



— DISCOVER YOUR SHAPE —

**PO BOX 336  
Crows Nest NSW 1585  
Australia**

## **Affiliate Program Operating Agreement**

This Affiliate Program Operating Agreement (the "Agreement") is made and entered into by and between ("LaSculpte" or "we"), and you, ("you" or "Affiliate") the party submitting an application to become a LaSculpte affiliate. The terms and conditions contained in this Agreement apply to your participation with LaSculpte Affiliate Program. By submitting an application, you expressly consent to all the terms and conditions of this Agreement.

### **I. Enrollment in the Affiliate Program**

You must accurately complete the application to become an affiliate (and provide us with future updates. After we review your application, we will notify you of your acceptance or rejection to the Affiliate Program, generally within two (5) business days. We may accept or reject your application at our sole discretion for any reason.

### **II. Obligations of the Parties**

Subject to our acceptance of you as an affiliate and your continued compliance with the terms and conditions of this Agreement, LaSculpte agrees as follows:

1. We will make available to you via the Affiliate Program graphic and textual links to the Program Web Site which you may display on web sites owned or controlled by you. The Links will serve to identify you as a member of our Affiliate Program and will establish a link from your Media to the Program Web Site.

2. We will pay Affiliate for each Qualified Action (the "Commission"). A "Qualified Action" means an individual person who

- (i) accesses the Program Web Site via the Link, where the Link is the last link to the Program Web Site,
- (ii) is not a computer generated user, such as a robot, spider, computer script or other automated, artificial or fraudulent method to appear like an individual, real live person,
- (iii) is not using pre-populated fields
- (iv) completes all of the information required for such action within the time period allowed by LaSculpte and
- (v) is not later determined by LaSculpte to be fraudulent, incomplete, unqualified or a duplicate.

3. We will pay you any Commissions earned monthly, based on the Affiliate Platform used. We reserve the right to charge back to your account any previously paid Qualified Actions that are later determined to have not met the requirements to be a Qualified Action.

4. Payment for Commissions is dependent upon Clients providing such funds to LaSculpte, and therefore, you agree that LaSculpte shall only be liable to you for Commissions to the extent that LaSculpte has received such funds from the Clients. You hereby release LaSculpte from any claim for Commissions if LaSculpte has not received such funds from the Clients.

5. LaSculpte shall pay the invoices, depending on the Affiliate Platform used, for all Commissions payable under this Agreement and shall remit payment to Affiliate based upon that invoice. All tracking of Links and determinations of Qualified Actions and Commissions shall be made by LaSculpte in its sole discretion. In the event that Affiliate disputes in good faith any portion of an invoice, Affiliate must submit that dispute to LaSculpte in writing and in sufficient detail within thirty (30) days of the date on the invoice. If Affiliate does not dispute the invoice as set forth herein, then Affiliate agrees that it irrevocably waives any claims based upon that invoice. In the event that Affiliate is also tracking Qualified Actions and Affiliate claims a discrepancy, Affiliate must provide LaSculpte with Affiliate's reports within three (3) days after 30th day of the calendar month, and if LaSculpte's and Affiliate's reported statistics vary by more than 10% and LaSculpte reasonably determines that Affiliate has used generally accepted industry methods to track Qualified Actions, then LaSculpte and Affiliate agree to make a good faith effort to arrive at a reconciliation. If the parties are unable to arrive at a reconciliation, then LaSculpte's numbers shall govern.

6. If Affiliate has an outstanding balance due to LaSculpte under this Agreement or any other agreement between the Affiliate and LaSculpte, whether or not related to the Affiliate Program, Affiliate agrees that LaSculpte may offset any such amounts due to LaSculpte from amounts payable to Affiliate under this Agreement. Affiliate also agrees to:

7. Have sole responsibility for the development, operation, and maintenance of, and all content on or linked to, the Affiliate's Media.

8. Ensure that all materials posted on your Media or otherwise used in connection with the Affiliate Program (i) are not illegal, (ii) do not infringe upon the intellectual property or personal rights of any third party and (iii) do not contain or link to any material which is harmful, threatening, defamatory, obscene, sexually explicit, harassing, promotes violence, promotes discrimination (whether based on sex, religion, race, ethnicity, nationality, disability or age), promotes illegal activities (such as gambling), contains profanity or otherwise contains materials that LaSculpte informs you that it considers objectionable (collectively, "Objectionable Content").

9. Not make any representations, warranties or other statements concerning LaSculpte or Client or any of their respective products or services, except as expressly authorized herein.

