

## AFFILIATE (Contractor) TERMS & CONDITIONS

BY SUBMITTING AN APPLICATION TO OUR AFFILIATE PROGRAM, YOU ARE CONSENTING TO THIS AFFILIATE AGREEMENT, WHICH ARE THE TERMS AND CONDITIONS OF OUR AFFILIATE PROGRAM.

In consideration of DARMILL GROUP, LLC dba Vino & Vision (“Company”) maintaining an affiliate program for its products, including, but not limited to Vino & Vision programs (“Affiliate Program”) and you (“Affiliate”) desiring to participate in the Affiliate Program, it is agreed as follows:

### 1. ENROLLMENT

In order to enroll in the Affiliate Program, Affiliate must complete an application by completing this Agreement. Applicant represents and warrants that, as of the date the application is submitted, all information provided to the Company is current and accurate. Applications will be reviewed by the Company and Company reserves the right to deny entrance into its Affiliate Program to any applicant that is deemed unqualified for any reason, at Company’s sole and absolute discretion.

To begin the enrollment process, Applicant will complete this agreement and pay the required monthly payments. Company may approve or reject Applicant’s application in its sole discretion. Company may cancel Applicant’s application if Company determines that it is unsuitable for the Affiliate Program, including, but not limited to, if your website or social media channels:

- Promote sexually explicit materials;
- Promote violence;
- Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age;
- Promote illegal activities;
- Incorporate any materials which infringe or assist others to infringe on any copyright, trademark or other intellectual property rights or to violate the law;
- Include “Vino & Vision Affiliate Associate” or variations or misspellings there of in its domain name;
- Are otherwise in any way unlawful, harmful, threatening, defamatory, obscene, harassing, or racially, ethnically or otherwise objectionable to us in our sole discretion;
- Contain software downloads that potentially enable diversions of commission from other affiliates in our program; and
- Fail to abide by FTC rules related to disclosure.

### 2. TERM

The term of this Agreement shall be exactly 1 year from the date of signing. At the end of the term, this Agreement will automatically renew for an additional 1-year term unless terminated by either party in accordance with Paragraph 3.

### 3. TERMINATION

Company or Affiliate may terminate this Agreement for any reason by providing 7 days written notice to the other party; the date this notice is sent will be the "Termination Date". Failure to comply with the terms of this Agreement will result in immediate termination of this Agreement by the Company and forfeiture by Affiliate of any accrued, unpaid commissions. Company shall pay any pending commissions owed to Affiliate through the Termination Date, if a termination of this Agreement occurs for any reason other than a violation of this Agreement on the part of the Affiliate. Upon termination by either party, Affiliate's limited license to use the intellectual property of Company for the purpose of promoting the products and/or services offered through the Affiliate Program, will cease as of the Termination Date.

### 4. PROMOTIONAL MATERIALS

Upon acceptance of Affiliate's application, Company will grant access to Affiliate to the Affiliate Program Facebook Group ("Facebook Group"). Within the Facebook Group, Company shall make available to Affiliate certain promotional graphics, button links, or text material for use on the Affiliate social media and website (the "Promotional Materials"). Affiliate shall display the Promotional Materials on Affiliate's website prominently and as Affiliate sees fit, provided that the manner of display shall be subject to the terms and conditions of this Agreement. Affiliate shall also include a link from the Promotional Materials to Company's website, as specified by the Company.

### 5. AFFILIATE CONTENT

Affiliate is permitted to create materials to promote the Affiliate Programs and Company's products ("Affiliate Content"). This may include graphics, video or text materials. All Affiliate Content must abide by the Vino & Vision Affiliate Associate Brand Integrity and Style Guidelines. At any time, if Affiliate is uncertain of whether Affiliate Content is compliant with Brand Integrity and Style Guidelines, Affiliate may email support@darmill.com. If, at any time, Company, in its sole discretion, determines that Affiliate Content is not compliant with Brand Integrity and Style Guidelines, or is inappropriate in any way, Affiliate agrees that Affiliate will remove such content as soon as possible. All requests for removal of Affiliate Content will be directed to Affiliate at the email address used during the registration.

### 6. USE OF PROMOTIONAL MATERIALS

The Affiliate's use and display of the Promotional Materials on the Affiliate's website shall conform to the following terms, conditions and specifications:

- Affiliate may only use the Promotional Materials for the purpose of promoting Company's website (and the products and services available thereon), and for linking to Company's website.

