

# Mobile Affiliate Sales Agreement

## FOREWORD

Our affiliates are very important to us. We do our best to treat you with the fairness and respect you deserve. We simply ask the same consideration of you. We have written the following affiliate agreement with you in mind, as well as to protect our company's good name. So please bear with us as we take you through this legal formality.

If you have any questions, please don't hesitate to let us know. We are strong believers in straight-forward and honest communication. For quickest results please email us through the 'Contact Merchant' link in your e-junkie administrative area.

Best regards,

Dawn Lanier  
CEO, Yes You Can

**PLEASE READ THE ENTIRE AGREEMENT.**

YOU MAY PRINT THIS PAGE FOR YOUR RECORDS.

THIS IS A LEGAL AGREEMENT BETWEEN YOURSELF AND YES YOU CAN, (DOING BUSINESS ONLINE AS MOBILE.BIZCOACHDAWN.COM)

BY SUBMITTING THE ONLINE APPLICATION AND SIGNING UP FOR OUR AFFILIATE PROGRAM YOU ARE AGREEING THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT YOU AGREE TO BE LEGALLY RESPONSIBLE FOR EACH AND EVERY TERM AND CONDITION.

## 1. Overview

This Agreement contains the complete terms and conditions that apply to you becoming an affiliate in the mobile.bizcoachdawn.com Affiliate Program. The purpose of this Agreement is to allow HTML and/or QR code linking between your web properties (websites, blog and social media pages, newsletters) and the mobile.bizcoachdawn.com web site. Please note that throughout this Agreement, "we," "us," and "our" refer to mobile.bizcoachdawn.com, and "you," "your," and "yours" refer to the affiliate.

## 2. Affiliate Obligations

2.1. To enroll in the program, you must complete our screening application and follow the sign-up link to register on the e-junkie.com website. The fact that we auto-approve applications does not imply that we will not re-evaluate your application at a later time or forfeit our right to reject your application at our sole discretion.

We may also cancel your application if we determine that your site or social media activity is unsuitable for our Program, including concerns related to:

- 2.1.1. Promotion of sexually explicit material
- 2.1.2. Promotion of violence
- 2.1.3. Promotion of discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age
- 2.1.4. Promotion of illegal activities
- 2.1.5. Inclusion of any materials that infringe or assist others to infringe on copyright, trademark or intellectual property rights that belong to another person or business entity
- 2.1.6. Inclusion of the word "mobile" or variations or misspellings thereof in your domain name
- 2.1.7. Any unlawful, harmful, threatening, defamatory, obscene, harassing, or other demonstration that our customers might find offensive or that would cast mobile.bizcoachdawn.com in a negative light.
- 2.1.8. Use of software downloads that potentially enable diversions of commission from other affiliates in our program.

2.2. You may not create or design your website or any other website that you operate, explicitly or implied in a manner which resembles our website nor design your website in a manner which leads customers to believe you are mobile.bizcoachdawn.com or any other affiliated business.

2.3. As a member of the mobile.bizcoachdawn.com Affiliate Program, you will have access to an Affiliate Account Manager. Here you will be able to review our Program's details, download HTML code that provides the link to our site, and select banner creatives you can use in your promotions. In order for us to accurately keep track of all guest visits from your site or QR link to ours, you must use the HTML code that we provide for each banner, text link, or other affiliate link we provide you with.

2.4. The maintenance and the updating of your site/web properties relative to mobile.bizcoachdawn.com advertising is your responsibility. You will receive advance notification of planned changes via email.

2.5. It is entirely your responsibility to follow all applicable intellectual property and other laws that pertain to your site. You must have express permission to use any person's copyrighted material, whether that is the written word, an image, or other copyrightable work. We will not be responsible (and you will be solely responsible) if you use another person's copyrighted material or other intellectual property in violation of the law or any third party rights.

