

GLOBAL CLEVERBRIDGE AFFILIATE PROGRAM MEMBERSHIP AGREEMENT

THIS CLEVERBRIDGE AFFILIATE PROGRAM MEMBERSHIP AGREEMENT (this “**Agreement**”) is entered into by and between **CLEVERBRIDGE AG**, with its principal place of business at Gereonstr. 43-65, 50670 Cologne, Germany (“**cleverbridge**”) and you (“**Affiliate**”).

RECITALS

WHEREAS, cleverbridge has developed and operates a service that allows Clients (as defined below) to offer Affiliates from around the world incentives for placing links on Affiliate’s website pointing to cleverbridge’s Client’s website; and

WHEREAS, Affiliate must accept this Agreement in full in order to participate in the cleverbridge Affiliate Program; and

WHEREAS, Affiliate may not use or continue to use this service if Affiliate do not accept the terms of this Agreement;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS.

The following capitalized terms will have the meanings ascribed to them below.

- 1.1 “**Active Affiliate Account**” means an Affiliate Account which has not been suspended by cleverbridge pursuant to Section 11.1 and which remains approved by Client to promote Client Products in the cleverbridge Affiliate Program.
- 1.2 “**Affiliate Account**” means an account in the cleverbridge Affiliate Program which is created by cleverbridge upon cleverbridge’s acceptance of Affiliate’s application to the cleverbridge Affiliate Program and approval by Client for Affiliate to promote its Client Products.
- 1.3 “**Affiliate Payment**” means a payment of Commissions from cleverbridge on behalf of Client to Affiliate further described in this Agreement.
- 1.4 “**cleverbridge Affiliate Center**” means the cleverbridge portal for use by Affiliates in connection with the cleverbridge Affiliate Program which is accessible through a cleverbridge website.
- 1.5 “**cleverbridge Affiliate Program**” means the affiliate marketing program described in this Agreement.
- 1.6 “**cleverbridge Online Store**” means an online store through which cleverbridge and/or Clients offer(s) or sell(s) Client Products to Customers.
- 1.7 “**Client**” means the supplier of products or services that the Affiliate wishes to promote through the use of Referral Links.
- 1.8 “**Client Product**” means (a) an unlock key, serial number, authorization key or number, download link, or similar code or mechanism that enables the Customer to access, use, or continue to use, the Client Software; or (b) any other product or service that cleverbridge resells for Client or which Client sells in its own name and for its own account.

- 1.9 **“Commission”** means a fee earned by Affiliate for successfully completed and valid Sales of Client Products promoted by Affiliate as further described in this Agreement.
- 1.10 **“Customer”** means an individual or entity that purchases Client Products through the cleverbridge Online Store.
- 1.11 **“Minimum Affiliate Payout Amount”** means the minimum amount of Commissions that must be accrued by Affiliate before an Affiliate Payment is made. Such amount may be found in the cleverbridge Affiliate Center.
- 1.12 **“Order”** means an order of a Client Product by a Customer through the cleverbridge Online Store.
- 1.13 **“Referral Link”** means a link that: (a) Affiliate generated in the cleverbridge Affiliate Center (b) Affiliate places on a website, email, or other electronic location and (c) contains the specific tracking information provided to Affiliate by cleverbridge in connection with Affiliate’s participation in the cleverbridge Affiliate Program.
- 1.14 **“Sale”** means the purchase of a Client Product by a Customer who was referred to the cleverbridge Online Store through a valid Referral Link for which cleverbridge or Client has received full payment from the Customer and which has not been refunded or resulted in a chargeback.