- Affiliate will not alter, add to, subtract from, or otherwise modify the Promotional Materials provided by Company. If Affiliate wishes to alter or otherwise modify the Promotional Materials, Affiliate must obtain prior written consent from the Company for such alteration or modification. Such requests may be directed to support@darmill.com.

- The Promotional Materials will be used to link only to Company's website, to the specific web site page specified by Company.

## 7. PROMOTION RESTRICTIONS

Affiliate is free to promote Affiliate's own web sites and social media channels, but any promotion that mentions Company could be perceived by the public or the press as a joint effort. Affiliate should know that certain forms of advertising are always prohibited by Company. For example, advertising commonly referred to as "spamming" is unacceptable to Company and could cause damage to Company's name and reputation. Other generally prohibited forms of advertising include the use of unsolicited commercial email (UCE), postings to non-commercial channels and cross-posting to multiple channels at once.

In addition, Affiliate may not advertise in any way that effectively conceals or misrepresents Affiliate's identity, domain name, or return email address. Affiliate may use email marketing to promote Company so long as the recipient is already a subscriber of Affiliate, and recipients have the option to remove themselves from future mailings, which is also known as unsubscribing. Also, Affiliate may post to social media channels to promote Company so long as the channel specifically welcomes commercial messages. Affiliate is liable for determining if a social media platform accepts commercial messages.

At all times, Affiliate must clearly represent itself and its web sites as independent from Company and fully disclose its status as Affiliate. If it comes to the attention of Company that Affiliate is spamming, Company will consider that cause for immediate termination of this Agreement and Affiliate's participation in the Affiliate Program. Any pending balances owed to Affiliate will not be paid if this Agreement is terminated due to such unacceptable advertising or solicitation.

Affiliates that, among other keywords, bid in their Pay-Per-Click campaigns on keywords such as DARMILL GROUP, VINO & VISION Affiliate Associate 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 Company's website, will be considered trademark violators, and will be banned from the Affiliate Program. Company will do everything possible to contact Affiliate prior to the ban. However, Company reserves the right to expel any trademark violator from the Affiliate Program without prior notice, and on the first occurrence of such PPC bidding behavior.

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 Company's site (i.e., no page from Company's site or

any of Company'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 Company site in IFrames, hidden links and automatic pop ups that open Company'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.

#### 8. LIMITED LICENSE TO USE INTELLECTUAL PROPERTY

Company grants Affiliate a non-exclusive, non-transferable, revocable right to (i) access Company's site through HTML links solely in accordance with the terms of this Agreement and (ii) solely in connection with such links, to use Company's Affiliate Program logos, trade names, trademarks, and similar identifying material (collectively, the "Licensed Materials") that Company provides to Affiliate or authorize for such purpose. Affiliate is only entitled to use the Licensed Materials to the extent that Affiliate remains a member in good standing of the Affiliate Program. Affiliate agrees that all uses of the Licensed Materials will be on behalf of Company and the good will associated therewith will inure to the sole benefit of Company.

Affiliate agrees not to use the Licensed Materials in any manner that is disparaging, misleading, obscene or that otherwise portray Company in a negative light. Company reserves all of its respective rights in the proprietary materials covered by this license. Other than the license granted in this Agreement, Company retains all right, title, and interest to its respective rights and no right, title, or interest is transferred to Affiliate.

#### 9. LIMITED LICENSE TO USE THE PROMOTIONAL MATERIALS

Upon acceptance into the Affiliate Program, Company grants the Affiliate a revocable, non-exclusive, worldwide, royalty-free license to use the Promotional Materials provided by Company during the term of this Agreement. The Affiliate may display these materials on the Affiliate's website or social media for the sole purpose of participating in the Affiliate Program. The Affiliate is prohibited from distributing, reproducing, modifying, amending, or creating derivative works of the Promotional Materials.

#### 10. EFFECT OF TERMINATION ON LICENSES GRANTED

Upon termination by either party, Affiliate's limited license to use the Licensed Materials and Promotional Materials for the purpose of promoting the products and/or services offered through the Affiliate Program, will cease as of the Termination Date. Upon the Termination Date, Affiliate must immediately cease any use of the Licensed Material and Promotional Material. If Affiliate fails to remove the Licensed Materials or Promotion Material from previously published content after the Termination Date, no commissions on purchases made through Affiliate's links after the Termination Date will be due to Affiliate.

