

## **AFFILIATE MARKETING AGREEMENT**

This AFFILIATE MARKETING AGREEMENT (hereinafter referred to as the "Agreement") is entered into on the \_\_\_\_\_ by and between Solutions Afoot, LLC (hereinafter referred to as the "Company") and MARKETER (hereinafter referred to as the "Marketer").

In consideration of the mutual covenants, agreed-upon stipulations set forth below, and other valuable consideration, both undersigned parties agree as follows:

### **1. Definitions**

The following definitions govern the meanings of the terms used in this Agreement:

- A. "Company Marks" means any intellectual property owned by Company or that Company may come to own that is governed by trademark laws.
- B. "Customer" means an individual or entity who makes purchasing decisions regarding Product(s) or Marketed Service(s) provided by Company in the course of its business.
- C. "Marketed Service" means any service that the Company is in the business of providing to Customers.
- D. "Marketer" means a business entity that may acquire Products or information about Products or Marketed Services for the purpose of marketing.
- E. "Marketer Marks" means Marketer's trademarks, service marks, trade names, logos and other commercial designations.
- F. "Order" or "Orders" means a Company-created contract for the purchase of Product(s) or Marketed Service(s) by Customer(s).
- G. "Products" means those products that may be provided or sold by Company to Customers in the course of Company's business.
- H. "Project" means a marketing opportunity with a Customer who is not already an active or immediately prospective consumer of the Company's Products or Services and is not in any customer list kept by the Company.
- I. "Purchase" shall mean the purchase of Product or Marketed Service by a Customer.
- J. "Sale" means when all of the following occur:
  - i. Customer executes an Order;

- ii. Company receives the Order from Marketer or through work directly tracing from Marketer's work described herein; and
  - iii. Company accepts the Order.
- K. "Service" shall be the performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as an information database) that Company may approve Marketer to market.

## **1. License**

Subject to the terms and conditions of this Agreement, Company grants to Marketer, and Marketer accepts, an exclusive, royalty-free, limited and non-transferable license, ("License"), pursuant hereto, to use Company Marks to advertise, promote, market, demonstrate, offer to sell, and sell the Products and Marketed Services provided by the Company to Customers, during the term hereof, only for Marketer's performance of this Agreement. Upon termination of this Agreement, Marketer agrees that such license is revoked.

Duly limited by any restrictions to the contrary in this Agreement, the License is subject to the following conditions:

- A. Marketer shall not reproduce, modify or reverse engineer Products or any portion thereof without Company's prior written consent, and Marketer shall not sublicense the License.
- B. Any intellectual property generated by Marketer for purposes of performing under this contract that directly relates to the Company's Products or Marketed Services or the marketing thereof shall automatically become the Company's property.

This section supersedes any limitation or prohibition of licenses contained in the Non-Disclosure Agreement which is otherwise completely incorporated by reference to this Agreement and attached hereto as Exhibit 1.

## **2. Relationship of the Parties**

Marketer is an independent contractor of the Company, and this Agreement will not be construed to create any association, partnership, joint venture, employee, or agency relationship between Marketer and the Company for any purpose. Marketer has no authority to bind the Company and Marketer shall not make any agreements or representations on the Company's behalf without the Company's prior written consent.

Marketer will not be eligible to participate in any benefits offered by the Company to its employees and the company will not be responsible for withholding or paying any applicable state or federal taxes or insurance contributions from Marketer's compensation under this Agreement.

Marketer is responsible for, and shall indemnify the Company against, all such taxes or contributions, including penalties and interest. Any persons employed or engaged by Marketer in connection with its performance under this Agreement are exclusively Marketer's employees or contractors and Marketer is fully responsible for them and shall indemnify the Company against any claims made by or on behalf of any such employee or contractor.

**3. Marketer Duties**

- A. Marketer shall perform, at Marketer's own expense and using its best efforts, all following duties in its capacity as an independent contractor advertise, market, promote, demonstrate, offer to sell, and sell Products and Marketed Services to Customers.
- B. Use its best efforts to protect Company's confidential and proprietary information and intellectual property. This shall not limit the applicability of the Non-Disclosure Agreement, incorporated by reference to this Agreement and attached hereto as Exhibit 1.
- C. If Marketer receives Orders from Customers, promptly transmit all Orders executed by such Customers as Company directs or may otherwise instruct.
- D. Communicate to, receive communications from, send material to, and receive material from Company as necessary to perform its obligations under this Agreement.
- E. Not present itself as an employee of Company; not exceed the bounds of authority expressly granted by Company in this Agreement or otherwise.
- F. Comply with any and all applicable laws, rules, regulations, and executive directives in the performance of this Agreement and in accordance with all Company policies and procedures.