2 THE CLEVERBRIDGE AFFILIATE PROGRAM

- 2.1 **Account Application and Approval Process.** Affiliate must complete the application accessible from the cleverbridge Affiliate Center and accept the terms and conditions of this Agreement. Affiliate must indicate the Client who’s Client Products that the Affiliate wishes to promote through the cleverbridge Affiliate Program. Affiliate must submit an application for each respective Client. Client may, in its sole discretion, approve or reject any application. cleverbridge may, in its sole discretion, approve or reject any application for no reason or any reason, including if cleverbridge considers, in its sole discretion, the Affiliate website incompatible with the cleverbridge Affiliate Program, because it promotes (a) material with explicit sexual content, violence; (b) race, sex, gender, religion, nationality, physical disability, sexual orientation and/or age discrimination; (c) illegal activities; or contains (d) materials infringing or supporting third parties to infringe intellectual property or any other applicable laws; (e) the term “cleverbridge” or the Client’s or Client Product’s name or derivations thereof; (f) typing errors in the domain name used by Affiliate; or (g) is in any way illegal, damaging, libelous, obscene, and/or aggressive. If Affiliate has been rejected, cancelled or terminated from the cleverbridge Affiliate Program subsequent to application for admission and/or admission to the cleverbridge Affiliate Program, Affiliate may not submit another such application for admission.
- 2.2 **Affiliate.** Upon approval of the application by cleverbridge and approval of the application by Client(s), the Affiliate may promote Client Products in accordance with the terms of this Agreement.

3 REPRESENTATIONS, WARRANTIES AND OBLIGATIONS OF AFFILIATE

- 3.1 **Authority to Enter into Agreement and Minimum Age.** Affiliate represents and warrants that it has full right, power, and authority to enter into this Agreement; to perform its obligations and duties under this Agreement; and that the performance of such obligations and duties does not and will not conflict with or result in a breach of any other agreement of Affiliate or any judgment, order, or decree by which Affiliate is bound. If Affiliate is a natural person, then Affiliate also represents that it is at least the minimum age required to perform legal actions on its own behalf

in the jurisdiction in which Affiliate resides.

- 3.2 **Use of Affiliate Account, Username and Password.** Affiliate represents and warrants that any and all usage and activity in its Affiliate Account will occur in full compliance with this Agreement and that Affiliate is responsible for all usage and activity with its Affiliate Account in the cleverbridge Affiliate Center and in the cleverbridge Affiliate Program. Affiliate will not disclose the login data and/or username, and/or password to any third party. Affiliate is responsible for the loss, theft or unauthorized disclosure of the username, login data and/or password. Affiliate shall immediately notify cleverbridge in writing of any such loss, theft or unauthorized disclosure and/or known or suspected unauthorized use of its Affiliate account.
- 3.3 **Affiliate Content/Website.** Affiliate represents and warrants that Affiliate is responsible for the development, display, operation, and maintenance of any content shown together or made available with or otherwise associated with the Referral Links in any way and originating from Affiliate or any third party (including website designs, designs, videos, citations, images, fonts, styles, visual effects, or information), and that such content will conform to all applicable laws, regulations and best industry practices at all times.
- 3.4 **Intellectual Property.** Affiliate represents and warrants that Affiliate (a) has and will maintain all necessary rights and consents to use any intellectual property that it uses, and (b) does not and will not in any way, directly or indirectly, infringe any intellectual property rights (including patents, copyrights, name, trademarks, service marks, trade dress, trade names, web designs, logos and other designation of origin) of the Client, cleverbridge and/or any third parties. Affiliate represents that no claim (whether or not embodied in an action, past or present) of infringement of any intellectual property right has been threatened or asserted, and that no such claim is pending or threatened against Affiliate, Affiliate's affiliates, or against any entity or person from which Affiliate obtained such rights. Affiliate may not copy any icons, buttons, banners, graphics files and/or content contained in the Referral Link, including removing or altering any copyright or trademark notices.
- 3.5 **Malware, Viruses.** Affiliate represents and warrants that Affiliate will not in any way, directly or indirectly, utilize any link implementation or engage in other activities which may include any computer "virus", back door, fire bomb, trojan horses, worm, or any other similar harmful, malicious, or hidden programs, code, or data.
- 3.6 **Promotion and Link Placement.** Affiliate may promote approved Client Products solely and exclusively through the use of Referral Links. Affiliate may not place Referral Links in newsgroups, on message boards, banner networks, e-counters, chatrooms, guestbooks, internet relay chat channels or through any similar Internet resources or other inappropriate locations. Affiliate may not employ the use of pop-ups, pop-unders, exit pages or any other techniques openly or covertly leading and/or guiding Customers to the cleverbridge Online Store, unless explicitly approved by cleverbridge in writing prior to usage.
- 3.7 **Artificial Traffic, Tracking, Collection of Customer Information and other Prohibited Actions.**
- 3.7.1 Affiliate may not generate or contribute to the generation of artificial traffic to and/or through the Referral Links and/or website of Clients by any means, including using any device, program, robot, bot, inline frames, hidden frames, and/or redirect.
- 3.7.2 Affiliate will not collect any Customer Information without such Customer's or potential Customer's express consent (opt-in). "Customer Information" means any information concerning the personal or material circumstances of an identified or identifiable natural person, including, but not limited to, any data set containing the customer's name, surname, email address, physical address

