

## **AFFILIATE TERMS & CONDITIONS**

In order to join our affiliate program ("Affiliate Program"), you must first read and accept the following terms (hereinafter "Agreement").

THE FOLLOWING TERMS AND CONDITIONS GOVERN THE RELATIONSHIP BETWEEN YOU ("AFFILIATE" AND SOMETIMES "YOU") AND TONY BROWN PRODUCTIONS, INC. A NEW YORK CORPORATION (HEREINAFTER REFERRED TO AS THE "COMPANY" AND SOMETIMES "WE" OR "US") FOR THE PROMOTION AND SALE OF THE TONY BROWN'S JOURNAL ONLINE TV MEMBERSHIP SERVICES ("SERVICES") OFFERED THROUGH [WWW.TONYBROWNSJOURNAL.COM](http://WWW.TONYBROWNSJOURNAL.COM) ("COMPANY SITE") AS AN AFFILIATE OF THE COMPANY. BY CLICKING ON THE "I ACCEPT" BUTTON BELOW AND/OR BY JOINING OUR AFFILIATE PROGRAM, YOU AGREE TO THESE TERMS. DO NOT CLICK ON THE "I ACCEPT" BUTTON IF YOU DO NOT ACCEPT THESE TERMS. YOU ALSO ACKNOWLEDGE THAT YOU HAVE READ THE FOLLOWING TERMS, THAT YOU UNDERSTAND THESE TERMS AND THAT YOU ARE ENTERING INTO A LEGALLY BINDING AGREEMENT WITH THE COMPANY.

**1. Affiliate Designation.** Company designates Affiliate as one of its non-exclusive affiliates for the promotion and marketing of the Services ("Promotional Activities") on any website Affiliate operates and controls ("Affiliate Website"). Affiliate accepts such designation and agrees to comply with these terms at all times during the Term of this Agreement or otherwise at all times Affiliate markets or promotes the Services in any capacity.

**2. Affiliate Link & Commission Tracking.** Affiliate will be assigned either a hypertext link created between the Affiliate's website ("Affiliate Website") and the Company's Site ("Affiliate Link") or a coupon code for use by Affiliate created through Company's affiliate software system, subject to the terms of this Agreement. Any assigned Affiliate Link will consist of a unique hypertext link which identifies the Affiliate and is made available to the Affiliate by us upon the grant of our approval of Affiliate's application to become our affiliate. It is the Affiliate's sole responsibility to ensure that this unique link or coupon code is used and maintained as set forth under these Terms, otherwise any commissions due Affiliate may not be tracked, recorded and/or paid. The Company is not liable for any commissions which are lost, or unearned or unpaid resulting from the failure by Affiliate to use or maintain the unique link or coupon code we provide.

**3. Promotional Materials.**

a. Promotional Materials Provided by Company. The Company may, but is not obligated to, make available to Affiliate certain button links, text links, and/or other graphic or textual material and/or information for display and use on any Affiliate website (the "Promotional Materials") for the promotion of the Services, which, subject to this Agreement, Affiliate may display as often and in as many areas on any approved Affiliate Website as Affiliate may deem appropriate. Affiliate's rights to use our Promotional Materials terminates immediately upon notice of termination of this Agreement by us, upon termination by You or upon your breach of any part of this Agreement. Upon termination of this Agreement, You shall remove all Promotional Materials from any Affiliate Website within twenty-four (24) hours and cease use of any and all Promotional Materials. Affiliate may be required to include a link from the Promotional Materials to the Company Site, in the manner specified by the Company. Affiliate agrees to fully cooperate with us in the use and maintenance of any Promotional Materials. All Affiliates shall display such graphic and/or textual images prominently in relevant sections of any Affiliate Website. Any Promotional Materials provided by the Company may be modified, discontinued and/or expanded from time to time throughout the term of this Agreement by the Company. Affiliate agrees not to reverse engineer, disassemble or decompile any portion of any Promotional Materials provided to Affiliate hereunder.

b. Video Content. The Company may from time to time (but is under no obligation to do so) provide snippets, cuts or other video content showing any video archival footage including any audio files in connection therewith (or by themselves) which are available to the members of the Company's Services, to certain Affiliates only, which such determination shall be made upon the sole discretion of the Company ("Video Content"). The Company reserves the right to charge a fee to any such Affiliates granted with the right to use any Video Content in exchange for the additional rights to use such Video Content to the exclusion of other Affiliates, which shall be determined by the Company in its sole discretion and may be enacted by the Company at any time during the Term of this Agreement. The Affiliate Link will be embedded as a watermark on any Video Content provided to Affiliate and Affiliate agrees that Affiliate will do nothing to edit or conceal such watermark or any portion thereof.

