

## **Your Joyologist™ AFFILIATE PROGRAM Terms & Conditions**

Please read our affiliate terms and conditions carefully before you join our program or begin marketing our program. Each Affiliate is responsible for assuring that its employees; agents and contractors comply with these terms and conditions.

BY SUBMITTING THE ONLINE APPLICATION YOU ARE AGREEING THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT YOU AGREE TO BE LEGALLY BOUND BY SUCH TERMS AND CONDITIONS UPON OUR ACCEPTANCE OF YOUR APPLICATION.

### **1. DEFINITIONS**

As used in these terms and conditions: (i) "We", "us", or "our" refers to Your Joyologist and our website; (ii) "you" or "your" refers to the Affiliate; (iii) "our website" refers to the Your Joyologist properties located at <http://www.shop.yourjoyologist.com> (iv) "your website" refers to any websites that you will link to our website; (v) "Program" refers to the Encircled Affiliate Program.

### **2. AFFILIATE OBLIGATIONS**

#### **2.1. REGISTRATION IN THE PROGRAM**

After receiving your online application on our Affiliate Platform, Refersion, we will review your website/proposal and notify you of your acceptance or rejection into our Program. Please allow up 72 hours for your application to be reviewed.

#### **2.2. AFFILIATE REQUIREMENTS**

We may reject or rescind your application at our sole discretion. We may reject or cancel your application if we determine that your site is unsuitable for our Program, including if it:

2.2.1. Promotes sexually explicit materials

2.2.2. Promotes violence

2.2.3. Promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age

2.2.4. Promotes illegal activities

2.2.5. Incorporates any materials which infringe or assist others to infringe on any copyright, trademark or other intellectual property rights or to violate the law

2.2.6. Includes "Your Joyologist" or variations or misspellings thereof in its domain name or subdomain name.

2.2.7. Is otherwise in any way unlawful, harmful, threatening, defamatory, obscene, harassing, or racially, ethnically or otherwise objectionable to us in our sole discretion.

2.2.8. Contains software downloads that potentially enable diversions of commission from other affiliates in our program.

2.2.9. Contain any viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any system, data, or personal information.

2.3. As a member of Your Joyologist's Affiliate Program, you will have access to our Affiliate Account Manager, Refersion. Here you will be able to review our Program's details and previously-published affiliate newsletters, download HTML code (that provides for links to web pages within the Your Joyologist web site) and banner creatives, browse and get tracking codes for our coupons and deals. In order for us to accurately keep track of all guest visits from your site to ours, you must use the HTML code that we provide for each banner, text link, or other affiliate link we provide you with.

2.4. Your Joyologist reserves the right, at any time, to review your placement and approve the use of Your Links and require that you change the placement or use to comply with the guidelines provided to you.

2.5. The maintenance and the updating of your site will be your responsibility. We may monitor your site, as we feel necessary to make sure that it is up-to-date and to notify you of any changes that we feel should enhance your performance in the Affiliate program.

2.6. It is entirely your responsibility to follow all applicable intellectual property and other laws that pertain to your 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 (and you will be solely responsible) if you use another person's copyrighted material or other intellectual property in violation of the law or any third party rights.

2.7. You may not engage in cookie stuffing or include pop-ups, false or misleading links on your website. In addition, wherever possible, you will not attempt to mask the referring url information (i.e. the page from where the click is originating). Additionally, using redirects to bounce a click off of a domain from which the click did not originate in order to give the appearance that it came from that domain is prohibited.

If you are found redirecting links to hide or manipulate their original source, your current and past commissions will be voided or your commission level will be set to 0%. This does not include using "out" redirects from the same domain where the affiliate link is placed.

2.8. You may not create or design your website or any other website that you operate, explicitly or implied in a manner which resembles our website nor design your website in a manner which leads customers to believe you are Your Joyologist or any other affiliated business.

