

aVinci Media, LC
Sales Affiliate Agreement

THIS SALES AFFILIATE AGREEMENT (“Agreement”) with aVinci Media, LC (“aVinci”), located at 11781 Lone Peak Parkway, Suite 270, Draper, Utah 84020, is offered by and through:

“Distributor”:
Name: _____
Address: _____
aVinci ID : _____
Phone: _____ Email : _____

to:

“Affiliate”:
Name: _____
Address: _____
Phone: _____ Email : _____

as of Date: _____ (the “Effective Date”),

to offer aVinci products (“Products”).

aVinci provides product authoring technology and Products including DVD productions, photobook, posters and other personal products using digital media. Distributor is an authorized distributor of aVinci Products and desires to register Affiliate, to be managed by Distributor, to be able to offer for sale aVinci Products. In consideration of the agreements and obligations herein, Affiliate may offer aVinci Products upon the terms and conditions herein:

1. **Affiliate Appointment and Commissions.** aVinci hereby grants to Affiliate a non-exclusive, non-transferable limited right to offer for sale aVinci Products in the defined territory or channel (the “Territory”) through defined outlets (the “Permitted Outlets”), as set forth on Schedule A, upon the terms and conditions set forth herein, and to receive commission for all such sales during the term of this Agreement as set forth on aVinci’s then current Affiliate Product, Pricing and Commission Sheet (“Pricing Sheet”). aVinci reserves the right to change the Products offered at any time without notice to Affiliate to comply with licensing terms and conditions, and the Pricing Sheet upon 30 days notice to Affiliate.

A. **Service Fee.** Affiliate will pay a service fee (“Service Fee”) of \$250 annually to aVinci to become and remain a registered Affiliate. aVinci, in its sole discretion, may require the Service Fee to be paid in advance or on a monthly prorata basis, and may allow for payment of such Service Fee to be made out of Commissions.

B. **Commission Statements.** aVinci will provide; (i) a weekly Commission report including Product sales information and any associated Commission due to Affiliates for such Product sales (“Commission Report”) within 7 days of the end of the calendar week during which the Product for which any Commissions are due were sold, and (ii) the associated Commission payment due to Affiliate. In the event Commissions due in any period are less than \$100, aVinci reserves the right to hold the Commission Report and payment until such time as Commissions due total more than \$100.

2. **Affiliate Obligations.** Affiliate agrees to abide by the obligations set forth in this Agreement, as may be amended from time to time in aVinci’s sole discretion, including the following:

A. **Sales Efforts.** Affiliate will use commercially reasonable efforts and resources, at Affiliate’s sole expense, to market and sell Products within the Territory through Permitted Outlets.

B. **Pricing.** Affiliate will make all sales subject to aVinci’s then current Product Pricing and Commission Sheet and terms and conditions (subject to change at any time in the sole discretion of aVinci), and use only sales and

merchandising materials provided by aVinci.

C. Ethics. Affiliate will promote aVinci's and its partner(s) brand images and reputation through the highest standards of ethics. Affiliate will under no circumstances knowingly disparage or infringe on aVinci or its partner(s) brand names, trademarks or reputations in connection with the marketing of Products, or misappropriate any aVinci, or its partner(s) brands, images, trademarks, confidential or proprietary information or trade secrets for use by Affiliate.

D. Marketing.

(i) **Affiliate will use only expressly approved sales and marketing materials provided by aVinci to sell and market the Products. Use by Affiliate of any sales and marketing materials that have not been expressly provided by aVinci, or any portions or parts of any provided marketing materials in any form other than the form such materials have been provided by aVinci for use by Affiliate is strictly prohibited and will result in the immediate termination of this Agreement and any rights to distribute Products hereunder. Additionally Affiliate assumes all responsibility for the inappropriate use or misuse of any aVinci or its partner brands, trademarks or other intellectual property rights and agrees to defend and indemnify aVinci from any third party claim or action arising out of Affiliate's inappropriate use or misuse of any such brands, trademarks or other intellectual property. Additionally, Affiliate expressly agrees to indemnify aVinci for any loss of rights to sell partner products as a result of Affiliate's violation of the sales and marketing materials restriction set forth in this section.**

