

## VINTAGE PORCH SWINGS LLC AFFILIATE AGREEMENT

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**THIS AGREEMENT** (the "Agreement") provides the terms and conditions of the relationship between Vintage Porch Swings LLC, organized in the State of South Carolina at 3547 Meeks Farm Road, Suite D-2, Charleston, SC 29455 (the "Company," "we," "us," or "our") and [REDACTED], an individual at [REDACTED] ("Affiliate," "you" or "your") in order to participate in the Vintage Porch Swings LLC Affiliate Program (the "Program") to refer traffic to the Company's website.

**WHEREAS**, the Company is the sole owner and operator of the Internet site known as www.vintageporchswings.com (the "Site"); and

**WHEREAS**, the Company has created a Program that enables Affiliates to refer internet traffic to the Site from the website(s) or advertising networks of others in exchange for agreed consideration; and

**WHEREAS**, you are the sole owner of the website or social media profile known as [REDACTED] (the "Affiliate Site"); and

**WHEREAS**, you desire to participate in the Program, as evidenced by your application, which application the Company may approve or disapprove, in its sole discretion.

**THEREFORE**, in consideration of the mutual promises herein, the Parties agrees as follows:

### **1 DEFINITIONS.**

Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

(a) "Completed Transaction" means the goods or services of the Company ordered by a Customer have been delivered satisfactorily and ten days has elapsed since the goods or services were paid for in full. (All sales are final.)

(b) "Customer" means any person or party who purchases goods or services on the Site after connecting to the Site from the Affiliate Site.

(c) "Links" means the banner, buttons, coding or other manner in which a Customer is referred by one site to the Site for the purpose of promoting the sale of goods or services on the Site. The Links are prepared so as to track Customers who are directed from the Affiliate Site to the Site and make a purchase which results in a Completed Transaction.

(d) "Net Sale Price" means the total received in US Dollars (after conversion from non-US currency to US Dollars, if necessary) from the Customer less (i) any tax collected by the Company for or on behalf of any governmental or taxing authority (such as a sales tax or VAT), (ii) shipping and handling charges, (iii) restocking fees, (iv) credit card or other charges by attributable to the payment method used by the Customer, (v) currency conversion fees, or (vi) discounts, credit or allowances granted by the Company in its sole and absolute discretion.

## **2 AFFILIATE SITE AND CONTENT.**

You have sole and exclusive responsibility and liability for the development, operation, maintenance and all materials and content that appear on the Affiliate Site. You shall operate and maintain the Affiliate Site or social media profile in accordance with all applicable laws, rules and regulations.

In consideration of the Fees, you agree to place one or more of the Links on the Affiliate Site in accordance with the terms and conditions of this Agreement.

We reserve the right to monitor the Affiliate Site to determine if you are in compliance with this Agreement.

The Company is not responsible to pay any Fees in the event your customer does not use the Links or referral code provided to you by the Company without modification OR you do not properly install those Links, meaning the traffic will not be properly tracked to reflect that a Customer came from the Affiliate Site.

## **3 COMPENSATION FOR YOUR REFERRED TRAFFIC.**

Subject to your proper installation and use of the Links, you will be compensated based upon the Net Sale Price from Completed Transactions. Your compensation (the "Fee") shall be in accordance with the attached Schedule of Fees.

The Fee will be offset with respect to each Completed Transaction for which (a) the Company issues discounts, credits or allowances, or (b) there is a chargeback issued against the Company for any payment previously credited to the Company.

The Company reserves the right to refuse an attempted purchase by any person, in the Company's sole and absolute discretion. You shall have no claim to any Fee based on the Company's decision to not complete transaction with any person who accesses the Site through a Link on the Affiliate Site.

The Fee relative to Completed Transaction shall be payable to you on or before the end of the following month. All Fees are payable in U.S. Dollars.

Notwithstanding the foregoing, if and to the extent you are required to file or provide certain documentation for tax and other governmental purposes, payment of the Fees may be suspended pending completion of such documentation.

#### **4 FULFILLMENT AND CUSTOMER INFORMATION.**

The Company is solely responsible for processing and fulfillment of all orders of goods and services on the Site, which shall be governed by the terms and conditions established by the Company in its sole and absolute discretion. All information about such orders and the Customers are the sole and exclusive property of the Company.

Additionally, you agree that the Company may collect, process and sell certain information about you.