**4. Company Duties**

At its cost, unless otherwise expressly stated, Company shall, as follows:

- A. Prepare and distribute to Marketer any specific Product and Marketed Service marketing, advertising and/or promotional material, contracts and other documents in PDF format or any other format chosen solely by Company that Company has and wishes Marketer to use in its performance under this Agreement.
- B. Provide Marketer any necessary training regarding Company's procedures, prices, fees, policies and contracts.
- C. Inform Marketer of updates or changes in current Products, Marketed Services, programs, prices, policies, and contracts.

- D. Have sole discretion to issue refund to any Customer and credit any Customer account.
- E. Track new Customers and revenue generated from Marketer's performance under this Agreement and regularly send this information monthly to Marketer and as necessary to properly remunerate Marketer for its performance under this Agreement.
- F. Generate annual audits for Marketer and review all accounting to true up any/all monies owed to Marketer hereunder for one year after this contract is terminated.
- G. Comply with any and all applicable laws, rules, regulations and executive directives in the performance of this Agreement.

The Company shall not control the manner or means by which Marketer or Marketer's employees or agents perform Marketer's duties listed under Section 3 of this Agreement, including but not limited to the time and place Marketer performs these duties.

## **5. Status Change**

Marketer agrees to give Company prompt written notice (unless precluded by law or regulation) of any change or anticipated change its financial condition, business structure, or operating environment (for example, a material change in equity ownership or management or any substantive change to information provided to Company when Marketer applied to enter into the relationship). Upon notification of such change, or if Marketer fails to give notice of such change, Company may, at its sole discretion, terminate this Marketing Agreement on written notice to Marketer.

## **6. Compensation**

Marketer's general commission as an independent contractor under this Agreement will be based on all revenue generated directly by Marketer pursuant to this Agreement. Commission shall be paid monthly based on all revenue generated and received the previous month from Customers brought in by Marketer's performance under this Agreement. Marketer shall be compensated based on a percentage of the total revenue generated for all Customers, pursuant to the following thresholds:

- Affiliate: 10% commission on gross revenues up to \$6,000.00 total in commission per Project until Marketer has generated \$500,000.00 in gross revenue, at which point the Marketer will be considered a "Super Affiliate" and the next threshold shall apply
- Super Affiliate: 10% commission on gross revenues for the life of each Project

The rates stated in this section do not apply retroactively. Once Marketer reaches a new commission threshold, that new rate applies to all revenue generated thereafter by Marketer until

Marketer reaches the next threshold, whereby the next rate applies to all revenue generated thereafter.

If multiple Marketers work on the same Project, the commission for that Project will be divided among the Marketers who contributed to the Project as determined by the Company, in its sole discretion.

## **7. Tax**

Each party shall report, pay and be responsible for payment of all of its own respective local, state, and federal taxes.

## **8. Warranties**

Each party warrants that it has all the rights necessary to enter into this Agreement, and that all duties to be performed hereunder shall be performed in a competent, timely and workmanlike manner. THE WARRANTIES SPECIFICALLY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHERS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **9. Ownership of Property**

All rights, title and interest, including but not limited to possession and intellectual property rights in and to Products, documentation, customizations, software, programs, content materials, and all other property, including but not limited to intellectual property, will at all times remain exclusively owned by Company.

Marketer grants Company a limited, non-exclusive, non-transferable, royalty-free license to use and display Marketer's Marks solely for the purpose of Company's performance under this Agreement. Company will not take any action inconsistent with Marketer's ownership of Marketer Marks. Company Marks and Marketer Marks will collectively be referred to as "THE MARKS."

All Products, Documentation, Company Marks, Company's confidential information, Company's proprietary information, and Company's intellectual property, and all copies thereof must be returned to Company upon request by Company and may not be used by Marketer during the term of this Agreement except in accordance with the terms hereof. All Marketer confidential information, proprietary information and intellectual property and all copies thereof must be returned to Marketer upon request by Marketer and may not be used by Company during the term of this Agreement except in accordance with the terms hereof.

**10. No Adverse Action**

Marketer shall not engage in any action that adversely affects any Company Marks or other Company property. During the term of this Agreement and at all times thereafter, neither party will disparage, slander, libel, misrepresent, or injure the reputation of the other, directly or indirectly.

**11. Indemnification**

Marketer shall defend, indemnify, and hold harmless the Company, its affiliates, and their officers, directors, employees, agents, successors, and assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from:

- A. Bodily injury, death of any person, or damage to real or tangible personal property resulting from Marketer's acts or omissions; and
- B. Marketer's breach of any representation, warranty, or obligation under this Agreement.

The Company may satisfy such indemnity, in whole or in part, by way of deduction from any payment due to you.

