



## Vinomis Affiliate Agreement

Version 1.1

**This Agreement** sets forth the terms under which affiliates of Vinomis Laboratories, LLC will promote and/or resell Vinomis products in exchange for commissions and other consideration as part of the Vinomis Affiliate Program (VAP).

1. **Parties:** This agreement is between Vinomis Laboratories, a Pennsylvania LLC (“we”, “us”, “our”) and the “Affiliate,” (“you”, “your” and “yours”) a person or business entity.
2. **Term:** The term of this agreement will begin upon accepting the terms by accepting the terms using the check box on the website. Either Vinomis or the Affiliate may terminate this Agreement at any time, with or without cause, by giving the other party written notice. The Affiliate is only eligible to earn commissions and bonuses occurring during the term.
3. **Notice:** For purposes of this agreement, email or written mail communication will be considered written notice.
4. **Affiliate ID, VAP-Code:** Once a person or company becomes an Affiliate, he/she/it will be issued a unique Affiliate VAP-CODE. All sales must be entered using the VAP-CODE as the “priority code” in the online ordering system or via telephone, in order for Vinomis to accurately track the Affiliate’s sales and commissions.
5. **Sales of Vinomis Product:** Vinomis grants the Affiliate a non-exclusive, non-transferable, revocable right to sell Vinomis products either by 1) purchasing product at a discount and re-selling to customers at NO GREATER THAN THE PUBLISHED LIST PRICE, 2) directly enter orders for customers online or via telephone, or 3) give customers your VAP-CODE for use when they purchase products online or via telephone.
  - a. You may not alter, modify, re-label, or change the Vinomis products in any way.
  - b. You are only entitled to sell, or use Vinomis marketing materials to the extent that you are within the Term of this agreement, and are in good standing of the Vinomis Affiliate Program.
6. **Sub-Affiliates:** You have the right to refer and sign up “sub-Affiliates” to the Vinomis Affiliate Program. The sub-Affiliate must expressly accept being one of your sub-Affiliates. Affiliates are eligible to receive commissions and bonuses for from sales of their sub-Affiliates. Should your sub-Affiliates further refer other Affiliates, you DO NOT receive compensation. The VAP is a “one-level” sub-Affiliate program.

7. **Commissions & Bonuses:** Commissions and bonuses will accrue per the current commission schedule. Affiliates will earn commissions on purchases by customers who place orders using their Affiliate VAP-CODE on the Vinomis website or when placing telephone orders. In addition, if the Affiliate signs up a sub-Affiliate, you will earn commissions on their sales, too. You will also accrue bonuses in addition to the commissions on highlighted products and programs, such as signing up new customer onto our Automatic Recurring Reorder (ARR) program, and signing up new sub-Affiliates. Affiliates do not accrue commissions on their personal purchases, shipping charges, sales to retailers, and certain specially priced promotional offers we may specify from time to time.
8. **Levels:** Commission rates are dependent on the cumulative annual sales of the Affiliate, and their sub-Affiliates. The current commission schedule lists the amount of sales needed to achieve and maintain each level, and to maintain the Affiliate's membership in the Vinomis Affiliate Program.
9. **Payment:** Payment of commissions will be made monthly via PayPal within 30 days of the end of each month. Upon request, paper checks can be mailed, or ACH deposits can be made directly to your bank account for a cost of \$1.00 per payment, which will be deducted from the accrued commission balance. Payments will not be made unless the balance in the Affiliate's account is greater than \$25. If the balance is less than \$25, the payment amount will roll over to the next month. If chargebacks or product returns occur, the commission for the respective sale will be debited from the Affiliate's account.
10. **Marketing:**
  - a. **Affiliate Center:** As an Affiliate, you have access to the online Affiliate Center, on the Vinomis website, which has a range of marketing and related materials including presentations, white papers, brochures, website graphics, reports, etc.
  - b. **Marketing Materials:** Affiliates may use graphics, text, and other marketing tools provided by Vinomis in print, website, and email marketing, provided that trademark and copyright notices are included.
  - c. **Affiliate's Website:** Affiliates may market Vinomis products on their personal websites, and link customers back to the Vinomis primary website ([www.vinomis.com](http://www.vinomis.com)).
    - i. You must follow all Copyright Laws that pertain to your website for any information contained on your website. Vinomis will not be held responsible or liable in the event of the Affiliate website containing a breach of copyright.
    - ii. Affiliates may link to various pages on the Vinomis website using HTML code (text and graphics) provided on the Affiliate Center web pages.

