

# Terms of Service Agreement

**IMPORTANT: READ THIS VERY CAREFULLY!**

## **SCOPE OF AGREEMENT**

This Terms of Service Agreement (“Agreement”) by and between Affinity Referral Network LLC (“we”, “us”, “our” or “Affinity”) and you (“you”, “your” or “User”) governs your use of <https://affinityreferralnetwork.net> and/or any other online content we may provide (collectively and individually the “Site”), together with all information, content, products, materials and services made available to you through the Site by us and/or third parties (which, together with the Site, shall be collectively and individually referred to as the “Services”). All applicable terms and conditions contained on the Site, including our Privacy Policy, are hereby incorporated by reference and made part of this Agreement. This Agreement constitutes the entire agreement between you and us, superseding any and all prior or inconsistent understandings, representations or agreements regarding the Services. By using or otherwise accessing the Services, or any component thereof, in any manner whatsoever, you agree to be bound by and comply with the terms and conditions of this Agreement.

If you do not agree to this Agreement, you are not authorized to access the Site or use the Services in any manner. When we refer to the “use” of the Services in this Agreement, we mean any actual or attempted access or use of the Services, including, without limitation, any transmission, exchange of information or communication associated with the Services.

Affinity reserves the right to modify the terms of this Agreement or any other terms and conditions on the Site at any time, without notice, and it is your responsibility to periodically review the Site, along with this Agreement, for revisions. Revisions to terms and conditions on the Site and/or this Agreement become effective immediately upon posting (the “Effective Date”). If any revisions are not acceptable to you, you must stop using the Services. Your use of the Services after the Effective Date shall constitute your acceptance of such changes. If we make any new products or services

available, they will be considered a part of the Services and your use of them will be governed by the terms and conditions of this Agreement. You must also comply with any additional terms which apply to third-party content, material, information, software or other services.

## **OWNERSHIP AND USE OF INTELLECTUAL PROPERTY**

“Affinity Intellectual Property” is intellectual property that is owned by Affinity or licensed to us by our third-party partners. You have no rights in or to such Affinity Intellectual Property and you agree you will not copy, retransmit, reproduce, publish, create derivative works based upon or otherwise transmit any Affinity Intellectual Property except as specifically permitted under this Agreement or other agreements between Affinity and you.

As a courtesy, we have posted to the Site certain content (“Affinity Content”). Unless specifically stated otherwise on the Site, or we give you written permission, you shall not use and access, download and copy any Affinity Content.

Our name or trademarks appearing on this Site may not be used in any advertising or publicity or otherwise to indicate Affinity’s sponsorship of or affiliation with any of your products or services without Affinity’s prior express written permission or as granted by specific terms and conditions of other documents defining a relationship between Affinity and you. You are prohibited from using any names, marks or other materials in a manner that is likely to cause confusion or dilute or damage the reputation or image of Affinity. You agree you will not alter any Affinity Content in any manner to make it appear that Affinity is endorsing, sponsoring, authorizing or affiliated with you, your company, or any thirdparty, except as expressly permitted in writing by Affinity.

## **LINKS**

As a courtesy to Users, we may provide links to other websites or resources owned and operated by third parties. Affinity has no control over such websites and resources; therefore, you acknowledge and agree we are not responsible for the availability of such external websites or resources and are not responsible or liable for any content, advertising, products, services or other materials on or otherwise made available via such websites or resources. You further acknowledge and agree we shall not be liable,

directly or indirectly, for any damage or loss caused or alleged to be caused by, or in connection with the use of or reliance on, any such content, goods or services.

## **COMPLIANCE WITH THE CAN-SPAM ACT**

The User agrees to abide by the CAN-SPAM Act (15 U.S.C. §§7701-13) when utilizing the Site and contacting other users by email. User may not use the Site to bombard individuals or groups with uninvited commercial email, sexually explicit commercial email or engage in other activities in violation of the CAN-SPAM Act, such as, but not limited to: (a) harvesting email addresses from the Site; (b) falsifying or using misleading header information; or (c) using deceptive subject lines. User may not promote User's or others products or services through uninvited commercial emails or any other means without the express written consent of Affinity. Affinity will not be liable for any direct, indirect, incidental, special, consequential or punitive damages of any kind resulting from User's failure to adhere to the CAN-SPAM Act or any other applicable laws. The User agrees to indemnify, defend and hold harmless Affinity, its affiliates, officers, directors, employees, consultants, attorneys and agents from any and all third-party claims, liability, damages, and/or costs (including, but not limited to, attorneys' fees) arising from the User's activities in violation of the CAN-SPAM Act or any other applicable laws. The terms of this Agreement will inure to the benefit of Affinity's successors, assignees and licensees. The User covenants to cooperate fully in the defense of any claim. However, Affinity reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by User, and User shall not in any event settle any matter without the written consent of Affinity.

