



RealDoll Affiliate Terms & Conditions

This Affiliate Agreement ("Agreement") contains the complete terms and conditions between us, Abyss Creations ("Abyss Creations") and you, regarding your application to and participation in, the Abyss Creations' Affiliate Program (the "Affiliate Program") as an affiliate of Abyss Creations (an "Affiliate"), and the establishment of links from your website to our websites, www.realdoll.com and www.monster-cocks.com.

BY JOINING THE AFFILIATE PROGRAM, YOU ARE CONFIRMING THAT YOU HAVE READ THIS AGREEMENT AND THE ABYSS CREATIONS' TERMS AND CONDITIONS AND THAT YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

1. Definitions

"Affiliate" - The business, individual, or entity applying to or participating in the Affiliate Program, or that displays Abyss Creation's products and Services and/or promotions on its website, or other means, using an affiliate tracking URL in exchange for receiving a commission from Abyss Creations for sales directly resulting from such display.

"Affiliate Site" - The Affiliate's website which displays Abyss Creations' Products and Services and/or promotions.

"Abyss Creations' Products and Services" - Web hosting and related products and services that are available for purchase from Abyss Creations.

"Commission Fees" - The amount you will be paid for each Qualified Purchase by a Referred Customer that you refer to Abyss Creations subject to the Commission Threshold and pursuant to the terms of this Agreement.

"Commission Threshold" - The amount of Commission Fees an Affiliate must accrue prior to receiving a payment from Abyss Creations. (There is none.)

"Qualified Purchase" - A sale of Abyss Creations' Products and Services by Abyss Creations, with a term of twelve (12) months or longer, to a Referred Customer that is not excluded under Section 7.

"Referred Customer" - Each new and unique customer referred from Affiliate through a Link (as defined in Section 3) that provides valid account and billing information.

"Registration Form" - Any and all order forms or other signup or acceptance form submitted by a customer to purchase Abyss Creations' Products and Services.

2. Enrollment in the Affiliate Program

- a) To begin the enrollment process, you must submit a completed Affiliate Program Signup Form.
- b) We will evaluate your application in good faith and will notify you of your acceptance or rejection in a timely manner. We may reject your application if we determine (in our sole discretion) that your website is not

suitable for the Affiliate Program for any reason, including, but not limited to, its inclusion of content that is, in our opinion, unlawful or otherwise violates our Acceptable Use Policy.

- c) If we reject your application, for any reason, you may not re-apply to the Affiliate Program utilizing the same domain name/URL or reapply using a different domain/URL name and then add the previously rejected domain name/URL to your affiliate account. Abyss Creations, in its sole discretion, reserves the right to notify or to not notify any prospective affiliate of their rejection or removal from the Affiliate Program at any time.