#### **5 LIMITED LICENSE RIGHTS.**

You agree to place one or more of the Links on the Affiliate Site. Links may contain logos, trademarks, service marks (collectively, "Marks"). Pursuant to this Agreement, the Company grants you a limited, non-exclusive, non-transferable and revocable license to display the Links on the Affiliate Site, and nowhere else, subject to the terms and conditions of this Agreement. You may not use the Links or the Marks for any other purpose absent the express written consent of the Company. You may not change, add to or delete from the Links or Marks. You may not use the Marks independently of the Links for any purpose without the Company's express written consent; and you may not use or present the Links in any manner that suggests the endorsement of or by any other goods, services, persons or entities without the express written consent of the Company. In addition, you agree to not (a) acquire or attempt to acquire, register or attempt to register, make a claim to or in any way use domain names, trademarks, service marks, keywords, handles, screen names or other forms of identification incorporating the Marks; or (b) not to use the Marks in a way that suggests that the source of the Affiliate Site is the Company.

All intellectual property rights in and to the Marks, and any goodwill generated by your use of the Marks shall inure solely to the benefit of the Company.

Upon suspension of this Agreement, the rights granted herein may, in the Company's sole discretion, be suspended. Upon termination of this Agreement, the rights granted in this section shall automatically terminate.

#### **6 REPRESENTATIONS AND WARRANTIES.**

You represent and warrant that:

(a) You are legally capable and authorized to enter into this Agreement; and, if you represent an entity, all actions necessary to authorize you to enter into this Agreement have been taken.

(b) You are the sole owner and operator of the Affiliate Site.

(c) The Affiliate Site does not and shall not:

- (i) depict anyone less than eighteen (18) years of age;
- (ii) contain material subject to 18 USC §2257 (but if it does, you will notify us not less than thirty (30) days in advance of such inclusion and you will comply in all respects therewith);
- (iii) contain any information which you know or reasonably should know is false;
- (iv) contain or transmit any apps or programs that are or can be installed or downloaded to a Customer's computer or other device without the Customer's express and knowing consent as to the exact nature, purpose and function of such apps or programs;
- (v) not use the Company's name or the Marks in any form of unsolicited communication, including unsolicited email (spam)

## **7 DISCLAIMERS.**

The Company makes no representations or warranties as to the Site. To the maximum extent of the law, the Company disclaims all representations, warranties and conditions, express and implied, including the warranties of merchantability, fitness for particular purpose, title and non-infringement. The Site is provided "as is."

## **8 LIMITATION OF LIABILITY.**

IN NO EVENT WILL THE COMPANY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT COSTS OR DAMAGES INCLUDING BUT NOT LIMITED TO THE LOSS OF PROFITS OR BUSINESS OPPORTUNITY, EVEN IF WE HAD BEEN ADVISED OF SUCH POSSIBILITY.

IN NO EVENT SHALL THE LIABILITY OF THE COMPANY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES PAID TO YOU BY THE COMPANY. THIS LIMITATION APPLIES TO ANY LIABILITY ARISING FROM ANY CAUSE OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES.

For purposes of this section, any reference to "the Company" shall include the Company's affiliates, officers, employees, principals, agents and contractors.

## **9 TERM AND TERMINATION.**

This Agreement shall commence upon the last signing by a Party and may be terminated by either Party upon written notice to the other. If we terminate this Agreement due to breach by you, no further Fees shall be paid to you and we may seek such other relief, equitable and legal, as may be available. If you terminate, the Fees due and owing to you shall be paid as provided herein. Regardless who terminates, upon termination, any and all rights and licenses granted by us to you shall immediately cease and you shall immediately stop using and remove the Links and the Marks from the Affiliate Site.

## **10 RELATIONSHIP.**

(a) You are an independent contractor with respect to the Company. Nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, franchisor/franchisee or employer-employee relationship between you and the Company. You shall not, in any manner or respect, represent, suggest or convey the impression that you are an employee or agent of the Company, or that the Company has endorsed you and/or the Affiliate site or that you represent the Company in any manner or capacity. You have no authority to and shall not enter into any agreements or obligations purporting to be binding upon the Company.

