

Last Updated: November 11, 2020

Online Marketing Affiliate Terms and Conditions

These terms and conditions (“Agreement”) are entered into between TruU Balance, on behalf of itself and its current and future affiliated entities (collectively, “TB”), and your company and your current and future affiliated entities (collectively, the “Marketing Affiliate”, and together with TB, the “Parties”, and each, a “Party”). This Agreement governs the terms and conditions under which Marketing Affiliate will deliver online marketing affiliate services (“Services”) for TB with respect to TB products (“Products”) and is effective upon Marketing Affiliate’s confirmation of its acceptance of these terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Marketing Affiliate Obligations and Responsibilities.

- a. Marketing Affiliate will:
 - i. deliver the Services consistent with good business practice, in conformance with relevant industry standards of good performance, using efforts comparable to those customarily used in online promotional campaigns of equivalent value and for similar products or services;
 - ii. promptly notify TB of, and provide, upon TB’s request, assistance to TB to address and investigate, any complaint or adverse claim about any Product or its use;
 - iii. include the hashtag #Ad or #Sponsored in any content that you post on to your website, or social media channels if you have received compensation or free Products in exchange for your post in order to remain in compliance with the rules, guidance, and regulations promulgated by the Federal Trade Commission (“FTC”); and
 - iv. disclose Marketing Affiliate’s connection to TB clearly and conspicuously when reasonably necessary or advisable or as required by applicable law.
- b. Marketing Affiliate will not:
 - i. make any misleading or untrue statements or claims concerning the medicinal effectiveness, treatment viability or health benefits arising out of the use of the Products;
 - ii. make any representations, warranties, guarantees, indemnities, similar claims, or other commitments actually, apparently, or ostensibly on behalf of TB;
 - iii. use any promotional or marketing materials concerning the Products, whether prepared by Marketing Affiliate or others, without the prior written consent of TB;
 - iv. bid on TB’s brand keywords such as TB’s company names, Product names, website names or any variation thereof with respect to such names or SKU numbers;
 - v. offer rebates, promotional codes or coupons with respect to Products without TB’s prior written consent; or
 - vi. place links to TB Sites on Marketing Affiliate coupon sites.

- c. Marketing Affiliate shall at all times comply with all applicable federal, state, and local laws, ordinances, regulations, and orders that are applicable to the operation of its business and to this Agreement and its performance hereunder, including but not limited to regulations and guidelines directly relating to the Services and/or Products set forth by the FTC and the US Food and Drug Administration (“FDA”), including but not limited to the Federal Trade Commission Act and the CAN-SPAM Act.

2. Payment of Commissions.

- a. TB shall pay Marketing Affiliate a commission for its Services for all sales solicited by Marketing Affiliate pursuant to the terms of this Agreement (“Sales”) in a calendar month (a “Month”), in the amount equal to a percentage (the “Commission Rate”) of the Net Sales Price of such Sales (the “Commission Fee”). “Net Sales Price” means the net sales price (exclusive of sales tax, processing fees, and/or shipping costs and after applying any discounts, promotional codes, credits, rebates, or adjustments) received by TB for the Sale of Products to Customers (defined below).
- b. A Sale shall be deemed solicited by Marketing Affiliate in the event:
 - i. a Customer is directed to a website owned and operated by TB (a “TB Site”) via a link on a web page, article, advertisement, or similar online site authored and/or operated by Marketing Affiliate (a “Marketing Affiliate Site”); and
 - ii. said Customer purchases and pays for Product(s) upon being directed to the TB Site via the link on the Marketing Affiliate Site.
- c. The Commission Rate applicable to Sales to new Customers who have never purchased Products from TB via a TB Site prior to being directed to the TB Site via the link on the Marketing Affiliate Site (“Unique Customer(s)” and together with all other customers “Customer(s)”) will be determined in accordance with the following schedule:

Tier	Aggregate Net Sales Price (\$)	Commission Rate
1	0-14,999.99	15%
2	15,000.00-49,999.99	20%
3	50,000.00 plus	25%

