

## **Terms & Conditions**

### **AFFILIATE AGREEMENT**

#### **PARTIES**

This agreement (this "**Agreement**") is made between **Equilibria Services Pte. Ltd.** (UEN 200814145K), a Singapore company with its registered and postal address at 21 Merchant Road #04-01, Singapore 058267 (herein referred to as "**Company**"), and **yourself as an Affiliate** (the "**Affiliate**").

#### **SECTION A: AGREEMENT AND KEY DETAILS**

##### **AGREEMENT**

The Company agrees to engage, and the Affiliate accepts engagement, to resell the Products on the terms of the Agreement. The Agreement comprises:

- ▲ Section A (Agreement and Key Details), and
- ▲ Section B (General Terms).

##### **KEY DETAILS**

**Start Date:** As per acceptance clause date.

**End Date:** Not specified.

**Territory:** Global

**Brands:** As at the Start Date, Reseller shall use the Equilibria Services Pte Ltd and/or Equilibria brands.

**Product(s) and/or Service(s):** PDI Basic Report, PDI Premium Report, Online E-Colors & Personal Intervention Book, E-Colors Interactive, E-Colors Observations, and selected items from the Equilibria Online Shop.

**Currency:** USD

**Fees:** 10% of the amount received by Company.

**Email addresses for notice:** [paul.grant@equilibria.com](mailto:paul.grant@equilibria.com) for Company, and your email address for Affiliate.

## SECTION B: GENERAL TERMS

### 1 DEFINITIONS

1.1 In the Agreement, the following terms have the stated meaning:

Term	Meaning
<b>Agreement</b>	Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms).
<b>Brands</b>	The brands, trade-marks, logos and/or designs set out in the Key Details.
<b>Business</b>	The promotion, marketing and reselling of the Products in the Territory.
<b>Confidential Information</b>	The terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. The Company's Confidential Information includes Intellectual Property owned by the Company (or its licensors), and the Customer (and prospective Customer) details described in section 9.
<b>Customer</b>	A person in the Territory who agrees to purchase services and/or products online via the Resellers website.
<b>Documentation</b>	A hard or electronic copy of the generally released documentation relating to the Products, as updated by the Company from time to time.
<b>End Date</b>	The end date set out in the Key Details.
<b>Fees</b>	The fees set out in the Key Details.
<b>Good Industry Practice</b>	In relation to an undertaking, the exercise of that degree of skill and care which would reasonably be expected from an experienced operator engaging in the same or a similar undertaking.

Term	Meaning
<b>Intellectual Property Rights</b>	Includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade-marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. <b>Intellectual Property</b> has a consistent meaning and includes any enhancement, modification, or derivative work of the Intellectual Property.
<b>Key Details</b>	The Agreement specific details set out in Section A of the Agreement.
<b>Order</b>	An online order by the Customer to purchase product(s) and/or service(s) via the Affiliates website.
<b>Product(s) &amp; Service(s)</b>	The products and services set out in the Key Details.
<b>Sales Tax</b>	Goods and services tax, value added tax, sales tax or equivalent tax payable under any applicable law.
<b>Start Date</b>	The start date set out in the Key Details.
<b>Territory</b>	The territory set out in the Key Details.

## 2 INTERPRETATION

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- b words in the singular include the plural and vice versa;
- c a reference to:
  - i a **party** to the Agreement includes that party's permitted assigns;

- ii **personnel** includes officers, employees, contractors, and agents, but a reference to the Company's personnel does not include the Reseller;
  - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
  - iv **including** and similar words do not imply any limit;
  - v **United States Dollars (USD)** is a reference to the currency listed in the Key Details; and
  - vi a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and
  - e if there is any conflict between Section B and Section A of the Agreement, Section B prevails unless expressly stated otherwise in Section A.

### **3 APPOINTMENT**

#### **3.1 Right to conduct the Business:**

- a The Company grants to the Affiliate the *non-exclusive*, non-transferable right to conduct the Business in accordance with the Agreement for the duration of the Agreement.
- b The Affiliate must use best efforts to conduct the Business.

**3.2 Territory:** The Affiliate must not market, promote, resell or distribute the Products outside the Territory. The Affiliate will promptly pass to the Company details of any enquiry or order received by it from a prospective customer or reseller outside the Territory.

**3.3 Status:** The Affiliate is an independent contractor of the Company. No other relationship (e.g. employment, joint venture, agency, trust or partnership) exists under the Agreement. The Agreement does not transfer or license any

Company Intellectual Property to the Affiliate, except as expressly set out in the Agreement.

- 3.4 **Non-exclusive arrangement:** To avoid doubt, the rights granted to the Affiliate under the Agreement are non-exclusive. Nothing in the Agreement applies to limit or restrict the Company's right to conduct the Business (and to authorise third parties to conduct the Business).

## 4 ORDERS

- 4.1 **Placing Orders:** The Affiliate must place an Order by providing the Company with the details of the links on their website that will track the order via the affiliate set-up.
- 4.2 **Accepting Orders:** The Company has the right to accept or reject each Order on reasonable grounds. If the Company rejects an Order, it must provide the Affiliate with its reasons for doing so.
- 4.3 **Customer Agreements:** An Order is not binding on the Company until the Company has entered into a Customer Agreement with the prospective Customer. The Company will use reasonable efforts to enter into a Customer Agreement as soon as practicable after accepting an Order.

## 5 MARKETING AND PROMOTION

- 5.1 **General:** The Affiliate must, at its own expense:
- a work diligently to promote and protect the Company's interests, enhance and maintain the reputation of the Products & Services and the Company, and act loyally and faithfully towards the Company, including:
    - i represent the Products & Services, and Brands to Customers and prospective Customers in the most favourable manner at every reasonable opportunity; and
    - ii maintaining good relationships with all of the Customers and prospective Customers in the Territory; and
  - b use best efforts to maximise sales of the Products & Services in the Territory.

## **6 RESELLER OBLIGATIONS**

6.1 **General:** In addition to complying with its other obligations in the Agreement, the Affiliate must:

- a conduct the Business in accordance with Good Industry Practice;
- b comply with:
  - i all applicable laws, regulations, rules and professional codes of conduct or practice when conducting the Business and performing its other obligations in the Agreement; and
  - ii reasonable guidance from the Company on the conduct of the Business, as updated by the Company from time to time;
- c procure all licences, authorisations and consents necessary for the Affiliate to conduct the Business, as applicable; and
- d promptly notify the Company of:
  - i any breach of the Affiliate under the Agreement or any matter which may impact on the Affiliate ability to perform its obligations under the Agreement; and
  - ii any complaint relating to the Products & Services that is received by the Affiliate, together with all available information relating to the complaint.

## **7 FEES**

7.1 **General:**

- a 10% of the amount received by the Company in their bank account, after any deduction of fees or rebates claimed by the Customer or money processing entity

7.2 **Invoicing and payment:**

- a The Company must pay the Fees within 30 days of receiving any fees from the Client.

7.3 **Refunds and credit:** If the Company repays or credits any money to a Customer relating to a Product, the Affiliate must, on demand by the Company, promptly repay any Fee paid to the Reseller relating to those Products & Service(s). The Company may set off against any future Fee payment any amount that becomes repayable by the Affiliate under this clause but which has not been received by the Company.

## **8 INTELLECTUAL PROPERTY**

8.1 **Products & Services:** The Company (and its licensors) owns all Intellectual Property Rights in the Products & Services, and the Documentation. The Affiliate must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

8.2 **New Intellectual Property:** As between the parties, from the date it is created, the Company solely owns:

- a all new Intellectual Property & Services created by the Company in the course of providing the Products & Services or otherwise in connection with the Agreement, and
- b all new Intellectual Property & Services in any documentation or other materials created by the Affiliate, to the extent the documentation or materials relate to the Products & Services.

8.3 **Feedback:** If the Affiliate or any Customer provides the Company with ideas, comments or suggestions relating to the Products & Services, or the Documentation (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by the Company; and
- b the Company may use or disclose the feedback for any purpose.

8.4 **Restrictions:** The Affiliate must not:

- a use the Company's Intellectual Property other than to carry out its obligations under the Agreement; or

- b alter, remove or otherwise interfere with any copyright or proprietary marking on the Products & Services, their packaging, or the Documentation; or
- c except to the extent permitted by law, reverse-engineer, decompile, disassemble or modify the Products & Services.

#### 8.5 **Brands:**

- a The Company grants to the Affiliate a non-exclusive, non-transferable licence for the duration of the Agreement to use the Brands in the Territory in order to conduct the Business in accordance with the Agreement.
- b The Products must be marketed and sold by the Affiliate using the Brands. The Company may add or remove a Brand from the scope of the Agreement at any time by notice to the Affiliate. On receipt of that notice, the definition of Brands in the Agreement is deemed to be amended in accordance with the notice.
- c The Affiliate must use the Brands only in accordance with any usage and marketing guidelines provided by the Company from time to time.
- d All goodwill generated through the Affiliate use of the Brands accrues to the benefit of the Company.

#### 8.6 **Notifying of issues:**

- a The Affiliate must promptly notify the Company:
  - i where the Affiliate becomes aware, or reasonably suspects, that the Company's Intellectual Property Rights are being infringed, or are likely to be infringed, including any circumstance that suggests a person may have unauthorised knowledge, possession or use of the Products & Services; and
  - ii of any proceeding or known intention to bring proceedings against the Affiliate and/or the Company, including for infringement of Intellectual Property Rights.
- b The Company has the sole right to take, defend or settle any proceeding for any alleged infringement of any Intellectual Property Right of any third party relating to the Intellectual Property of the Company.



- c The Affiliate must provide the Company with all assistance reasonably requested by the Company, at the Company's reasonable cost, relating to any action taken by the Company on a matter notified by the Affiliate under clause 10.6a.

## **9 CONFIDENTIALITY**

- 9.1 **Security:** Each party must, unless it has the prior written consent of the other party:
- a keep confidential at all times the Confidential Information of the other party;
  - b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
  - c disclose Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that the personnel or professional advisor is aware of, and complies with, clauses 9.1a and 9.1b.
- 9.2 **Permitted disclosure:** The obligation of confidentiality in clause 9.1 does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
  - b required by law (including under the rules of any stock exchange);
  - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
  - d which was rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or
  - e by the Company if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Company enters into a confidentiality agreement with the third party on terms no less restrictive than this section 9.

## 10 WARRANTIES

- 10.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.
- 10.2 **Products:** The Company does not give any warranty to either the Affiliate or any Customer relating to the Products & Services, other than the warranties:
- a that the Company makes directly to Customers in a Customer Agreement or the Documentation; or
  - b for which the Company cannot exclude its liability.
- 10.3 **Prohibition:** The Affiliate must not give any warranty or make any representation relating to the Products & Services, including that the Products & Services will be exclusively licensed or made available to the Customer or prospective Customer.
- 10.4 **No implied warranties:** To the maximum extent permitted by law:
- a the Company's warranties are limited to those set out in the Documentation and the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to an amount equal to the Fees paid or payable by the Company to the Reseller in relation to the relevant Products & Services; and
  - b the Company makes no representation concerning the quality of the Products & Services, and does not promise that the Products & Services will operate without error or interruption.

- 10.5 **Consumer Guarantees Act:** The Affiliate agrees and represents that it is acquiring the right to conduct the Business, and entering the Agreement, for the purposes of trade.

## **11 INDEMNITY**

### **11.1 IP indemnity:**

- a The Company indemnifies the Affiliate from and against any claim or proceeding brought against the Affiliate in the Territory to the extent that claim or proceeding alleges that the resale of the Products & Services (or the use of the Brands) by the Affiliate in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights in the Territory (**IP Claim**). The indemnity in this clause is subject to the Reseller:
  - i promptly notifying the Company of the IP Claim;
  - ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the Company's prior written consent; and
  - iii giving the Company complete authority and information required for the Company to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the Company's account.
- b The indemnity in clause 11.1a does not apply to the extent that the IP Claim arises from or in connection with the conduct of the Business in breach of the Agreement, including:
  - i the resale of the Products \*& Services (or use of the Brands) outside the Territory; or
  - ii any warranty given or representation made by the Affiliate to a Customer or prospective Customer in breach of clause 11.1a.
- c Without limiting the indemnity in clause 11.1a, if at any time an IP Claim is made, or in the Company's opinion is likely to be made, then in defence or settlement of the IP Claim, the Company may modify or replace the items the subject of the IP Claim so they become non-infringing.

- 11.2 **Affiliate indemnity:** The Affiliate indemnifies the Company from and against any claim, proceeding, damage, loss, liability, cost and expense (including legal costs on a solicitor and own client basis) suffered or incurred by the Company resulting from:
- a infringement of the Company's Intellectual Property Rights by the Affiliate, including any misuse of the Brands; and
  - b any warranty given or representation made by the Affiliate to a Customer or prospective Customer in breach of clause 11.1a.

## 12 LIABILITY

- 12.1 **Maximum liability:** The maximum aggregate liability of the Company to the Affiliate under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise:
- a relating to any Product, must not exceed an amount equal to the Fee paid or payable by the Company to the Affiliate for that Product; and
  - b must not in any Year exceed an amount equal to the Fees paid to the Affiliate under the Agreement in the previous Year (which in the first Year is deemed to be the total Fees paid to the Affiliate from the Start Date to the date of the first event giving rise to liability).
- 12.2 **Unrecoverable loss:**
- a Neither party is liable to the other under or in connection with the Agreement for any:
    - i loss of profit, revenue, savings, business, data and/or goodwill; or
    - ii consequential, indirect, incidental or special damage or loss of any kind.
  - b To avoid doubt, the Affiliate liability to a Customer or any other person is a type of loss excluded under clause 12.1.
- 12.3 **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent the failure is directly caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

12.4 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the

### **13 TERM AND TERMINATION**

13.1 **Duration:** Unless terminated under this clause 13, the Agreement:

- a starts on the Start Date and ends on the End Date; but
- b where there is no End Date, continues for successive terms of from the Start Date unless a party gives at least a 30 day notice.

13.2 **No fault termination:** The Company may terminate the Agreement on at least 1 months prior notice to the Affiliate.

13.3 **Termination rights:**

- a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
  - i breaches any material provision of the Agreement and the breach is not:
    - ▲ remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach; or
    - ▲ capable of being remedied;
  - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or charge's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
  - iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
- b The Company may, by notice to the Affiliate, immediately terminate the Agreement if the exercise of the remedy in does not remedy or settle the IP Claim.

- 13.4 **Company termination:** The Company may terminate the Agreement by giving at least 30 days' notice if the Affiliate fails to meet or exceed the Minimum Requirements.
- 13.5 **Consequences of termination or expiry:**
- a Termination or expiry of the Agreement does not affect either party's rights and obligations accrued before that termination or expiry.
  - b On termination or expiry of the Agreement, the Affiliate must:
    - i immediately cease to:
      - ▲ conduct the Business; and
      - ▲ use the Documentation, the Brands and all other Company Confidential Information;
    - c Where the Agreement is terminated by the Company under clause 13.4, no further Fees are payable by the Company from the termination date, other than to settle any outstanding amounts that are due.
    - d No compensation is payable by the Company to the Affiliate as a result of termination of the Agreement for whatever reason.
- 13.6 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, continue in force.

## **14 DISPUTES**

- 14.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.
- 14.2 **Obligations continue:** Each party must, to the extent practicable, continue to perform its obligations under the Agreement even if there is a dispute.
- 14.3 **Right to seek relief:** This section 14 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

## 15 GENERAL

- 15.1 **Rights of third parties:** No person other than the Company and the Affiliate has any right to a benefit under, or to enforce, the Agreement.
- 15.2 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 15.3 **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email using the email address set out in the Key Details or otherwise notified by the other party for this purpose.
- 15.4 **Severability:**
- a If any provision of the Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.
- 15.5 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 15.6 **Entire Agreement:** The Agreement sets out everything agreed by the parties relating to the Products & Services, the relationship between the parties, and the conduct of the Business, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to be bound by this clause 15.6.
- 15.7 **No assignment:**
- a The Reseller may not assign, novate, subcontract or transfer any right or obligation under the Agreement, without the prior written consent of the Company. The Reseller remains liable for the performance of its obligations under the Agreement despite any approved assignment, subcontracting, or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
  - b Any change of control of the Affiliate is deemed to be an assignment for which the Company's prior written consent is required. In this clause,

**change of control** means any transfer of shares or other arrangement affecting the Affiliate or any member of its group which results in a change in the effective control of the Affiliate.

- 15.8 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of Singapore. Each party submits to the non-exclusive jurisdiction of the Courts of Singapore in relation to any dispute connected with the Agreement.
- 15.9 **Counterparts:** This Agreement terms & conditions must be accepted electronically by the Affiliate.