

## Affiliate Particulars

These particulars (the “**Particulars**”) together with the SmarterNaturally Terms and Conditions (April 2023) (the “**Terms**”) form the contract between us (the “**Agreement**”). You should ensure that you read and understand the Terms in connection with the scope of the Agreement. Should any of the terms included in the Terms conflict with any of the other terms in the Particulars, the latter will prevail.

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|---|---|
| <b>Effective Date:</b>  | The Effective Date of the Agreement shall become effective as of the date on which the last party executes the Agreement. |
| <b>Affiliate Referred User</b>  | a £5 discount off their first purchase of a trail pack of 4 sachets of the Company’s product                              |
| <b>Commission:</b><br><br>For all subscriptions that go through one renewal cycle<br><br>For all subscriptions that go through a second renewal cycle | £15<br><br>£10  |
| <b>Initial Term:</b>  | Twelve months from the Effective Date.  |

The Parties have indicated their acceptance of these Agreements by completing the online “Affiliate Signup” form.

## Affiliate Terms & Conditions

April 2023 version

### The Parties

- (1) **The Smarter Food Company Limited** a company registered in England and Wales under number 11453121 whose registered office is at c/o MA Partners, 7 The Close, Norwich, NR1 4DJ ("TSFC") ("the Company" or "TSCC") trading as SmarterNaturally; and
- (2) **The Affiliate** as set out in the Particulars.

### WHEREAS:

- (1) The Agreement applies to the Affiliate's participation in SmarterNaturally's Affiliate Programme ("the Affiliate Programme").
- (2) The Company operates the website at <https://smarternaturally.com> ("the Company Website") for the purposes of marketing its goods to its users.
- (3) The Affiliate wishes to enrol in the Affiliate Programme, subject to the terms and conditions of the Agreement.

### IT IS AGREED as follows:

#### 1. Definitions and Interpretation

- 1.1 In the Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**"Affiliate Referred User"** means a user referred by the Affiliate to the Company Website;

**"Commission"** means the commission payable by the Company to the Affiliate for Completed Sales, as set out in Clause 6;

**"Completed Sale"** means the completed purchase of goods offered for sale on the Company Website by an Affiliate Referred User;

**"Confidential Information"** means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such); and

**"Effective Date"** means the date set out in the Particulars.

- 1.2 Unless the context otherwise requires, each reference in the Agreement to:

1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by

electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "the Agreement" is a reference to the Agreement and each of the Schedules as amended or supplemented at the relevant time;

1.2.4 a Schedule is a schedule to the Agreement;

1.2.5 a Clause or paragraph is a reference to a Clause of the Agreement; and

1.2.6 a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in the Agreement are for convenience only and shall have no effect upon the interpretation of the Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include any other gender.

1.6 References to persons shall include corporations.

#### 2. Enrolment in the Affiliate Programme

2.1 By entering into the Agreement, the Affiliate agrees to enrol in the Affiliate Programme, subject to the terms and conditions of the Agreement.

2.2 The date of the Agreement shall be the Effective Date set out in the Particulars.

2.3 The Agreement shall be non-exclusive and shall not restrict or prevent the Company from entering into similar or different arrangements with third parties.

#### 3. The Company's Obligations

3.1 The Company shall be responsible for operating and maintaining the Company Website.

3.2 The Company shall create, operate, and maintain a unique promotional code for the Affiliate to provide to an Affiliate Referred User.

#### 4. Affiliate's Obligations

4.1 The Affiliate shall use all commercially reasonable endeavours to market and promote the Company Website and the Company's goods to its clients.

4.2 The Affiliate shall provide the Company with all reasonable co-operation required in relation to the Company's performance of its obligations under the Agreement.

4.3 The Affiliate shall comply with all applicable laws and regulations with respect to its business and to the Agreement.

4.4 The Affiliate shall have no authority to legally bind the Company with respect to Affiliate Referred Users, other users, or any other party. The Affiliate shall not be appointed an agent of the Company for any purposes. The Affiliate shall not make any representation or commitment about or on behalf of the Company, the Company Website, or the Company's goods.