- d. At the end of each Month, TB will calculate the total Commission Fee for Sales to Unique Customers based upon the Commission Rate in each tier set forth in the table in Section 2(c) multiplied by the aggregate Net Sales Price received from Unique Customers in that tier. For example, if Marketing Affiliate is credited with an aggregate Net Sales Price to Unique Customers of \$25,000 in a Month, then the Commission Fee to which Marketing Affiliate is entitled to for that Month with respect to Sales to such Unique Customers is \$4,250.00 [20% x \$10,000 for Tier 2] + [15% x \$14,999.99 for Tier 1] (rounded up for the sake of this example).
- e. In the event Marketing Affiliate qualifies for a Commission Rate in Tier 2, 3, or 4 in accordance with Section 2(c) for 2 consecutive months (an “Earned Tier”), then

thereafter, Marketing Affiliate shall at least receive the Commission Rate for the Earned Tier regardless of the aggregate Net Sales Price received but shall retain the ability to earn a higher Commission Rate in a Month than that in the Earned Tier by accomplishing aggregate Net Sales in such higher tiers in accordance with Section 2(c); provided that if Marketing Affiliate fails to achieve the aggregate Net Sales Price associated with the Earned Tier for 2 consecutive months, then thereafter, Marketing Affiliate’s Commission Rate shall be determined in accordance with Section 2(c) until an Earned Tier is achieved again pursuant to this Section 2(e).

- f. The Commission Rate earned on Sales to all Customers other than Unique Customers shall be 15%.
- g. Marketing Affiliate shall be entitled to the Commission Fee on all Sales to each Customer for a period of 90 days following the initial Sale solicited by Marketing Affiliate for TB with respect to such Customer, whether or not said Customer accesses a TB Site via a Marketing Affiliate Site. Following the expiration of said 90 day period, such Customer shall be considered a customer of TB and Marketing Affiliate shall not be entitled to a Commission Fee in relation to any further sales made to such Customer by TB.
- h. Notwithstanding anything to the contrary herein, Marketing Affiliate shall not be eligible for a Commission Fee in relation to sales of Products to the Marketing Affiliate and/or any of its employees or contractors.
- i. The Commission Fee shall be paid by TB within 60 days of the end of the Month in which (and only to the extent that) TB actually receives unconditional payment from a Customer. If the Customer makes payments to TB in increments or installments, TB shall pay Marketing Affiliate pro rata commission corresponding to the incremental or installment payments of the Net Sales Price.
- j. TB may use third parties to track, calculate, and disburse Commission Fee payments to Marketing Affiliate. In such an event, Marketing Affiliate shall be required to utilize the same in order to receive payment hereunder and shall be subject to the terms and conditions set forth by such third party site. Marketing Affiliate shall fully cooperate with TB in the use of such third parties, including the transition from one third party provider to another.
- k. Payments to Marketing Affiliate may be withheld, in whole or in part, by TB if Contractor is in breach of this Agreement and fails to cure such breach promptly upon receiving notice of the same.
- l. TB reserves the right to revise the Commission Rate and how it is earned here under upon prior notice to the Marketing Affiliate; provided such revision will not be effective until the first day of a month after 30 days have passed since Marketing Affiliate received such notice.

3. Bonus.

- a. Marketing Affiliate shall earn a flat bonus payment (the “Bonus”) based upon the total number of individual Sales entered into by Customers which were solicited by Marketing Affiliate during the applicable Month based upon the following schedule:

Number of Individual Customer Sales	Flat Bonus Amount
2,000	\$2,500
3,500	\$5,000
5,000	\$10,000

- b. At the end of each Month, TB will determine the amount of the Bonus Marketing Affiliate is eligible to receive by summing the number of individual Sales entered into by Customers solicited by Marketing Affiliate during the applicable Month and shall pay the Bonus amount corresponding to such number of individual Sales set forth in Section 3(a) above. For example, if Marketing Affiliate solicits 2,200 individual Sales from Customers in a Month (and such orders are filled and paid for), Marketing Affiliate shall earn a \$2,500 Bonus for that Month. If Marketing Affiliate solicits 7,000 individual Sales in a Month (and such orders are filled and paid for), Marketing Affiliate shall earn a \$10,000 Bonus for that Month.
- c. The Bonus shall be paid by TB to Marketing Affiliate along with the Commission Fee.