3. **Promotion of Our Affiliate Relationship**

- a) **Use of Links.** If you qualify and agree to participate as an Affiliate, we will make a variety of graphic and textual links available to you (each referred to herein as a "Link" or collectively, as the "Links"). The Links will serve to identify your website as a member of the Affiliate Program and will establish a link from your website or e-mail to Abyss Creations' website. You agree to cooperate fully with us in order to establish and maintain such Links. You further agree that your use of the Links must be in compliance with this Agreement at all times. Abyss Creations may modify the Links from time to time in its sole discretion. You will not use graphic or textual images (indicating a Link) or text messages to promote Abyss Creations that are not approved in advance by Abyss Creations. All Affiliate Sites shall display the Links prominently in relevant sections of their website. Furthermore, you agree not to use cookie stuffing techniques that set the affiliate tracking cookie without the Referred Customer's knowledge (e.g. iframe). Any information with respect to Abyss Creations that is going to be displayed on the Affiliate Site must be preapproved by Abyss Creations in writing.
- b) **Disclaimer.** EXCEPT AS PERMITTED HEREIN, YOU SHALL NOT AND ARE NOT AUTHORIZED TO (i) USE THE ABYSS CREATIONS' TRADEMARK, NAME OR ANY OF OUR OTHER INTELLECTUAL PROPERTY, INCLUDING WITHOUT LIMITATION, THE LINKS, AND THE LICENSED MATERIALS (COLLECTIVELY, THE "ABYSS CREATIONS IP") (OR ANY VARIATIONS OR MISPELLINGS THEREOF OR OTHER TERM OR TERMS CONFUSINGLY SIMILAR TO ANY OF THE FOREGOING) WITHOUT ABYSS CREATIONS' EXPRESS PRIOR WRITTEN PERMISSION; (ii) USE ABYSS CREATIONS IP IN A DOMAIN OR WEBSITE NAME, IN ANY BIDS FOR KEYWORDS OR GOOGLE ADWORDS (OR SIMILAR PROGRAMS AT OTHER SEARCH ENGINES), IN ANY SEARCH ENGINE ADVERTISING (PAID OR OTHERWISE), IN ANY METATAGS, GOOGLE ADWORDS (OR SIMILAR PROGRAMS AT OTHER SEARCH ENGINES), KEY WORDS, ADVERTISING, SEARCH TERMS, CODE, OR OTHERWISE; (iii) ACT IN ANY WAY THAT CAUSES OR CREATES OR COULD CAUSE OR CREATE ANY "INITIAL INTEREST CONFUSION" OVER THE USE OF ABYSS CREATIONS IP ON THE INTERNET OR IN ANY SEARCH ENGINE ADVERTISING. YOUR USE OF ABYSS CREATIONS IP IN ANY MANNER, OTHER THAN AS EXPRESSLY PERMITTED HEREUNDER SHALL CONSTITUTE UNLAWFUL INFRINGEMENT OF ABYSS CREATIONS' INTELLECTUAL PROPERTY RIGHTS, AND MAY SUBJECT YOU TO CLAIMS FOR DAMAGES (INCLUDING POTENTIAL TREBLE DAMAGES FOR KNOWING OR WILFUL INFRINGEMENT), AND THE OBLIGATION TO PAY ABYSS CREATIONS' LEGAL FEES AND COSTS IN CONNECTION WITH ANY ACTION OR PROCEEDING IN WHICH ABYSS CREATIONS SEEKS TO ENFORCE ITS RIGHTS UNDER THIS AGREEMENT OR WITH REGARD TO ANY OF ABYSS CREATIONS' INTELLECTUAL PROPERTY RIGHTS.
- c) **Discounts and Coupons.** You are not allowed to post any refunds, credits or discounts on the Abyss Creations' Products and Services, or other content concerning Abyss Creations without Abyss Creations' prior written consent in each instance. Affiliates may only use coupons and discounts that are provided exclusively through the Affiliate Program using banners and links. Each Link connecting users of the Affiliate Site to the pertinent area of the Abyss Creations' website will in no way alter the look, feel, or functionality of the Abyss Creations website. Any violations of the terms surrounding links, coupons, refunds, credits or discounts shall constitute a material breach of this Agreement, and may result in your termination from the Affiliate Program or the withholding of Commission Fees.

4. **Data Security**

Affiliate shall comply with all applicable data protection laws regarding the transmission of data exported to or from the United States or the country in which Affiliate resides, including without limitation, the General Data Protection Regulation 2016/679 of European Parliament and of the Council of 27 April 2016 (the "GDPR"). Affiliate, as a controller under the GDPR, shall also implement appropriate technical measures to ensure a level of security appropriate to the risk, taking into account the nature, scope, context, and purpose of processing any personal data. Affiliate agrees to promptly assist Abyss Creations in complying with any data subject rights

request under the GDPR that Abyss Creation may receive from any individuals referred to Abyss Creations by Affiliate. Affiliate further agrees to promptly assist Abyss Creations in complying with any duties to cooperate with supervisory authorities under the GDPR.

5. Order Processing

Abyss Creations will process orders placed by Referred Customers who follow the Links from an Affiliate Site to Abyss Creations. We reserve the right, in our sole discretion, to reject orders that do not comply with certain requirements that we may establish from time to time. All aspects of order processing and fulfillment, including Abyss Creations' services, cancellation, processing, refunds and payment processing will be our responsibility. We will track the Qualified Purchases generated by your Affiliate Site and will make this information available to you through our website. To permit accurate tracking, reporting, and commission accrual, you must ensure that the Links between your website and our website are properly formatted.

6. Commission Determination; Qualified Purchases

Commissions will be calculated based on the commission rates stated on the Abyss Creations website for each Qualified Purchase (as defined herein) subject to commission accruing pursuant to Section 8 below.