(ii) **Affiliate will not engage in any Internet marketing except as expressly approved by aVinci, or purchase any domains or bid on any keyword phrases that include aVinci trademarks including but not limited to "ESPN", "myESPNhighlights", "aVinci", "aVinci Media", "aVinci Studio" or derivatives thereof, or any partner trademarks or brands or any derivatives thereof, in any pay per click (PPC) search engine, nor include derivatives of these words and trademarks as part of any URLs and directory names for the intention of search engine marketing and/or search engine optimization, nor optimize any page of Affiliate or Affiliate partner website(s) for keyword or keyword phrases that include aVinci or partner trademarks, such as "ESPN", in any format including but not limited to, meta tags, headers and body content, nor shall Affiliate establish any social network domains such as MySpace or Facebook, blog domain, profile name or display name containing any variation of aVinci trademarks, nor shall Affiliate place banners or links within unauthorized newsgroup postings, chat rooms, or through the use of "bots." Affiliate websites cannot include unsuitable content, including any content that promotes adult-oriented, sexually explicit or otherwise inappropriate materials, violence or behavior that is harmful, threatening, harassing or racially, ethnically or otherwise objectionable, discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age, illegal activities, violation of any laws or that violates the intellectual property of any party.**

E. Online, Branding and Marketing Restrictions. aVinci employs strict eDM (email direct marketing) and branding guidelines and policies for Distributors and Affiliates. Provided aVinci provides approved online marketing of brands, Affiliate will adhere to aVinci's eDM and branding policies and acknowledges that aVinci prohibits the use of email spam, spam-vertising, phishing and spoofing, and any such activity by Affiliate related to aVinci Products. Failure to comply with aVinci's branding guidelines will result in the immediate termination of this Agreement. Neither Distributor nor its registered Affiliates may engage in press or news releases or advertising of aVinci products without aVinci's prior written approval.

F. Taxes. Affiliate will be responsible for all tax returns and payments required to be filed with, or made to, any federal, state/provincial or local tax authority with respect to any commissions paid hereunder. No part of Affiliate's commissions will be subject to withholding by aVinci for the payment of any social security, federal, state/provincial or any other employee payroll taxes. Affiliate will collect and remit any Product sales tax from end customers and report and pay such tax to the appropriate local, state and federal taxing authority. aVinci assumes no obligation to report or pay any sale tax associated with Affiliate's sale of Products.

G. Marketing Costs. Affiliate will bear all costs and expenses incurred in connection with any advertising, promoting and selling efforts by Affiliate. aVinci will have no obligation to provide any advertising, promoting, or selling efforts for or on behalf of Affiliate; although, aVinci reserves the right to provide advertising and promotion in its sole discretion.

H. Independent Contractor. Affiliate, as an independent contractor hereunder, will not hold itself out as having the power to make contracts, verbal or written commitments, or warranties for or on behalf of aVinci or Distributor under any circumstance. Affiliate is not an agent, employee, partner, joint venture, franchisee, or fiduciary of aVinci. Subject to the limitations set forth herein, Affiliate will have sole control of the manner and means of performing its obligations and duties under this Agreement. Affiliate will bear all of its costs and expenses, including, without limitation, motor vehicle, travel, entertainment, office, rent, clerical, employee, tax, insurance, telephone and all other selling and operating expenses Affiliate incurs, and aVinci will not in any way be responsible or liable therefore.

I. Insurance. Affiliate agrees that upon 30 days written request by aVinci, Affiliate will provide to aVinci a certificate of insurance issued to Affiliate by an insurance company with at least a B rating from A.M. Best, evidencing comprehensive general liability insurance coverage of at least \$1,000,000 of per occurrence and aggregate coverage for Affiliate's business operations. At aVinci's request, Affiliate will name aVinci as an additional insured and provide a valid and current certificate as evidence of such coverage.

J. Non-Compete. Affiliate agrees that during the Term of this Agreement and for a period of six months following its termination for any reason, Affiliate will not offer for sale any personalized themed DVD, photobook, or poster products competitive with the aVinci Product offering.

3. Registration of Affiliates. Affiliate's registration with aVinci through Distributor is subject to the following conditions:

A. Affiliate Agreement. Affiliate is required to execute this Agreement to become a registered Affiliate. Distributor will not charge Affiliate any fees except as expressly required by aVinci. Upon receipt of a signed Agreement and associated Service Fee, aVinci will acknowledge its acceptance and registration of Affiliate as authorized to sell Products by and through issuing Affiliate an "Affiliate Identifier" to be used to track Commissions. Unless and until Affiliate receives an Affiliate Identifier, Affiliate will have no right to sell Products. Distributor expressly agrees that aVinci's approval and acceptance of any Affiliate Sales Agreement will also constitute Distributor's approval and acceptance of such agreement, and Distributor hereby provides aVinci with limited power of attorney to accept and bind Distributor as a party to such Affiliate Sales Agreement. aVinci will register the Affiliate to the Distributor. Affiliates may only be registered to one Distributor at a time.