4. **Free Products.**

- a. TB, in its sole discretion, may, from time to time, deliver to Marketing Affiliate a Product selected by Marketing Affiliate free of charge ("Free Products").
- b. Free Products shall not be sold by Marketing Affiliate. Free Products are not intended for re-sale by any third party. Free Products are delivered to Marketing Affiliate "AS IS WHERE IS" without any warranty of any kind. Free Products are intended to be used solely by Marketing Affiliate for the purpose of improving the Services.

5. **Marketing Affiliate Sites, Links, Landing Pages, and Content.**

- a. All TB graphics, logos, or other insignia ("TB Logos") utilized by Marketing Affiliate on Marketing Affiliate Sites shall be provided by TB.
- b. TB shall designate certain TB Sites as landing pages for links utilized by Marketing Affiliate on its Marketing Affiliate Sites for the purpose of directing Customers to TB Sites in relation to the Services ("Links"). Marketing Affiliate shall only direct Customers to and use Links to TB Sites approved by TB. TB reserves the right to disable any Links or their landing pages at any time in its sole discretion upon notice to Marketing Affiliate.
- c. All content related to TB and/or Products utilized on Marketing Affiliate Sites in relation to the Services, including but not limited to articles, writings, pictures, graphics, images, videos, gifs, memes, or other similar content ("Content") is subject to review, approval, and removal from Marketing Affiliate Sites by TB.
- d. TB may provide Marketing Affiliate access to pre-approved Content created by TB and TB Logos for use on Marketing Affiliate Sites solely in relation to the Services.
- e. Marketing Affiliate shall immediately remove and/or disable Content or Links upon the request of TB.

- f. Marketing Affiliate Sites utilized in performance of the Services shall not contain any materials or links to materials which infringe upon the intellectual property/trademark rights of any party, including TB, or which are false, misleading, explicit, offensive, harassing, spamming, intimidating, illegal, pornographic or otherwise inappropriate for use in the Services.
- g. Marketing Affiliate shall not use TB company or Product names or TB Logos as part of Marketing Affiliate's website domain, blog, Facebook account, YouTube channel, Twitter user name, Instagram handle, or any URL associated with Marketing Affiliate.

6. Promotional Codes

- a. Upon Marketing Affiliate's request, TB, in its sole discretion, may deliver to Marketing Affiliate promotional codes for a discount off the Net Sales Price of Products for use by third party visitors to a Marketing Affiliate Site ("Promotional Codes").
- b. TB reserves the right to modify or disable Promotional Codes at any time upon notice to Marketing Affiliate. Upon receiving any such notice, Marketing Affiliate shall modify the promotion as instructed or, in the event of disabling, remove all references to such Promotional Codes.
- c. Promotional Codes may be limited to certain Products and with respect to specific quantities of Products in TB's sole discretion.
- d. Promotional Codes may not be used by Marketing Affiliate or its employees or contractors.
- e. Marketing Affiliate shall not use Promotional Codes on coupon based websites such as Groupon.com, Retailmenot.com, CouponTrade.com or any other similar functioning sites.
- f. Promotional Codes are provided by TB in an amount determined by TB in its sole discretion. The amount of the Promotional Code you receive in relation to a Product may be more or less than that offered by TB or other marketing affiliates.

7. Intellectual Property

- a. "Intellectual Property Rights" means all intellectual property and industrial property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, websites, and URLs; (iv) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software, and firmware, data, data files, and databases and other specifications and documentation; (v) trade secrets; and (vi) all other intellectual property and industrial property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction in any part of the world.