### **3. Yes You Can Rights and Obligations**

3.1. We have the right to monitor your site/web properties at any time to determine if you are following the terms and conditions of this Agreement. We will notify you of any changes that we feel should be made. If you do not make the changes we feel are necessary, we reserve the right to terminate your participation in the mobile.bizcoachdawn.com Affiliate Program.

3.2. Yes You Can reserves the right to terminate this Agreement and your participation in the mobile.bizcoachdawn.com Affiliate Program immediately and without notice to you, should you commit fraud in your use of the mobile.bizcoachdawn.com Affiliate Program or if you abuse this program in any way. If such fraud or abuse is detected, Yes You Can shall not be liable to you for any commissions generated by such fraudulent sales.

3.3. This Agreement will begin upon our acceptance of your Affiliate application, and will continue unless terminated hereunder.

### **4. Termination**

Either you or we may end this Agreement AT ANY TIME, with or without cause, by giving the other party written notice. Written notice can be in the form of email. You may use the 'Contact Merchant' option in your e-junkie administrative panel to notify us of your intent. In addition, this Agreement will terminate immediately upon any breach of this Agreement by you.

### **5. Modification**

We may modify any of the terms and conditions in this Agreement at any time at our sole discretion. In such event, you will be notified by email. Modifications may include, but are not limited to, changes in the payment procedures and/or mobile.bizcoachdawn.com Affiliate Program rules. If any modification is unacceptable to you, your only option is to end this Agreement. Your continued participation in the mobile.bizcoachdawn.com Affiliate Program following the posting of the change notice or new Agreement on our site will indicate your agreement to the changes.

### **6. Payment**

Yes You Can uses a third party (e-junkie.com) to handle all affiliate sales tracking. Commissions are paid through PayPal on the 15<sup>th</sup> of the month based on sales made in the prior month. For example, payouts for sales completed in July will be made on August 15<sup>th</sup>. Payment notifications will be sent to the email address given on your application.

## **7. Access to Affiliate Account Interface**

You will create a password so that you may enter e-junkie's secure affiliate account interface. From their site you will be able to receive your reports that will describe our calculation of the commissions due to you.

## **8. Promotion Restrictions**

8.1. You are free to promote your own web sites, but naturally any promotion that mentions mobile.bizcoachdawn.com could be perceived by the public or the press as a joint effort. You should know that certain forms of advertising are always prohibited by Yes You Can.

For example, advertising commonly referred to as "spamming" is unacceptable to us and could cause damage to our name. Other generally prohibited forms of advertising include the use of unsolicited commercial email (UCE), postings to non-commercial newsgroups and cross-posting to multiple newsgroups at once.

In addition, you may not advertise in any way that effectively conceals or misrepresents your identity, your domain name, or your return email address. You may use mailings to customers to promote mobile.bizcoachdawn.com so long as the recipient is already a customer or subscriber of your services or web site, and recipients have the option to remove themselves from future mailings.

Also, you may post to newsgroups to promote mobile.bizcoachdawn.com so long as the news group specifically welcomes commercial messages. At all times, you must clearly represent yourself and your web sites as independent from mobile.bizcoachdawn.com. If it comes to our attention that you are spamming, we will consider that cause for immediate termination of this Agreement and your participation in the mobile.bizcoachdawn.com Affiliate Program. Any pending balances owed to you will not be paid if your account is terminated due to such unacceptable advertising or solicitation.

8.2. Affiliates that bid in their Pay-Per-Click campaigns on keywords such as mobile, mobile sites, mobile websites, go mobile, get your mobile site 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 ours, will be considered trademark violators, and will be banned from mobile.bizcoachdawn.com's Affiliate Program. We will do everything possible to contact the affiliate prior to the ban. However, we reserve the right to expel any trademark violator from our affiliate program without prior notice, and on the first occurrence of such PPC bidding behavior.

8.3. Affiliates 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 the mobile.bizcoachdawn.com site (i.e., no page from our site or any mobile.bizcoachdawn.com content or branding is visible on the end-user's screen).