#### 5. **Affiliate Reports**

Within 30 days after the end of each calendar month, the Company shall provide to the Affiliate a report setting out the following data for that calendar month:

- 5.1 The number of Affiliate Referred Users who have registered on the Company Website; and
- 5.2 The number of Completed Sales, including a statement of the sums due to the Affiliate as set out below in Clause 6.

#### 6. **Commission and Payment**

- 6.1 The unique promotional code provided to the Affiliate will provide the Affiliate Referred User with a discount off their first purchase of a trial pack of 4 sachets of the Company's product as set out in the Affiliate Particulars.
- 6.2 The Company shall pay to the Affiliate Commission at the rates set out in the Affiliate Particulars.
- 6.3 Commission shall be payable only on actual receipts, not on an accruals basis. If the Company does not receive revenue on a Completed Sale, no Commission shall be payable to the Affiliate.
- 6.4 All sums payable shall be exclusive of VAT. If VAT is chargeable, it shall be paid in addition.
- 6.5 The Affiliate shall immediately notify the Company if its contact details or address details change during the Term of the Agreement and shall complete any and all forms required by HM Revenue & Customs and any other applicable public authority with respect to its activities under the Agreement.
- 6.6 The report specified above in Clause 5 shall include a statement of the sums due from the Company to the Affiliate for the calendar month to which the report applies. The Company shall pay such sums to the Affiliate within 30 calendar days after the date of the report or, if later, within 7 calendar days of the receipt of a proper VAT invoice.
- 6.7 In the event of any refunds issued for any reason including, but not limited to fraud and where such refunds are not incurred through any fault of the Company's, the Affiliate may be contacted to arrange for the repayment of any related Commission.

#### 7. **Intellectual Property Rights**

- 7.1 The Company hereby grants to the Affiliate a non-exclusive, non-transferrable, royalty free licence to use the Company's trademarks and any and all other materials provided by the Company to the Affiliate to the extent required to promote the Company and to perform the Affiliate's obligations under the Agreement.
- 7.2 The Affiliate acknowledges and agrees that the Company (and its licensors, as applicable) own all intellectual property rights in the Company Website, any materials provided by the Company, and the Company's goods. Except as expressly stated herein, the Agreement shall not grant the Affiliate any rights to or in any copyrights, patents, database rights, trademarks (registered or unregistered), trade names, trade secrets, or any other rights or licences belonging to the Company.
- 7.3 The Company acknowledges and agrees that the Affiliate (and its licensors, as applicable) own all intellectual property rights in the Affiliate Website and any materials provided by the Affiliate. Except as expressly stated herein, the Agreement shall not grant the Company any rights to or in any copyrights, patents, database rights, trademarks (registered or unregistered), trade names, trade secrets, or any other rights or licences belonging to the Affiliate.

#### 8. **Confidentiality**

- 8.1 Except as provided by sub-Clause 8.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of the Agreement and for two years after its expiry or termination:
  - 8.1.1 keep confidential all Confidential Information;
  - 8.1.2 not disclose any Confidential Information to any other party;
  - 8.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the Agreement;
  - 8.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 8.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.1.1 to 8.1.4 above.
- 8.2 Either Party may:
  - 8.2.1 disclose any Confidential Information to:
    - a) any sub-contractor or supplier of that Party;

- b) any governmental or other authority or regulatory body; or
- c) any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement, or as required by law. In each case that Party shall first inform the person, party, or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 8.2.1(b) or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 8, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

8.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

8.3 The provisions of this Clause 8 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of the Agreement for any reason.

## 9. Data Protection

9.1 Each Party shall at all times, and at its own expense, ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time in the United Kingdom with respect to the use of personal data, and shall assist the other Party in complying with the same.

9.2 The legislation and regulatory requirements referred to in sub-Clause 9.1 include, but are not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended.

