

## AFFILIATE AGREEMENT

PLEASE READ THE ENTIRE AGREEMENT.

YOU MAY PRINT THIS PAGE FOR YOUR RECORDS.

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND MERCHANT, INC. (DBA DRY MAMA ) 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 RESPONSIBLE FOR EACH AND EVERY TERM AND CONDITION.

WHEREAS, the Affiliate hereby wish to engage in Company's Affiliate marketing program and Affiliate wishes provide certain services to Company as provided in this Agreement.

THEREFOR IN CONSIDERATION THEREOF, all parties herein hereby agree to the terms and conditions set forth below.

### 1. Overview

This Agreement contains the complete terms and conditions that apply to you becoming an affiliate in Dry Mama Affiliate Program. The purpose of this Agreement is to allow you the opportunity to use our products and marketing materials to promote all Dry Mama products either person-to-person or by electronic forms. Please note that throughout this Agreement, "we," "us," and "our" refer to Dry Mama, and "you," "your," and "yours" refer to the affiliate.

### 2. Affiliate Obligations

2.1. To begin the enrollment process, you will complete and submit the application. You must be 18 years or older to complete this application. The fact that we auto-approve applications does not imply that we may not re-evaluate your application at a later time. We may reject your application at our sole discretion. We may cancel your application if we determine that your marketing efforts are unsuitable for our Program, including if it:

2.1.1. Promotes sexually explicit materials

2.1.2. Promotes violence

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

2.1.4. Promotes illegal activities

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

2.1.6. Includes "Merchant" or variations or misspellings thereof in its domain name

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

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

2.1.9. 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 Dry Mama or any other affiliated business.

2.2. Dry Mama 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.

2.3. 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.

2.4. 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.

2.5. The Affiliate does not have the right to create hardcopy marketing materials (brochures, tri-folds, business cards etc) which explicitly or implied in a manner which resembles any of Dry Mama marketing materials which leads customers to believe you are Dry Mama or any other affiliated business.

### 3. Dry Mama Rights and Obligations

3.1. We have the right to monitor your site/marketing material 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/marketing material 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/marketing material that we feel are necessary, we reserve the right to terminate your participation in the Dry Mama Affiliate Program.

3.2. Dry Mama reserves the right to terminate this Agreement and your participation in the Dry Mama Affiliate Program immediately and without notice to you should you commit fraud in your use of the Dry Mama Affiliate Program or should you abuse this program in any way. If such fraud or abuse is detected, Dry Mama shall not be liable to you for any commissions for such fraudulent sales.

3.3. This Agreement will begin upon our acceptance of your Affiliate application, and will continue unless terminated hereunder.

### 4. Termination

Either you or we may end 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. In addition, this Agreement will terminate immediately upon any breach of this Agreement by you.

### 5. Modification

We may modify any of the terms and conditions in this Agreement at any time at our sole discretion. In such event, you will be notified by email. Modifications may include, but are not limited to, changes in the payment procedures and Dry Mama 's Affiliate Program rules. If any modification is unacceptable to you, your only option is to end this Agreement. Your continued participation in Dry Mama 's Affiliate Program following the posting of the change notice or new Agreement on our site will indicate your agreement to the changes.

### 6. Payment

a. *Sole Compensation.* Affiliate's sole compensation under the terms of this Agreement shall be a commission:

a.i. Commission

a.i.1. 25% For each unit sold through [www.drymama.com](http://www.drymama.com) when using the Affiliate's unique Dry Mama Affiliate program code.

a.i.1.a. Customer who purchases product will get a 10% discount

a.i.1.b. Dry Mama can provide a limited breakdown of commissions on a quarterly basis when requested by email and the breakdown will be delivered by email as well.

b. *Time of Payment.* Commission shall be paid on the fifteenth day of the month after orders are shipped and paid and accompanied by a detailed shipment log and commission statement, and made payable to Affiliate's Name and Address.

- c. *Commission Charge-Back.* Company shall have the absolute right to set forth cash discounts, to make such allowances and adjustments to accept such returns from its customers, and to write off as bad debts such overdue customer accounts as it deems advisable. In each such case Company shall charge back to Affiliate's account any amounts previously paid or credited to it with respect to such cash discounts, allowances, adjustments, return or bad debts. However, Company agrees that the amount of any cash discount provided to a customer and charged back to Affiliate shall not exceed the sales price. Payment to Affiliate upon receipt of customer payments and for the percentage agreed upon eliminates most of these areas for dispute, which the parties acknowledge herein.

## 7. Promotion Restrictions

7.1. You are free to promote your own web sites, but naturally any promotion that mentions Dry Mama 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 Dry Mama. 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 Dry Mama 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. Also, you may post to newsgroups to promote Dry Mama 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 Dry Mama. 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 Dry Mama Affiliate Program. Any pending balances owed to you will not be paid if your account is terminated due to such unacceptable advertising or solicitation.

7.2. Affiliates that among other keywords or exclusively bid in their Pay-Per-Click campaigns on keywords such as Dry Mama, www.Dry Mama, 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 Dry Mama'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 behavior.

7.3. 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 Merchant's site (i.e., no page from our site or any Dry Mama'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) through accidental or direct intent 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 Dry Mama site in IFrames, hidden links and automatic pop ups that open Dry Mama'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.

7.4. You may not promote any Dry Mama products to a free standing store or established e-retailer without express written consent from Dry Mama.

## 8. Grant of Licenses

8.1. 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 Dry Mama's Affiliate Program. You agree that all uses of the Licensed Materials will be on behalf of Dry Mama and the good will associated therewith will inure to the sole benefit of Dry Mama.

8.2. 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.

## 9. Disclaimer

DRY MAMA MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING DRY MAMA SERVICE AND WEB SITE OR THE PRODUCTS OR SERVICES PROVIDED THEREIN, ANY IMPLIED WARRANTIES OF DRY MAMA 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.

## 10. Representations and Warranties

You represent and warrant that:

10.1. 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;

10.2. 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;

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

## 11. 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 DRY MAMA'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 COMMISSION FEES PAID TO YOU UNDER THIS AGREEMENT.

## 12. Indemnification

You hereby agree to indemnify and hold harmless Dry Mama, 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 are based on (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.

#### 13. 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.

#### **14. Governing Law.**

This Agreement shall be construed and enforced according to the laws of the State of Texas and any dispute under this Agreement must be brought in this venue and no other.

#### 15. Miscellaneous

15.1. 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 Dry Mama. 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 Site or any other of Your Site or otherwise, that reasonably would contradict anything in this Section.

15.2. Neither party may assign its rights or obligations under this Agreement to any party, except to a party who obtains all or substantially all of the business or assets of a third party.

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

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

15.5. 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.

15.6. 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.