## 11. COMMISSION

- Affiliate will be paid a referral fee ("Commission"), for each customer who completes a purchase on the Company website using the link assigned ("Link"), in accordance with the schedule set forth in Paragraph 7(b). The Affiliate shall be paid Commissions only on sales that are tracked through the Company's commission tracking system.

- The Commission rate varies and is dependent upon the item sold. Please refer to the Vino & Vision Associate Commission program for current commission rates.

- Company reserves the right to change and amend the commission rate structure at any time, in the Company's sole discretion.

- Commissions will be paid to the Affiliate in accordance with the following schedule:

- All commissions will be paid no later than the end of the month following the purchase. For example, if a purchase is made on June 20th, the payment will be made prior to July 31st.

- Commissions will be adjusted for orders that are cancelled, returned, or where payment is otherwise refunded to the purchaser. All payments will be made to the Affiliate's PayPal account or company's affiliate pay system unless other arrangements are approved by the Company.

- If a cancellation or return occurs after Company has paid the commission, the corresponding amount will be deducted from the next payment made to Affiliate.

## 12. CUSTOMER SERVICE

The Company will handle all aspects of customer service for customers who purchase through the Affiliate's efforts including customer inquiries, product orders, customer billing and collection, and product shipment/delivery. Company reserves the right to change the Company's policies and procedures, pricing structure, add or cancel any special offers, discontinue products or services, or change the terms under which products or services are offered at any time, without any advance notice to the Affiliate or customers purchasing through the Affiliate Link.

### 13. AFFILIATE INTELLECTUAL PROPERTY

The Affiliate grants Company a revocable, non-exclusive, worldwide, royalty-free license to use the Affiliate's trademarks, trade names, service marks, business names, web page titles, slogans, logos, and copyrighted materials for the purposes of promoting, advertising, announcing, or marketing the Affiliate's participation in the Affiliate Program. The Company has no obligation to announce, advertise, market, or promote the Affiliate's participation in the Company Affiliate Program, but reserves the right to do so at its sole discretion.

### 14. AFFILIATE'S OBLIGATIONS

- Affiliate may not create or design its website or any other website that Affiliate operates, explicitly or implied, in a manner which resembles Company's website. Affiliate may not design its website in a manner that leads customers to believe Affiliate is Company or any other affiliated business.
- As a member of the Affiliate Program, Affiliate will have access to the Vino & Vision Associate Commission program. Here Affiliate will be able to obtain links/URLS (that provides for links to web pages within the Company web site). If Affiliate fails to use a link from Company, Company is not responsible for making payment to Affiliate for any commissions that Affiliate alleges are due from Affiliate's failure to follow procedure.
- Company reserves the right, at any time, to review Affiliate's placement and approve the use of Affiliate's links and require that Affiliate change the placement or use to comply with the guidelines provided through the Affiliate Program.
- The maintenance and the updating of Affiliate's site lie solely with Affiliate. Company may monitor Affiliate's site as necessary to make sure that it is up-to-date and to notify Affiliate of any changes that could enhance Affiliate's performance.
- It is entirely Affiliate's responsibility to follow all applicable intellectual property and other laws that pertain to website, social media channels, and content. Affiliate must have express permission to use any person's copyrighted material, whether it be a writing, an image, or any other copyrightable work. Company will not be responsible (and Affiliate will be solely responsible) if Affiliate uses another person's copyrighted material or other intellectual property in violation of the law or any third-party rights.

### 15. COMPANY RIGHTS AND OBLIGATIONS

- Company reserves the right to monitor Affiliate's site at any time to determine if Affiliate is following the terms and conditions of this Agreement. Company may notify Affiliate of any changes to Affiliate's site that should be made, or to make sure that Affiliate's links to Company's web site are appropriate and to notify Affiliate further of any changes that should be made. If Affiliate does not make the changes suggested by Company, Company reserve the right to terminate Affiliate's participation in the Affiliate Program.