## 10. Liability

10.1 Subject to sub-Clause 10.4, neither Party shall be liable to the other, whether in contract, tort (including negligence), breach

of statutory duty, or otherwise, for any loss of profit, revenue, goodwill, or anticipated savings.

10.2 Subject to sub-Clause 10.4, Neither Party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

10.2.1 Any loss arising out of the lawful termination of the Agreement or any decision not to renew its Term; or

10.2.2 Any loss that is an indirect or secondary consequence of any act or omission of the Party in question.

10.3 Subject to sub-Clause 10.4, the total liability of either Party to the other in respect of all other loss or damage arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed £5,000 for the entire Term of the Agreement (including renewals).

10.4 Nothing in the Agreement shall limit or exclude the liability of either Party for death or personal injury caused by its negligence or the negligence of its directors, officers, employees, agents, sub-contractors or advisers; fraud or fraudulent misrepresentation; or for any other matter in respect of which it would be unlawful to exclude or restrict liability.

## 11. Term and Termination

11.1 The Agreement shall come into force on the Effective Date and shall continue for an agreed Initial Term set out in the Particulars, subject to the provisions of this Clause 11.

11.2 Either Party shall have the right, exercisable by giving not less than 30 days written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 11.1 (or any further period for which the Agreement has been extended) to extend the Agreement for a further period.

11.3 The Company may terminate the Agreement on notice at any time if it discontinues or withdraws (in whole or in part) the Affiliate Programme. The Company shall use reasonable endeavours to provide the Affiliate with as much notice as is reasonably possible. Such termination shall be without any liability to the Affiliate.

11.4 Either Party may terminate the Agreement by giving to the other not less than one month's written notice.

11.5 Without prejudice to any other rights or remedies to which either Party may be entitled, either Party may terminate the Agreement (without liability to the other) if:

11.5.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not

paid within 30 days of the due date for payment;

11.5.2 the other Party commits any other material breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 15 days after being given written notice giving full particulars of the breach and requiring it to be remedied;

11.5.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

11.5.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

11.5.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or reconstruction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

11.5.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

11.5.7 the other Party ceases, or threatens to cease, to carry on business; or

11.5.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 11, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

11.6 For the purposes of sub-Clause 11.5.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

11.7 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## 12. Effects of Termination

Upon the termination of the Agreement for any reason:

12.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

12.2 all licences and benefits granted under the Agreement shall terminate immediately;

12.3 each Party shall return to the other Party (or destroy or otherwise dispose of, as requested) and make no further use of any materials, property, or other items (and any and all copies thereof) belonging to the other Party;

12.4 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information;

12.5 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect; and

12.6 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination.

## 13. Force Majeure

Neither Party shall be liable for any failure or delay in performing their obligations under the Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party.

## 14. No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## 15. Further Assurance

Each Party shall execute and do all such further deeds, documents, and things as may be necessary to carry the provisions of the Agreement into full force and effect.

## 16. Costs

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution, and carrying into effect of the Agreement.

## 17. Assignment and Other Dealings

17.1 The Affiliate shall not assign, mortgage, charge (otherwise than by floating charge), declare a trust over, or sub-licence or otherwise delegate any of its rights under

the Agreement, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the Company, such consent not to be unreasonably withheld.

17.2 The Company may assign, mortgage, charge, declare a trust over, or sub-licence or otherwise delegate any of its rights under the Agreement, or sub-contract or otherwise delegate any of its obligations hereunder.

#### 18. **Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

#### 19. **Third Party Rights**

No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

#### 20. **Notices**

20.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.2 Notices shall be deemed to have been duly given:

20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

#### 21. **Entire Agreement**

21.1 The Agreement constitutes the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

21.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest

extent permitted by law.

#### 22. **Severance**

In the event that one or more of the provisions of the Agreement is found to be unlawful, invalid, or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement. The remainder of the Agreement shall be valid and enforceable.

#### 23. **Law and Jurisdiction**

23.1 The Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

23.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