c. Non-Exclusive License. Company hereby grants to Affiliate a nonexclusive, nontransferable and revocable license ("License") to use any Promotional Materials and/or Video Content provided to Affiliate by the Company exclusively for promotion of the Services on any Affiliate Website as specified under the terms and conditions of this Agreement. The term of the License shall expire upon the expiration or termination of this Agreement or upon revocation of the License by the Company which may be revoked for any reason in the sole discretion of the Company. Except for the rights expressly granted herein, this License does not transfer any rights, title or interest in and to any Intellectual Property (as defined in this Agreement) including, but not limited to, the name, trade marks, logos and/or other means of branding used by the Company related to the Services, from time to time, including the name "Tony Brown's Journal" or any other trade name of the Company.

d. Tracking Technology. We reserve the right to include tracking technology in any Affiliate Link and/or certain other Promotional Materials which will enable us to track a user's activity with respect to the Promotional Materials on your Affiliate Website. In such case, Affiliate shall not edit or otherwise alter the tracking technology. Furthermore, Affiliate acknowledges and understands that such tracking technology shall be used to calculate any Commissions (as hereinafter defined), if any, payable to Affiliate under this Agreement. We shall not be obligated to pay any Commission amounts for any activity in which the associated tracking technology was omitted or modified by Affiliate or any third party.

e. User Data. Affiliate acknowledges that if the Company should use any tracking technology in any Promotional Materials to be used on any Affiliate Website, the Company will receive information from or about visitors to your Affiliate Website. Your participation in the Affiliate Program constitutes your specific and unconditional consent to our access, receipt, storage, ownership, use and disclosure of any and all such information, all of which shall be consistent with our Privacy Policy located on our Company Site. Affiliate agrees that Affiliate will not under any circumstances collect any personally identifiable user information or aggregate user data through use of any Promotional Materials which may be provided to Affiliate by us on any Affiliate Website.

**4. Promotional Materials Restrictions**. Affiliate agrees to the following use restrictions regarding Affiliate's use of any Promotional Materials:

- i. Affiliate shall use only the Promotional Materials in accordance with the terms of this Agreement and only in a lawful manner;
- ii. Affiliate shall not use any Promotional Materials in a manner that is misleading, defamatory, libelous, obscene or that is otherwise objectionable as determined in Company's sole discretion.
- iii. Affiliate shall not use any Promotional Materials in a way that infringes upon, derogates, dilutes or otherwise impairs any rights of the Company;
- iv. Affiliate shall not use any Promotional Materials as part of a name, or in connection with, any product or service offered by a company other than the Company;
- v. Affiliate shall not modify or alter any Product Materials including, but not limited to, branding, bylines or other editorial elements. If Affiliate wishes to alter or otherwise modify the Promotional Materials, Affiliate must obtain prior written consent from Company for such alteration or modification;
- vi. Affiliate shall not interrupt the presentation of any Promotional Materials by placing advertisements or other content within the body of any Promotional Materials;
- vii. Affiliate shall not use or display Promotional Materials alone or in combination with third party content on any Affiliate Website in such a way as to promote or drive traffic or leads to other retail, comparison shopping or e-commerce sites other than the Company's Site;
- viii. Affiliate shall not use or display any Promotional Materials alone or in combination with third party content on any Affiliate Website in such a way as to suggest that the Company owns, endorses or sponsors content other than the Promotional Materials;
- ix. The Promotional Materials will only contain links to the Company Site or to a specific page and address as specified by Company.

**Affiliate will promptly delete any Promotional Materials that is no longer displayed on the Company Site or which are no longer available for Affiliate's use pursuant to any written notification sent to Affiliate by the Company.**

**5. Affiliate Obligations and Responsibilities**.

a. Updated Account Information. Affiliate agrees to provide us with updated information if Affiliate changes Affiliate's email address, phone number, postal address, US tax filing status, Affiliate Websites participating in the Affiliate Program, any substantial change in Affiliate's promotional methods not in conformity with these terms, or any other relevant information.

b. Email Updates. Affiliate agrees to receive email updates regarding the Affiliate Program and/or the Services.

