

Affiliate Agreement (Commission on sales)

iCreateditfirst Ltd

and

The Affiliate:

Date:

Affiliate Agreement (Commission on sales)

Contents

Date

Parties

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ECM081 Affiliate Agreement (Commission on sales)

This Agreement is dated: [Date]

It is made between iCreateditfirst of York House, 14 Salisbury Square, Hatfield, Herts AL9 5AD (“ICIF”)

And

[Affiliate name] of [address] (“the Affiliate”).

These are the definitions that apply unless the context to this agreement requires a different interpretation:

- “Commission” means the money paid by ICIF to the Affiliate under the terms of this agreement.
- “Commission Period” means the period commencing when a Visitor becomes a Tagged Visitor and ending at the expiry of the term set out at 2.3, below.
- “Goods” means all of the services offered for sale by ICIF on the Web Site.
- “Intellectual Property” means all the intellectual property of ICIF used or associated with ICIF Site.
- “Member / Customer” means a person who pays ICIF for Services or Goods.
- “Pay Day” means the day each month by which ICIF shall have paid the Commission to the Affiliate.
- “Sale” means a sale of Services or Goods to a Tagged Visitor on one occasion.
- “Referral Tools” means any material in any medium supplied by ICIF for use by the Affiliate in promoting the Services or Goods or linking to ICIF Site.
- “Reports” means the reports automatically prepared on ICIF site for the purpose of providing to the Affiliate statistics relating to Tagged Visitors and Sales.
- “R P Affiliate” means a Tagged Visitor who joins the affiliate programme of ICIF.
- “Services” means all of the services offered for sale by ICIF on the

Web Site.

“Software” means all or part of the software, which is or which supports ICIF Site.

“Tagged Visitor” means a Visitor who at any time is recorded by ICIF as having reached ICIF Site directly by way of a link from the Affiliate Site and with the intention of visiting ICIF Site AND who visits ICIF Site on a second or subsequent occasion.

“Visitor” means a person who visits ICIF Site.

These are the agreed terms:

1 Purpose of agreement

The Affiliate agrees to promote the Services on the Affiliate Site and ICIF agrees to pay the Commission in the way set out and subject to the terms of this agreement.

2 Applicable values

- 2.1 The Commission rate is £1 for the first 100 Lifetime customers referred by the Affiliate. The Commission rate is £2 for 100 – 500 and £3 thereafter.
- 2.2 The Commission Period is 12 months.
- 2.3 ICIF Site is www.icreateditfirst.com
- 2.4 Pay Day is the 10th day of the month.
- 2.5 The R P Site is www.xxxxxxxx.com

3 Relationship of Parties

ICIF and the Affiliate are independent contractors, and nothing in this agreement creates any partnership, joint venture, agency, franchise, or employment relationship between them.

4 Commission payable

- 4.1 For the purpose of this agreement a Tagged Visitor shall remain a Tagged

Visitor throughout the Commission Period.

- 4.2 Commission shall be payable by ICIF to the Affiliate in respect of all Sales to Tagged Visitors within the Commission Period.

5 Commission calculation and payment

- 5.1 ICIF will pay Commission on or before the Pay Day in respect of all Commission credited in the previous month.
- 5.2 Commission is calculated at a flat rate on every Sale.
- 5.3 Commission is calculated in UK pounds. The rate of exchange is taken at the date of payment to the Affiliate.
- 5.4 No deduction from Commission is made by ICIF in respect of currency exchange costs.
- 5.5 Commissions paid are inclusive of any tax payable by The Affiliate to any authority. If ICIF should become liable at law to deduct tax before payment to The Affiliate, he may do so, paying the net amount to the Affiliate.
- 5.6 Commission will be paid by transfer from ICIF's bank to the Affiliate's bank on or before Pay Day each month in respect of Commission due for Sales made in the previous month.
- 5.7 If the amount due to the Affiliate is less than £10 in any month, the amount due will be carried forward to the following month repeatedly until the cumulative amount due exceeds £10.

6 Tagging condition

- 6.1 Commission shall not be payable in respect of a person who is first tagged by ICIF as having reached ICIF Site from a web site owned by some other affiliate or affiliate or person with whom some sales arrangement has been made.

7 ICIF tracking and Reports

- 7.1 ICIF undertakes to set up the Software to:
- 7.1.1 tag the identity of all Visitors from the Affiliate Site;
 - 7.1.2 record all Sales made to all Tagged Visitors within the Commission Period;

- 7.1.3 record the cumulative amount of Commission due to the Affiliate for any time period he chooses;
 - 7.1.4 record the history of payments of Commission made to the Affiliate;
 - 7.1.5 provide the Reports
- 7.2 ICIF undertakes to provide password-protected access to the Affiliate to the Reports.