B. Management. Distributor expressly agrees to support and manage Affiliate and will require Affiliate strict adherence to the terms and conditions outlined in this Agreement.

C. Recruiting Restriction. Affiliate will not be permitted to register under any other aVinci Distributor for a period of six months following the termination of Affiliate's registration with aVinci under any other Distributor, except in the event of Distributor's breach of its agreement with aVinci or upon the written approval of Distributor, Affiliate and aVinci.

D. Termination. Distributor and aVinci will immediately terminate Affiliate's rights to resell aVinci products if Affiliate violates any terms and conditions set forth in this Agreement.

E. Commission Payment. aVinci will pay Affiliate any earned Commissions within 7 days of the end of the calendar week during which the Product for which Commission is due was sold.

4. Representations and Warranties.

A. Duly Executed Agreement. Affiliate represents and warrants that this Agreement has been duly executed and constitutes a legal, valid and binding obligation of Affiliate, enforceable in accordance with its terms.

B. Limitation of Warranties. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, NO PARTY MAKES ANY REPRESENTATION THAT THE OPERATION OF ITS SITE WILL BE UNINTERRUPTED OR ERROR FREE, AND SUCH PARTY WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.**

5. **Indemnification.** Each of Affiliate, Distributor and aVinci (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party(ies) (the "Indemnified Party") from and against any suit, proceeding, assertion, damage, cost, liability, and expenses (including court costs and reasonable attorneys' fees) incurred as a result of a claim or claims by a third party against Indemnified Party or its affiliates, licensors, officers, directors, employees, members and agents, arising from or in connection with: (i) any representation or warranty made by the Indemnifying Party being untrue, (ii) any breach by the Indemnifying Party of any covenant or agreement made by it herein or (iii) the use by the Indemnified Party of the trademark, trade name, service mark, logo, copyright, proprietary method or technology of the Indemnifying Party in accordance with the terms hereof.

6. **Limitation of Liability.** **EXCEPT FOR AFFILIATE'S OBLIGATION TO PROVIDE DEFENSE AND INDEMNITY UNDER SECTION 1.D, IN NO EVENT SHALL ANY PARTY HERETO BE LIABLE TO AFFILIATE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE OR LOST PROFITS, ARISING FROM ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF AVINCI AND ANY RELATED PARTY, AND THEIR DIRECTORS AND OFFICERS ARISING WITH RESPECT TO THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE QUALIFYING COMMISSIONS MADE OR PAYABLE TO AFFILIATE UNDER THIS AGREEMENT.**

7. **Term of Agreement and Termination.** The term of this Agreement ("Term") will be from the Effective Date through March 31, 2010, subject to automatic extension for successive one-year periods each year thereafter provided Affiliate is current with any required Service Fees and neither party has provided written notice of termination at least 30 days before the end of the then current term.

A. **Termination Notice.** Either party may terminate this Agreement at any time from and after the Effective Date upon 30 days written notice to the other party. aVinci may terminate this Agreement immediately in the event of any breach of any of the terms and conditions by Affiliate. Upon expiration or termination of this Agreement, Affiliate will return to aVinci any confidential information, and will immediately cease to use any of aVinci's trademarks and copyrighted materials, and the rights and obligations of Affiliate hereunder shall terminate except as otherwise expressly provided herein.

B. **Payment on Termination.** In the event of expiration or termination of this Agreement by aVinci for any reason other than Affiliate's breach, aVinci will pay Affiliate for any commissionable sales by Affiliate for a period of 180 days after the effective date of such expiration or termination provided Affiliate is and remains current with any required Service Fees. Any orders received after such 180 day period will not qualify Affiliate for any further Commissions. In the event of termination by aVinci for Affiliate's breach or by Affiliate for any reason, only Commissions for Product sales by Affiliate occurring before such termination will be payable.

8. **Confidentiality.** As used herein, the term "Confidential Information" means all information, documentation, materials, technology, intellectual property, business and marketing plans, this Agreement, pricing and sales information, and data belonging to aVinci, or to any third party who disclosed such information to aVinci in confidence, and which aVinci makes available to Affiliate in oral, written, electronic, or other format which is identified at the time of disclosure as confidential or at any time within 30 days of disclosure, or which Affiliate knows, or reasonably should know, would likely be considered confidential by aVinci, including but not limited to information relating or pertaining to aVinci's business, projects, products, customers, trade secrets, business and marketing plans, financial information, or unpublished know-how, whether patented or un-patented.

