

## DINERMAGIC AFFILIATE PROGRAM

Northwest Technical Inc. is pleased to offer a flexible Affiliate Program for organizations and individual who want to provide the benefits of DinerMagic for their customers. As part of this program, we offer to both broadline and specialty food service providers, as well as independent Food Distributor Sales Reps or Marketing Associates, the information and material they need to successfully market DinerMagic. And we provide an open channel of communication to assist our DinerMagic Affiliates every step along the way.

### Benefits:

- Registered Affiliates who resell DinerMagic licenses shall receive a commission plus residual payments
- You will have the option of having your name or company name listed at the bottom of each website homepage as the “**Authorized Food Service Distributor for...** (your customer’s restaurant)”.
- The use of the DinerMagic name and logo on your website.
- Marketing and Affiliate support from the DinerMagic team.

### Requirements:

- The affiliate must execute the following **DinerMagic Affiliate Agreement** with Northwest Technical Inc. and register online through this website.
- The affiliate must use the DinerMagic name on all materials offering our product for sale.
- As an affiliate, your customers will pay for a license when you sign them up, or when they sign up themselves.
- The affiliate must provide a marketing point of contact for DinerMagic.

## DINERMAGIC AFFILIATE AGREEMENT

### DEFINITIONS

"**You**" refers the person or company who is being licensed to resell DinerMagic, identified in the title of this DinerMagic Affiliate Agreement.

"**We**" and "**us**" refers to Northwest Technical Inc., a registered corporation in Brookings, Oregon USA, and the creators of DinerMagic.

"**Affiliate**" refers to a legally certified reseller of DinerMagic and a registered member of the DinerMagic Affiliate Program.

"**End User**" refers to an Affiliate's customer: the party to whom the Affiliate offers DinerMagic services to, or the party to whom the Affiliate resells DinerMagic to.

"**Program**" refers to the DinerMagic Affiliate Program.

"**DinerMagic**" refers to the product/service available for resale by the Affiliate.

"**Agreement**" refers to this DinerMagic Affiliate Agreement.

### TERMS

Affiliates are Food Service Distributor organizations or individual DSRs (Distributor Sales Reps) who refer their restaurant customers to DinerMagic. The resale price of DinerMagic is the same as the retail price, as listed on the DinerMagic website. Compensation for the DinerMagic Affiliate is in the form of a signup commission plus residual payments. Upon acceptance into the Program, Affiliates shall be issued a **Reseller ID** and may purchase pre-paid DinerMagic licenses, using either purchase orders or credit card payment. They may then sign-up as many customers as they have pre-paid licenses for. Or, their customers can sign-up themselves and the Affiliate will receive credit if the customer mentions their name as the referrer.

1. Compensation. Affiliates who sign up or refer their restaurant customers to DinerMagic shall receive a flat-rate commission of **\$100 per customer sign-up**. They will also receive an **additional \$100 in the form of monthly residual**

**payments**, based in a percentage (~28%) of the monthly fee that DinerMagic customers pay (\$29.95), as long as they remain a DinerMagic customer for the subsequent 12 months following the month of their signup. Thus the **total compensation is \$200 for the first year** for every DinerMagic customer they subscribe, **and \$100 per for every year thereafter**, as long as the customer remains a subscriber.

2. Affiliates will first need to register on the DinerMagic website prior to signing up a customer. Please ensure that you enter your restaurant customer's information under [Affiliate's Customer Signup](#) rather than the **Customer Signup** in order to receive credit and to be able to manage your customer's account. Unless purchasing pre-paid licenses with a purchase order, Affiliate signups shall be paid for at the time of ordering via credit card on the DinerMagic website. Affiliates can also view/edit their account information, number of signups, and customer website information.

## Affiliate Account Administration

- [Edit/View My Account Info](#)
- [Reseller's Customer Sign-up](#)
- [Reseller's Customer Sites and Status](#)

3. Commission checks to Affiliates shall be issued after both the customer's website is activated and after their menu conversion is completed, and we are in receipt of the first monthly subscription payment by the customer, which will serve as final acceptance notification of the website and converted menu by the customer.

4. Affiliates shall certify to Northwest Technical Inc. that they have a valid resale license for their state or a federal tax ID number. Northwest Technical Inc. shall not charge sales tax on sales made to Affiliates, since all sales are intended for resale to End Users. They shall be responsible for assessment, collection, remittance, accounting, reporting, and all other such legal responsibilities of sales tax for Affiliate's sales to End Users.