10. Make sure that your Media does not copy or resemble the look and feel of the Program Web Site or create the impression that your Media is endorsed by LaSculpte or Clients or a part of the Program Web Site, without prior written permission from us.

11. Comply with all (i) obligations, requirements and restrictions under this Agreement and (ii) laws, rules and regulations as they relate to your business, your Media or your use of the Links.

12. Comply with the terms, conditions, guidelines and policies of any third party services used by Affiliate in connection with the Affiliate Program, including but not limited to, email providers, social networking services and ad networks.

13. Always prominently post and make available to end-users, including prior to the collection of any personally identifiable information, a privacy policy in compliance with all applicable laws that clearly and thoroughly discloses all information collection, use and sharing practices, including providing for the collection of such personally identifiable information in connection with the Affiliate Program and the provision of such personally identifiable information to LaSculpte and Clients for use as intended by LaSculpte and Clients.

14. Always prominently post and make available to end-users any terms and conditions in connection with the Offer set forth by LaSculpte or Client, or as required by applicable laws regarding such Offers.

15. Make sure to not place LaSculpte ads on any online auction platform (i.e. eBay, Amazon, etc). The following additional program-specific terms shall apply to any promotional programs set forth below:

16. Advertising Campaigns. No Links can appear to be associated with or be positioned on chat rooms or bulletin boards unless otherwise agreed by LaSculpte in writing. Any pop-ups/unders used for the Affiliate Program shall be clearly identified as Affiliate served in the title bar of the window and any client-side ad serving software used by Affiliate shall only have been installed on an end-user's computer if the function of the software is clearly disclosed to end-users prior to installation, the installation is pursuant to an affirmatively accepted and plain-english end user license agreement and the software be easily removed according to generally accepted methods.

17. Affiliate Network Campaigns. For all Affiliate's that maintain their own affiliate networks, Affiliate agrees to place the Links in its affiliate network (the "Network") for access and use by those affiliates in Affiliate's Network (each a "Third Party Affiliate"). Affiliate agrees that it will expressly forbid any Third Party Affiliate to modify the Links in any way. Affiliate agrees to maintain its Network according to the highest industry standards. Affiliate shall not permit any party to be a Third Party Affiliate whose web site or business model involves content containing Objectionable Content. All Third Party Affiliates must be in good standing with Affiliate. Affiliate must require and confirm that all Third Party Affiliates affirmatively accept, through verifiable means, this Agreement prior to obtaining access to the Links. Affiliate shall promptly terminate any Third Party Affiliate who takes, or could reasonably be expected to take, any action that violates the terms and conditions of this Agreement. In the event that either party suspects any wrongdoing by a Third Party Affiliate with respect to the Links, Affiliate shall promptly disclose to LaSculpte the identity and contact information for such Third Party Affiliate. Affiliate shall promptly remove any Third Party Affiliate from the Affiliate Program and terminate their access to future Offers of LaSculpte in the Network upon written notice from LaSculpte. Unless LaSculpte has been provided with all truthful and complete contact information for a Third Party Affiliate and such Third Party Affiliate has affirmatively accepted this Agreement as recorded by LaSculpte, Affiliate shall remain liable for all acts or omissions of any Third Party Affiliate.

18. Affiliate shall be prohibited to engage in any of the following: Utilising search engine optimisation for brand bidding using LaSculpte's brand name and any or all of its misspellings; Utilising search engine optimisation to include LaSculpte's URL in the display URL; Utilising search engine optimisation to include Affiliate Links in the destination URL; Engaging in any and/or all direct marketing strategies through Facebook including paid advertisements utilising LaSculpte's brand; Partaking in online marketing campaigns in any and/or all of the following: Affiliate Networks, Torrent sites, Streaming sites, Adult sites, websites promoting abusive, erotic, extremist, radical political content, sites with content unsuitable for adolescents, Links on other websites, pop-up windows or pop-ups, cookie dropping.

19. LaSculpte shall not offer any Commissions to Affiliate on orders which are returned by its customers, any invalid orders or any orders which involved using the LaSculpte BRAND AMBASSADOR PROGRAM voucher codes. In the event of partial returns of orders, LaSculpte shall extend Commissions only on that part of the order which is successfully completed and has not been returned. For the avoidance of doubt there shall be no Commissions payable on any returned part of an order.