A. **Obligation of Confidentiality.** Affiliate agrees to use at least reasonable care in protecting and keeping all Confidential Information strictly confidential and to not use such information for any purpose outside the terms of this Agreement, except to the extent that any such information is generally known or available to the public. Notwithstanding the foregoing, Affiliate is hereby authorized to deliver a copy of any such information (i) to any person pursuant to a subpoena issued by any court or administrative agency, (ii) to its accountants, attorneys or other agents on a confidential basis and (iii) otherwise as required by applicable law, rule, regulation or legal process. Affiliate may also disclose the Confidential Information to Affiliate's employees, agents and professional advisors, provided that such party agrees to be bound by this Agreement to the same extent as Affiliate is bound and Affiliate agrees to be responsible for any breach by these entities, agents, and advisors.

B. Survival of Obligation. The duties herein shall survive termination of this Agreement and (i) for trade secret information, shall continue for as long as such information remains a trade secret under applicable law, and (ii) for all other confidential information, shall continue for as long as such information is deemed confidential. Upon any termination or expiration of this Agreement, Affiliate will promptly return to aVinci all materials then in its possession containing aVinci's and Distributor's confidential information or destroy such materials and provide aVinci a certificate of an officer attesting to the destruction of materials containing such Confidential Information.

9. General Provision.

A. Miscellaneous. This Agreement constitutes the entire agreement between aVinci, Distributor, and Affiliate, and supersedes all prior and contemporaneous agreements and contains all terms and conditions agreed to by the parties. If any term or condition of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. This Agreement shall be binding upon any and all successors and permitted assigns of aVinci, Distributor, and Affiliate. This Agreement may be altered only in writing signed by the parties and assigned only with the express written consent of aVinci.

B. Choice of Law and Forum. The parties agree that this Agreement shall be interpreted according to and under the laws of the State of Utah. In the event of any dispute regarding this Agreement or the interpretation or enforcement of any of its terms, the parties agree that jurisdiction and venue shall be in Salt Lake County, Utah. The parties further agree that in the event of any litigation regarding this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in connection therewith.

C. Equitable Relief. The parties acknowledge and agree that the Confidential Information constitutes valuable trade secrets of aVinci, and that any unauthorized reproduction and/or disclosure of such information by Affiliate may cause aVinci irreparable harm for which its remedies at law may be inadequate. Affiliate agrees that aVinci will be entitled, in addition to any other remedies available to it at law or in equity, to seek injunctive relief to prevent the breach or threatened breach of Affiliate's obligations hereunder.

D. Amendments. This Agreement may be amended by an instrument in writing signed by all parties that expressly refers to this Agreement and specifically states that it is intended to amend it. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute the same Agreement.

D. Modification. The Agreement and the Pricing Sheet referenced may be modified at any time as set forth herein. Modifications may include changes in or to the Products and pricing, Commission amounts on future sales of Products by Affiliate, Commission procedures and any other term or condition contained herein. Affiliate will be deemed to have been notified of any changes by and through aVinci posting changes on its website, or sending mail or email notifications to Affiliate.

E. Notices. Other than notice of modifications as describe in Section 9E, all notices, consents, requests, instructions, approvals, and other communications made hereunder shall be given in writing and delivered to the receiving party to its address set forth herein by personal delivery or by certified or registered mail (return receipt requested), or by a nationally recognized courier. The effective date of any such notice shall be deemed to be the date upon which the notice was properly delivered.

F. Acceptance and Appointment. Affiliate must sign and return this Agreement to aVinci and aVinci must affirmatively accept and appoint Affiliate in writing, and assign Affiliate an "Affiliate Identifier" for such party to be recognized as an Affiliate authorized to sell the Products. aVinci will acknowledge its acceptance and appointment of the Affiliate, by and through issuing Affiliate an Affiliate identifier to be used to track sales. Unless and until Affiliate receives an Affiliate identifier, aVinci will not be bound hereby and Affiliate will have no right to sell the Products.

Affiliate has executed this Agreement as of the Effective Date, and if accepted, aVinci acknowledges such the Effective Date.

“Affiliate”

(Company or business name)

(Signature)

(Printed name and title)

Schedule A
Territory and Outlets

“Territory” means the United States.

“Permitted Outlets” means the channels and places where Affiliate may sell Products, which include sales directly to any municipality, school, school district, club, organization or sports team, or through such organizations or associations to any end consumer. Affiliate may not sell or offer products to or through any retailer or wholesaler.