

CAKEDODGER RETAIL AGREEMENT

This is an agreement between you (the “Retailer”) and Cakedodger Limited whose registered office is at 20 Ropley Road, Bournemouth, Dorset (“Cakedodger”).

Important. By joining our retailer program, you agree to be bound by the terms set out below.

Definitions

“Click Through”	means the arrival of a Visitor at the Retailer Website from the Cakedodger Website which triggers a Commission charge payable to Cakedodger
“Commission”	means the charges payable by the Retailer to Cakedodger under the terms of this agreement
“Intellectual Property”	means all the intellectual property of Cakedodger used or associated with the Cakedodger website
“Cakedodger Website”	means the website http://www.cakedodger.co.uk operated by Cakedodger
“Retailer Website”	means the website of the Retailer to which a Click Through was achieved / can be achieved
“Reports”	means the reports automatically prepared and made available for access to the Retailer on the Cakedodger Website for the purpose of providing to the Retailer statistics relating to Click Through activity and Commission payable by the Retailer
“Software”	means all or part of the software which is or which supports the Cakedodger Website.
“Visitor”	means a person who visits the Cakedodger Website

These are the agreed terms:

1 Purpose of agreement

Cakedodger operates a specialist price comparison website geared specifically towards the needs of runners, cyclists, mountain-bikers and triathletes / multi-sporters. It offers consumers the ability to price compare goods and products through the website and can then bring these well-informed consumers to the resulting retailer website in return for Commission subject to the terms of this agreement.

2 Relationship of Parties

Cakedodger and the Retailer are independent contractors, and nothing in this agreement creates any partnership, joint venture, agency, franchise, or employment relationship between them.

3 Commission rates

- 3.1 Commission will be charged on a 'pay per click' basis.
- 3.2 For each Click Through, the Commission rate is £0.25 excl VAT (which shall be payable at the applicable rate).
- 3.3 Cakedodger reserves the right to vary the Commission rate at any time subject to one month's prior notice to the Retailer.

4 Charges calculation and payment.

- 4.1 Commission will be paid by the Retailer to Cakedodger in one of two ways as set out below. The Retailer shall inform Cakedodger of the selected payment method at the time of enrolment. In both cases Commission is calculated at a flat rate for every Click Through as stated in clause 3.

Option 1 Post-Pay: Cakedodger will invoice the Retailer every month through the Cakedodger Website for all Commission charges incurred in that month. The Retailer shall settle such invoices within 10 days and in full. Cakedodger reserves the right to apply interest at the rate of 4% per annum above the Bank of England Base Rate for any amounts outstanding after this period.

Option 2 Pre-Pay : The Retailer will effectively pre-purchase an amount of Commission credit. This amount will then be deducted from, upon each Click Through achieved. The **minimum** individual purchase transaction value for this option is £50.00 and the maximum is £500.00. The Retailer is responsible for ensuring that sufficient pre-pay funds are in place at all times. In the event that the pre-pay balance is allowed to reach zero by the Retailer, Cakedodger reserves the right to either i) switch the Retailer to the Post Pay option above or ii) suspend the Retailer's account until further pre-payments are received into cleared funds.

- 4.2 Pre-Pay credit is not refundable in any circumstances during the term of the agreement or upon cancellation of the agreement (for whatever reason).
- 4.3 The Retailer may not change his selected payment option at any time without the prior written agreement of Cakedodger. Cakedodger's decision in this regard shall be final.
- 4.4 Payment (for both the Pre-Pay and Post-Pay options) shall be made electronically using the accepted methods of payment listed at the Cakedodger Website. All payments shall be made in UK Pounds Sterling and are subject to VAT at the prevailing rate which shall be in addition to the Commission.

5 Cakedodger tracking and Reports

- 5.1 Cakedodger undertakes that the Software shall:
 - 5.1.1 Record all Click Through activity;
 - 5.1.2 Record the cumulative amount of Commission due to the Retailer
 - 5.1.3 Record the history of payments of Commission made by the Retailer;
 - 5.1.4 Provide Reports to the Retailer
- 5.2 Cakedodger undertakes to provide password protected access to the Retailer.

6 Duration and termination

- 6.1 The initial term of this agreement is 12 months from the date of this agreement. The term shall automatically be renewed for a further period of 12 months at a time unless notice is given at least 30 days before the expiration of the 12 month date.

This agreement can be terminated by:

- 6.2 Three months notice in writing by either party to the other; or
- 6.3 Immediately and without notice or explanation if Cakedodger determines (in its sole discretion) that the Retailer Website is or has become unsuitable. Unsuitable sites may include those that: are aimed at children, promote sexually explicit materials, promote violence, promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age; promote illegal activities, or violate intellectual property rights of any person/entity; or
- 6.4 14 days notice by Cakedodger if the Retailer fails to pay any sum due by the due date; or
- 6.5 Immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it; or
- 6.6 immediately by either party if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).

7 Upon termination

- 7.1 All rights and licenses granted to the Retailer in this agreement shall immediately terminate.
- 7.2 Cakedodger will remain entitled to all Commission earned on or before the date of termination.

8 Advertising tools

Cakedodger shall supply the following advertising tools:

- 8.1 Promote and offer those of the Retailer's goods and services, details of which are loaded onto the Cakedodger Website by the Retailer, by way of comparison to other similar available goods and services of other retailers.
- 8.2 Provide a direct link from the Cakedodger Website to the Retailer Website.

9 Data Protection

- 9.1 Cakedodger shall at all times be a Data Controller for the purposes of Data Protection and shall take all reasonable steps to comply with the Data Protection Act 1988.
- 9.2 All personal information about Visitors and/or customers collected by Cakedodger is owned solely by Cakedodger.

10 Cakedodger promotions

- 10.1 Cakedodger does not have the authority to make or accept any offer or contract on behalf of the Retailer.
- 10.2 Cakedodger alone is responsible for decisions on policy and problem resolution.

11 Confidentiality

The parties are aware that in the course of working under the terms of this agreement each will have access to and be entrusted with information in respect of the business and operation of the other of them and of their dealings, transactions and affairs, all of which information is or may be confidential.

- 11.1 The parties hereby undertake for themselves and every employee or sub-contractor whose services they may use both during the operation of this agreement and after its termination that they will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information.
- 11.2 Both Cakedodger and the Retailer hereby undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by his employees agents and sub-contractors with these provisions.

12 Retailer indemnifies Cakedodger

The Retailer agrees to indemnify Cakedodger against all costs claims and expense arising directly or indirectly from:

- 12.1 Any claim, representation or warranty made by the Retailer in connection with the services provided by Cakedodger.
- 12.2 The Retailer's failure to comply with the law of any country in which its goods / services are being advertised
- 12.3 The posting by the Retailer of any content on the Cakedodger Website;
- 12.4 A breach of the intellectual property rights of any person or entity and;
- 12.5 Any use of the Retailer Website for a purpose forbidden by this agreement and / or in law;
- 12.6 The Retailer's failure to conduct its business in a manner that reflects favourably at all times on Cakedodger and Cakedodger's good name, goodwill and reputation and the retailer shall not enter into any contract or engage in any practice detrimental to Cakedodger's interests, be deceptive, misleading or unethical practices or detrimental to the public.
- 12.7 The Retailer's failure to ensure at all times that the Retailer's product and pricing information (as loaded onto the Cakedodger Website) is consistent with the same on the Retailer Website.
- 12.8 Provided that Cakedodger;
 - 12.8.1 Gives notice to the Retailer of any infringement immediately it becomes aware of it;
 - 12.8.2 Gives the Retailer the sole conduct of the defence to any claim and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim except upon the express instructions of the Retailer; and
 - 12.8.3 Acts in accordance with the reasonable instructions of the Retailer and gives to the Retailer whatever assistance it reasonably requires in respect of the conduct of his defence.

