



M A G A R I

## **Affiliate Terms & Conditions**

*These Affiliate Terms & Conditions were last updated on December 21, 2017.*

THIS IS A LEGAL AGREEMENT BETWEEN YOU (“YOU”, “YOUR”, OR “YOURS”), AND MAGARI DESIGN, INC., A NEW JERSEY CORPORATION LOCATED IN RINGWOOD, NEW JERSEY, UNITED STATES OF AMERICA (“MAGARI”, “MAGARI DESIGN” “WE”, “US”, OR “OUR”). BY SIGNING YOUR NAME AT THE END OF THESE AFFILIATE TERMS AND CONDITIONS (“AFFILIATE TERMS”) YOU ARE AGREEING THAT YOU HAVE READ AND UNDERSTAND THESE AFFILIATE TERMS AND THAT YOU AGREE TO BE LEGALLY RESPONSIBLE FOR EACH AND EVERY TERM AND CONDITION HEREIN.

Any version of these Affiliate Terms in a language other than English is provided for convenience and You understand and agree that the English language will control if there is any conflict.

### **1. Overview**

These Affiliate Terms contain the complete terms and conditions that apply to You when becoming an affiliate in Magari’s affiliate program (the “Affiliate Program”). The purpose of these Affiliate Terms is to allow You to make affiliate commissions through sales generated from Your website to Our Products in the manner set forth herein.

### **2. Enrollment in the Affiliate Program**

(a) *Application Completion.* If You have not already done so, You need to complete an application to the Affiliate Program (the “Application”). You need to identify Your website, describe how You plan to promote Magari’s Products on Your website, and provide certain contact information. The Application can be found at [www.magaridesign.com/ambassador](http://www.magaridesign.com/ambassador)

(b) *Acceptance of Your Application.* If we choose to accept Your Application, You will receive an email notification confirming that Your Application has been approved. You understand and agree that We may accept or reject Your Application at Our sole discretion. Your Application will be rejected if any of the information You provide is incorrect or incomplete, if Your website promotes materials of a sexual, pornographic, violent, or defamatory nature, if You or Your website discriminate, violate any applicable law, or violate any person’s intellectual property rights, or for any other reason We may deem fit to reject Your Application.

(c) *Access to our Affiliate Program.* If We have accepted Your Application, We will send You a welcome email with Your login details so that You may enter Our secure affiliate center. From this center You will be able to download Promotional Materials and qualifying links as well as access Your reports which will describe Our calculation of the affiliate commissions

due to You. It is Your responsibility to keep Your username and password information secure. For purposes of clarity, Promotional Materials is defined as banners, text links, article copy, and access to data feeds.

(d) You will ensure that your information including your email address is at all times complete, accurate and up-to-date. We may send communications to the email address associated with your account. You will be deemed to have received all notifications, approvals, and other communications sent to that email address, even if the email address associated with your account is no longer current.

### 3. Specific Obligations of Affiliates

As a member of Our Affiliate Program, You represent, warrant, and covenant that You will:

(a) *Link to Our Products.* You will implement the links, banners, and other means of linking Your website to Our Products (collectively, "Referral Links") pursuant to the referral specifications set forth on the Affiliate Program. On this page You will be able to download certain technical materials, including links, HTML code, banner ads, copy and other content, and any documentation for the foregoing (collectively, "Referral Materials"). When Our customers click through the Referral Links to purchase an item on the Magari site, you can receive commissions for qualifying purchases as described in Affiliate Commissions.

### 4. Affiliate Responsibilities

As a member of Our Affiliate Program, You understand and agree that:

(a) *We Determine the Policies for Referred Customers:* Persons who become customers of Our Products through referrals made in the Affiliate Program will be considered Our customers, at Our sole discretion. All Our terms, rules, policies, and operating procedures that apply to Our Users will apply to such referred customers. We may change Our terms, rules, policies, and operating procedures at any time, as further described in Our Terms of Use and Our other terms as We may post from time to time.

(c) *You will not promote Magari through paid advertising or media buying that leads directly to the Magari website.* You will not bid on Magari-branded keywords as an affiliate. This applies to all advertising platforms and to all affiliates unless direct approval from Magari is granted.

(d) *You will not use Our company name or variations of Our company name in your Domain Names or Social Media pages:* You may not register or purchase domain names that include Our company's name or any misspellings or variations of Our company name to run promotions as an affiliate. Additionally, you may not include Our Company name, variations of Our company name, or the look and feel of Our own social media pages on any social media pages (i.e. Facebook Fan Page) where You run promotions as an affiliate.