"Qualified Purchase" does NOT include the following:

- i. A purchase by a Referred Customer that has transferred from any Abyss Creations partners or subsidiaries.
 - ii. A purchase by a Referred Customer who is also associated with any Abyss Creations reseller, referral, or other program.
 - iii. A purchase by a Referred Customer that is not up to date on its payments or is subject to a refund, referral, or other program.
 - iv. A purchase that was completed prior to the Affiliate joining the Affiliate Program or was not tracked properly through an Affiliate Link.
 - v. A purchase by a Referred Customer that has not been in good standing for a period of at least thirty (30) days or is in violation of Abyss Creations' Terms Of Service, Acceptable Use Policy, or other applicable policies at the time the Commission Fees accrue.
 - vi. A purchase that Abyss Creations suspects, in its sole discretion, is the result of fraud, which shall include but is not limited to, the use of software that generates real and fictitious information, multiple accounts from the same customer, or the referral of accounts that do not comply with this Agreement.
 - vii. A purchase referred by an Affiliate that has an excessive cancellation rate as determined in Abyss Creations' sole discretion.
 - viii. A purchase by a Referred Customer if the Referred Customer was offered or received coupons, refunds, credits or discounts from the Affiliate.
 - ix. A purchase by a Referred Customer if the Affiliate or Referred Customer is in or is promoting a business-opportunity program, as determined by us in our sole discretion.
 - x. A purchase by a Referred Customer who received a popup with a discounted offer, while leaving Abyss Creations' website during their purchase.
 - xi. A purchase by a Referred Customer engaging in "Domain Speculation," which is determined by the identification of two (2) web hosting accounts with the same Referred Customer's name, email address, or other identifying characteristic as determined by Abyss Creations and/or the identification of two (2) or more web hosting accounts that have no content on their websites or have similar content, templates or formatting, as determined by Abyss Creations, in our sole discretion.
- a. Abyss Creations reserves the right to withhold payment of initial Commissions Fees to Affiliates who are new to the Affiliate Program, or who have commissions that are potentially fraudulent as determined by Abyss Creations in its sole discretion, to determine the legitimacy and cancellation rates of Referred Customers.
 - b. Abyss Creations reserves the right to suspend the payment of Commission Fees at any time and indefinitely, if it suspects fraud or other improper activity or a potential breach of any of the terms of this Agreement by the Affiliate or a Referred Customer. Abyss Creations reserves the right to deduct from Affiliate's current and future Commission Fees any and all Commission Fees corresponding to any fraudulent, questionable, and cancelled purchases.

- c. Abyss Creations reserves the right to immediately cancel or withhold for later review any Commission Fee that fails to meet the criteria of a "Qualified Purchase." Affiliate is responsible for monitoring the payment, denial, and withholding of Commission Fees; Abyss Creations is not obligated to actively notify Affiliates of the status of Commission Fees. If Affiliate has a question about a Commission Fee that has been cancelled or withheld, Affiliate has thirty (30) days from the day the payment would have been due to contact Abyss Creations to request that the Commission Fee be paid. Any changes to decisions about cancelled or withheld Commission Fees are strictly made in Abyss Creations' sole discretion.
- d. Commissions for any Referred Customer who is associated with any Abyss Creations reseller, referral or other program may not be considered a Qualified Purchase. In other words, you may not receive double commissions or compensation.
- e. In the event that the Referred Customers that are referred to Abyss Creations by an Affiliate are determined to have an excessive cancellation rate, as determined by Abyss Creations in its sole discretion, Abyss Creations reserves the right to withhold or decline pending and future Commission Fees to such Affiliate.
- f. Any attempt by an Affiliate to manipulate, falsify or inflate Referred Customers, Qualified Purchases, or Commission Fees to intentionally defraud Abyss Creations or any violation of the terms of this Agreement constitutes immediate grounds for Abyss Creations to terminate the Affiliates participation in the Affiliate Program and will result in the forfeiture of any Commission Fees due to the Affiliate.