### **3. MARKETING & PROMOTION**

3.1. You are free to promote your own web sites, but naturally any promotion that mentions Your Joyologist could be perceived by the public or the press as a joint effort. You should know that certain forms of advertising are always prohibited by Your Joyologist. For example, advertising commonly referred to, as "spamming" is unacceptable to us and could cause damage to our name. Other generally prohibited forms of advertising include the use of unsolicited commercial email (UCE), postings to non-commercial newsgroups and cross posting to multiple newsgroups at once. In addition, you may not advertise in any way that effectively conceals or misrepresents your identity, your domain name, or your return email address. You may use mailings to customers to promote Your Joyologist so long as the recipient is already a customer or subscriber of your services or web site, and recipients have the option to remove themselves from future mailings. Emails must abide by Anti-Spam Legislation regulations. Also, you may post to newsgroups to promote Encircled so long as the news group specifically welcomes commercial messages. At all times, you must clearly represent yourself and your web sites as independent from Your Joyologist. If it comes to our attention that you are spamming, we will consider that cause for immediate termination of this Agreement and your participation in the Your Joyologist Affiliate Program. Any pending balances owed to you will not be paid if your account is terminated due to such unacceptable advertising or solicitation.

3.2. Affiliates that among other keywords or exclusively bid in their Pay-Per-Click campaigns on keywords

such as Your Joyologist, Own Your Awesome, [www.yourjoyologist.com](http://www.yourjoyologist.com) , [www.shop.yourjoyologist.com](http://www.shop.yourjoyologist.com), and/or any misspellings or similar alterations of these – be it separately or in combination with other keywords – and do not direct the traffic from such campaigns to their own website prior to re-directing it to ours, will be considered trademark violators, and will be banned from Your Joyologist's Affiliate Program. We will do everything possible to contact the affiliate prior to the ban. However, we reserve the right to expel any trademark violator from our affiliate program without prior notice, and on the first occurrence of such PPC bidding behaviour.

3.3. Affiliates are prohibited from keying in prospect's information into the lead form, which violates the Anti-Spam Legislation regulations.

3.4. Affiliate shall not transmit any so-called "interstitials," "Parasiteware™," "Parasitic Marketing," "Shopping Assistance Application," "Toolbar Installations and/or Add-ons," "Shopping Wallets" or "deceptive pop-ups and/or pop-unders" to consumers from the time the consumer clicks on a qualifying link until such time as the consumer has fully exited Your Joyologist's site (i.e., no page from our site or any Your Joyologist's content or branding is visible on the end-user's screen). As used herein a. "Parasiteware™" and "Parasitic Marketing" shall mean an application that (a) accidentally or intentionally causes the overwriting of affiliate and non affiliate commission tracking cookies through any other means than a customer initiated click on a qualifying link on a web page or email; (b) intercepts searches to redirect traffic through an installed software, thereby causing, pop ups, commission tracking cookies to be put in place or other commission tracking cookies to be overwritten where a user would under normal circumstances have arrived at the same destination through the results given by the search (search engines being, but not limited to, Google, MSN, Yahoo, Overture, AltaVista, Hotbot and similar search or directory engines); (c) set commission tracking cookies through loading of Your Joyologist site in IFrames, hidden links and automatic pop ups that open Your Joyologist's site; (d) targets text on web sites, other than those web sites 100% owned by the application owner, for the purpose of contextual marketing; (e) removes, replaces or blocks the visibility of Affiliate banners with any other banners, other than those that are on web sites 100% owned by the owner of the application.

3.5. COUPON GUIDELINES If you are enrolled in our Program and your Website promotes coupon codes, you must adhere to our Coupon Guidelines as follows:

3.5.1. You may ONLY advertise coupon codes that are provided to you through the affiliate program or network or that are displayed on our website(s).

3.5.2. Posting any information about how to work around the requirements of a coupon/promotion (i.e. first time customers only) will result in removal from the program.