13 Interruption to the Service

- 13.1 If it is necessary for Cakedodger to interrupt access to the Cakedodger Website and for any element of its software and Cakedodger reasonably believes the prospective duration of downtime does not justify informing the Retailer in advance, then it need not do so.
- 13.2 If notice of prospective downtime is given by Cakedodger it shall in its discretion give whatever period of notice it believes is reasonable under the circumstances.
- 13.3 The Retailer acknowledges that the Cakedodger Website may also be interrupted for reasons beyond the control of Cakedodger.
- 13.4 The Retailer agrees that Cakedodger is not liable to it for any loss whether foreseeable or not, arising as a result of interruption to the Cakedodger Website and/or Software.

14 License to use Intellectual Property

- 14.1 The Retailer hereby grants to Cakedodger a non-exclusive, non-transferable license, during the term of this agreement, to use its intellectual property solely in connection with the furtherance of this agreement.
- 14.2 This license is limited to use for the promotion of the goods or services in accordance with this agreement.
- 14.3 This license shall not be sub-licensed, assigned or otherwise transferred by Cakedodger without the prior written consent of the Retailer (which shall not be unreasonably withheld or delayed).
- 14.4 Cakedodger licenses the Retailer a non-exclusive non-transferable license during the term of this agreement to use its Intellectual Property solely as set out in this agreement,

15 Limitation of liability

- 15.1 The following provisions set out Cakedodger's entire liability (including any liability for the acts and omissions of its agents, sub-contractors or employees) to the Retailer in respect of:
 - 15.1.1 Any breach of his contractual obligations arising under this agreement; and
 - 15.1.2 Any representation statement or tortious act or omission including negligence arising under or in connection with this agreement

- 15.2 Any act or omission on the part of Cakedodger falling within this paragraph shall be known as an “Event of Default”.
- 15.3 Cakedodger shall not be liable to the Retailer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Retailer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Cakedodger had been advised of the possibility of the Retailer incurring the same.
- 15.4 If a number of Events of Default give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 15.5 The Retailer hereby agrees to give the Cakedodger not less than 28 days in which to remedy any Event of Default hereunder.
- 15.6 Nothing in this paragraph shall confer any right or remedy upon the Retailer to which he would not otherwise be legally entitled.
- 15.7 Cakedodger shall not be liable to the Retailer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.
- 15.8 To the fullest extent permitted by law, in the event that Cakedodger is found to be liable for breach of any of its obligations under this agreement, in contract, tort, (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of its obligations, Cakedodger’s maximum aggregate liability to the Retailer shall be limited to the total value of the Commission paid by the Retailer in the previous 6 month period (excluding VAT).

16 Force Majeure

Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including acts of God, fire, natural disaster, war or military hostilities, strikes of its own employees, issues with its internet service provider, and the date of delivery of its obligations shall be extended to the extent of any delay resulting from such force majeure event. And in such a situation:

- 16.1 Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it;
- 16.2 If a default due to force majeure shall continue for more than 6 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

17 General

- 17.1 The benefit and obligations of this agreement shall be binding on any successor in title.
- 17.2 Cakedodger shall be entitled to assign this agreement on 7 days notice to the Retailer. Retailer shall be entitled to assign this agreement subject to the prior written consent of Cakedodger (which shall not be unreasonably withheld).
- 17.3 Each sub paragraph in this agreement is independent and severable from each other paragraph and enforceable accordingly. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.
- 17.4 Any notice to be served on either of the parties by the other shall be sent by first class post or pre paid recorded delivery or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct number.
- 17.5 The headings in this agreement are for reference only.
- 17.6 In the event of a dispute arising out of or in connection with this agreement and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by the Retailer and Cakedodger then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 17.7 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this contract.

- 17.8 Retailer warrants that it shall not make any representations, warranties, guarantees or other commitments or otherwise incur any liability on behalf of Cakedodger.
- 17.9 A person who is not party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 17.10 This Contract shall be interpreted according to the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 17.11 Cakedodger shall be entitled to amend this agreement at any time subject to prior notification to Retailer by e-mail. Your continued use of the Cakedodger Website shall constitute your acceptance of this agreement as amended.
- 17.12 This agreement constitutes the whole agreement and understanding between the parties with respect to the subject matter of this agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to the subject matter of this agreement.