## RIGHTS AND OBLIGATIONS OF AFFILIATE

5. Northwest Technical Inc. shall not be responsible for any delays or the rescheduling of design jobs if Affiliate's customer fails to provide all of the necessary information to Northwest Technical Inc. for the design of both the website and first menu in a timely manner. It is in the best interest of all parties if the Affiliate gathers all of the necessary items required for the design and forwards it to DinerMagic as soon as possible. (See the FAQ explaining what materials are required).

6. Affiliate agrees that one DinerMagic license shall be issued for each restaurant location and shall not ask Northwest Technical Inc. to design multiple menus for different restaurant locations using the same End User license. Affiliate agrees not to misuse or misrepresent this Affiliate arrangement in any way that may result in a violation of the DinerMagic's End User License Agreement (EULA).

7. Affiliate agrees that End User shall be bound by the terms of the End User License Agreement. Affiliate shall have no authority to modify in any way the terms of any License Agreement, nor to make any representations or warranties contrary to the License Agreement. Affiliate shall make a good-faith effort to ensure that End User is aware of and complies with all License Agreements.

8. Affiliate acknowledges that they are acquiring a limited **Nonexclusive License** to sell DinerMagic. This does not preclude the possibility of our introducing an Exclusive Licensing program in the future. We remain the owner of all rights, titles, and interests in DinerMagic.

9. For pre-purchased licenses, Affiliates shall be responsible for collection of payments from the End User. DinerMagic will of course, offer technical support for both the Affiliate and registered End User, either direct or indirect.

10. End Users shall be considered primarily to be the customer of the Affiliate. Northwest Technical Inc. will honor an Affiliate's request to contact or not to contact their End User in the normal course of business. However, Northwest

Technical Inc. reserves the right to maintain lists of End Users and to contact the End User if the need arises.

11. It is up to the Affiliate to prequalify their customer to ensure that their customer will follow through on their obligations, including the End User License Agreement and the Terms of Use policy.

12. Affiliate shall not send or cause to be sent any unsolicited email ("spam"), including newsgroup postings, regarding DinerMagic or services involving DinerMagic. Any DinerMagic advertising by Affiliates must have the prior written approval of DinerMagic.

13. Affiliate shall indemnify and hold Northwest Technical Inc. harmless from and against any and all claims, losses, or damages that may arise from Affiliate's marketing, sale, or support of DinerMagic.

14. Affiliate shall be authorized to use certain DinerMagic trademarks, graphics, symbols, or other content for use in promotion of DinerMagic. Such materials are to be provided by Northwest Technical Inc. to Affiliate with the express intent of their use for such purposes. Use of such content shall be subject to DinerMagic's usage policies, which Northwest Technical Inc. reserves the right to change at any time for any reason. Affiliate may also create their own content relating to DinerMagic, which Northwest Technical Inc. shall have the right to prevent Affiliate from using if it finds it to be objectionable or for any other reason. Northwest Technical Inc. shall have no ownership rights or any other rights to content, products or services independently created by Affiliate, except as provided for above.

15. You may not sub-license others to resell DinerMagic without the approval of DinerMagic. Each party must register as an authorized DinerMagic Affiliate through this website. DinerMagic may only be purchased in single quantity per transaction through the DinerMagic website at this time. **Purchases of multiple licenses can be processed by calling DinerMagic directly at (541) 412-0254, or emailing your purchase order to sales@dinermagic.com.**

16. Affiliate agrees not to, directly or indirectly, publish, distribute, disclose, disseminate, decompile or disassemble, copy, reproduce, or otherwise reverse engineer DinerMagic except as provided for in this Agreement. Affiliate shall not use any DinerMagic license as the part of Affiliate's own product or service without express written approval of Northwest Technical Inc.

17. Affiliates and their customers agree not to use DinerMagic in a way that potentially conflicts with our business interests. Examples include, but are not limited to, using DinerMagic to host illegal or offensive content, and providing or posting disassembly, bug, or hacking information about DinerMagic to other parties, or developing a similar program that will directly compete with DinerMagic.

18. Affiliate agrees that all of Northwest Technical Inc.'s rights, including but not limited to, intellectual property rights, patents, trademarks, and copyrights, shall fully remain with Northwest Technical Inc. Affiliate shall act merely as a reseller of DinerMagic, and shall gain no rights over Northwest Technical Inc. or DinerMagic.

## **RIGHTS AND OBLIGATIONS OF DINERMAGIC & NORTHWEST TECHNICAL INC.**

19. Limited Warranty and Remedy.

Northwest Technical shall be responsible for any and all refunds to be issued to End User. No employee, agent, affiliate, reseller, or distributor of ours is authorized to modify this limited warranty, nor to make any additional warranties.