## **REGISTERED USERS ACCOUNT, PASSWORD AND SECURITY**

In consideration for your use of the Site, you represent and warrant you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. You also agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the relevant portions of the Site and (b) maintain and promptly update your profile information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Affinity has

reasonable grounds to suspect such information is untrue, inaccurate, not current or incomplete Affinity has the right to suspend or terminate your access to the Site and refuse any and all current or future use of the Site, or any portion thereof. You also agree to indemnify, defend and hold harmless Affinity, its affiliates, officers, directors, employees, consultants, and agents from any and all loss, damages, and/or costs (including, but not limited to, attorneys' fees) arising from your provision of information that is untrue, inaccurate, not current or incomplete.

You are solely responsible for maintaining the strict confidentiality of your User IDs and Passwords and for any charges, damages, liabilities or losses incurred or suffered as a result of your failure to do so. We are not liable for any harm caused by or related to the theft of your User IDs/Passwords, your disclosure of your User IDs/Passwords or your authorization to allow another person to access and use the Services using your User IDs/Passwords. You agree to immediately notify us if you become aware of any unauthorized use of your User IDs/Passwords or other need to deactivate a User ID/Password due to security concerns.

## **DISCLAIMER OF WARRANTIES**

AFFINITY DOES NOT WARRANT OR GUARANTEE UNINTERRUPTED ACCESS TO THE SITE, OR ANY SITE LINKED TO THE SITE. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR USE OF THIS SITE AND ANY INFORMATION ON THIS SITE.

**AFFINITY PROVIDES ANY AND ALL SERVICES AND INFORMATION ON AN "AS IS" BASIS AND GRANTS NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY. AFFINITY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.**

## **LIMITATION OF LIABILITY AND RELEASE**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER AFFINITY, NOR ITS OWNERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY OTHER FORM OF DAMAGES IN ANY MANNER ARISING OUT

OF OR IN CONNECTION WITH THIS AGREEMENT, YOUR USE OF THE SITE OR ANY SERVICES, REGARDLESS IF CAUSED BY NEGLIGENCE OR GROSS NEGLIGENCE OF AFFINITY AND REGARDLESS OF THE FORM OF ACTION, THE BASIS OF THE CLAIM, OR WHETHER OR NOT AFFINITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES BEYOND THE MONETARY AMOUNT YOU PAID FOR THE SERVICES.

IN THE EVENT YOU HAVE ANY DISPUTE WITH ONE OR MORE THIRD PARTIES AS A RESULT OF YOUR USE OF THE SITE OR THE SERVICES, OR ARE IN ANY WAY DAMAGED AS A RESULT OF ANY THIRD PARTY IN CONNECTION THEREWITH, YOU HEREBY RELEASE AND COVENANT NOT TO SUE OR OTHERWISE MAKE A CLAIM, DEMAND OR FILE ANY LEGAL ACTION OR INSTITUTE ANY LEGAL OR REGULATORY PROCEEDINGS AGAINST US, OUR OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, OR ATTORNEYS FOR ANY CLAIMS, ACTIONS, DEMANDS OR DAMAGES (WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL), OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHETHER FORESEEABLE OR NOT, DISCLOSED OR UNDISCLOSED.

## **SPECIFIC TERMS FOR REFERRAL AGENTS**

**Your admission, and continued admission, to our network is subject to our sole and absolute discretion. Your admission may be terminated at any time and for any reason or no reason at all. If you are terminated, you understand and agree that no refund will be provided to you. The most common reasons for termination may include the performance of substandard work, poor customers service, suspected dishonesty, non-payment of annual fees, and non-responsiveness. In addition to agreement to these terms, your admission to our network is contingent upon payment of our annual, non-refundable fee, which ranges from \$459-\$999 depending on your market areas and experience. You may add an assistant or buyer agent to the network for an additional \$149.00 annually.**

**You acknowledge and agree that we do not and cannot guarantee that you will get any leads or certain types of leads as result of being a part**

**of our network, and that other than what is stated herein, you are not relying upon any representations, statements or expectations to the contrary.**

## **INDEMNITY**

You agree to defend, indemnify and hold us harmless against any losses, expenses, costs or damages (including our attorneys' fees, expert fees' and other costs of litigation) arising from, incurred as a result of, or in any manner related to any claim or action based upon (a) your breach of the terms and conditions contained in this Agreement and/or the Site, (b) your use of the Services, and/or (c) the use of the Services by any other person using your IDs. We may, if necessary, participate in the defense of any such claim or action and any negotiations for its settlement or compromise. No settlement that may adversely affect our rights or obligations shall be made without our prior written approval. We reserve the right, at our own expense and upon notice to you, to assume exclusive defense and control of any such claim or action and then your corresponding obligation to defend will end; however, your duty to indemnify shall continue.

## **RIGHT TO TERMINATE AND/OR TO BLOCK ACCESS**

Affinity reserves the right to terminate, block or restrict your access to, or use of, the Site for any breach or suspected violation of any provision of this Agreement. In such an event, we may terminate this Agreement, restrict, suspend or terminate your access to and use of the Services immediately and without notice or liability, with or without cause, and it will not limit any other rights or remedies which are available to us. You may terminate this Agreement by providing us with written notice of your termination and ceasing to use or access the Services. Termination is your sole right and exclusive remedy if you are not satisfied with the Services. Upon the effective date of any such termination, your right to access and use the Services shall immediately cease.

## **NON-DISPARAGEMENT**

You agree that you will neither publish on the Internet, directly or indirectly, any negative or untrue statement about Affinity, nor take any action which is adverse to the interests of Affinity or that would cause it or its owners

embarrassment or humiliation or otherwise cause or contribute to such persons being held in disrepute by the public or in Affinity's line of business.

## **GOVERNING LAW**

This Agreement shall be governed in accordance with the laws of the State of Arizona, USA, notwithstanding any conflict-of-law provisions to the contrary. Additionally, you also agree that the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, UN Convention on Contracts for the International Sales of Goods and the Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement or any interpretation or disputes relating thereto.

## **WAIVER OF JURY TRIAL**

You hereby irrevocably waive your right to trial by jury in any action or proceeding arising out of this Agreement or the transactions relating to its subject matter.

## **JURISDICTION/DISPUTES**

All disputes under this Agreement shall be resolved by litigation in the federal or state courts located in the State of Arizona, USA, Maricopa County, and each Party irrevocably consents to the jurisdiction of such courts and hereby waives any jurisdictional or venue defenses available.

## **AFFINITY'S REMEDIES**

In the event of a breach or threatened breach by you of any of the provisions of this Agreement pertaining to intellectual property, disparagement, or unauthorized use of the Site, you hereby consent and agree that Affinity shall be entitled to obtain, as a matter of right hereby granted, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief. Upon the issuance of any injunctive relief, Affinity shall be entitled to recover from you, as part of its costs, reasonable

attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any award or judgment rendered (regardless of whether or not the matter is contested).

## **ATTORNEYS' FEES AND LEGAL EXPENSES**

If any proceeding or action shall be brought to recover any amount under this Agreement, or for or on account of any breach hereof, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and/or arbitrator, and shall be made a part of any award or judgment rendered (regardless of whether or not the matter is contested).

## **ASSIGNABILITY**

This Agreement is personal to you and you may not assign this Agreement or the rights and obligations hereunder to any third party.

## **WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

## **SEVERABILITY**

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

## **SURVIVAL OF TERMS**

Any provision of this Agreement which by its nature must survive the termination of this Agreement in order to give effect to its meaning shall survive such termination, including but not limited to the ownership, intellectual property rights and non-disparagement provisions set forth in this Agreement.



## **LIMITATION ON ACTIONS**

You agree that any claim or defense arising out of or related to the use of the Site or Services, or otherwise relating to this Agreement, must be brought or asserted within one (1) year after the action or inaction occurred that gave rise to such claim or defense or will be forever barred, regardless of any statute of limitations, time of discovery statute or rule, savings statute, tolling statute or doctrine, equitable doctrine, or other theory that may be used to extend the time in which a claim or defense can be asserted.

## **ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their agreement. It shall not be modified or amended except in writing or Site posting by Affinity. The Site, as posted and amended in the future, and this Agreement, as posted and amended in the future, shall be the valid document respecting the rights and obligations of Affinity and the User.

## **FORCE MAJEURE**

Affinity shall not be responsible for, or be considered in breach or default of this Agreement, on account of any failure to perform or delay in the performance of any obligation hereunder caused by the death or disability of a member of Affinity, an act of God, fire, war, act of terrorism, insurrection, riot, labor disturbance (including strike and lockout), equipment malfunction, computer hacker, cut wire or fiber, governmental regulation or interference or other events not within the reasonable control of Affinity. In the event of death or disability of a member of Affinity, this Agreement may be terminated at the election of Affinity, in its sole and absolute discretion, without any liability resulting to Affinity or its remaining members, including any obligation to refund any fees paid.

Last updated on 4/20/18