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

#### 16. DISCLAIMER

COMPANY MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING COMPANY SERVICE AND WEB SITE OR THE PRODUCTS OR SERVICES PROVIDED THEREIN, ANY IMPLIED WARRANTIES OF COMPANY ABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, COMPANY MAKES NO REPRESENTATION THAT THE OPERATION OF ITS SITE WILL BE UNINTERRUPTED OR ERROR FREE, AND COMPANY WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.

#### 17. WARRANTIES

- Affiliate represents and warrants that this Agreement has been duly and validly executed and delivered by Affiliate and constitutes Affiliate's legal, valid, and binding obligation, enforceable against Affiliate in accordance with its terms ; Affiliate represents, warrants and covenants that Affiliate has full authority to enter into this Agreement and has or will obtain, during all times relevant hereunder, all of the necessary consents, rights, licenses, clearances, releases or other permissions to lawfully consummate the transactions and lawfully discharge, in all material respects, each and every of Affiliate's obligations or duties set forth hereunder, whether performance is due now or hereafter during the Term. The Affiliate represents warrants and covenants that its website does not and will not contain any materials that are illegal and that the Affiliate's site is not operated for an illegal purpose or in an illegal manner.

- EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED THROUGHOUT THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED.

#### 18. LIMITATION OF LIABILITY

- IN NO EVENT SHALL THE COMPANY HAVE ANY LIABILITY TO AFFILIATE FOR ANY LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE; AND

- IN NO EVENT SHALL THE COMPANY'S LIABILITY EXCEED THE FEES PAID UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY.

#### 19. INDEMNIFICATION

The Affiliate hereby indemnifies and holds harmless the Company, its officers, directors, employees, contractors, affiliates, agents, successors and assigns from and against any and all claims, liabilities, damages, actions, causes of action, suits, threats, demands, settlements, including all costs and attorney fees related thereto, that the Company may incur and which are based in whole or in part upon (a) the Affiliate's participation in the Affiliate Program, (b) any claims that any of the Affiliate trademarks and other intellectual property and proprietary material infringe upon the rights of any third party, (c) the Affiliate breached of any term, covenants, condition, representation or warranty contained in this Agreement or any policies of participation in the Affiliate Program, or (d) any claim related directly or indirectly to Affiliate's use, operation or the content of the Affiliate's website.

## 20. 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.

## 21. STATUS

Affiliate agrees that Affiliate is an independent contractor, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, or employment relationship between Affiliate and Company. Affiliate has no authority to make or accept any offers or representations on Company's behalf. Affiliate will not make any statement, whether on Affiliate's website or social media channels, that reasonably would contradict anything in this Section.

## 22. EFFECT OF HEADINGS

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

## 23. MODIFICATION

Company may modify any of the terms and conditions in this Agreement at any time in its sole discretion. In such event, Affiliate will be notified by email. Modifications may include, but are not limited to, changes in the payment procedures and Affiliate Program rules. If any modification is unacceptable to Affiliate, Affiliate's only option is to end this Agreement in accordance with Paragraph 3. Affiliate's continued participation in the Affiliate Program following the posting of the change notice or new Agreement on Company's site will indicate Affiliate's acceptance to the changes.

## 24. ENTIRE AGREEMENT; WAIVER

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No waiver of any of the provisions of this Agreement shall be deemed, or



shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

#### 25. NEUTRAL CONSTRUCTION

This Agreement was prepared by Company and/or its counsel. It is expressly understood and agreed that this Agreement shall not be construed against Company merely because it was prepared by its counsel; rather, each provision of this Agreement shall be construed in a manner which is fair to both parties.

#### 26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### 27. ASSIGNMENT

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.

#### 28. NOTICES

All written notice under this Agreement may be provided via email, as follows:

To Affiliate at the email address provided on the application form completed by Affiliate at the time of enrollment.

To Company, at support@darmill.com.

Any party may change its email address for purposes of this paragraph by giving the other parties written notice of the new email address.

#### 29. GOVERNING LAW; VENUE

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Missouri as applied to contracts that are executed and performed entirely in Missouri. The exclusive venue for any court proceeding based on or arising out of this Agreement shall be St. Louis County, Missouri.

#### 30. RECOVERY OF LITIGATION EXPENSES

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

### 31. SEVERABILITY

If any term, provision, covenant, or condition of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Questions about this Affiliate Agreement? Email us at [support@darmill.com](mailto:support@darmill.com)

May 17, 2022