8 Duration and termination

This agreement shall continue until terminated:

- 8.1 by passage of time 12 months from today; or
- 8.2 by 3 months notice in writing by either party to the other; or
- 8.3 By ICIF if it determines (in ICIF's sole discretion) that the Affiliate site is or has become unsuitable. Unsuitable sites may include those that: are aimed at children, promote sexually explicit materials, promote violence, promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age; promote illegal activities, or violate intellectual property rights. If ICIF terminates the agreement under this paragraph ICIF does not have to give the Affiliate any reason; or
- 8.4 on 28 days notice by the Affiliate if ICIF fails to pay any sum due within 28 days of the due date; or
- 8.5 immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it; or
- 8.6 immediately by either party if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).

9 Upon termination

- 9.1 All rights and licenses granted to the Affiliate in this agreement shall immediately terminate.
- 9.2 The Affiliate will immediately stop using the Referral Tools and (where applicable) will remove them from the Affiliate Site.

- 9.3 The Affiliate will remain entitled to all Commission earned on or before the date of termination.
- 9.4 If ICIF continues to receive payments from Tagged Visitors after termination of this agreement, this will not constitute a continuation or renewal of this agreement or a waiver of termination.
- 9.5 The Affiliate will immediately return to ICIF any confidential information, and all copies of it in the possession of the Affiliate and will cease to use the Intellectual Property.
- 9.6 The Affiliate will not be entitled to fees for payments received by ICIF after the date of termination.
- 9.7 ICIF may withhold from the Affiliate the final payment of Commission for a reasonable time to ensure that the correct amount is paid.
- 9.8 All claims or actions that one party has against the other shall remain intact despite termination.

10 Refunds and charge backs

If a payment is later charged back by ICIF's service provider or refunded to a Customer or if a Customer's payment does not clear, then any commission paid to the Affiliate for that transaction will be repayable and will become a debt due by the Affiliate.

11 Referral tools

ICIF shall supply the following Referral Tools:

- 11.1 PDF's of documents suitable for the promotion of ICIF's services
- 11.2

12 ICIF controls Visitor data

- 12.1 ICIF shall be solely responsible for order and payment processing, renewal payment processing, cancellations and refund processing, and related Customer services even where the link to ICIF Site is a co-branded page on The Affiliate Site.
- 12.2 All personal information about Customer's collected by ICIF is owned solely and exclusively by ICIF.

13 ICIF promotions

- 13.1 ICIF reserves the right to change the offer / contract to prospective Customers at any time and without notice to you, even if this affects the earnings of the Affiliate. This includes change to prices, operating procedures, site layout and organisation.
- 13.2 The Affiliate does not have the authority to make or accept any offer or contract on behalf of ICIF.
- 13.3 The standard terms of ICIF apply without exception to all Customers introduced by The Affiliate. ICIF alone is responsible for decisions on pricing policy and problem resolution. ICIF is not responsible for any representations made by The Affiliate that contradict ICIF's policies.

14 Confidentiality

The parties are aware that in the course of the Contract they will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs, all of which information is or may be confidential.

- 15.1 The parties hereby undertake for themselves and every employee or sub-contractor whose services they may use both during and after completion of the Contract that they will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information.
- 15.2 Both the Host and the Customer hereby undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with these provisions.
- 14.3 Each of the Host and the Customer hereby undertakes one to the other that for the period of 12 months following completion of the Contract they will not directly or by an agent or otherwise and whether for themselves or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment. The provisions of this sub paragraph shall not apply to one of them if the other becomes subject to bankruptcy, receivership or liquidation proceedings.

15 Affiliate indemnifies ICIF

The Affiliate agrees to indemnify ICIF against all costs claims and expenses arising directly or indirectly from:

- 15.1 any claim representation or warranty made by the Affiliate in connection with ICIF or the Goods or Services;
- 15.2 the Affiliate's failure to comply with the law of any country;
- 15.3 the posting by the Affiliate of any content on the Affiliate Site;
- 15.4 a breach of the intellectual property rights of any person;
- 15.5 any use of the Affiliate Site for a purpose forbidden by this agreement;
- 15.6 provided that ICIF:
 - 15.6.1 gives notice to the Affiliate of any infringement immediately he becomes aware of it;
 - 15.6.2 gives the Affiliate the sole conduct of the defence to any claim and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim except upon the express instructions of the Affiliate; and
 - 15.6.3 acts in accordance with the reasonable instructions of the Affiliate and gives to the Affiliate whatever assistance he reasonably requires in respect of the conduct of his defence.
- 15.7 The Affiliate shall reimburse ICIF his reasonable costs incurred in complying with the above provisions and for the purpose of this paragraph the Affiliate agrees that the cost of management and technical time of ICIF is properly recoverable and can reasonably be valued at £100 per hour without further proof.