7. Commission Payments

- a) Subject to the terms of this, commissions will be calculated according to the specified percentage or dollar amount set forth in the commission report in your Affiliate Summary (as stated in the first 4 pages of this agreement) for each Qualified Purchase that accrues during the period for which such commission fee is being calculated.
- b) Commission Fees will be processed approximately forty-five (45) to sixty (60) days after the end of the month or other period in which they accrue. Abyss Creations will only compensate you for Qualified Purchases made in accordance with this Agreement.
- c) Commission Fees shall be paid based on the current information in your Affiliate profile. You are required to notify us promptly of any change in your address by updating your profile information in the Affiliate console. You are responsible for informing Abyss Creations of your desired payment form/type. You can update or change your desired payment method at any time by updating your affiliate profile located in the affiliate console. Any changes to your desired payment method may take up to two payout cycles to take effect.
- d) You may choose to receive Commission Fees through PayPal, ACH, check or hosting credit, subject to the following conditions:
 - a. **PayPal Payments:** Please refer to PayPal's policy to ensure you are eligible to receive payment if you reside outside of the United States https://www.paypal.com/cgi-bin/webscr?cmd=_display-approved-signup-countries-outside. (PayPal payments will only be reissued within one hundred and twenty (120) days of the original issue date in the case of an incorrect PayPal address or refusal from PayPal to accept a payment.)
 - b. Abyss Creations is not responsible for paying any third-party fees charged by PayPal in order for you to receive Affiliate Commission Fees.
- e) Abyss Creations, in its sole discretion, reserves the right to modify the available commission payment methods or payment schedule at any time. Such changes shall take effect when posted.
- f) Disputes: Affiliate has access to Abyss Creations' real-time Affiliate Program statistics and agrees to file any disputes within forty-five (45) days after the end of the month in which the sale or event that is disputed occurred. Disputes filed after forty-five (45) days of the date on which the disputed sale or event occurred will not be accepted by Abyss Creations and Affiliate forfeits forever any rights to a potential claim.
- g) It is solely your responsibility to provide Abyss Creations with accurate tax and payment information that is necessary to issue a Commission Fee to you. If Abyss Creations does not receive the necessary tax or payment information within ninety (90) days of a Qualified Purchase which would otherwise trigger Commission Fees, the applicable commissions shall not accrue and no Commission Fees will be owed with respect to such Qualified Purchase.
- h) Each Affiliate is required to submit a W8/W9 tax form before any Commission Fees shall accrue. You are responsible for the payment of all taxes related to the commissions you receive under this Agreement. In compliance with U.S. tax laws, Abyss Creations will issue a Form 1099 to Affiliates whose earnings meet or exceed the applicable threshold.

- i) Any address change must be made in the Affiliate profile in the affiliate console at least fifteen (15) business days prior to the end of the calendar month in order for Commission Fees for that month to be processed.

8. Reports of Qualified Purchases

You may log into your affiliate console to review your click through and potential Qualified Purchases statistics on a daily basis. The potential Qualified Purchases shown in this report have not been reviewed to confirm they meet all criteria for Qualified Purchases. As such, Commission Fees may not be issued for all Referred Customers that appear in the affiliate console.

9. Obligations Regarding Your Affiliate Site

- a) You are solely responsible for the development, operation, and maintenance of your Affiliate Site and for all materials that appear on your Affiliate Site. Such responsibilities include, but are not limited to, the technical operation of your Affiliate Site and all related equipment; creating and posting product reviews, descriptions, and references on your Affiliate Site and linking those descriptions to our website; the accuracy of materials posted on your Affiliate Site (including, but not limited to, all materials related to Abyss Creations' Products and Services); ensuring that materials posted on your Affiliate Site do not violate or infringe upon the rights of any third party and are not libelous or otherwise illegal. We disclaim all liability and responsibility for such matters
- b) We have the right in our sole discretion to monitor signups through your Affiliate Site from time to time to determine if you are in compliance with the terms of this Agreement. If you are not in compliance, we may terminate your participation in the Affiliate Program effective immediately.

10. Abyss Creations' Responsibilities

We will provide all of the information necessary for you to make Links from your Affiliate Site to our site. Abyss Creations will be solely responsible for order processing (including payment processing, cancellations, and refunds) for orders for Abyss Creations' Products and Services placed by a Referred Customer following a Link from your Affiliate Site, for tracking the volume and amount of Qualified Purchases generated by your Affiliate Site, and for providing information to Affiliates regarding Qualified Purchase statistics. Abyss Creations will be solely responsible for all order processing, including but not limited to payment processing, cancellations, refunds and related Abyss Creations service.

11. Policies and Pricing

Referred Customers who buy Abyss Creations' Products and Services through our affiliate network are deemed to be Abyss Creations' Customers. Abyss Creations' Terms and Conditions, rules, policies, and operating procedures will apply to such customers. We may change our policies, pricing, and operating procedures at any time. For example, Abyss Creations determines the prices to be charged for Abyss Creations' Products and Services sold through the affiliate network in accordance with our own pricing policies. Prices and availability of Abyss Creations' Products and Services may vary from time to time, from affiliate to affiliate, and from region to region. Because price changes may affect products that you have listed on your Affiliate Site, you may or may not be able to include price information in your product descriptions. We will use commercially reasonable efforts to present accurate information on our website, but we cannot guarantee the availability or price of any particular Abyss Creations Product or Service.

12. E-mails and Publicity

You shall not create, publish, transmit or distribute, under any circumstances, any bulk email messages (also known as "SPAM") without prior written consent from Abyss Creations, to be granted or denied in Abyss Creations' sole discretion, in each instance. Additionally, you may only send emails containing an Abyss Creations affiliate link and or a message regarding Abyss Creations or Abyss Creations' Affiliate Program to people who have previously consented to receiving such communications from you. Your failure to abide by this Section 14, the CAN-SPAM Act of 2003, our Anti-Spam Policy, and all applicable laws relating to email communications, in any manner, will be deemed a material breach of this Agreement by you and will result in the forfeiture by you of any and all rights you may have to any commissions and the termination of your participation

in the Affiliate Program. Further, if your account has excessive clicks in a very short period of time as determined by Abyss Creations in its sole discretion, the Affiliate relationship may be terminated.

13. Licenses and Use of Abyss Creations Logos and Trademarks.

- a) Subject to the limitations set forth in Section 3 above and otherwise in this Agreement, we grant you a non-exclusive, non-transferable, revocable license to (i) access our website through the Links solely in accordance with the terms of this Agreement and (ii) solely in connection with such Links, to use the Abyss Creations trademark and logo and similar identifying material provided by us (collectively, the "Licensed Materials"), for the sole purpose of selling Abyss Creations' Products and Services on your Affiliate Site and as approved in advance by us. You may not alter, modify, or change the Licensed Materials in any way. You are only entitled to use the Licensed Materials while you are an Affiliate in good standing and in compliance with all of the terms of this Agreement.
- b) You shall not use the Licensed Materials for any purposes other than selling Abyss Creations' Products and Services, without first submitting a sample to us and obtaining the express prior written consent of Abyss Creations in each instance. You shall not use the Licensed Materials in any manner that is disparaging or that otherwise portrays Abyss Creations, any hosted member of Abyss Creations or any Abyss Creations' employee or representative in a negative light. We reserve all of our rights in the Licensed Materials and your license to use such material is limited to the manner described herein. We may revoke your license at any time, by giving you written notice. If not previously revoked, this license shall immediately terminate upon the termination of your participation in the Affiliate Program.
- c) You grant to us a non-exclusive license to utilize your name, title, trademarks, and logos (the "Affiliate Trademarks") in any advertisement or other materials used to promote Abyss Creations and the Affiliate Program, provided that Abyss Creations' use of the Affiliate Trademarks is not required and is at its sole discretion. This license shall terminate upon the termination of your participation in the Affiliate Program.

14. Term and Termination

- a) The term of this Agreement will begin upon our acceptance of your Affiliate Program application and will end when terminated by either party (the "Term"). Either party may terminate this Agreement at any time, with or without cause.
- b) You are only eligible to earn Commission Fees on Qualified Purchases occurring during the Term. Commission Fees earned prior to the date of termination will be eligible for commissions only if the orders for the related Abyss Creations' Products and Services are not cancelled within (30) days and comply with all of the terms of this Agreement. We may withhold your final payment of Commission Fees for a reasonable time to ensure that all Qualified Purchases are valid and payment from Referred Customers are legitimate as determined by Abyss Creations in its sole discretion.
- c) Any Affiliate who violates this Agreement, Abyss Creations' Terms and Conditions, or any applicable law will immediately forfeit any right to any and all accrued, but not yet received, Commission Fees and will be immediately removed from the Affiliate Program.
- d) Abyss Creations reserves the right to remove an Affiliate from the Affiliate Program, and to terminate or suspend this Agreement, at any time for any reason, in Abyss Creations' sole discretion.

15. Modification

We may modify this Agreement at any time in our sole discretion; provided that the change shall solely apply to events occurring after the date on which you accept and agree to such modifications unless you otherwise agree herein. Such modifications shall take effect when posted on our website. Modifications may include, but are not limited to, changes in the scope of available Commission Fees, commission amounts or percentages, payment procedures, Commission Fee payment schedules, and Affiliate Program rules. If any modification is unacceptable to you, your only recourse is to terminate this agreement, in which event you shall be entitled to your rights under the unmodified Agreement prior to the date of the applicable modification. Your continued participation in the Affiliate Program following our posting of any modification on our website will constitute binding acceptance of the change.

16. Disclaimers

We make no express or implied warranties or representations with respect to the Affiliate Program or any Abyss Creations Products and Services sold through the Affiliate Program (including, without limitation, WARRANTIES OF FITNESS, MERCHANTABILITY, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE). 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, including the tracking of information concerning Referred Customers during any period of interruption.

17. Relationship of Parties

You and Abyss Creations are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. 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 Affiliate Site or otherwise, that contradicts anything in this section.

18. Representations and Warranties

You hereby represent and warrant to us as follows:

- a) You have reviewed and understand this Agreement and agree to be bound by its terms.
- b) Your acceptance of this Agreement and participation in the Affiliate Program will not violate (i) any provision of law, rule, or regulation to which you are subject, (ii) any order, judgment, or decree applicable to you or binding upon your assets or properties, (iii) any provision of your by-laws or certificate of incorporation, or (iv) any agreement or other instrument applicable to you or binding upon your assets or properties.
- c) You are the sole and exclusive owner of the Affiliate Trademarks and have the power to grant to Abyss Creations the license to use such marks in the manner contemplated herein, and such grant will not (i) breach, conflict with, or constitute a default under any agreement or other instrument applicable to you or binding upon your assets or properties, or (ii) infringe upon any trademark, trade name, service mark, copyright, or other proprietary right of any third person or entity.
- d) You are not required to obtain consent, approval, or authorization of, or exemption by, or filing with, any governmental authority or any third party in connection with your entrance into this Agreement
- e) There is no pending or threatened claim, action, or proceeding against you, or any affiliate of yours with respect to the Affiliate Trademarks, and, to the best of your knowledge, there is no basis for any such claim, action, or proceeding.
- f) During the Term, you will not include in your Affiliate Site content that is, in our opinion, unlawful, harmful, threatening, defamatory, obscene, harassing, racially, ethically, or otherwise objectionable or are in violation of our Terms and Conditions or Acceptable Use Policy.
- g) You are at least eighteen (18) years of age.
- h) Each Referred Customer is valid, genuine, and unique and meets the criteria of a Qualified Purchase for generating a Commission Fee as provided in this Agreement.

19. Limitation of Liability

WE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, PROFITS, OR DATA, ARISING IN CONNECTION WITH THIS AGREEMENT OR THE AFFILIATE PROGRAM, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT AND THE AFFILIATE PROGRAM WILL NOT EXCEED THE TOTAL COMMISSIONS PAID OR PAYABLE TO YOU UNDER THIS

AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

20. **Indemnification**

You hereby agree to indemnify and hold harmless Abyss Creations 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 Affiliate Site, including, without limitation, its development, operation, maintenance and content therein not attributable to us.

21. **Confidentiality**

Each of the parties hereto agrees that all information including, without limitation, the terms of this Agreement, business and financial information, Abyss Creations and vendor lists, and pricing and sales information, shall remain strictly confidential and shall not be utilized for any purpose outside the terms of this Agreement except and solely to the extent that any such information is (a) already lawfully known to or independently developed by the receiving party, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from any third party any obligation of confidentiality to the discloser hereunder. Notwithstanding the foregoing, each party is hereby authorized to deliver a copy of any such information (a) to any person pursuant to a valid subpoena or order issued by any court or administrative agency of competent jurisdiction, (b) to its accountants, attorneys, or other agents on a confidential basis, and (c) otherwise as required by applicable law, rule, regulation, or legal process including, without limitation, the Securities Exchange Act of 1933, as amended, and the rules and regulations promulgated thereunder, and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

22. **Independent Investigation**

You understand that we may at any time (directly or indirectly) solicit Abyss Creations' relationships on terms that may differ from those contained in this Agreement. We may also solicit relationships with entities that operate websites that are similar to or compete with your Affiliate Site. You have independently evaluated the desirability of participating in the Abyss Creations' Affiliate Program and are not relying on any representation, guarantee, or statement other than as set forth in this Agreement

23. **Miscellaneous**

- a) **Governing Law.** The laws of the Commonwealth of Massachusetts will govern this Agreement, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in Middlesex County, Massachusetts and you irrevocably consent to the jurisdiction of such courts.
- b) **Assignment.** You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns
- c) **Waiver.** Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such a provision or any other provision of this Agreement.