**12. Non-Solicitation**

Marketer agrees that, during the term of this Agreement and for a period of one year following the termination of this Agreement, Marketer shall not employ or seek to employ any of the Company's personnel without written consent of the Company, which the Company may grant or withhold in its sole discretion.

**13. Miscellaneous Provisions**

- A. Marketer's rights under this Agreement are not property rights and, therefore, Marketer may not transfer them to another party or encumber them in any way. For example, Marketer may not sell Marketer's approval to market Company's Products or Services or Marketer's rights to use Company Marks.
- B. Both parties agree that the laws of North Carolina shall govern and be used to interpret and enforce all of Marketer's and Company's respective rights, duties and obligations arising from, or relating, in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement remain in full force and effect.
- C. This Agreement sets forth the entire understanding of the parties and supersedes any and all written or verbal agreements between the parties related to the subject matter hereof,

unless explicitly incorporated by reference into this Agreement. Any amendment to this Agreement must be in writing and signed by a duly authorized officer or representative of both parties.

- D. The relationship of the parties will at all times be one between independent contractors, and neither party will be, nor represent itself to be, an employee, agent, representative, or joint venture Marketer of the other, nor shall either party have the right or authority to assume or create any obligation on behalf of, or in the name of, the other or otherwise to act on behalf of the other.
- E. The terms and conditions of Orders and any other commercial transactions, if any, between Company and Customers are separate and independent of any agreements between Marketer and Company. Marketer has no authority other than is expressly granted by this Agreement. Without limiting the foregoing, Marketer has no authority to make any warranties or refunds.
- F. The parties consent to the jurisdiction and venue of Forsyth County, North Carolina and agree that all disputes between the parties may be litigated therein.

**14. Exclusivity**

Company is free to promote, demonstrate, offer to sell, sell and license Products and Marketer Services to any third party, including Customers and customers of Marketer, through itself or with the assistance of any third party. Marketer is free to advertise, promote, market, demonstrate, offer to sell, sell and license any Products or Marketed Services to any third party, including Customers and customers of Company. Company will not engage or retain any other marketer whilst this contract is valid and in effect. All Customers remain exclusively the commissionable to Marketer during the term of this Agreement.

**15. Transferability**

Company may transfer its rights, interests and obligations under this Agreement once without notice to Marketer to enable Company to transition these rights, interests, and obligations to an entity created for the purpose of performing under this Agreement. Thereafter, no party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party. Subject to the rights and limitations in this section, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**16. Termination**

This Agreement shall continue until either party terminates it pursuant to procedures stated hereafter in this section. Either party may terminate this Agreement for any reason by providing ninety (90) days written notice to the other party. If the Company terminates this Agreement, Marketer shall be entitled to any/all commissions owed hereunder, subject to all applicable

limitations in this section and Section 7 of this Agreement, if any Customers purchase Products or Marketed Services within 180 days after termination of this Agreement, unless Marketer materially breaches the Agreement. If either party fails to comply with a material term of this Agreement, the other party may terminate this Agreement immediately for cause via written notice to the non-compliant party.

Examples of a “material breach” by Marketer are if Marketer:

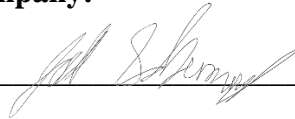
- A. Fails to perform its duties under Section 3 of this Agreement;
- B. Violates Sections 9, 10, or 12 of this Agreement;
- C. Repudiates this Agreement; or
- D. Makes any material misrepresentations to Company.

Marketer agrees that Company’s only obligation to Marketer regarding notice of termination is to provide the notice called for in this section of the Agreement and Company is not liable for any claims against Marketer or losses it may incur if Company terminates this Agreement with cause and proper notice.



**IN WITNESS WHEREOF**, and intending to be legally bound, the parties have executed this Agreement through their authorized representatives on the date first above written.

**Company:**

 \_\_\_\_\_ (Signature)

\_\_\_\_\_  
Josh Schuminsky \_\_\_\_\_ (Typed or Printed Name)

\_\_\_\_\_  
Solutions Afoot, LLC \_\_\_\_\_ (Company Name)

\_\_\_\_\_  
Founder/CEO \_\_\_\_\_ (Title/Position)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Date Signed)

**Marketer:**

\_\_\_\_\_  
\_\_\_\_\_ (Signature)

\_\_\_\_\_  
\_\_\_\_\_ (Typed or Printed Name)

\_\_\_\_\_  
\_\_\_\_\_ (Company Name)

\_\_\_\_\_  
\_\_\_\_\_ (Title/Position)

\_\_\_\_\_  
\_\_\_\_\_ (Date Signed)