c. Responsibilities for Affiliate Website and Marketing Materials. You will be solely responsible for the development, operation, and maintenance of any Affiliate Website. Affiliate agrees that it will update the content of any Affiliate Website as and when any changes to these Terms are made in order to maintain consistency and accuracy with such changes. All maintenance and updating of any Affiliate Website is the sole responsibility of the Affiliate. The Affiliate agrees that the Company is entitled to monitor any Affiliate Website to make sure any links to the Company Site and/or the Affiliate Website and/or otherwise the Affiliate's participation in the Company's Affiliate Program are appropriate and not in violation of these terms. If in the sole discretion of the Company, we consider any portion or element of any Affiliate Website or Affiliate's participation in the Affiliate Program to not be appropriate, we may either notify the Affiliate of the changes we require that the Affiliate make or terminate this Agreement in accordance with these terms.

**6. Services Pricing.** At the execution of this Agreement, the initial price for the Services is \$6 per month and \$60 per year when members sign-up for a full year in advance. Affiliate may not charge any other amount for the sale of the Services other than as set forth by the Company and as posted on the Company Site, from time to time, without the prior written consent of the Company.

## **7. Affiliate Commissions.**

a. Multilevel Commission Structure. "Commissions" shall be paid to Affiliate by the Company for each single purchase of our membership Services for an entire year up front (\$60) on our Company Site by any customer who has been brought to the Company Site directly from: i) the Affiliate Website via the Affiliate Link or coupon code provided by us; or ii) any other website operated by any of our other affiliates who have joined our Affiliate Program underneath Affiliate through the Affiliate Website ("Junior Affiliate").

The Company shall pay to Affiliate the Commissions as initially set forth below. The Company reserves the right to update its pricing for the Services and Commissions to be paid to Affiliate at any time. **Any such changes to the pricing to be paid to Affiliate shall be published on the Company Site contained on the "Affiliate Pricing Amendments" page.** Affiliate acknowledges and agrees that it shall be Affiliate's responsibility to periodically monitor the Company Site for any pricing changes that may be made and that the Company will not have any responsibility to provide any advance notice of such changes to Affiliate.

b. Payment of Commissions. Payment of the Commissions shall be made after a 7-day refund period has expired and all Commissions in the preceding 30-day period will be paid to Affiliate every 30 days, less all taxes which the Company may be required by law to withhold or deduct and/or any other deductions permitted pursuant to this Agreement. Payments will commence 30 days after the refund period expiration from the first sale to an Affiliate customer.

The Company shall keep accurate and up-to-date written records of the Commissions to be remitted to Affiliate. Affiliate shall be given reasonable access to these records through the Company's affiliate software directly on the Company Site. Any discrepancy between the amount of Commissions due Affiliate according to such records, and the actual amounts paid to Company for the Services in any period or periods shall be rectified by Company and Affiliate within 14 business days of discovering any such discrepancy. The Company reserves the right to vary the Commissions structure at any time under this Agreement to reflect increases in the costs of applicable materials, labor, other overheads, fluctuations in taxes and duties, currency and exchange rates and any other relevant and applicable costs suffered by Company from time to time. Payment of Commissions by the Company is subject to the Company having been paid by the customer for the transaction underlying the Commission in question.

c. Charge backs. If following a transaction any form of charge-back is made to the Company by or on behalf of any customer, third party processor, credit card company or banking institution, then no Commission will be due to Affiliate in relation to such transaction and if the Company has already paid the Commission on such transaction, then the Company may deduct an amount equal to such Commission from the next payment of Commission due to the Affiliate, or where no further Commission is due, the

Company shall raise an invoice for such amount and this shall be paid by the Affiliate to the Company within 30 days of the invoice date. For purposes of this Agreement, a charge-back means a payment dispute initiated by the cardholder with their credit card issuing bank. The amount of the disputed transaction is withdrawn from the merchant's bank account.

d. Non-Payment of Commissions. No Commission shall be payable to the Affiliate for any customers or transactions secured otherwise than in accordance with the terms of this Agreement and/or for any customers or transactions which are not genuine or which involve use of fraudulent means including but not limited to any click fraud or other abusive tactics intended to obtain customers which are not genuine. If any Commissions has been paid to the Affiliate before the Company becomes aware of circumstances giving rise to any click fraud or other fraud or abuse, the Company shall be entitled to recover all Commissions paid to the Affiliate for customers or transactions gained by such methods or means. No Commission shall be payable to the Affiliate for any customers or transactions which occur by visits made to the Company Site by a link which is not the Affiliate Link and/or not through any coupon code provided to Affiliate by the Company, including those instances where the customer has followed the Affiliate Link longer than 3 months prior to the transaction. Reissuing Commissions that were lost due to Affiliate's acts or omissions are subject to extra charges. No payments shall be reissued to Affiliate if payment is claimed after 1 year from the date it was issued to Affiliate.