16 Interruption to the Service

- 16.1 If it is necessary for ICIF to interrupt the Services and ICIF reasonably believes the prospective duration of downtime does not justify telling the Affiliate in advance, then he need not do so.
- 16.2 If notice of prospective down-time is given by ICIF he shall in his discretion give whatever period of notice he believes is reasonable.
- 16.3 The Affiliate acknowledges that the Services may also be interrupted for reasons beyond the control of ICIF.
- 16.4 The Affiliate agrees that ICIF is not liable to him for any loss whether foreseeable or not, arising as a result of interruption to the Services.

17 Publicity and Referral Tools

- 17.1 The Affiliate shall not create, publish, distribute or permit any written material that makes reference to ICIF without first having obtained the written consent of the Merchant.
- 17.2 The Affiliate agrees that he will not without the prior approval in writing of ICIF use any written or other means of promoting referrals to ICIF except the material comprising Referral Tools from time to time.
- 17.3 Referral Tools consisting of text may be changed with the permission of ICIF. Tools comprising graphics may not be changed.
- 17.4 ICIF is under no obligation to provide additional marketing material or assistance to the Affiliate but if he does so that shall not make ICIF liable in any way to the Affiliate or to any third party for that or any material on the Affiliate Site.
- 17.5 The Affiliate is responsible for the correct formatting and presentation of the dynamic links to ICIF Site through which Commission will be recorded.

18 License to use Intellectual Property

- 18.1 ICIF hereby grants to the Affiliate a non-exclusive, non-transferable license, during the term of this agreement, to use the Intellectual Property solely in connection with the furtherance of this agreement.
- 18.2 This licence is limited to use for the promotion of the Goods or Services in accordance with this agreement.
- 18.3 This license cannot be sub-licensed, assigned or otherwise transferred by the Affiliate.
- 18.4 The Affiliate agrees that he will not do or omit any action that has the result of prejudicing or damaging the Intellectual Property.

19 Limitation of liability

- 19.1 The following provisions set out the Merchant's entire liability (including any liability for the acts and omissions of his employees) to the Affiliate in respect of:
 - 20.1.1 any breach of his contractual obligations arising under this agreement; and
 - 20.1.2 any representation statement or tortuous act or omission including negligence arising under or in connection with this agreement.
- 19.2 Any act or omission on the part of ICIF falling within this paragraph shall be known as an "Event of Default".

- 19.3 The Merchant's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the total Commission paid or payable by ICIF under this agreement for the last previous one year.
- 19.4 ICIF shall not be liable to the Affiliate in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Affiliate as a result of an action brought by a third party) even if such loss was reasonably foreseeable or ICIF had been advised of the possibility of the Affiliate incurring the same.
- 19.5 If a number of Events of Default give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 19.6 The Affiliate hereby agrees to give ICIF not less than 28 days in which to remedy any Event of Default hereunder.
- 19.7 Nothing in this paragraph shall confer any right or remedy upon the Affiliate to which he would not otherwise be legally entitled.
- 19.8 ICIF shall not be liable to the Affiliate for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.

20 Other affiliates

ICIF may at any time (directly or indirectly) solicit Visitors on terms that may differ from those contained in this agreement or from operators of web sites that are similar to or compete with The Affiliate Site.

21 Force majeure

- 21.1 Neither party shall be liable for any breach of his obligations resulting from causes beyond his reasonable control including strikes of his own employees.
- 21.2 Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it.
- 21.3 If a default due to force majeure shall continue for more than 8 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

22 Successors to the agreement

- 22.1 The benefit and obligations of this agreement shall be binding on any successor in title.
- 22.2 Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.
- 22.3 The Affiliate shall not permit any part of the benefit of this agreement to be used by any other person except a person to whom The Affiliate Site has been sold or transferred.

23 Contract is divisible

Each sub paragraph in this agreement is independent and severable from each other paragraph and enforceable accordingly. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

24 Notices

Any notice to be served on either of the parties by the other shall be sent by first class post or pre paid recorded delivery or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct number.

25 Headings

The headings in this document are for reference only.

26 Dispute Resolution

In the event of a dispute arising out of or in connection with this Contract and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by The Affiliate and ICIF then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

27 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this contract.

28 Jurisdiction

This Contract shall be interpreted according to the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

Signed by [name]:

Signature:

Duly authorised by the Affiliate:

Signed by [name]:

Signature:

Duly authorised by ICIF: