

## Surfer Affiliate Program Agreement

Last Modified: March 20, 2020

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This contract is concluded between you (the “Partner”) and Surfer sp. z o.o. (“the Surfer”). It defines aspects of our business relationship and how we will cooperate.

This Agreement applies to your participation in our Affiliate Program. We may update this agreement from time to time. If we update this agreement we will let you know by email. If you don’t agree to the update, you may choose to terminate as described below.

### I. Definitions

- a) **Account** - means an account created by Surfer on Surfer Website for the purposes of Affiliate Program.
- b) **Affiliate Lead** - means a prospective customer who clicks on the Affiliate Link and before that action was not our customer at any time.
- c) **Affiliate Link** - means the unique tracking link you place on your Website or promote through other channels.
- d) **Affiliate Program** - means Surfer Affiliate Program governed by provisions of this Agreement.
- e) **Agreement** - means this Surfer Affiliate Program Agreement and all policies referred or linked to in here.
- f) **Commission** - means an amount of remuneration due to Partner for each Referred Customer.
- g) **Partner IP** – all intellectual property, logos, trademarks etc. that you provide to Surfer in connection with Affiliate Program.
- h) **Referred Customer** - means the legitimate actual user of the Surfer Website who has registered on Surfer Website and purchased Surfer Services after receiving status of an Affiliate Lead.
- i) **Surfer Content** - means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that we incorporate into our services.
- j) **Surfer Services** - means both the subscription Services and other products or our web-based software that is subscribed to, and developed, operated, and maintained by us, accessible at [www.surfer.com](http://www.surfer.com) or another designated URL. For the purposes of this Agreement, Surfer Service does not include our any implementation, customization, training, consulting, additional support or other professional services, or fees for third-party products or services.

- k) **We, us, our, and Surfer** - means Surfer sp. z o.o.
- l) **You, Partner and Affiliate** - means the party being an entrepreneur (conducting own business), other than Surfer, entering into this Agreement.
- m) **Surfer Website** – website available at [www.surfer.com](http://www.surfer.com) or another designated URL.
- n) **Your Website** – website to which you have legal rights, used for promoting Surfer Services.
- o) **Your Account** – account registered for you on Surfer Website, for the purposes of Affiliate Program.

## II. Registration

1. You will be required to register for an account in order to participate in Affiliate Program.
2. You must provide your full legal name, a valid email address, and all other information requested in order to complete the signup process on the Surfer Website. All information you provide in your profile must be truthful. You are solely responsible for all the information you provide in Your Account and on Your Website. You are also obliged to update data provided during registration process as necessary to maintain its truth and accuracy.
3. If you register for Affiliate Program, You agree to accept responsibility for all activities that occur under Your Account or password, if any, and you agree you will not sell, transfer, reveal, make available for or assign Your Account to any third party.
4. As a Partner, you can only have 1 (one) Account.
5. Once you complete an application to become a Partner, we will review your application and notify you whether you have been accepted to participate in the Surfer Affiliate Program. Before we accept your application, we may want to review your application with you, so we may ask you for more information. If we do not notify you that you are accepted to participate in the Surfer Affiliate Program within thirty (30) days from your application, your application is considered to be rejected.

## III. Partner Representations and Warranties

1. You represent and warrant that: (i) you have all sufficient rights and permissions to participate in the Affiliate Program and to provide Surfer with Affiliate Leads, (ii) your participation in this Affiliate Program will not conflict with any of your existing agreements or arrangements; and (iii) you own or have sufficient rights to use and to grant to us our right to use your logos and other intellectual property (Partner IP).
2. You further represent and warrant that: (i) you will ensure that you are compliant with any trade or regulatory requirements that may apply to your participation in the Affiliate Program; (ii) you will not purchase ads that direct to your site(s) or through an Affiliate Link that could be considered as competing with Surfer's own advertising, including, but not limited to, our branded keywords; (iii) you will not participate in cookie stuffing or pop-ups, false or misleading links are strictly prohibited; (iv) you will not attempt to mask the referring URL information; (v) you will not use your own Affiliate Link to purchase Surfer products for yourself.

## IV. Promoting Surfer Services

1. As a Partner in our Affiliate Program, you may advertise or promote Surfer Services.
2. If You promote, market or otherwise advertise any Surfer Services which is available for Customers via Surfer Website, including for the purpose of earning a Commission, you agree, acknowledge, represent and warrant that:
  - a. You will abide provision of this Agreement and all referred Policies;
  - b. You will promote Surfer Services at your own cost and expense, unless we expressly grant you with certain benefits in writing. You will act at your own risk and in compliance with this Agreement and other our Policies;

- c. You must not produce or distribute your own materials that are deceptively similar to those produced, published or provided by us or which suggest they originate from us;
- d. You can't promote directly the Services on social media. You can promote an blog post, video or review etc. At all times you must comply with the following social media guidelines: (i) use your own name or business name on the social media account, (ii) do not present yourself as an employee, representative or agent of Surfer, (iii) do not post discriminatory, insulting or offensive content or comments, (iv) respect the privacy of other users of the social media channel, (v) respect copyrights and all other intellectual property rights of Surfer and third parties;
- e. You will not use mass telemarketing to promote Surfer Services, including automatic calling devices. You may not use pre-recorded or artificial voice messages or send fax, email, or text messages to anyone with whom you do not have an established business relationship, or who has not given prior express consent to send such messages. It is your responsibility to comply with all applicable laws and regulations applicable to personal data protection, privacy or unsolicited commercial communications;
- f. You will not SPAM. We will terminate Your Account on the first offense of spamming;
- g. You will not send emails to lists or groups that you do not have permission to send them to;
- h. You will not promote Surfer in a way that requires a prospect customer to perform an action (such as sign up for a Surfer Services or Free Trial) in order to receive a reward, gift, or other compensation as result of such action. Promoting Surfer Services with an incentive of "cash back" to prospects or Referred Customers in return for signing up for an Account is prohibited;
- i. You will not promote Surfer Services with use of ad campaigns in search engines or through other search engine service providers without our prior written or email consent in each instance;
- j. You will not contact the media about Surfer or its Services, act as a spokesperson for Surfer or make any statements for the media relating to Surfer or its services;
- k. You will not make any false statement or misrepresentation about Surfer or its Affiliates or their respective services.
- l. You will not use the Surfer Affiliate Program for any illegal or unauthorized purpose.
- m. You will not promote Surfer Services and/or Surfer on any gambling websites, websites with adult/hate/violent/defamatory content or any other content that is considered offensive or inappropriate, and any websites that violate third party rights and/or violate any applicable laws;
- n. You will not use and/or mention in any way: (i) Surfer brand names as a keyword in your advertising campaigns across any search engines, including any misspellings in the brand name; (ii) Surfer brand names in the domain name of Your Website, including any misspellings of the brand name;
- o. You will not modify the trademarks, banners, the content or any of the images provided to you in any way, without our prior written consent;
- p. When You use Surfer's trademarks, logos, trade names or service marks You will obey Surfer's trademark guidelines, which will be supplied by Surfer;
- q. You will not make any unlicensed or unauthorized use of, or otherwise infringe, violate or misappropriate any patent, copyright, trademark, trade secret, right of privacy, right of publicity or other intellectual property or other proprietary right of any entity or individual;
- r. You will not interfere with or manipulate tracking of Commissions, or the normal flow of traffic to, through, or from the Surfer Services;
- s. You will not promote any Surfer Services to children under the age of thirteen (13);

- t. You will not in any way copy the "look and feel" of any third party website, or otherwise imply that the promotion is in fact a third party website;
  - u. All communications and/or representations made by You in connection with any promotions and/or in relation to any Surfer Services will be accurate and contain all disclosures and disclaimers necessary to prevent such promotions from being false or deceptive. Such disclosures and disclaimers must be made in a clear and conspicuous manner, and will otherwise comply with Polish laws, Your country's laws and all U.S. federal and state laws, including U.S. Federal Trade Commission ("FTC") regulations, policies and guidelines governing advertising, disclosure and consumer protection, including the FTC's Endorsement Guidelines;
  - v. Your statements about offers, products and Surfer Services will not go beyond the statements of Surfer;
  - w. You will not generate pop-ups, pop-unders, iframes, frames, or any other seen or unseen actions that set affiliate cookies unless the user has expressed a clear and explicit interest in activating a specific saving by clicking on a clearly marked link, button or image for that particular coupon or deal. Your link must send the prospective customer to Surfer Website;
  - x. You will not use any of our trademarked terms as part of the domain (i.e. surferseo.net, surferseo.pl etc.) or subdomain for your website (i.e. surfer.example.com);
  - y. You will not market Surfer trials as discount offers/coupons and will not place Surfer trials in discount/coupon sections of Your Website, unless otherwise agreed with Surfer in writing;
  - z. You will comply with all applicable laws, rules and regulations;
3. Surfer may review all content on Your Website(s) or used by you in your promotional methods. Surfer may require and you agree to provide us the information regarding traffic sources, promotional channels and your promotional methods with regard to Surfer Services.
  4. You should always provide the prospective customers and Referred Customers with true and up-to-date information on pricing, discounts concerning Surfer Services.
  5. We have the right to deactivate or delete Your Account on the first offense referring to this section.
  6. You may not use a third party to perform the obligations under this Agreement without our prior written consent.

#### **V. Referred Customers. Commission**

1. We will pay you Commission for each Referred Customer who purchased Surfer Services after clicking on an Affiliate Link made available by you, as well as for additional purchases made by that Referred Customer, provided that you remain eligible to receive Commission pursuant to the terms of this Agreement.
2. Unless otherwise stated herein, when the Affiliated Lead with your reference ID recorded in Surfer's cookie, registers an account on Surfer Website, you will receive a Commission for as long as the Referred Customer maintains paid subscription for Surfer Services on Surfer Website or until terminated by either party in accordance with Agreement, provided that you remain eligible to receive a Commission pursuant to Surfer Affiliate Program Terms.
3. Cookie lifetime is 30 days.
4. You will receive the Commission if Referred Customer purchase Surfer Services at any time.
5. If at any time the Referred Customer's account is canceled, suspended or refunded, you will become ineligible to receive Commission on any future fees collected from that Referred Customer.
6. The Commission will be calculated on a monthly basis and will refer to the actual subscription of the Referred Customer. If the Referred Customer upgrades the subscription, the

Commission will be calculated on the upgraded subscription. If the subscription will be lowered also the Commission will be calculated on that lowered subscription.

7. You are not eligible to receive Commission especially if: (i) such compensation is disallowed or limited by the laws, (ii) the Customer has paid or will pay such commissions, referral fees, or other compensation directly to you, (iii) the Commission payment has been obtained by fraudulent means, misuse of the Affiliate Link, in violation of any Affiliate Program Policies that we make available to you, or by any other means that we deem to breach the spirit of the Affiliate Program, or (iv) Referred Customer participates in Affiliate Program.
8. You will not receive Commissions for self-referrals and for Affiliates, who violate our Surfer Affiliate Program Terms. You may not refer the company you work for and receive Commissions for that.
9. In order to receive payment under this Agreement, you must have: (i) agreed to the terms of this Agreement, (ii) completed all steps necessary to create your Account on Surfer Website, (iii) have a valid and up-to-date bank account or PayPal account, (iv) completed any and all required tax documentation in order for Surfer to process any payments that may be owed to you.
10. We will pay the Commission amount due to you if the amount of the Commission exceeds two hundred and fifty US dollars (USD 250). We will not pay more than one Commission payment per month.
11. In order to receive the Commission, you must provide us with a properly issued invoice.
12. You are responsible for payment of all taxes applicable to the Commission. Please note that withholding tax may be deducted from the amount of the Commission. All amounts payable by us to you are subject to offset by us against any amounts owed by you to us.
13. The amount of the Commission shall be calculated in accordance with below rules:

Monthly plans:

Plan (price)	29 USD	59 USD	99 USD	199 USD	650 USD
Recurring commission	8,7 USD	17,7 USD	29,7 USD	59,7 USD	195 USD

Annual plans:

Plan (price)	290 USD	590 USD	990 USD	1990 USD	6500 USD
One-time Commission	87 USD	177 USD	297 USD	597 USD	1950 USD

## VI. Proprietary Rights.

1. No license to any software is granted by this Agreement. Surfer Website and Surfer Services are protected by intellectual property laws. We retain all ownership rights in the Surfers intellectual property. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the Surfer Content, or the Surfer Services in whole or in part, by any means, except as expressly authorized in writing by us. Surfer logos and other marks that we use from time to time are our trademarks and you may not use them without our prior written permission, except as otherwise set forth in this Agreement.

2. Surfer Website as well as advertising material and all provided material along with its source texts may not be edited visually or content-wise or changed otherwise without Surfer's prior written consent.

## VII. Confidentiality

1. As used herein, "Confidential Information" means all confidential information disclosed by a Surfer You, (i) whether orally or in writing, and (ii) Surfer's customer and prospect information. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to Surfer or (ii) was known to You prior to its disclosure by the Surfer without breach of any obligation.
2. You may not disclose any Confidential Information without Surfer's prior written permission or use any Confidential Information for the purpose of soliciting, or to permit others to solicit, Surfer Customers to subscribe to any other services or promote the sale of any products, which compete, either directly or indirectly, with Surfer Services.

## VIII. Term and Termination

1. This Agreement will apply for as long as you participate in the Affiliate Program, until terminated.
2. Both parties may terminate this Agreement on fifteen (15) days written notice to the other party.
3. If we update or replace the terms of this Agreement, you may terminate this Agreement on seven (7) days written notice to us, provided that you send us written notice within ten (10) days after we send you notice of the change.
4. Notice can be sent via email.
5. We may terminate this Agreement: (i) upon thirty (30) days' notice to you of a material breach if such breach remains uncured at the expiration of such period, (ii) upon fifteen (15) days notice to you of non-payment of any amount due to us if such amount remains unpaid at the expiration of such period, (iii) immediately, if you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (iv) or immediately, if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers.
6. If your sources, channels or methods with regard to Surfer Service would be considered as inappropriate or inconsistent with the terms of this Agreement, at Surfer sole discretion, your Account could be suspended, your use privileges could be revoked and Commissions could be canceled.
7. If you take any action described in this Section, or any other action that we reasonably determine to be detrimental to us, our Affiliates or their services, we may withhold (temporarily or permanently) payment of Commissions or terminate this Agreement effective immediately.
8. We will not pay you Commission recognized by us after thirty (30) days after the date of termination or expiration set out above. Provided however, in the event of termination without cause by you, or for cause by us, our obligation to pay and your right to receive any Commission will terminate upon the date of such termination, regardless of whether you would have otherwise been eligible to receive Commission prior to the date of termination.
9. Except as expressly set forth in this section, you are not eligible to receive a Commission payment after expiration or termination of this Agreement. Upon termination or expiration, you will discontinue all use of and delete Surfer Content that we make available to you for your participation in the Affiliate Program. Upon termination or expiration, an Affiliate Lead is not considered valid, and we may choose to maintain it in our database and engage with such a prospect.

10. Upon termination or expiration, you will immediately discontinue all use of our trademark and references to this Affiliate Program from your website(s) and other collateral.
11. Fraud is a serious offense and will be treated as such. Fraud is defined as any action that intentionally attempts to create sales, leads, or click-throughs using robots, frames, iframes, scripts, or manually "refreshing" of pages, for the sole purpose of creating Commissions. ANY ATTEMPTED FRAUD OR FRAUD OR ANY HARMFUL ACTION WILL RESULT IN ACCOUNT CANCELATION AND VOIDED COMMISSIONS. Affiliate have to provide all the documents requested by us within 30 (thirty) days in case we notice any potentially fraudulent activities associated with Your Account or coming through your Affiliate Links. Otherwise, Your Account will be blocked and the Commissions will be canceled.

#### **IX. Indemnification**

You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding brought against Surfer (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us, provided that such is based upon or arises out of (a) your participation in the Affiliate Program, (b) our use of the prospect data you provided us, (c) your noncompliance with or breach of this Agreement, (d) or our use of Partner IP.

#### **X. Disclaimers; Limitations of Liability**

1. Surfer make no representations or warranties about the suitability, reliability, availability, timeliness, fitness for a particular purpose, title and non-infringement, security or accuracy of the Surfer Services or the Affiliate Program.
2. Surfer Services are provided "as is" without warranty or condition of any kind.
3. To the extent permitted by law, in no event Surfer shall be liable for any indirect, punitive, or consequential damages, including lost profits or business opportunities.
4. Our aggregate liability will be limited to the total Commission amounts you have actually earned in Affiliate Program in the twelve month period preceding the event giving rise to a claim.

#### **XI. Complaints handling procedure**

1. Any complaints concerning Affiliate Program should be sent by e-mail to the address tomasz@surferseo.com.
2. The complaint should contain Account data (email address) and detailed description of a complaint.
3. The Surfer has 14 days to consider the complaint, counting from the day of its receipt.

#### **XII. General**

1. We may update and change any part or all of this Agreement. If we update or change this Agreement, the updated Agreement will be sent to you by email. The updated Agreement becomes effective and binding on the next business day after we have notified you. If you will not agree to the update, change or replacement, you can choose to terminate as described above.
2. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

3. This Agreement has the entire understanding between Surfer and you and supersedes any prior written or oral agreement related hereof.
4. Any terms or conditions submitted to Surfer, do not form part of this Agreement and are void, unless signed by authorized representatives of the Parties.
5. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, transferred, delegated or otherwise disposed of by either Party without the prior written consent of the other Party, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Surfer may, without the prior consent of a Partner, assign, transfer, delegate or otherwise dispose of, this Agreement, or any of its rights, interests or obligations hereunder to any of its subsidiaries.
6. You shall comply, and shall ensure that any third parties performing sales or referral activities on your behalf comply, with all applicable foreign and domestic laws (including without limitation export laws and laws applicable to sending of unsolicited email), governmental regulations, ordinances, and judicial administrative orders. The following sections of this Agreement shall survive its expiration or termination: Commission, Proprietary Rights, Confidentiality, Indemnification, Disclaimers; Limitation of Liability, Non-Solicitation and General.
7. Any notice connected with this Agreement shall be sent to the following email addresses:  
To Surfer: tomasz@surferseo.com.  
To you: your email address as provided in your Account.
8. Unless otherwise provided herein, notices under this Agreement must be sent by e-mail, with a suggestive subject, to the addresses listed below (or notified in writing) and will be effective the earlier of (i). being received or refused by the Party or (ii). the next business day after being sent.
9. This Agreement and all related documents are drawn up in English. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship and the translated version is provided for convenience only and will not be interpreted to modify the English version of this Agreement.
10. This Agreement shall be governed by the laws of Poland without regard to the conflict of laws provisions thereof.
11. Any dispute between you and Surfer shall be resolved before competent common court in Wrocław, Poland.