(e) *You will be Responsible for Your Website's Content:* You may not promote Our products on a website that contains any form of misleading, defamatory, obscene, illegal, bigoted, pornographic or any other content deemed offensive by Us.

(f) *You will not promote using cookie-stuffing:* You may not use cookie stuffing techniques or click-generators that set the tracking cookie without the user actually clicking on the Referral

Link. You will not artificially generate clicks or impressions on your site or create visits on the Magari site, whether by way of a robot or software program or otherwise.

(g) *You will not use spyware, malware, virus and the like:* You may not include on your site, display, or otherwise use Referral Links or other Content that uses any spyware, malware, or virus, or any software application not expressly and knowingly authorized by users prior to being downloaded or installed on their computer or other electronic device.

(h) *You will be open and honest about Your relationship to Us:* You may not misrepresent or embellish the relationship between you and Magari or imply any relationship or affiliation between you and Magari or any other person or entity except as expressly permitted by this affiliate Agreement. You may not represent yourself as an agent or employee of Magari or represent that you have the authority to bind Magari to a contract.

(i) All coupon codes available in the extension must be approved by Magari. You also understand and agree that your browser extension cannot allow users to upload new coupons into the extension's feed.

(j) *You will be mindful of who You do business with:* You may not use marketing practices that attract fake customers. We, in our sole discretion, will make the determination whether someone is a fake customer.

(k) *You will ensure your sub-affiliates follow all of Our terms:* You have the right to work with a sub-affiliate network so long as your sub-affiliates follow Our Affiliate Terms. You understand that You are responsible for Your sub-affiliate's compliance with these terms and that non-compliance by any of Your sub-affiliates may result in the termination of Your affiliate account.

(l) *For Magari employees who are also Magari Affiliates:* You will make it clear you are a Magari employee when promoting Magari as an affiliate. As a Magari employee, You agree to clearly state in all promotional posts or promotions containing Magari affiliate links Your employee and affiliate relationship with Magari via a disclaimer. Specific requirements and examples for Magari Affiliates who are also Magari employees.

These Affiliate Terms will begin and become effective upon Our acceptance of Your Application.

## 5. Affiliate Commissions

(a) *Eligibility:* Except in jurisdictions in which such a transaction is not permitted, You are eligible to earn affiliate commissions through Referrals (as defined in section (i) below) during the term of these Affiliate Terms, according to the calculation described below.

(b) *Amount due:* The exact amount of affiliate commissions due to you every 30 days will be calculated in the following manner:

The affiliate commission is set up in the offers available to You in Your Publisher account. A "Referral" is a paying customer that You refer from Your website to Our website using the Referral Materials in accordance with the Referral Specifications. Acceptance of a Referral as a User of Our Products shall be at Our sole discretion.

(c) Payment of affiliate commissions will be made on a monthly basis. Payments are disbursed according to the payment method You have selected in Your affiliate account

(Paypal unless requested otherwise) If Your account is terminated due to violation of these Affiliate Terms, We reserve the right to withhold all future payments owed to You.

(d) Affiliate payments are sent to you using Paypal's payment system.

(e) Affiliates are responsible for any and all charges, fees, taxes, exchange rates, surcharges and other expenses incurred in order to receive affiliate payments. Please check with your receiving banking institution to find out if any of these apply for your account.

(f) If We determine that payment of affiliate commissions to You in any jurisdiction is illegal under any laws, then We may reserve the right to not pay affiliate commissions for any sales made in that jurisdiction.

(g) We may withhold Your final payment for a reasonable time to ensure that the correct amount is paid to You.

(h) If at any time there has been no substantial activity on your account for XX years, then we will have the right to withhold any accrued fee. Further, any unpaid fees in your account may be subject to escheatment under applicable law.

## 6. Licenses

(a) You hereby grant Us a non-exclusive, non-transferable, revocable right to use Your names, titles, and logos in the advertising, marketing, promoting, and publicizing in any manner of Our rights under these Affiliate Terms. However, We are under no obligation to advertise, market, promote, or publicize.

(b) We both agree not to use the other's proprietary materials in any manner that is disparaging or that otherwise portrays the other in a negative light. We each reserve all of our respective rights in the proprietary materials covered by this license. Either one of us may revoke this license at any time by giving the other written notice ending our engagement under these Affiliate Terms and Your Affiliate status. Other than the license granted in these Affiliate Terms, we each retain all right, title, and interest to our respective rights and no right, title, or interest is transferred to the other.