e. Eligible Clicks. The following clicks on any Affiliate Link provided to Affiliate will be excluded from the calculation of any Commissions otherwise due Affiliate under these terms:

1. Clicks from known robots, "bots" or other forms of automated clicks;
2. Clicks logged without any referring URL;
3. Clicks from any IP address(es) belonging to the Company;
4. Clicks from any IP address(es) belonging to Affiliate or reasonably determinable to be initiated by Affiliate; and
5. Clicks that are the result of unreasonable activity as determined by the Company in its sole discretion or are violations of this Agreement.

**8. General Affiliate Restrictions.** A shall comply with the following terms, conditions and specifications at all times during Affiliate's participation in the Affiliate Program:

a. Affiliate is prohibited from using language in advertising campaigns such as "Official Site," "Main Site," "Official Representative," or any other language that might confuse or may provide the viewer of such an advertisement with the perception that Affiliate's website is the principal provider of the Services and/or any other products or services provided by the Company;

b. Affiliate will not engage in any advertising utilizing spyware or adware of any kind. This includes "permission" based adware software, used exclusively for the delivery of pop up or related ads. In the event that you have an application that delivers advertisements, express permission must be granted in writing from the Company to allow any promotion. Affiliate will also not attempt to "bundle" any material from any of its sites with any other software, regardless of user permission or otherwise, unless expressly permitted to do so in writing by the Company. The Company has no past or existing "bundling" arrangement of any kind, so Affiliate shall not bundle the Company material or software with any other unless expressly permitted in writing to do so by the Company;

c. Affiliate will not engage in any browser hijacking of any kind, or any other interference with the normal functioning of a potential website visitor's computer. This could include starting any process(es) not expressly started by potential website visitor, including opening of a CD ROM, or any other program or application. In keeping with this, Affiliate is directly responsible to be in full compliance with all pertinent law and the following two laws specifically: HR2929, the Securely Protect Yourself Against Cyber Trespass Act, and HR4661, the Internet Spyware Prevention Act of 2004;

d. Affiliate will not intentionally mislead any potential website visitor to believe that the Services ours any other services or product. This could include website content, or ads run on any search engine. Affiliate will not use any Company branded name in context of advertising which could be misunderstood to be the Company's services or products, and therefore be misleading to potential website visitors;

e. Affiliate shall not use any of the content of any websites owned and/or operated by the Company without the Company's prior written consent and the Affiliate shall not frame any pages or parts of any pages of the Company Site or any other website nor will the Affiliate create the impression that the Affiliate Website is Company Site or any part of the Company Site;

f. Affiliate shall not, without the prior express written content of the Company: (i) make any statements that Affiliate is doing business with the Company or use any Company Marks in connection with such statements; or (ii) make any representations and warranties with respect to the Company, the Company Site or any other products or services offered by the Company from time to time;

g. Affiliate shall not issue any press release or public announcement with respect to this Agreement, Affiliate's participation in the Affiliate Program or Affiliate's status as an Affiliate. Any violation of this Section shall be considered a material breach of this Agreement and may result in the immediate termination of Affiliate's participation in the Affiliate Program.

h. Affiliate shall not authorize any third party to use the Company trademarks or other names or any similar names or misspelling of such names including in any written materials or as domain names or as keywords or key phrases on any pay-per-click search engines or as a meta-tag, unless and to the extent expressly permitted by the Company. This includes using any Company trademark in the destination URL;

i. Affiliate shall not promote the Services by using any incentives, discounts or bonuses or use of any newsgroup, message boards, chat rooms, instant messaging guest books, public forums, electronic newsletters or other web-based means except as approved by the Company;

j. Affiliate shall not create or attempt to create a transaction by any other means than that permitted in this Agreement. The Affiliate shall not attempt to use any device, program, code or other technology which is intended to create any transaction which is not made in good faith. All transactions shall be made by the Company and subject to the Company's membership terms.

k. Affiliate agrees not to ping the Company's servers or undertake any activity that may be considered as "cookie stuffing".

l. Affiliate agrees not to purchase the Services under its own name or any other by its Affiliate Link or otherwise with the purpose of re-sale of the Services directly to its customers. Affiliate agrees not to undertake any activity which would amount to the re-sale of the Services. If the Affiliate purchases the Services in any capacity, either directly or indirectly, then any Commissions due for such purchase will be revoked.

m. Affiliate will not register or use in commerce any domain name that incorporates the Company's name, the domain name of the Company Site or any portion of the foregoing, or a domain name that is confusingly similar to the Company Site or Company's name.