- iii. The maintenance and updating of your website will be your responsibility. Vinomis updates its information often, and it will be necessary for you to update the content of your website regularly to maintain consistency and accuracy.
- iv. We can monitor your website at any time to determine if you are following the terms and conditions of this Agreement, and to notify you of changes we feel you should make to remain in compliance. Failure to comply is grounds for membership termination.

**11. Restrictions:** You are prohibited from engaging in any of the following types of activities that are listed below.

- a. Affiliates may not use unsolicited commercial email (or SPAM) in conjunction with the sale Vinomis' products. UCE is defined as mass email sent to recipients who have not requested it (opted-in) and with whom the Affiliate has no prior relationship. Any such use may result in the termination of an affiliate account and forfeiture of any payment due.
- b. Creating a website that copies, resembles or otherwise creates the impression that your website is a Vinomis website.
- c. Purchasing or bidding for placement of "Vinomis", "Vinomis Laboratories", "Vindure", "Vindure 900" or any variation or misspelling thereof, within any third party search engine or portal, including but not limited to Aol.com, Yahoo.com, Google.com, Overture.com, and Lycos.com
- d. Submitting or encouraging others to submit orders to Vinomis in bad faith, such as placing orders with the intent to return products after Vinomis has paid a commission on the order.
- e. Employing any technology, including pop-ups, pop-unders and pop-overs, to serve messages to shoppers on the Vinomis website, designed to divert them to your website.
- f. Issuing any Press Release, announcement that uses Vinomis' name or trademarks, without prior written consent by Vinomis.
- g. Making any representations or warranty concerning Vinomis' products except those expressly stated by Vinomis.

**12. Modification:** We may modify any of the terms and conditions contained in this Agreement, at any time and in our sole discretion, by posting a change notice or a new agreement on the Vinomis website. Modifications may include, for example, changes in the scope of available commissions, commission and bonus schedules, payment procedures and program rules. If any modification is unacceptable to you, you may terminate this agreement.

**13. Representations and Warranties:** Vinomis makes no express or implied representations or warranties regarding Vinomis Laboratories or our products. **The Affiliate Represents and Warranties the following:**

- a. This Agreement has been duly and validly executed and delivered to you and constitutes your legal, valid and binding obligation.
- b. You have the full right, power, an authority to enter into and be bound by the terms of this Agreement, without the approval or consent of any other party.
- c. You will not advertise or promote your website or Vinomis and its products for any purpose that is infringing, defamatory, obscene, offensive or otherwise violates any law or right of any third party.

**14. Limitation of Liability:** We will not be liable for indirect, special or consequential damages, or any loss of revenue or profits, arising in connection with this Agreement or the 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 Program will not exceed the total referral fees paid or payable to you under to this Agreement.

**15. No Employment:** Affiliates are deemed to be independent contractors with respect to this Agreement, and nothing contained in this Agreement shall be deemed or construed as creating any partnership, joint venture, employment, agency, fiduciary or other similar relationship. No employment relationship is created by this agreement. Affiliates may not represent that they are Vinomis employees or agents.

**16. Indemnification:** In the event of a breach of this Agreement or any applicable laws, you agree to indemnify and hold harmless Vinomis, its employees, representatives, agents, and affiliates. All reasonable costs for such proceedings will be borne by the Affiliate.

**17. Miscellaneous:** This Agreement will be governed by the laws of the United States and the State of Pennsylvania, 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 Pittsburgh, Pennsylvania, and you irrevocably consent to the jurisdiction of such courts.

- a. 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.
- b. 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 provision or any other provision of this Agreement.

- c. If any provision of this Agreement is held to be invalid or unenforceable, that provision shall be eliminated or limited, and the remainder of this Agreement shall have full force and effect.