(b) As an independent contractor, you are solely and exclusively responsible (i) for all taxes payable with respect to income earned through the Site; (ii) to obtain any liability, health, workers' compensation, disability, unemployment, or other insurance needed, desired, or required by law, and that you are not covered by or eligible for any insurance from the Company; and (iii) for ensuring that you comply with any Licensing Authority's rules or practices.

## **11 CONFIDENTIALITY.**

You promise and agree to hold Confidential Information in strict confidence and in trust for the sole benefit of the Company, both during the term of this Agreement and at all times thereafter, and shall not use such Confidential Information for any purpose, whether or not for consideration, business or personal, other than as may be reasonably necessary for the performance of its duties pursuant to this Agreement, without the Company's prior written consent. You shall not disclose any Confidential Information to any person or entity, other than to such of its employees or consultants as may be reasonably necessary for purposes of performing its duties hereunder and have executed agreements of confidentiality no less protective than this Agreement, without the Company's prior written consent. You shall use not less than the same degree of care it uses to protect its own Confidential Information, but in any event not less than a reasonable degree of care. For purposes of clarity, your obligations hereunder include taking all actions necessary to ensure that your affiliates, employees, contractors and agents and any other person or party who obtains Confidential Information from or as a result of provider abide by the terms of this section in their entirety.

Confidential Information does not include information that (a) is or becomes publicly known through lawful means; (b) was rightfully in provider's possession or part of your general knowledge prior to the effective date of this Agreement; or (c) is disclosed to you without confidential restriction by a third party who rightfully possesses the information (without confidential restriction) and did not learn of it, directly or indirectly, from the Company.

If you are required to disclose Confidential Information by virtue of a lawful court order, subpoena or similar legal request, you will promptly notify the Company in writing of such requirement and cooperate so that the Company may seek an appropriate protective order. You will not use, copy, publish, distribute or summarize any Confidential Information except as necessary to carry out the activities contemplated herein.

## **12 WAIVER.**

You expressly and unconditionally waive any and all claims against the Company, regardless the bases upon which such claim(s) may be made, that may be based on, arise in connection with or be related to any of the following acts, circumstances or conditions:

- (a) the Site is partially or totally inoperative or inaccessible;
- (b) there are bugs, errors or inaccuracies in the Site;
- (c) a suspension, termination or other action was taken with respect to your account by the Company even if such suspension, termination or other action resulted in a loss of profits to you;
- (d) any claim relating to a change in this Agreement by the Company;
- (e) withholdings, deductions or offset in connection with payment of Fees due to applicable tax or currency control restrictions.

For purposes of this section, any reference to “the Company” shall include the Company’s affiliates, officers, employees, principals, agents and contractors.

No waiver by the Company of any breach by you of any condition or provision of this Agreement shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by the Company in exercising any right, power, or privilege under this Agreement operate as a waiver to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

You are solely responsible for the security of your Account, and the username and password associated with your Account. You hereby waive and dismiss any claims against us and agree to indemnify, defend and hold us harmless against any unauthorized use of or access to your Account by an unauthorized person using your username and password.

You agree that any dispute you raise shall be as an individual only, not as a class or with or behalf of anyone else. You expressly waive any right to bring a class or collective action, or be a member in a class or collective proceeding. The Company may take any and all actions necessary to dismiss a class or collective actions or claims thereunder.

### **13 ASSIGNMENT; SUCCESSION.**

You may not assign this Agreement. Any attempted assignment or transfer in violation of this subsection will be null and void. Subject to the foregoing restrictions, this Agreement is binding upon and will inure to the benefit of the successors, heirs and permitted assigns of the Parties.

This Agreement shall be binding upon the Parties and their successors, permitted assigns, heirs, affiliates, directors, shareholders, officers, employees and/or agents.

### **14 CHOICE OF LAW.**

This Agreement shall be governed by the laws of the State of South Carolina, without regard to its conflict of laws rules or principles.

#### **15 WAIVER OF JURY TRIAL.**

Each of the Parties knowingly, voluntarily and irrevocably waives, to the fullest extent permitted by law, all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of any Party in negotiation, administration, performance or enforcement of this Agreement.

#### **16 REMEDIES.**

All rights, remedies, undertakings, obligations and agreements contained in this Agreement or available at law, in equity or otherwise, shall be cumulative, and none shall be a limitation of any other remedy, right, undertaking, obligation or agreement.

This Agreement shall be binding upon the parties and their successors, permitted assigns, heirs, affiliates, directors, shareholders, officers, employees and/or agents.