**n. Affiliate will not make any false, deceptive or materially misleading claims, reviews or endorsements about the Services and agrees at all times during the Term to comply with the FTC Act, the Uniform Deceptive Trade Practices Act and any state deceptive advertising and business practices laws which may be applicable to Affiliate's promotion of the Services. Affiliate expressly acknowledges that it understands that Affiliate is considered a "sponsored endorser" of the Company under FTC Guidelines and that the Company may be liable for any conduct by Affiliate that violates the FTC Act in promoting the Services. The Affiliate agrees not to make any representations and/or give any warranties and/or guarantees relating to the Services other than those given by the Company from time to time and/or as otherwise approved by the Company in writing. Affiliate agrees that the only claims regarding the Services Affiliate makes on any Affiliate Website shall be based upon information stated directly on the Company Site and/or provided to Affiliate by the Company, from time to time ("Services Information").**

o. That the Promotional Activities and any Affiliate Website shall not contain or use:

i. any content whatsoever which is and/or any links to any website which contains, libelous, defamatory, obscene, abusive, illegal content or content which is, invasive of any privacy and/or publicity rights, infringing of any third party intellectual property rights, criminal, in violation of any law or which is in the opinion of the Company otherwise objectionable;

ii. any information or claims about the Services other than the Services Information;

iii. any material that would mislead or cause confusion about the Services or the relationship between the Affiliate and the Company;

iv. any domain name comprising the name of any product or services offered by the Company, trade mark or similar such mark, either in whole or in part, unless specifically listed in any attached Schedule, or approved and authorized in writing by the Company.

v. any activities which involve generating or utilizing traffic sources from any form of Spyware, Adware, or Parasiteware applications or involve the use of the practice known as cookie stuffing or similar or which in effect cause a transaction to result from any illegitimate or unauthorized means. For the avoidance of doubt the Company considers and the Affiliate agrees that the use of any such unauthorized means is a fundamental breach of the terms of this agreement incapable of remedy and the Company shall be entitled to terminate this Agreement in accordance with Section 16.

**9. Third-Party Search & Meta tags.** Affiliate may bid on search terms available from third-party websites, search engines or other directory or referral services (e.g., Google, Yahoo!) and/or may use such search terms as metatags on any Affiliate Website solely in connection with promoting the Services, provided that: (i) any such search terms, metatags listing titles, descriptions, and the content contained on any Affiliate Website(s) does not violate the trademark or other rights of the Company or any other third party; and (ii) all search results link directly to a page within the Company Site or to a page within your Affiliate Website that is primarily dedicated to promoting the Services. If Affiliate bids on a term that is the trademark of a third-party, Affiliate must either: (i) prominently identify the appropriate trademark owner on any Affiliate Website such term is used in a manner that does not create a likelihood of consumer confusion; or (ii) use the term in a generic or descriptive manner.

**10. Privacy Policy.** Affiliate shall maintain a current privacy policy on all Affiliate Websites which governs how Affiliate uses any personally identifiable information collected from users of any Affiliate Website.

**11. Anti-Spam Policy.** The Company does not authorize, consent to, or condone the initiation (as "initiate" is defined in 15 U.S.C. § 7702(9)) by Affiliate of commercial electronic messages (as defined in 15 U.S.C. § 7702(2)) that refer to Company in any manner that are not specifically authorized within the scope of this Agreement. Affiliate agrees that commercial electronic messages initiated as part of the promotion of Company by Affiliate will be sent only to current customers of Affiliate who have given affirmative consent, as it is defined in 15 U.S.C. § 7702(1), to receive such emails, and that such emails are the only emails authorized under this Agreement. Affiliate agrees that all commercial electronic messages initiated by Affiliate as part of the promotion of Company will comply with the requirements of the CAN-SPAM Act (15 U.S.C. § 7701 *et. seq.*). Affiliate agrees to forward all SPAM-related complaints that arise out of the promotion of Company to Company at [mail@tbol.net](mailto:mail@tbol.net).