**End Users** or restaurant customers who purchase through Affiliates and who pay directly to Northwest Technical Inc./DinerMagic, shall have 3 days to cancel their contract. This is their exclusive remedy to receive a refund of the purchase price of the license before any design work has begun. It is their responsibility to notify

us in writing within 72 hours. If your customer contacts you instead of us, you must ensure that we receive the request immediately. Otherwise, we cannot guarantee a full refund.

If a refund is requested after 72 hours or after design on the website or menu has commenced, a partial refund may be granted in an amount to cover administrative costs, domain name registration and any work started, as determined solely by Northwest Technical Inc. These costs will be subtracted from the amount refunded. Due to the inherent and unrecoverable costs with design work involved in a customer's website and menu, no refunds will be made after 5 days.

20. No Incidental or Consequential Damages. Independent of the foregoing provisions, in no event shall we be liable to you for any incidental, special, punitive, exemplary, or consequential damages arising from or connected with this agreement or your use of DinerMagic, regardless of whether we know or have reason to know of the possibility of such damages.

21. Indemnity. Independent of the foregoing provisions, you agree to defend and indemnify us against, and hold us harmless from any and all claims, damages, losses, and expenses of any kind arising from or connected with the operation of your business.

22. Northwest Technical Inc. reserves the right to refuse Affiliate the right to promote DinerMagic, or any other affiliation with DinerMagic.

23. Northwest Technical Inc. shall not be responsible for Acts of God, acts by third parties, or other events outside Northwest Technical Inc.'s reasonable control. This includes any possible web hosting outages that are caused by reasons beyond our control, such as outages due to equipment or fiber/cable faults from our upstream Internet Services Providers, or datacenters.

24. Northwest Technical Inc. provides technical support via voice or chat to End Users for 90 days after their signup date. After that, and for as long as End

Users are active DinerMagic subscribers, technical support via email is available 24/7. Affiliates shall receive unlimited telephone and/or email support.

25. Nothing in this Agreement shall prohibit Northwest Technical Inc. from selling DinerMagic directly to any customer desired without involvement of or obligation to Affiliate.

## **ACCEPTANCE AND TERMINATION**

26. This Agreement shall become effective on the date of execution of the Agreement, which is the date you submit your registration. You will be sent your **Reseller ID** and a confirmation email signifying our acceptance of your registration as an Authorized DinerMagic Affiliate. If you breach this Agreement, we may terminate your right to use DinerMagic by notice to you, and without refund. You agree that, upon termination of this Agreement, you will destroy all technical or marketing materials in your possession. This Agreement may be modified only by a writing signed by you and us. You agree that we need not sign this Affiliate Agreement in order for it to take effect.

27. Once accepted into the Program, this Agreement between Northwest Technical Inc. and Affiliate shall remain in force until cancelled by either party. Furthermore, Northwest Technical Inc. may cancel the Agreement at any time for any reason, and Affiliate may cancel with no less than forty-five (45) days written notice. Termination of the Agreement shall not relieve Affiliate of the obligation to pay any monies due to Northwest Technical Inc. Upon termination Affiliate shall lose all rights granted under this Agreement.

28. Both Northwest Technical Inc. and Affiliate agree that this Agreement does not establish an employer-employee relationship between Northwest Technical Inc. and Affiliate. Each party shall conduct its business at its own location with its own employees and resources, and at its own expense. Affiliate shall not be construed to be a legal partner of Northwest Technical Inc. Neither party shall have the right to incur any obligations on behalf of the other, except as otherwise provided herein.

29. This Agreement shall be governed by the laws of the State of Oregon. If any provision in this Agreement is found to be non-binding then the remaining provisions shall remain in force. In case of litigation to resolve issues between the parties, the prevailing party is entitled to compensation for reasonable legal fees. Any actions brought under this Agreement shall be brought before the United States District Court, State of Oregon.

30. Northwest Technical Inc. makes no representations or warranties, express or implied, by way of example but not of limitation, of merchantability or fitness for any particular purpose. Northwest Technical Inc. shall not be held to any liability with respect to any claim by Affiliate or third party on account of or arising from the use of DinerMagic.

31. Affiliate shall not assign, transfer, and/or otherwise sell their rights in this Agreement without first obtaining in writing the express permission of Northwest Technical Inc.

32. This Agreement constitutes the entire Agreement and understanding between the parties. No term or provision of this Agreement may be changed, waived or discharged without the written approval of Northwest Technical Inc. By sending us your Affiliate confirmation by clicking on "Register", you agree to be bound by all of the terms of this Agreement.

Revised: 101029