#### **17 FORCE MAJEURE.**

The Company shall not be responsible or liable for any delay or failure to fulfill any provision of this Agreement if such a delay or failure results directly or indirectly from any act of God, war, riot, insurrection, embargoes, acts of civil or military authorities, fires, floods, explosions, accidents, or any other cause beyond the reasonable control of the Company.

#### **18 INTERPRETATION.**

You acknowledge and agree that you had sufficient time and opportunity to have this Agreement reviewed by your legal counsel. If this Agreement is ever construed, whether by a court or arbitrator, such court or arbitrator will not construe this Agreement, or any provision hereof, against any party as drafter.

This Agreement is written in English and, notwithstanding the translation or translatability into other languages, the English language version of this Agreement shall be controlling.

The headings used herein are for convenience only and shall not be deemed to define, limit or construe the contents of any provision of this Agreement. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms.

#### **19 COUNTERPARTS.**

This Agreement may be executed in counterparts, via any means (including facsimile and e-mail), all of which shall be effective, but when taken together shall comprise one agreement.

**20 SEVERABILITY.**

If any provision of this Agreement is unenforceable under any applicable law or is held invalid, such holding shall not affect any other provision hereof, and the defective provision shall, if applicable law permits, be modified and interpreted in a manner that it is enforceable. Otherwise, the offending term or provision shall be omitted and not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**21 AMENDMENTS.**

The Company may modify or amend the terms of this Agreement at any time by posting such changes on the Site and/or notifying you by email. No such amendment shall be effective until at least thirty (30) days after the posting or email notice, whichever occurs first. Notwithstanding any modification, the rights and obligations of the Parties relating to the consideration to be received hereunder and any fees to be charged as between Parties as to any occurrence prior to the effective date of such modification shall remain unchanged by any such modification.

**22 NOTICES.**

Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered in Person or sent by registered or certified mail (return receipt requested) or nationally recognized overnight delivery service, postage pre-paid, or delivered via telecopier or facsimile transmission addressed as follows, or to such other address as such Party may notify to the other Parties in writing:

To the Company:

VINTAGE PORCH SWINGS LLC  
3547 MEEKS FARM ROAD, #D-2  
JOHNS ISLAND, SC 29455  
Email: VICKI@VINTAGEPORCHSWINGS.COM

To the Affiliate:

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY/STATE/ZIP: \_\_\_\_\_, \_\_\_\_\_  
Email: \_\_\_\_\_

Notices, demands or requests which we or you are required or desire to give the other hereunder shall be deemed to have been properly given for all purposes if (a) hand-delivered to the Party's notice address, (b) delivered to a nationally recognized overnight courier such as FedEx, UPS or DHL to its addressee at such Party's notice address, or (c) delivered via telecopier or facsimile transmission to the Party's facsimile number. Each such notice, demand or request shall be deemed to have been received upon the earlier of (i) actual receipt or refusal by the addressee if



hand-delivered in accordance with clause (a) or (b) above, or (ii) the date and time of transmission if sent during business hours in accordance with clause (c) above. The Parties shall notify the other of any change in address, which notification must be at least two business days in advance of it being effective. Notices may be given on behalf of any Party by such Party's legal counsel. For a notice to be valid and effective, an email copy of such shall notice shall be sent concurrently to the addressee's email. An email notice alone shall be sufficient upon acknowledgment of receipt by the recipient or the recipient's reply to such email, direct or indirect.

### **23 ENTIRE AGREEMENT.**

This Agreement sets forth the entire agreement and understanding between you and the Company relating to the subject matter hereof and thereof and supersedes any prior or contemporaneous discussions, agreements, representations, warranties and other communications between you and the Company, written or oral, to the extent they relate in any way to the subject matter hereof.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement this date, August 19, 2022.

THE COMPANY

\_\_\_\_\_  
Authorized Signature

Printed Name: VICKI JOHNSON

Title: HEAD OF SALES & MARKETING

THE AFFILIATE

\_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE 1** **FEES**

For each Completed Transaction, you will be paid five (5) Percent of the Net Sale Price.

The Company is not responsible to pay any Fees in the event you do not use the Links/Referral Code provided by the Company without modification OR you do not properly install those Links, meaning the traffic will not be properly tracked to reflect that a Customer came from the Affiliate Site.