(including street and apartment name and number as well as ZIP code, city and country if collected in connection with other Customer Information such as street and customer name), phone number or customer behavior (including previous history and interests recorded by cookie).

- 3.7.3 Affiliate may not use automatic redirection to the cleverbridge Online Store or any automatic method for saving and/or use of any cookies and/or tracking which has not been generated in the cleverbridge Affiliate Center or otherwise provided by cleverbridge.
- 3.7.4 Affiliate may not advertise Client Products employing cookie stuffing techniques, including pop-ups, frames, images, JavaScript and/or stylesheets, and/or any type of software download and/or technology which attempts to intercept traffic or commissions to or from any other website.
- 3.7.5 Affiliate may not replace, intercept, interfere with, hinder, disrupt and/or otherwise alter the access, viewing or usage of the Client's website and/or cleverbridge Online Store.
- 3.7.6 Affiliate may not use outbound, inbound, solicited and/or unsolicited calling techniques to promote and/or sell Client Products.
- 3.7.7 Affiliate may not use any tag manager or tag management tools without the express written consent of cleverbridge.
- 3.8 **Misrepresentations and Deceptive Practices.** Affiliate may not promote Client Products in a manner that intentionally or unintentionally misleads Customers, conveys information that is contrary to fact, or that provides information not in compliance with all applicable laws and this Agreement. Affiliate may not promote Client Products through scare-ware and/or any similar or sales tactics. Affiliate will not identify or describe itself as an authorized dealer, agent, sales representative, or in any other way imply an association with cleverbridge that is inaccurate in any way. Affiliate will make no claims, representations or warranties, express or implied, on behalf of cleverbridge, to prospective or actual Customers or others.
- 3.9 **Restricted and Embargoed Countries.** Exports and re-exports of the Client Products may be subject to certain export control laws, rules, and regulations (collectively, "Export Regulations"), including Export Regulations of the European Union (EU) and the United States of America. Affiliate will comply with all applicable Export Regulations at all times. Affiliate represents and warrants that Affiliate is not situated in a country that is subject to such Export Regulations and that Affiliate is not subject to such Export Regulations
- 3.10 **Correct Information.** Affiliate represents and warrants that all information it provides to cleverbridge or a Client (including (a) information in its application, (b) Affiliate's physical address, Affiliate's VAT ID or TIN or (c) otherwise updated in the cleverbridge Affiliate Center) is true and correct. Affiliate must update such information in the cleverbridge Affiliate Center as necessary. cleverbridge may suspend or terminate Affiliate's Account without notice if it determines, in its sole discretion, that Affiliate has provided incomplete or inaccurate information.
- 3.11 **Grant of Rights.** Affiliate grants to cleverbridge a non-exclusive, royalty-free, and worldwide license to use the Affiliate's name, branding and/or logos for the purpose of promoting the Affiliate to Clients and advertising the cleverbridge Affiliate Program.
- 3.12 **Non-Solicitation.** Affiliate represents and warrants that, during the term of this Agreement, the Affiliate will not enter into any direct or indirect agreement with any Client which concerns the referral of (potential) Customers and/or would in any manner circumvent, avoid or compete with the cleverbridge Affiliate Program or initiate or further such a (third party) practice in any way.

- 3.13 **Unsolicited email and SPAM.** Affiliate represents and warrants that Affiliate will not promote Client Products using unsolicited email or include Referral Links in unsolicited email.

3.14 **Data Privacy.**

Affiliate represents and warrants that Affiliate will comply at all times with and not to act in any manner that would violate cleverbridge's privacy policy and rules pertaining to the protection of personal information set forth in cleverbridge's privacy policy in the then-current version, available at: <https://www.cleverbridge.com/540/?scope=opprivacy>. Affiliate acknowledges and accepts the policies and practices of cleverbridge outlined in such privacy policy with respect to information regarding Affiliate.