### **III. Confidentiality**

Except as otherwise provided in this Agreement or with the consent of LaSculpte, you agree that all information, including, without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, and pricing and sales information, concerning us or any of our affiliates provided by or on behalf of any of them shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by you for any purpose other than your participation in the Affiliate Program, except and solely to the extent that any such information is generally known or available to the public through a source other than you. Affiliate shall not use any information obtained from the Affiliate Program to develop, enhance or operate a service that competes with the Affiliate Program, or assist another party to do the same.

### **IV. Limited License & Intellectual Property**

We grant you a non-exclusive, non-transferable, revocable right to use the Links and to access our web site through the Links solely in accordance with the terms of this Agreement, for the sole purpose of identifying your Media as a participant in the Affiliate Program and assisting in increasing sales through the Program Web Site. You may not alter, modify, manipulate or create derivative works of the Links or any LaSculpte graphics, creative, copy or other materials owned by, or licensed to, LaSculpte in any way. You are only entitled to use the Links to the extent that you are a member in good standing of the Affiliate Program. We may revoke your license anytime by giving you written notice. Except as expressly stated herein, nothing in this Agreement is intended to grant you any rights to any of LaSculpte's trademarks, service marks, copyrights, patents or trade secrets. You agree that LaSculpte may use any suggestion, comment or recommendation you choose to provide to LaSculpte without compensation. All rights not expressly granted in this Agreement are reserved by LaSculpte.

### **V. Termination**

This Agreement shall commence on the date of our approval of your Affiliate Program application and shall continue thereafter until terminated as provided herein. You may terminate your participation in the Affiliate Program at any time by removing all Links from your Media, deleting all copies of the Links. We may terminate your participation in one or more Offers or this Agreement at any time and for any reason which we deem appropriate with or without prior notice to you by disabling the Links or providing you with a written notice. Upon termination of your participation in one or more Offers or this Agreement for any reason, you will immediately cease all use of and delete all Links, plus all LaSculpte or Client intellectual property, and will cease representing yourself as a LaSculpte or Client affiliate for such one or more Offers. All rights to validly accrued payments, causes of action and any provisions, which by their terms are intended to survive termination, shall survive any termination.

### **VI. Remedies**

In addition to any other rights and remedies available to us under this Agreement LaSculpte reserves the right to delete any actions submitted through your Links and withhold and freeze any unpaid Commissions or charge back paid Commissions to your account if (i) LaSculpte determines that you have violated this Agreement, (ii) LaSculpte receives any complaints about your participation in the Affiliate Program which LaSculpte reasonably believes to violate this Agreement or (iii) any Qualified Action is later determined to have not met the requirements set forth in this Agreement or on the Affiliate Program. Such withholding or freezing of Commissions, or charge backs for paid Commissions, shall be without regard as to whether or not such Commissions were earned as a result of such breach. In the event of a material breach of this Agreement, LaSculpte reserves the right to disclose your identity and contact information to appropriate law enforcement or regulatory authorities or any third party that has been directly damaged by your actions.

### **VII. Fraud**

You are expressly prohibited from using any persons, means, devices or arrangements to commit fraud, violate any applicable law, interfere with other affiliates or falsify information in connection with referrals through the Links or the generation of Commissions or exceed your permitted access to the Affiliate Program. Such acts include, but are in no way limited to, using automated means to increase the number of clicks through the Links or completion of any required information, using spyware, using stealware, cookie-stuffing and other deceptive acts or click-fraud. LaSculpte shall make all determinations about fraudulent activity in its sole discretion.

### **VIII Representations and Warranties**

You hereby represent and warrant that this Agreement constitutes your legal, valid, and binding obligation, enforceable against you in accordance with its terms and that you have the authority to enter into this Agreement. Subject to the other

terms and conditions of this Agreement, LaSculpte represents and warrants that it shall not knowingly violate any law, rule or regulation which is applicable to LaSculpte's own business operations or LaSculpte's proprietary products or services.

#### **IX. Modifications**

In addition to any notice permitted to be given under this Agreement, we may modify any of the terms and conditions of this Agreement at any time by providing you with a notification by email. The changes will become effective ten (10) business days after such notice. If the modifications are unacceptable to you, you may terminate this Agreement without penalty solely on the account of such termination within such ten (10) business day period. Your continued participation in this Affiliate Program ten (10) business days after a change notice has been posted will constitute your acceptance of such change. In addition, LaSculpte may change, suspend or discontinue any aspect of an Offer or Link or remove, alter, or modify any tags, text, graphic or banner ad in connection with a Link. Affiliate agrees to promptly implement any request from LaSculpte to remove, alter or modify any Link, graphic or banner ad that is being used by Affiliate as part of the Affiliate Program.