- b. Marketing Affiliate acknowledges and agrees that: (i) any and all of TB's Intellectual Property Rights are the sole and exclusive property of TB or its licensors; (ii) Marketing Affiliate shall not acquire any ownership interest in any of TB's Intellectual Property Rights under this Agreement; (iii) any goodwill derived from the use by Marketing Affiliate of TB's Intellectual Property Rights inures to the benefit of TB or its licensors, as the case may be; (iv) if Marketing Affiliate acquires any Intellectual Property Rights in or relating to any TB Intellectual Property Rights by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to TB or its licensors, as the case may be, without further action by either of the Parties; and (v) Marketing Affiliate shall use TB's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of TB.
- c. Subject to the terms and conditions of this Agreement, TB grants to Marketing Affiliate a non-exclusive, non-transferable, and non-sublicensable license to use TB's trademarks during the term of this Agreement solely in connection with the marketing, promoting, advertising, and sale of Products. Other than the express licenses granted by this Agreement, TB grants no right or license to Marketing Affiliate by implication, estoppel, or otherwise to Products or any of TB's Intellectual Property Rights.

8. **Miscellaneous**

- a. Marketing Affiliate shall indemnify and defend TB and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorney fees, that are incurred by Indemnified Party, arising out of or related to any: (a) breach or non-fulfillment of any provision of this Agreement by Marketing Affiliate or Marketing Affiliate's personnel; or (b) any failure by Marketing Affiliate or its personnel to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations under this Agreement.
- b. This Agreement may be terminated by either Party at any time, upon notice to the non-terminating Party. Upon the termination of this Agreement, commissions will be paid to Representative on all finalized Sales with Customers through the date of termination for which Marketing Affiliate is entitled to a Commission Fee for hereunder. Upon the termination of this Agreement, Marketing Affiliate shall promptly remove all links to TB Sites and remove any and all Content and TB Logos from Marketing Affiliate Sites.
- c. Marketing Affiliate is an independent contractor of TB. Neither Marketing Affiliate nor any of its personnel is an employee of TB for the purposes of payroll taxes, social security, unemployment taxes, or workman's compensation, or any other purpose. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, corporate affiliation or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other party. Furthermore, TB

will not be held responsible for any expenses of Marketing Affiliate unless authorized in writing by TB in advance of such expenditure.

- d. This Agreement is not assignable in whole or in part by Marketing Affiliate. This Agreement may be assigned by TB at anytime.
- e. This Agreement binds and benefits the Parties and their respective legal representatives, successors, and permitted assigns.
- f. TB reserves the right to amend this Agreement. In such event, you will be notified of such amended terms and conditions. If any such modification is unacceptable to you, you may terminate this Agreement. Your continued performance of Services for TB shall be deemed an acceptance of the amended Agreement.
- g. This Agreement and all claims or causes of action arising out of or relating to this Agreement will be governed by and construed in accordance with the laws of the State of Colorado, USA, including Colorado's Uniform Commercial Code, without regard to the chosen jurisdiction's choice-of-law principles. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any dispute arising under this Agreement shall be resolved through binding arbitration according to the Rules of the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures; provided, however, the Parties shall have the right to invoke self-help remedies (such as set-off), and/or request ancillary or provisional judicial remedies (such as specific performance, injunction, and restraining order), before, during or after any arbitration. Venue for any such ancillary and/or provisional judicial remedy shall reside exclusively in the state or federal courts having jurisdiction in or for Hillsborough County, New Hampshire, USA. Use of self-help or ancillary and/or provisional judicial remedies shall not operate as a waiver of either Party's right to compel arbitration. Any ancillary or provisional judicial remedy which would be available from a court at law shall be available from the Arbitrator. The seat or place of arbitration shall be Denver, Colorado, USA. The arbitration shall be conducted and the award shall be rendered in the English language. Except as may be required by law, no Party and no Arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both Parties, except to the extent necessary to protect or pursue a legal right. This Section shall survive the expiration or earlier termination of this Agreement. In the event suit or action is brought to enforce or interpret any of the provisions of this Agreement, or that arise out of or relate to this Agreement, the Parties agree to reimburse the prevailing Party's reasonable attorney fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled. The determination of who is the prevailing Party and the amount of reasonable attorney fees to be paid to the prevailing Party shall be decided by agreement of the Parties, or, if the Parties cannot reach agreement, then by the Arbitrator.
- h. If any part of this Agreement is held to be unenforceable in a court of law, such provision will be severed, and the remainder of this Agreement will remain in full force and effect. Further, upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the covenants contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

- i. This Agreement, together with all documents incorporated herein, is the final and exclusive agreement between the Parties with respect to its subject matter.