Affiliate will adhere at all times to the Data Protection Directive 95/46/EC, the Directive on Privacy and Electronic Communications 2002/58/EC, the Federal Trade Commission's Telemarketing Sales Rules, the Canadian Anti-Spam law, and to all other laws and regulations applicable in the jurisdictions in which Customers reside.

Affiliate shall immediately inform and notify cleverbridge in case of a serious interruption of operations, suspicion of breaches of (personal) data protection and/or unintentional release of (personal) data to an untrusted and/or unauthorized environment (including by Affiliate's employees, affiliates, agents and/or any third parties), and/or any other irregularity in processing personal data or any other circumstances under which Affiliate is required to provide a notification under applicable law ("Data Breach").

Affiliate shall promptly investigate any Data Breach and take any and all effective measures to identify its root cause(s) and prevent any (partial) recurrence of such Data Breach. As information is collected by third parties or otherwise becomes available, unless prohibited by applicable law, Affiliate will provide cleverbridge with a description of the Data Breach, the type of data that has been and/or is the subject to the Data Breach, and any and all other information cleverbridge may reasonably request concerning the affected persons, including Customers and/or any third parties.

- 3.15 **Compliance with Laws.** Affiliate will comply at all times with all applicable laws, regulations, rules, directives and best industry accepted standards and practices.

4 **OBLIGATIONS OF CLEVERBRIDGE**

- 4.1 **Reporting.** cleverbridge will provide the Affiliate information regarding Sales and Commissions earned by Affiliate. Such information is provided to Affiliate only in the cleverbridge Affiliate Center for a period of six months following the applicable Sale. cleverbridge will not provide additional information regarding Sales and Commissions that is not otherwise provided in the cleverbridge Affiliate Center.

- 4.2 **Affiliate Payments.** cleverbridge will initiate Affiliate Payments which are set forth in the cleverbridge Affiliate Center at the times described in this Agreement. Such payments will be initiated to the account designated by Affiliate in the cleverbridge Affiliate Center and which is approved by cleverbridge. Affiliate irrevocably waives any objections to any payment and/or report, and any calculations of amounts contained therein and/or covered thereby, that Affiliate does not raise by written notice to cleverbridge within three (3) months after such report was made available to Affiliate.

- 4.3 **Disputes between Affiliate and Client.** Any dispute between Affiliate and a Client will be addressed and/or resolved by the Affiliate and the Client. cleverbridge may, but is not required to, mediate or assist in the resolution of any such dispute.

5 COMMISSIONS AND AFFILIATE PAYMENTS.

5.1 **Successful Sales.** cleverbridge, in its sole discretion, will determine which Sales entitle Affiliate to a Commission. cleverbridge reserves the right to reject Orders and/or Sales for any and/or no reason.

5.2 **Commission.** The Commission paid to Affiliate for each Sale will be defined by the Client in the cleverbridge Affiliate Center. The Commission may vary depending the Client Product promoted and certain Sales of Client Products may not earn any Commission.

In order for Affiliate to earn a Commission (a) the Affiliate must have an Active Affiliate Account which has not been suspended; (b) Affiliate must remain an approved Affiliate by Client; (c) a Customer must access the cleverbridge Online Store through a valid Referral Link; (d) that Customer must accept cookies to its web browser; and (e) that Customer must place an Order and generate a Sale of a Client Product within the time period defined by the Client.

The basis for the calculation of the Commission is (a) the amount actually collected and retained by cleverbridge for the respective Sale, excluding, if applicable, VAT, sales tax, shipping, exchange, handling or other such fees, taxes, or customs and (b) the Commission rate or amount specified by the Client in the cleverbridge Affiliate Center.

5.3 **Affiliate Payments and Timing.** Affiliate Payments are made in arrears once per month by cleverbridge. However, if the Affiliate has not accrued Commissions totaling the Minimum Affiliate Payout Amount, then cleverbridge will hold the accrued amounts until the Minimum Affiliate Payout Amount has been accrued. Affiliate Payments will not be made to Affiliates that do not have an Active Affiliate Account.

