

## **Affiliate Agreement**

This Agreement is entered into by Birch Hill Happenings Aromatherapy LLC (hereinafter referred to as "BHHALLC" or "we") and the Affiliate (hereinafter referred to as "Affiliate" or "you" or "your"), collectively referred to as "the Parties". This Agreement sets forth the terms and conditions of the Affiliate Program (or "Program") at [www.birchhillhappenings.com](http://www.birchhillhappenings.com), and constitutes a binding agreement between the Parties.

For purposes of this Agreement, "website" means the World Wide Web site located at the URL [www.birchhillhappenings.com](http://www.birchhillhappenings.com), or the website identified by you in your Affiliate Application.

### **1. Qualifications For Enrollment in the Program**

You must be a resident of the United States, its territories or Canada in order to apply to participate in the BHHALLC Affiliate Program and to enter into this Agreement.

All applications for the BHHALLC Affiliate Program will be reviewed and your website(s) and business model will be reviewed before final approval to ensure compliance with BHHALLC's high standards. In order to participate in the BHHALLC Affiliate Program, your website must meet BHHALLC standards, including the display of a clear Privacy Policy. Websites that are unsuitable for the BHHALLC Program include those that: promote sexually explicit materials, promote violence, discriminate based on race, sex, religion, nationality, disability, sexual orientation, age or which otherwise promote illegal activities or activities that BHHALLC in its discretion determine at any time are unacceptable.

### **2. Term of Agreement and Cancellation**

Either Party may cancel this Agreement at any time, and for any reason, and shall provide the other party with cancellation notice by email. Notification shall be made to BHHALLC at [affiliate@birchhillhappenings.com](mailto:affiliate@birchhillhappenings.com). Notification shall be made by BHHALLC to the email address provided by you in your Affiliate Application.

Upon the termination of this Agreement by either Party, you will immediately cease use of, and remove from your site, all links to BHHALLC's website, and all BHHALLC trademarks, trade dress, and logos, and all other materials provided by or on behalf of BHHALLC to you in connection with the Program. You are eligible to earn commissions only on sales of products that occur during the term of the Agreement, and referral fees earned through the date of termination will remain payable only if the related orders are not canceled or returned. We may withhold your final payment for a reasonable time to ensure that the correct amount is paid.

### **3. Commissions**

BHHALLC shall pay you a commission of 10% of qualifying sales, which shall specifically exclude any amounts attributable to shipping and handling. Checks will be issued in US Dollars on or about the 15th of each month for qualifying commissions of \$50.00 or more, and will be mailed to you at the address stated in your Affiliate Application. However, if the commissions payable to you for any month are less than \$50, we will hold payment until the total amount due is at least \$50, or (if earlier) until this Agreement is terminated.

In calculating commissions, we will deduct the corresponding referral fee from your next quarterly payment if a product that generated a referral fee is returned by the customer or if payment is not received, such as when payment is made by check or money order. If there is no subsequent payment due to you, we will send you a bill for the referral fee.

### **4. Product Purchases By Affiliate**

You may not purchase products during sessions initiated through the affiliate links on your website for your own use for resale or commercial use of any kind. This includes orders for customers or on behalf of customers or orders for products to be used by you or your friends, relatives, or associates in any manner. Such purchases may result (in our sole discretion) in the withholding of commissions or the termination of this Agreement.

### **5. Breach**

In the event that you breach or terminate this Agreement in bad faith, any accrued and payable commissions owing to you shall be forfeited, and BHHALLC shall not be obligated to pay any commissions to you.

You may not quote pricing of any of the products listed on our price sheets/lists or on our website, as our products and pricing can change without notice at any time.

### **6. Indemnification.**

Affiliate shall indemnify BHHALLC and hold harmless BHHALLC and its owners, associates, employees, contractors and other affiliates from any claim, damage, lawsuit, action, complaint or other costs arising out of any breach of this Agreement or any other agreement between the Parties. Affiliate shall also indemnify and hold harmless BHHALLC for any damage, loss or other costs arising out of the use or misuse by Affiliate of any promotional materials provided by BHHALLC.

## **7. Confidentiality and Privacy**

The Parties agree that any information gained as a result of this Agreement that is not available to or accessible by the shall be considered “Confidential Company Information” and will not be used by either Party in any way other than the fulfillment of this Affiliate Agreement, nor shall it be disclosed to any other third party, person or company without the other Party's written permission.