3.5.3. Coupons must be displayed in their entirety with the full offer, valid expiration date and code.

3.5.4. You may NOT use any technology that covers up the coupon code and generates the affiliate click  
by revealing the code(s).

3.5.5. You may NOT advertise coupon codes obtained from our non-affiliate advertising, customer e-mails,  
paid search, or any other campaign.

3.6. SOCIAL MEDIA USAGE Promotion on Facebook, Twitter, and other social media platforms is permitted following these general guidelines.

1. You ARE allowed to promote offers to your own lists; more specifically, you're welcome to use your affiliate links on your own Facebook, Twitter, etc. pages.

2. You ARE PROHIBITED from posting your affiliate links on Your Joyologist's Facebook, Twitter, etc. company pages in an attempt to turn those links into affiliate sales.

#### **4. RIGHTS**

4.1. We grant to you a non-exclusive, non-transferable, revocable right to (i) access our site through HTML links solely in accordance with the terms of this Agreement and (ii) solely in connection with such links, to use our logos, trade names, trademarks, and similar identifying material (collectively, the "Licensed Materials") that we provide to you or authorize for such purpose. You are only entitled to use the Licensed Materials to the extent that you are a member in good standing of Your Joyologist's Affiliate Program. You agree that all uses of the Licensed Materials will be on behalf of Your Joyologist and the good will associated therewith will inure to the sole benefit of Your Joyologist.

4.2. Each party agrees not to use the other's proprietary materials in any manner that is disparaging, misleading, obscene 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. 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.

#### **5. PAYMENT + ADMINISTRATIVE**

5.1. Your Joyologist uses a third party to handle all of the tracking and payment. The third party is the Refersion affiliate network via Paypal.com. Kindly review the network's payment terms and conditions. You will create a password so that you may enter Refersion's secure affiliate account interface. From their site you will be able to receive your reports that will describe our calculation of the commissions due to you. It is mandatory to have a verified PayPal account to be a part of the Affiliate program as this is the only form of payment for Affiliate commissions.

5.2. Commissions are calculated and paid based on your Affiliate level. In general, commissions calculation represents a % of the gross sales price but do not include shipping and handling, taxes, gift wrap costs, late charges, collection costs, special service fees, import/export duties or any other payment or disbursement incurred by Your Joyologist that is not a product purchase price inclusion.

5.3. Commissions will only be paid on sales that are tracked through the Refersion Affiliate tracking software, meaning that you must use your affiliate link to get credit for the sale. There is no right to commissions if a customer later returns to the website not using the affiliate link, or makes future purchases from Your Joyologist not using an affiliate link. Commissions are only tracked and paid when the user makes a purchase in the same visit using the affiliate link, or within (30) thirty days through cookie tracking, provided the customer does not clear their cookies.

5.4. Commissions will be paid to the recipient on a monthly basis on or about the 15<sup>th</sup> of the month. Your Joyologist does not guarantee an exact payment date as it will vary month to month. There is a (30) thirty-day waiting period for payment. Commissions will not be calculated or paid based on amounts that (i) from sales where the purchasers have fraudulently used a credit card; (ii) which are credited back to customers; (iii) which are uncollectable; (iv) refunded to customers for returned goods.

5.5. Your Joyologist will only pay out commissions if the customer purchasing has paid for their order in full. Only purchases made through Your Joyologist's primary website, [www.yourjoyologist.com](http://www.yourjoyologist.com) will be eligible for commissions.

5.6. Your Joyologist will be responsible for providing all after-sales care to customers including customer service, and billing inquiries. Pricing of our products is subject to change without notice. Your Joyologist will not provide detailed customer information to Affiliates under any circumstances.

5.7. Your Joyologist is not responsible for the failure to assign any sale or commission to the Recipient if the sale is resulting from an improperly formatted affiliate link.