#### **X. Independent Investigation**

You acknowledge that you have read this Agreement and agree to all its terms and conditions. You have independently evaluated the desirability of participating in the Affiliate Program and each Offer and are not relying on any representation, guarantee or statement other than as set forth in this Agreement or on the Affiliate Program.

#### **XI. Mutual Indemnification**

Affiliate hereby agrees to indemnify, defend and hold harmless LaSculpte and Clients and their respective subsidiaries, affiliates, partners and licensors, directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on (i) any failure or breach of this Agreement, including any

representation, warranty, covenant, restriction or obligation made by Affiliate herein, (ii) any misuse by Affiliate, or by a party under the reasonable control of Affiliate or obtaining access through Affiliate, of the Links, Offers or LaSculpte or Client intellectual property, or (iii) any claim related to your Media, including but not limited to, the content contained on such Media (except for the Links). LaSculpte hereby agrees to indemnify, defend and hold harmless Affiliate and its subsidiaries, affiliates, partners, and their respective directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on a claim that LaSculpte is not authorized to provide you with the Links.

#### **XII. Disclaimers**

THE AFFILIATE PROGRAM AND LINKS, AND THE PRODUCTS AND SERVICES PROVIDED IN CONNECTION THEREWITH, ARE PROVIDED TO AFFILIATE "AS IS". EXCEPT AS EXPRESSLY SET FORTH HEREIN, LaSculpte EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. LaSculpte DOES NOT WARRANT THAT THE AFFILIATE PROGRAM OR LINKS WILL MEET AFFILIATE'S SPECIFIC REQUIREMENTS OR THAT THE OPERATION OF THE AFFILIATE PROGRAM OR LINKS WILL BE COMPLETELY ERROR- FREE OR UNINTERRUPTED. LaSculpte EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY ACT OR OMISSION OF A CLIENT OR THEIR PRODUCTS OR SERVICES. LaSculpte DOES NOT GUARANTEE THAT AFFILIATE WILL EARN ANY SPECIFIC AMOUNT OF COMMISSIONS.

#### **XII. Limitation of Liability**

IN NO EVENT SHALL LaSculpte BE LIABLE FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE LINKS, PROGRAM WEB SITES, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR OTHER INJURY, DAMAGE OR DISRUPTION OF ANY KIND BEYOND THE REASONABLE CONTROL OF LaSculpte. IN NO EVENT WILL LaSculpte BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PERSONAL INJURY / WRONGFUL DEATH, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT LaSculpte HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. LaSculpte'S CUMULATIVE LIABILITY TO AFFILIATE, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO AFFILIATE BY LaSculpte IN COMMISSIONS DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO SUCH CLAIM.

#### **XIV. Governing Law & Miscellaneous**

This Agreement shall be governed, construed, and enforced in accordance with the laws of Australia. This Agreement contains the entire agreement between LaSculpte and Affiliate with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements or understandings, written or oral. Affiliate agrees that LaSculpte shall not be

subject to or bound by any Affiliate insertion order or online terms and conditions that amend, conflict with or supplement this Agreement, regardless of whether LaSculpte "clicks through" or otherwise indicates its acceptance thereof. Affiliate may not assign all or any part of this Agreement without LaSculpte's prior written consent. LaSculpte may assign this Agreement at any time with notice to Affiliate. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and valid assigns of the parties hereto. The provisions of Section 3, 4(b), 6, 7, 8, 12-15 and any accrued payment obligations shall survive the termination of this Agreement. Except as set forth in the "Modifications" section above, this Agreement may not be modified without the prior written consent of both parties. If any provision of this Agreement is held to be void, invalid or inoperative, the remaining provisions of this Agreement shall continue in effect and the invalid portion of any provision shall be deemed modified to the least degree necessary to remedy such invalidity while retaining the original intent of the parties. Each party to this Agreement is an independent contractor in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. No course of dealing nor any delay in exercising any rights hereunder shall operate as a waiver of any such rights. No waiver of any default or breach shall be deemed a continuing waiver or a waiver of any other breach or default.

By submitting and application to Affiliate Program, you affirm and acknowledge that you have read this Agreement in its entirety and agree to be bound by all of its terms and conditions. If you do not wish to be bound by this Agreement, you should not submit an application to Affiliate Program. If an individual is accessing this Agreement on behalf of a business entity, by doing so, such individual represents that they have the legal capacity and authority to bind such business entity to this Agreement. This Agreement was last revised on Jul 19-2016