## **8. Taxes and Responsibilities to IRS**

You must supply a valid Federal Tax ID number or if you are a sole proprietor, include your social security number in the Federal Tax ID form field in the application. You are responsible for reporting your earnings from the affiliate program. BHHALLC will report your earnings in accordance with the IRS regulations for such earnings. We do not withhold any local, state or federal taxes from your commission payments. That is solely your responsibility to report and pay these earnings.

## **9. Entire Agreement**

The Parties acknowledge that this Agreement is the full, complete and correct understanding of the Parties, and that no other communication shall have any force or effect with respect to this Agreement. We may modify any of these Terms and Condition within this Agreement, at any time and in our sole discretion, and you shall be notified of such changes by posting of such changes at our website. If any modification is unacceptable to you, your only recourse is to terminate from this Agreement and Program.

## **10. 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 our site. Modifications may include, for example, changes in the scope of available referral fees, referral fee schedules, payment procedures, and Program rules. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON OUR SITE WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.

## **11. Warranty**

BHHALLC makes no guarantees of the ability of the affiliate program to generate income for the affiliate. BHHALLC is exempt for all warranty, including any revenue earned, traffic generation and functionality of the affiliate program.

## **12. Limitations of Liability**

BHHALLC will not be liable for indirect, special 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 such damages. In no event shall BHHALLC accumulate liability to you arising out of or related to this Agreement, whether based in contract, negligence, strict liability, or other legal or equitable theory, exceed the total commission fees paid to you under this agreement.

## **13. Identifying Yourself as an Affiliate**

You may not issue any press release with respect to this Agreement or your participation in the Affiliate Program, and you agree that such action may result in your termination from the Program. In addition, you may not in any manner misrepresent or embellish the relationship between us and you, or express or imply any relationship or affiliation between us and you or any other person or entity except as expressly permitted by this Agreement, including by expressing or implying that BHHALLC supports, sponsors, endorses, or contributes money to any charity or other cause.

## **14. Limited License**

We grant you a nonexclusive, revocable right to use graphic images and text as provided by BHHALLC for which we grant express permission, solely for the purpose of identifying your site as a Program participant and to assist in generating Product sales. You may not modify the graphic image or text, or any other of our images, in any way. We reserve all of our rights in the graphic image and text, any other images, our trade names and trademarks, and all other intellectual property rights. We may revoke your license at any time by giving you written notice.

## **15. Responsibility for Your Site**

You will be solely responsible for the development, operation, and maintenance of your site and for all materials that appear on your site. For example, you will be solely responsible for: the technical operation of your site and all related equipment, creating and posting Product descriptions on your site and linking those descriptions to our catalog, the accuracy and appropriateness of materials posted on your site (including, among other things, all Product-related materials), ensuring that materials posted on your site do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights), ensuring that materials posted on your site are not libelous or otherwise illegal, ensuring that your site accurately and adequately discloses, either through a privacy policy or otherwise, how you collect, use, store, and disclose data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers.

We disclaim all liability for these matters. Further, you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, attorneys' fees) relating to the development, operation, maintenance, and contents of your site.

## **16. Relationship of Parties**

The Parties understand and acknowledge that they 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 site or otherwise, that reasonably would contradict anything in this Section.

## **17. Limitation of Liability**

We will not be liable for indirect, special, or consequential damages (or any loss of revenue, profits, or data) 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 this Agreement.

## **18. Disclaimers**

We make no express or implied warranties or representations with respect to the Program or any products sold through the Program (including, without limitation, warranties of fitness, merchantability, noninfringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, we make no representation that the operation of our site will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

## **17. Independent Investigation and Due Diligence**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEB SITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEBSITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE AFFILIATE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

## **18. Governing Law**

The Parties agree that this Agreement shall be governed by the laws of the State of Minnesota without reference to rules governing choice of laws. You agree that while you are a BHHALLC Affiliate, you will comply with all laws, ordinances, rules and regulation, orders, licenses, permits or other requirements of any governmental authority that has jurisdiction over you, whether those laws are now in effect or later come into effect while you are an Affiliate. You agree to comply with all applicable laws (Federal, State or otherwise). Including any applicable laws governing marketing by e-mail, including the CAN-SPAM Act of 2003 and other Anti-spam laws.

If you are found in violation of any law, you will be considered in breach of this Agreement, and your affiliate account will immediately be terminated and all commissions forfeited.

Your submission of the Affiliate Application constitutes acceptance of Terms and Conditions of this Affiliate Agreement.

## **19. Miscellaneous**

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. 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.