## **6. DISCLAIMER**

YOUR JOYOLOGIST MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING YOUR JOYOLOGIST SERVICE AND WEB SITE OR THE PRODUCTS OR SERVICES PROVIDED THEREIN, ANY IMPLIED WARRANTIES OF YOUR JOYOLOGIST ABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, WE MAKE NO REPRESENTATION THAT THE OPERATION OF OUR SITE WILL BE UNINTERRUPTED OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.

## **7. REPRESENTATIONS AND WARRANTIES**

You represent and warrant that:

7.1. 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;

7.2. 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;

7.3. You have sufficient right, title, and interest in and to the rights granted to us in this Agreement.

## **8. 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 WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL ENCIRCLED'S 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 COMMISSIONS PAYABLE BUT THEN UNPAID TO YOU UNDER THIS AGREEMENT.

## **9. INDEMNIFICATION**

You hereby agree to indemnify and hold harmless Your Joyologist, and its subsidiaries and affiliates, and their directors, officers, employees, agents, shareholders, partners, members, and other owners, against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees) (any or all of the foregoing hereinafter referred to as "Losses") insofar as such Losses (or actions in respect thereof) arise out of or, based on or occasioned by (i) any claim that our use of the affiliate trademarks infringes on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of any third party, (ii) any misrepresentation of a representation or warranty or breach of a covenant and agreement made by you herein, or (iii) any claim related to your site, including, without limitation, content therein not attributable to us.

## **10. CONFIDENTIALITY**

All confidential information, including, but not limited to, any business, technical, financial, and customer information, disclosed by one party to the other during negotiation or the effective term of this Agreement which is marked "Confidential," will remain the sole property of the disclosing party, and each party will keep in confidence and not use or disclose such proprietary information of the other party without express written permission of the disclosing party.

## **11. MISCELLANEOUS**

11.1. You agree that you are an independent contractor, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between you and Your Joyologist. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on Your Website or otherwise, that reasonably would contradict anything in this Section.

11.2. You may not assign your rights or obligations under this Agreement to any party without our consent. Your Joyologist™ AFFILIATE PROGRAM Terms.docx

11.3. 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.

11.4. You may not amend or waive any provision of this Agreement unless in writing and signed by both parties.

11.5. This Agreement represents the entire agreement between us and you, and shall supersede all prior agreements and communications of the parties, oral or written.

11.6. 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.

11.7. 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.

## **12. TERMINATION**

12.1. Either party may terminate 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. Any such notice shall be effective, in the case of fax or e-mail, at the time such notice is sent and in the case of surface mail at the end of the day such notice is posted in a mailbox. In addition, this Agreement will automatically terminate immediately upon any breach of this Agreement by you.

12.2. If you are in breach of your obligations under the terms and conditions in section 2 hereof, you will not be entitled to commissions pending payable. If you are terminated in a mutually agreeable manner, any commissions owing at the date of termination will be paid in full after the waiting period of (30) thirty days expires. No other commissions will be accrued or paid after the termination of participation in the program.

12.3. You may withdraw your application anytime in writing to [affiliates@yourjoyologist.com](mailto:affiliates@yourjoyologist.com). You agree that you are of sound mind, and are lawfully able to enter into agreements.

## **13. YOUR JOYOLOGIST RIGHTS + OBLIGATIONS**

13.1.1. We have the right to monitor your site at any time to determine if you are following the terms and conditions of this Agreement. We may notify you of any changes to your site that we feel should be made, or to make sure that your links to our web site are appropriate and to notify further you of any changes that we feel should be made. If you do not make the changes to your site that we feel are necessary, we reserve the right to terminate your participation in the Program.

13.1.2. Your Joyologist reserves the right to terminate this Agreement and your participation in the Program immediately and without notice to you should you fraudulently in use of the Program or

should you abuse the Program in any way. If such fraud or abuse is detected, Your Joyologist shall not be liable to you for any commissions for any fraudulent sales.

13.1.3. This Agreement will begin upon our acceptance of your Affiliate application, and will continue until the termination thereof.

Thank you for your interest in the Your Joyologist Affiliate program! Let's spread love, inspiration and joy together!

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