5.4 **Payment Service.** Affiliate Payments are made on behalf of Client and cleverbridge is only acting for Client in connection with such payments. Such payments do not create an ongoing relationship between cleverbridge and the Affiliate beyond the relationship expressly created by this Agreement, nor does cleverbridge have any singular or ongoing payment obligations to the Affiliate beyond the obligations expressly created by this Agreement.

5.5 **Tax Status and Obligations.** cleverbridge is not obligated to and will not provide Affiliate with tax and/or legal advice. cleverbridge takes no duty to investigate or research Affiliate's tax status and/or obligations, and such research and investigation is solely Affiliate's responsibility. The Affiliate is obligated to independently assess and comply with all relevant tax and legal requirements.

6 PROCESSOR CHARGEBACKS, REFUNDS AND HOLDBACKS.

6.1 A "**Processor Chargeback**" means a reversal of a payment (excluding cash payments) in which (a) the issuer or payment provider of the respective payment method (the "**Payment Provider**") credits the amounts charged to the account of a Customer in connection with ordering Client Products back to such account after the Customer disputes the transaction; and (b) the Payment Provider deducts such amounts from a cleverbridge account, regardless of whether cleverbridge consented to such deduction and credit to Customer. cleverbridge may also, in its sole discretion, refund payments to Customers for any reason, including goodwill or effective revocation, cancellation or termination of sales and/or purchases by Customers ("**Refund**").

6.2 Affiliate acknowledges that Processor Chargebacks and Refunds may occur for some time after a successful Sale. As such, the Affiliate may have received an Affiliate Payment for a Sale that later becomes subject to a Processor Chargeback or Refund. In such case, cleverbridge will deduct the respective amount of such Affiliate Payment from later payouts of Affiliate Payments. Affiliate

further remains liable to cleverbridge for any and all outstanding negative balances resulting from Processor Chargebacks and Refunds related to the Affiliate Payments.

- 6.3 **Holdback.** cleverbridge may hold back some or all Affiliate Payments to cover potential future Processor Chargebacks or any other liabilities of Affiliate towards cleverbridge or Client, if cleverbridge determines in its sole discretion that Affiliate may be unable to fulfill or will breach Affiliate's obligations towards cleverbridge or Client and/or resulting from this Agreement. Such holdback will be paid out to Affiliate no later than twelve (12) months after it was initiated. cleverbridge is in no way liable for any losses, including damages and lost income, interest or profits, the Affiliate may sustain due to such holdback.

7 SUBSCRIPTIONS AND RECURRING PAYMENT SALES.

- 7.1 Certain Client Products require recurring payments from a Customer to continue using such Client Products, e.g. subscriptions. Unless expressly agreed between Client and Affiliate, Affiliate earns a Commission only on the initial Sale made by a Customer and will not earn a Commission on future Sales to or Payments by Customer, that are related to the initial sale. In the event that a Client does agree to pay a Commission on subsequent Sale(s), cleverbridge will only make such Affiliate Payment(s) while this Agreement is in effect and while the agreement between Client and Affiliate remains in effect. cleverbridge reserves the right to suspend or terminate Affiliate Payments if instructed to do so by Client or if Affiliate is rejected for any reason by Client or cleverbridge.

8 CONFIDENTIALITY.

- 8.1 **Confidential Information.** Affiliate acknowledges that, as a result of this Agreement, it may gain access to certain Confidential Information of cleverbridge and Client. **"Confidential Information"** means the terms of this Agreement and all documentation and information, including business and marketing information and information related to techniques, algorithms, processes and technical details, designated or marked by the party disclosing such documentation and information orally, visually or in writing (the **"Disclosing Party"**) as "proprietary" or "confidential" or the like, or that Affiliate knows to be confidential, or should reasonably consider to be confidential under the circumstances of its disclosure, supplied by the Disclosing Party to Affiliate in connection with this Agreement (other than documentation and information intended for distribution to Customers or third parties).
- 8.2 **Protection of Confidential Information.** During the term of this Agreement and for a period of five (5) years thereafter, Affiliate agrees (a) to hold the Disclosing Party's Confidential Information in strict confidence, using the same degree of (but no less than reasonable) care and protection that it exercises with its own Confidential Information of a similar nature; (b) not to directly or indirectly disclose or otherwise make available any Confidential Information of the Disclosing Party to a third party; and (c) not to copy or use Disclosing Party's Confidential Information for any purpose other than as necessary to fulfill Affiliate's obligations or exercise its rights under this Agreement. Affiliate will disclose Confidential Information only to its employees with a need to know such information in order to fulfill Affiliate's obligations hereunder and who have been informed of and have agreed to abide by the provisions of this section. In addition, Affiliate is permitted to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is approved in writing by the affected Disclosing Party or is required by law or by the order of a court or similar judicial or administrative body, provided that the Affiliate notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- 8.3 **Exclusions.** The obligations of this Section will not apply to Confidential Information if such

information: (a) is publicly available prior to or at the time of disclosure, or becomes publicly available through no act of the Affiliate; or (b) was, prior to disclosure, rightfully known to the Affiliate (other than in connection with this Agreement) without confidentiality restriction.

9 LIMITATIONS ON CLEVERBRIDGE'S LIABILITY.

9.1 **No Service Warranty.** CLEVERBRIDGE DOES NOT WARRANT OR GUARANTEE THE PERFORMANCE OR AVAILABILITY OF CLEVERBRIDGE'S ONLINE STORE, THE CLEVERBRIDGE AFFILIATE PROGRAM, THE CLEVERBRIDGE AFFILIATE CENTER, THE REFERRAL LINKS, OR THE WEBSITES OF THE CLIENTS OR ANY RELATED LINKS AND LINKED WEBSITES.

9.2 **Types and Amount of Damages.** IN NO EVENT SHALL CLEVERBRIDGE BE LIABLE TO AFFILIATE FOR INDIRECT, INCIDENTAL, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY AFFILIATE OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF CLEVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLEVERBRIDGE SHALL NOT BE LIABLE FOR ANY COSTS OR DAMAGES INCURRED BY THE AFFILIATE OR ANY OTHER PARTY ARISING OUT OF THIS AGREEMENT UNLESS CAUSED DIRECTLY BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CLEVERBRIDGE IN FULFILLING ITS OBLIGATIONS HEREUNDER. ANY OBLIGATION OR LIABILITY OF CLEVERBRIDGE SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE AFFILIATE PAYMENTS ACTUALLY RECEIVED BY AFFILIATE IN THE THREE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO LIABILITY. THIS LIMITATION IS CUMULATIVE AND SHALL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM.

9.3 **Client and Client Products.** CLEVERBRIDGE SHALL NOT BE LIABLE TO AFFILIATE FOR THE ACTIONS OR OMISSIONS OF CLIENTS AND CLIENT PRODUCTS AND MAKES NO REPRESENTATIONS OR WARRANTIES AS TO FEATURES OR THE PERFORMANCE OF CLIENT PRODUCTS OR THE PERFORMANCE, OR LACK THEREOF, OF ANY DUTIES OR OBLIGATIONS OF CLIENTS. IN PARTICULAR, CLEVERBRIDGE SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES INCURRED BY THE AFFILIATE, ANY CONTRACTUAL OBLIGATIONS OR LIABILITIES (IF ANY) CREATED BY AN AGREEMENT OR DEALINGS BETWEEN AFFILIATE AND CLIENT, OR ANY PAYMENT OBLIGATIONS ARISING OUT OF AN AGREEMENT BETWEEN THE AFFILIATE AND A CLIENT.

9.4 **Basis of the Bargain.** The parties agree that the limitations of liability set forth in this Section shall survive and continue in full force and effect despite any failure of consideration. The parties acknowledge that the terms of this Agreement have been determined, and the Agreement entered into, in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

10 **INDEMNIFICATION.** Affiliate will indemnify, defend and hold harmless cleverbridge and its affiliates, directors, officers, employees, agents, Clients and Customers from any and all claims, losses, liabilities, damages, costs and expenses (including attorney's fees, expert witness fees, and dispute resolution costs) directly or indirectly arising from or relating to any actual or alleged (a) breach of or inaccuracy in any representations or warranties made by Affiliate in Section 3 of this Agreement, (b) breach of this Agreement, or (c) breach of or inaccuracy in any representations or warranties made by Affiliate in the agreement between Client and Affiliate

11 SUSPENSION, TERMINATION AND AMENDMENTS.

11.1 **Suspension.** cleverbridge reserves the right to suspend an Affiliate Account at any time in order to investigate an alleged violation of this Agreement. Affiliate acknowledges and agrees that if such a suspension occurs, (a) Affiliate must cease use of Referral Links, (b) Commissions will not be earned by Affiliate and (c) Affiliate Payments will not be made during such suspension.

