

## **SYMI,INC. Affiliate Contract**

**THIS IS A LEGAL AGREEMENT BETWEEN YOU AND SYMI,INC. YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS.**

This agreement contains the complete terms and conditions between SYMI,INC, a Massachusetts corporation, (“Us”) and you, the applicant (“You”), regarding your application to participate in the SYMI,INC Affiliate Program (the “Affiliate Program”).

Upon our acceptance of your application and execution of this agreement by You, or a duly authorized representative of yours, in the place provided below, this will be a legally binding agreement between You and SYMI,INC.

**1. Enrolling in the Affiliate Program.** To apply for participation in the Affiliate Program, you must properly complete an Affiliate Program application and submit the application to us via our website, mail or fax.

We will review the application and will notify you of our decision whether to accept the application or reject it. We will reserve the right to accept or reject the application at our sole discretion.

An application will be automatically rejected if it is submitted from an entity that promotes any of the following :

- Promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Promotes sexually explicit materials
- Promotes violence
- Promotes unlawful activities
- Violates intellectual property rights

If, at later time after the application is accepted you violate any provisions, violate any laws, engage in any unethical, immoral or other activities which SYMI,INC finds immoral, antithetical, or otherwise not in accordance with what SYMI,INC deems to be good business practices, SYMI,INC reserves the absolute right in its sole discretion to terminate this agreement.

**2. Exclusive Musical Instrument Buyer.** Subject to the terms and conditions set forth below, SYMI,INC shall be the exclusive Buyer of Musical Instruments purchased by the Applicant or any of your Affiliates. You agree that you will not , directly or indirectly, purchase used Instruments on your own behalf or on the behalf of anyone else and your purchases shall exclusively be on behalf of SYMI,INC. Any exceptions to our requirement of exclusivity on the behalf of SYMI,INC will be granted only in writing after a formal request has been made. Any violation of exclusivity will terminate this Agreement immediately.

**3. Affiliate Commissions.** On a monthly basis Affiliates will be paid a \_\_\_\_\_% commission based on total monthly purchases, less any other chargebacks or costs related to the merchandise.

Within approximately 30 days following the end of each calendar month, SYMI,INC will send you a check based on purchases processed during that calendar month, less returns, Paypal chargebacks (**The prepaid commission portion only**) and miscellaneous adjustments.

The Affiliates will have a checkbook in their possession for purchases of Music Instruments only, and any fraud or larceny will automatically terminate this Agreement, and commissions will be held till resolution.

**4. SYMI,INC Search Engine Placement.** SYMI,INC recognizes the need for affiliates to promote the SYMI,INC Affiliate Program through search engine placement. However SYMI,INC reserves exclusive rights to the advertising of our trademarked company name within all pay-for-placement and all other search engines.

These names include: **SYMI,INC / SYMI.COM / SYMICOM / SYMI.NET / MUSICMANIA,INC / SYMI.ORG / SELLYOURMUSICALINSTRUMENTS.COM** or any similar names used in the course of business, any trademarks, symbols, signage or other materials of any type of media used to promote, advertise, sell, promote business, attract business or otherwise used at anytime by SYMI,INC. is the exclusive property of SYMI,INC.

Nothing contained within this agreement in any way authorizes directly or indirectly the use of names, symbols, or images employed by or used by SYMI,INC. Said items remain the sole and exclusive use of SYMI,INC.

Violation will be cause for Affiliate's immediate termination and any unpaid commissions will be unearned, disallowed and/or charged back.

**5. Indemnification.** You agree that You will be solely responsible for, and that you will defend, indemnify and hold us and our officers, directors, agents, employees and representatives harmless from and against, any and all claims, suits, damages, losses, liabilities, obligations, penalties, and expenses, including legal fees and expenses, related to or based on the development, operation and maintenance of your site (\_\_\_\_\_), including all materials that appear on your site; the accuracy and propriety of all materials that appear or that are used in the course of your business, including your site; the sale or offering for sale, use or consumption of any products on your site; and ensuring the materials posted on your site do not violate or infringe upon the rights of any third party and are not libelous or otherwise illegal.