## 7. Disclaimer

WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING MAGARI. ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, WE MAKE NO 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.

## 8. Limitations of Liability

WE WILL NOT BE LIABLE TO YOU WITH RESPECT TO ANY SUBJECT MATTER OF THESE AFFILIATE TERMS 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 YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE AFFILIATE TERMS, IN NO EVENT SHALL OUR CUMULATIVE LIABILITY TO YOU ARISING OUT OF OR RELATED TO THESE AFFILIATE TERMS, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL REFERRAL FEES PAID TO YOU UNDER THESE AFFILIATE TERMS.

## 9. Indemnification

You agree to indemnify and hold harmless Magari and its employees, representatives, agents, and affiliates, against any and all claims, suits, actions, or other proceedings brought against them based on or arising from any claim resulting from Your breach of these Affiliate Terms. You will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Us in connection with or arising from any such claim, suit, action, or proceeding.

## 10. Termination

*Magari or You can Each End Our Engagement Under these Affiliate Terms:* Either Us or You may end these Affiliate Terms 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.

## 11. Modification

From time to time, We may update these Terms to clarify Our practices or to reflect new or different practices, for example We may change the scope of Referral Fees, payment procedures, and Affiliate Program rules, or Referral Specifications or Referral Materials, and Magari reserves the right in its sole discretion to modify and/or make changes to these Affiliate Terms at any time, at Our sole discretion. If We make any material change to these Affiliate Terms, You will automatically receive an email notifying You that changes were made and prompting You to agree to Our new Affiliate Terms. Modifications will become effective on the day they are posted unless stated otherwise. If any modification is unacceptable to You, Your only option is to end Your participation in the Affiliates Program by removing Us as an advertiser in Your Affiliate account. Your continued access to Our Affiliate platform will be contingent on Your acceptance of Our updated Affiliate Terms. You should visit the Products regularly to ensure You are aware of any changes to the Affiliate Terms, as any revised Affiliate Terms shall supersede all previous Affiliate Terms.

## 12. Miscellaneous

(a) You represent and warrant to Us that:

(i) These Affiliate Terms constitutes Your legal, valid, and binding obligation, enforceable against You in accordance with the terms and conditions set-forth herein;

(ii) You have the full right, power, and authority to accept and be bound by these Affiliate Terms and to perform Your obligations under these Affiliate Terms, without the approval or consent of any other party;

(iii) You have sufficient right, title, and interest in and to the rights granted to Us in these Affiliate Terms; and,

(iv) YOU HAVE READ AND TAKEN INTO ACCOUNT THE LIMITATION OF LIABILITY AND WARRANTY DISCLAIMER PROVISIONS OF THESE AFFILIATE TERMS PRIOR TO ACCEPTING THESE AFFILIATE TERMS.

(b) *Independent Contractors.* Each of us shall be deemed to be independent contractors with respect to the subject matter of these Affiliate Terms, and nothing contained in these Affiliate Terms shall be deemed or construed in any manner as creating any partnership, joint venture, employment, agency, fiduciary, or other similar relationship. You will not make any statement, whether on your site or otherwise, that contradicts or may contract anything in this paragraph.

(c) *Assignability.* You may not assign Your rights or obligations under these Affiliate Terms to any party, and any attempt to do so will be void and without effect. We are free to assign these Affiliate Terms.

(d) *Governing Laws.* These Affiliate Terms shall be governed by the substantive laws of the State of California without reference to its choice or conflicts of law principles that would require the application of the laws of another jurisdiction, and shall be considered to have been made and accepted in the State of California. Any dispute that may arise in connection with these Affiliate Terms shall be resolved in accordance with our terms of use.

(e) You may not amend or waive any provision of these Affiliate Terms unless in writing and signed by both of us.

(f) *Entire Agreement.* These Affiliate Terms represent the entire agreement between Us and You, and shall supersede all prior agreements and communications between us, oral or written.

(g) *Headings and Titles.* The headings and titles contained in these Affiliate Terms are included for convenience only, and shall not limit or otherwise affect the terms herein.

(h) *Severability.* If any provision of these Affiliate Terms 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 both of us is effectuated, and the remainder of these Affiliate Terms shall have full force and effect.

*Derek Allegrini*

Magari, Derek Allegrini CEO

Magari Affiliate