11.2 **Termination for Convenience.** The parties may terminate this Agreement at any time for any or

no reason with immediate effect by giving the other party notice.

- 11.3 **Automatic Termination.** If Client's agreement with cleverbridge is terminated, this Agreement shall automatically be terminated.
- 11.4 **Effect of Termination.** Upon termination of this Agreement, The Affiliate must cease to use the service and agrees to remove any Referral Links immediately. Affiliate will not earn Commissions or receive Affiliate Payments after termination of this Agreement. Sections 3.14, 4.3, 5.4, 6, 8, 9, 10, 11 and 12 shall survive termination of this Agreement.
- 11.5 **Amendments.** cleverbridge reserves the right to amend this Agreement and/or the Affiliate Program at any time. Affiliate will be notified of any modification or change of this Agreement via email (delivered to the email address provided by Affiliate in the cleverbridge Affiliate Center) or through the cleverbridge Affiliate Center. If Affiliate does not agree to such modifications or changes, Affiliate must terminate this Agreement and cease using any and all Referral Links immediately. Affiliate's continued use of the cleverbridge Affiliate Program (including use of Referral Links) shall be deemed Affiliate's acceptance of the revised Agreement.

12 GENERAL.

12.1 Notice.

- 12.1.1 **Notice to cleverbridge.** Any notice, approval, authorization, consent, or other communication required to be delivered to cleverbridge under this Agreement must be in writing and will be deemed properly delivered and given on receipt (or when delivery is refused) if delivered (a) by hand, or (b) by courier or express delivery service, or (c) by postage prepaid first-class mail to the address set forth below:

cleverbridge AG
Attention: cleverbridge Affiliate Program
Gereonstr. 43-65
50670 Cologne, Germany

- 12.1.2 **Notice to Affiliate.** Any notice, approval, authorization, consent, or other communication required to be delivered to Affiliate will be deemed properly delivered when (a) emailed to the email address provided by Affiliate in the cleverbridge Affiliate Center or (b) fourteen (14) days after being posted in the cleverbridge Affiliate Center.
- 12.2 **Governing Law and Venue.** This Agreement and any action related thereto will be construed in accordance with and governed in all respects by the laws of the State of Illinois without regard to any conflicts of law principles that would result in the application of laws of any other jurisdiction. Affiliate expressly agrees to submit to the exclusive personal jurisdiction, and that the exclusive venue for disputes related to this Agreement shall be the state and federal courts of Cook County, Illinois. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 12.3 **Assignment.** Affiliate may not assign or transfer any rights under this Agreement or delegate any obligations or duties under this Agreement without cleverbridge's prior written consent. Any attempted assignment or delegation without such consent will be null and void.
- 12.4 **Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.\

- 12.5 **Independent Contractors.** This Agreement does not establish any partnership, joint venture, employment, or other relationship between the parties, except that of independent contractors.
- 12.6 **Construction.** The section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement, and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words “include” and “including,” and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation.” All references in this Agreement to “Sections” are intended to refer to sections of this Agreement.
- 12.7 **Waiver.** cleverbridge’s failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single, continued or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof.
- 12.8 **Force Majeure.** If a Party’s inability to perform this Agreement, or any obligation hereunder, is the result of an Act of God (e.g. fire, flood, epidemic, or earthquake); war or act of terrorism, including chemical or biological warfare; governmental acts, orders or restrictions; or any other reason where failure to perform is beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure, then the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.
- 12.9 **Entire Agreement.** This Agreement contains the entire understanding of the parties relating to the subject matter hereof and supersedes all prior or contemporaneous agreements, communications, and understandings between the parties (whether written or oral) relating to the subject matter hereof. Between and in relation to the parties to this Agreement, it supersedes and prevails, if any of its contents or provisions conflict with any agreement between Affiliate and Client or any other third party.