**6. Term.** The “Term” of this agreement will began upon our acceptance of your program application and will end on the date this agreement is terminated by either party.

Either You or SYMI,INC may terminate this agreement at any time, with or without cause, for any reason whatsoever, by giving the other party two days’ written notice of termination.

Upon the termination of this agreement for any reason, You will immediately cease use of and remove your site, all links and licensed materials and any other names, marks, symbols, copyrights, logos, fanciful and other characters, designs, representations, figures, drawing, photographs, ideas or proprietary designations or properties owned, developed, licensed or created by us and/or provided by or on behalf of us to You pursuant to this agreement or in connection with the Program. You will not receive any fees on product sale occurring following the end of the Term, and fees earned thru the end of the Term 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.

**7. Modification.** We may modify any of the terms and conditions contained in this Affiliate Agreement, at any time and at our sole discretion, by posting a change notice or new agreement on our site. Modifications may include, for example, changes in the fee schedule, payment procedures and Program rules. **IF ANY MODIFCATIONS ARE 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 THIS CHANGE.**

**8. 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 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 Affiliate commission fees paid or payable to You under this agreement. The affiliate must maintain insurance and agrees to have a insurance policy in terms acceptable to this agreement and SYMI,INC.

**9. 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.

**10. Independent Investigation.** YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, HAVE HAD AN OPPORTUNITY TO CONSULT WITH YOUR OWN LEGAL ADVISORS IF YOU SO DESIRED, AND AGREE TO ALL THE TERMS AND CONDITIONS SET FORTH HEREIN. YOU AGREE THAT, IN INTERPRETING THIS AGREEMENT, NO WEIGHT SHALL BE PLACED UPON THE FACT THAT THIS AGREEMENT HAS BEEN DRAFTED BY US, AND YOU SHALL NOT ASSERT THAT THIS AGREEMENT IS UNENFORCEABLE OR INVALID ON THE GROUNDS THAT IT IS A CONTRACT OF ADHESION, THAT IT IS UNCONSCIONABLE OR ANY SIMILAR THEORY. 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 WEB SITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

**11. Entire Agreement.** The provisions contained in this agreement constitute the entire agreement between the parties with respect to the subject matter of this agreement, and no statement or inducement with respect to such subject matter by any party which is not contained in this agreement shall be valid or binding between the parties.

**12. Assignment.** You may not assign or transfer this agreement or any interest herein, nor shall the same be assignable by operation of law, without our prior written consent. For this purpose, "assignment" shall include any sale of a majority of the voting power of your capital stock or any merger, consolidation or other comparable transaction following which you are not the surviving corporation.

**13. Governing Law.** This agreement shall be governed by, and construed in accordance with, the laws of the State of Massachusetts. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this agreement, or arising out of any matter pertaining to this agreement, shall be submitted for trial, without jury, before the federal or state courts located in City of Worcester in the State of Massachusetts.

**14. Miscellaneous.** No release, discharge or waiver of any provision of this agreement will be enforceable against or binding upon either party unless in writing and executed by the party granting such release, discharge or waiver. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this agreement, shall be deemed a waiver of any rights or remedies that either party may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

**15. Licensing.** The affiliate shall obtain all licensing required for the geographic locale in which they are operating. The affiliate also agrees to adhere to any licensing or permitting authorities and that violation of any regulations regarding licensing or permitting shall be a basis for termination of this agreement at the sole discretion of SYMI,INC.

If any term or provision of this agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this agreement shall be given effect as if the parties had not included the severed term herein.

**BY SIGNING THIS LEGAL AGREEMENT BETWEEN YOU AND SYMI,INC. YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS.**

Affiliate Signature : \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature : \_\_\_\_\_ Date: \_\_\_\_\_

SYMI,Inc (CEO) : \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature : \_\_\_\_\_ Date: \_\_\_\_\_