the avoidance of doubt) the Affiliate shall not be entitled to receive any Commission made on sales after the termination date.
- 11.2 Clauses 9.5 & 11.3 shall survive the termination of this Agreement.
- 11.3 The Affiliate shall acquire no rights following the termination of this Agreement to use any registered or unregistered trade marks or domain names or any text, or images, banners or any other works created by or for DWL or the Merchants.

12 **GENERAL**

- 12.1 This Agreement is personal to the Affiliate.
- 12.2 Except as provided for in clause 7.1.1 all notices proceedings or other formal documents to be served by either party on the other shall be delivered:
 - 12.2.1 by hand to the other's address as set out at the head of this Agreement (or as subsequently notified in writing);
 - 12.2.2 by recorded delivery and all notices shall be deemed to be received upon delivery.
- 12.3 This Agreement sets out the entire agreement and understanding between the parties and no other representation or statement (excluding those which are fraudulent) and irrespective of whether such is in writing shall form a term of this Agreement.
- 12.4 Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labour conditions, earthquakes or any other cause which is beyond the reasonable control of such party.
- 12.5 This Agreement is governed and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 12.6 No third party shall acquire rights pursuant to the Law of Contracts (Rights of Third Parties) Act 1999.