Accordingly, Affiliate represents and warrants that Affiliate will not engage in the practice of sending unsolicited email messages and Affiliate hereby agrees to the following conditions:

a. e-mails promoting the Services or otherwise the Company shall not contain or include a falsified sender domain name or falsified IP address;

b. e-mails promoting the Services advertisements shall not be routed or relayed through servers that the sender does not have explicit authorization to use;

c. e-mails promoting the Services advertisements shall not contain or include a false or misleading subject line that attempts to disguise or conceal the content of the e-mail;

d. all e-mails shall contain or include valid and responsive contact information of the sender, list manager or list owner; this includes your physical postal address.

e. no e-mails promoting the Services and/or the Company shall be sent for the purpose of harvesting the e-mail addresses in order to send future unsolicited e-mails.

f. all e-mails promoting the Services and/or the Company will be sent to individuals who have given you their "Affirmative Consent" as defined in Sec. 3.1 of the "CAN-SPAM Act".

g. every e-mail promoting the Services and/or the Company shall contain a functioning return electronic mail address or other Internet-based mechanism for 30 days from sending that is clearly and conspicuously displayed and that a recipient may use to submit in a manner specified in the message a reply electronic mail message or other form of Internet-based communication requesting not to receive future e-mail messages from you.

h. affiliate shall process any and all opt-out requests within three (3) business days, or less, of any such opt-out request.

i. unless otherwise directed by the Company in writing, Affiliate shall not use the Company, its represented advertisers names (including any abbreviation thereof) or an of the Company marks or logos in the originating or return e-mail address line, header or subject line of any e-mail transmission and that all e-mail transmissions shall contain language in the body and both the "from" line as well as the "re:" line that clearly announces that the offer embedded in the e-mail is being sent by you for the benefit of your users.

j. Affiliate agrees and affirms Affiliate will comply with all the rules, regulations and guidelines set forth in the "CAN-SPAM Act of 2003", as well as all obligations and provisions herein.

Any failure to comply with any of the foregoing conditions will result in immediate termination of this Agreement and will render Affiliate ineligible for any Commissions that may otherwise be due.

**12. Intellectual Property.** Company retains all right, ownership, title and interest in the Content, the Website, Promotional Materials, whether or not the Company has applied for or has been granted any such copyright, trademark and/or trade name protections under State and/or Federal law for the same, it being understood and agreed to by Affiliate that the Program, Company Site, Website and Promotional Materials, and all contents contained therein, have been developed by Company by the investment of significant time, effort and expense, and that such information are valuable, special and unique assets of Company, which provides Company with a significant competitive advantage, and needs to be protected from unauthorized use ("Intellectual Property"). Additionally, Affiliate specifically agrees that at no time after the termination of this Agreement shall Affiliate copy, use, publish, disseminate, make available or otherwise attempt to offer for sale the Program or the contents thereof. Nothing in this Agreement shall be construed to grant Affiliate any rights whatsoever, including rights of ownership or interest in the Intellectual Property, other than the rights to use the Promotional Materials as set forth in Section 3.

**13. Relationship of Parties.** This Agreement shall not be construed to create any employment relationship, agency relationship, or partnership between Company and Affiliate. Affiliate shall provide services for Company as an independent contractor. Affiliate shall have no authority to bind Company into any agreement, nor shall Affiliate be considered to be an agent of Company in any respect. No third party shall have the right to enforce any terms of this Agreement between the parties. Any rights of a third party to enforce the terms of this Agreement between the parties may be varied and/or extinguished as agreed between the parties without the need for the consent of any such third party.

**14. Affiliate's Representations and Warranties.** Affiliate represents and warrants the following:

a. Affiliate has the legal authority to enter into this Agreement and to be bound to the promises, covenants, and other duties set forth in this Agreement;

b. Affiliate has obtained any and all necessary clearances, licenses, or other permission for any content that is protected from dissemination or use by virtue of any trademark and/or copyright used on Affiliate's website;

c. Nothing on Affiliate's website that it has placed thereon infringes upon or will infringe upon the intellectual property rights of any person or entity. No person or entity has brought or threatened an action claiming such infringement, nor does Affiliate have any reason to believe that any person or entity will bring or threaten such a claim in the future;

d. Affiliate will not make any claim to ownership of any of the Promotional Materials, Video Content the Company Site or any other Company materials or content, whether or not any such rights have been protected by the Company, nor will Affiliate use any Company marks, logos or other materials or content that would mislead or cause confusion about the relationship between the Affiliate and the Company.

**15. Confidentiality.** The term "Confidential Information" means any information or material, which is proprietary to Company, whether or not owned or developed by Company, which is not generally known other than by Company, and which Affiliate may obtain through any direct or indirect contact with Company or Company's customers such as, but not limited to business records and plans, financial statements, customer lists and records, any customer correspondence concerning Company, credit card information, technical information, pricing structure, source code and/or object code, copyrights and intellectual property, competitive information, and other proprietary information. Affiliate represents that it will protect any confidential material and information, which may be disclosed between Company, Company's customers and the Affiliate at all times. Affiliate understands and acknowledges that the Confidential Information has been developed or obtained by Company by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of Company, which provides Company with a significant competitive advantage, and needs to be protected from improper disclosure. In consideration for the disclosure of the Confidential Information, Affiliate agrees to hold in strictest confidence and to not disclose under any and all circumstances the Confidential Information to any person or entity without the prior written consent of Company. Affiliate will not copy or modify any Confidential Information without the prior written consent of Company. Further, Affiliate shall not disclose any Confidential Information to any of Affiliate's customers, contractors, agents or employees, except those contractors or employees who are required to have the Confidential Information in order to perform their job duties in connection with the limited purposes of this Agreement. If it appears that Affiliate has disclosed or has threatened to disclose Confidential Information in violation of this Agreement, Company shall be entitled to a temporary and/or permanent injunction to restrain and enjoin Affiliate from disclosing, in whole or in part, the Confidential Information or any portion thereof, in addition to and without prejudice to any and all other remedies available to Company at law or equity. Company shall not be prohibited by this provision from pursuing other remedies, including but not limited to a claim for losses and damages.

The parties agree that given the nature of this Agreement and the obligations of the Parties, the covenants and the restrictions set forth in this provision are reasonable and necessary for the protection of the significant investment of time and monies by the Company in developing, maintaining and expanding its Affiliate Program for Affiliate. Accordingly, the Parties hereto agree and acknowledge that in the event of any breach by Affiliate of any of the terms of provisions contained in this Section hereof, monetary damages alone will not adequately compensate Company for its losses, and therefore that it may seek any and all legal or equitable relief available to it, including without limitation, injunctive relief without the necessity of bond, and may hold Affiliate liable for all damages, costs and expenses including legal costs and reasonable attorneys fees incurred by the Company as a result of such breach. The rights and remedies set forth herein are cumulative and are in addition to any rights or remedies available at law or equity. Each obligation of Affiliate shall be construed as a covenant independent of any other provision herein. The existence of any claim or cause of action by Affiliate against the Company shall not constitute a defense to the enforcement of the provisions of this section.

**16. Term & Termination.**

a. This Agreement shall take effect on the date referenced above, and shall remain in full force and effect indefinitely, or until terminated pursuant to this Section;

b. Either Party shall have the right to terminate this Agreement at any time and for any cause by providing the other Party with ten (10) days prior written notice of termination. Should any party desire to terminate this Agreement, then that party must send written termination notice to the other party by either email, facsimile or U.S. registered or certified mail, return receipt requested and postage prepaid;



c. Upon termination of this Agreement for any reason, we shall de-activate any Affiliate Links and/or coupon codes we have provided to Affiliate and Affiliate will immediately: i) cease carrying out any and all Promotion Activities; ii) cease to describe itself or promote itself under or by reference to the designation "Tony Brown's Journal Affiliate" and/or as an "Affiliate of Tony Brown's Journal," or similar such designation; iii) cease use of any Promotional Materials; iv) remove all material referring to the Company or the Company Site any Company brands, and/or the Services from all Affiliate Websites; v) deliver up to the Company or if the Company directs, permanently erase or destroy as appropriate, all Promotional Materials and all tangible or other records or storage systems, documents, materials, and/or other media including source codes containing or which comprises information all or part of which relates to the Intellectual Property Rights of the Company, which may be in Affiliates' possession, power or control, if any.

Unless due to a breach of these Terms by Affiliate, upon termination of this Agreement, any Commissions due to Affiliate at the time of termination will be paid within 30 days following termination, subject to any set-off, counterclaim or deduction the Company may have.

**17. Taxes & Tax Reporting.** Company shall not be responsible for any taxes owed by Affiliate arising out of Affiliate's relationship with Company as set forth in this Agreement. Any Affiliate residing in the U.S.A. or otherwise subject to pay U.S. Income taxes on any earnings as our Affiliate must provide the Company with a completed W-9 Federal Tax Form before any payments of any Commissions will be issued to you. A 1099 will be issued to Affiliate if Affiliate is a sole-proprietor and if Affiliate exceeds the maximum payout allowed under U.S. Federal tax regulations requiring that the Company sent a 1099 to Affiliate. Affiliate is solely responsible for the reporting of all income and payment of all taxes, charges and penalties associated with any amount received by Affiliate under these terms. Affiliate will not be eligible to receive any Commissions hereunder until the Company is in receipt of Affiliate's completed W-9 Federal Tax form, if applicable.

**18. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE TO AFFILIATE, IN ANY MANNER WHATSOEVER RELATED TO AFFILIATE'S USE OR MISUSE OF ANY OF THE PROMOTIONAL MATERIALS AND/OR VIDEO CONTENT PROVIDED TO AFFILIATE, RELIANCE ON THE CONTINUATION BY THE COMPANY OF OFFERING THE SERVICES AND/OR RELIANCE BY AFFILIATE ON RECEIVING ANY PROMOTIONAL MATERIALS AND/OR VIDEO CONTENT OR OTHERWISE RELATED TO OR STEMMING FROM THE INABILITY OF AFFILIATE TO PARTICIPATE IN, OR FOR THE INTERRUPTION, SUSPENSION OR TERMINATION OF THE SERVICES OR ANY PROMOTIONAL MATERIALS. FURTHERMORE, UNDER NO CIRCUMSTANCE SHALL AFFILIATE BE ENTITLED TO THE RECOVERY OF ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND/OR PUNITIVE DAMAGES (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING LOST PROFITS, GOODWILL AND/OR ANY LOST DATA RELATING TO ANY CLAIM OR DEMAND AFFILIATE MAY SEEK TO BRING AGAINST THE COMPANY AND AFFILIATE'S RECOVERY AGAINST THE COMPANY SHALL BE LIMITED TO THE AMOUNTS PAID TO THE COMPANY BY AFFILIATE FOR ANY DIRECT COSTS OF ANY VIDEO CONTENT, IF ANY. SUCH LIMITATION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. FURTHERMORE, THE COMPANY HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES FOR ALL PRODUCTS AND GOODS OFFERED BY THE COMPANY, INCLUDING BUT NOT LIMITED TO THE PROGRAM, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**AFFILIATES' REMEDIES HEREUNDER ARE SOLEY AND EXCLUSIVELY AS DESCRIBED AND LIMITED UNDER THIS SECTION AND THE COMPANY'S LIABILITY, WHETHER BASED IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY, IS STRICTLY LIMITED AS SET FORTH ABOVE.**

**19. Default.** In the event Affiliate fails to perform any of its obligations or responsibilities hereunder, or should fail to perform its responsibilities or obligations by the manner prescribed for under this Agreement, or should violate any term or condition contained in this Agreement, such action or inaction shall be considered to a default of this Agreement and the Company shall have each and every remedy available to it in a court of law or equity to enforce the provisions of this Agreement, notwithstanding anything contained in this Agreement to the contrary. All such remedies shall be non-cumulative and the election of one shall not preclude the subsequent election of any other remedy by the Company. In the event of a default by Affiliate and/or litigation arising out of enforcement of this agreement by the Company, the Company shall be entitled to recover all costs, charges, expenses, and their reasonable attorney's fees arising as a result thereof.

**20. Governing Law and Forum.** This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of New York, without regard to conflicts of law principles or any International laws or treaties. Any state or federal court located in New York County, state of New York, U.S.A. shall serve as the exclusive forum and venue to resolve any and all claims, suits, controversies, demands or disputes arising out of or relating directly or indirectly to this Agreement and the parties hereby expressly consent to the exclusive jurisdiction of such state or federal court by virtue of this Agreement. Affiliate hereby expressly consents to extra-territorial service of process. Further, Affiliate waives any right to challenge the selection and choice of jurisdiction and acknowledges that the right of selection of jurisdiction being waived by Affiliate is a valid part of the consideration of allowing Affiliate to participate in the Affiliate Program.

**21. Attorney Fees.** In the event any party brings an action to enforce any provisions of this Agreement, whether such action is at law, in equity, or otherwise, and such party prevails in such action, such party shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party or parties the reasonable costs and expenses incurred in the investigation preceding such action and the prosecution of such action, including but not limited to reasonable attorney fees and court costs.

**22. Severability.** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

**23. Entire Agreement.** This Agreement constitutes the entire agreement between Company and Affiliate, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.

**24. Survival.** The provisions contained in Sections 4, 12, 14, 15 & 18 shall survive the termination of this Agreement.