As used herein, "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 or QR code scan of a qualifying link; (b) intercepts searches to redirect traffic through an installed software, thereby causing, pop ups or 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, Bing, Dogpile or similar search or directory engines); (c) set commission tracking cookies through loading of the mobile.bizcoachdawn.com site in iFrames, hidden links and automatic pop ups that open the mobile.bizcoachdawn.com site; (d) targets text on web sites, other than those 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.

## **9. Grant of Licenses**

9.1. We grant to you a non-exclusive, non-transferable, revocable right to (i) access our site through HTML links solely in accordance with the terms of this Agreement and (ii) solely in connection with such

links, to use our logos, trade names, trademarks, and similar identifying material (collectively, the "Licensed Materials") that we provide to you or authorize for such purpose. You are only entitled to use the Licensed Materials to the extent that you are a member in good standing of the mobile.bizcoachdawn.com Affiliate Program. You agree that all uses of the Licensed Materials will be on behalf of mobile.bizcoachdawn.com and the good will associated therewith will inure to the sole benefit of mobile.bizcoachdawn.com.

9.2. Each party agrees not to use the other's proprietary materials in any manner that is disparaging, misleading, obscene or that otherwise portrays the party in a negative light. Each party reserves all of its respective rights in the proprietary materials covered by this license. Other than the license granted in this Agreement, each party retains all right, title, and interest to its respective rights and no right, title, or interest is transferred to the other.

## **10. Disclaimer**

YES YOU CAN MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING MOBILE.BIZCOACHDAWN.COM SERVICE AND WEB SITE OR THE PRODUCTS OR SERVICES PROVIDED THEREIN. ANY IMPLIED WARRANTIES OF MOBILE.BIZCOACHDAWN.COM'S ABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED AND EXCLUDED. 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.

## **11. Representations and Warranties**

You represent and warrant that:

11.1. This Agreement has been duly and validly executed and delivered by you and constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms;

11.2. You have the full right, power, and authority to enter into and be bound by the terms and conditions of this Agreement and to perform your obligations under this Agreement, without the approval or consent of any other party;

11.3. You have sufficient right, title, and interest in and to the rights granted to us in this Agreement.

## **12. Limitations of Liability**

WE WILL NOT BE LIABLE TO YOU WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR GOODWILL OR ANTICIPATED PROFITS OR LOST BUSINESS), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL YES YOU CAN'S CUMULATIVE LIABILITY TO YOU ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL COMMISSION FEES PAID TO YOU UNDER THIS AGREEMENT.

## **13. Indemnification**

You hereby agree to indemnify and hold harmless Yes You Can and its subsidiaries and affiliates, and their directors, officers, employees, agents, shareholders, partners, members, and other owners, against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees) (any or all of the foregoing hereinafter referred to as "Losses") insofar as such Losses (or actions in respect thereof) arise out of or are based on (i) any claim that our use of the affiliate trademarks infringes on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of any third party, (ii) any misrepresentation of a representation or warranty or breach of a covenant and agreement made by you herein, or (iii) any claim related to your site, including, without limitation, content therein not attributable to us.

## **14. 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.

## **15. Miscellaneous**

15.1. You agree that you are an independent contractor, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between you and Yes You Can. 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, a web property you own/administer or any other site that would reasonably contradict anything in this Section.

15.2. 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.

15.3. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to the conflicts of laws and principles thereof.

15.4. You may not amend or waive any provision of this Agreement unless in writing and signed by both parties.

15.5. This Agreement represents the entire agreement between us and you, and shall supersede all prior agreements and communications of the parties, oral or written.

15.6. The headings and titles contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.

15.7. If any provision of this Agreement is held to be invalid or unenforceable, that provision shall be eliminated or limited to the minimum extent necessary such that the intent of the parties is effectuated, and the remainder of this agreement shall have full force and effect.