

# MindGenius Affiliate Agreement

Last update: September 2017 MindGenius Ltd

This Affiliate Agreement (“Agreement”) contains the terms and conditions that apply to your participation as an affiliate (“you” or “Affiliate”) in the MindGenius Limited. (the “Company”) Affiliate Program. Affiliate acknowledges that it may participate in the Company Affiliate Program only under the terms and conditions set forth below, and that subsequent to Company accepting this Agreement, Company will, in its sole discretion, determine whether or not to accept Affiliate into Company’s Affiliate Program.

By submitting an application to become an Affiliate, you warrant that you have read and understand this Agreement, and you agree to be bound by it.

To begin the enrollment process, you must submit a complete Affiliate Program Application via the Company Site. We will evaluate your application and notify you of your acceptance or rejection. We reserve the right in our sole and absolute discretion, to accept or reject your application for any or for no reason whatsoever.

Upon notice of acceptance of your application, this Agreement shall be effective between you and the Company (“us” or “we”). If we reject your application you will not be able to participate in the Company Affiliate Program.

## 1. Definitions

1. Throughout this Agreement, capitalized terms shall have the meaning ascribed to them in quotes. In addition, for purposes of this Agreement, the following definitions apply:
2. “Advertising” or “Advertisements” means any and all advertisements (including, without limitation, banner or box-style advertisements, pop-up or pop-under placements, text links or other similar solicitations through the Internet) that promote Company Products or Services and that contain a Link to the Company Site.
3. “Affiliate” means any person or entity that has submitted an Affiliate Program Application and has been accepted for participation in the Company Affiliate Program in accordance with the terms of this Agreement.

4. "Agent" is defined in Section 7.
5. "Company Brand Features" means Company trade names, trademarks, service marks and/or logos authorized by Company.
6. "Company Products and Services" means those proprietary products and services currently offered on the Company Site, which currently consists of online project collaboration and project management software, and any proprietary products or services as may be offered at a future date on the Company Site during the Term of this Agreement. "Company Products and Services" does not include products and services offered by third parties on or through the Company Site.
7. "Company Site" means the Company internet site currently located at [www.MindGenius.com](http://www.MindGenius.com) and [www.barvas.com](http://www.barvas.com), or any page, section, subsection or subdirectory thereof, and any other additional, substitute or successor site that may be designated by Company under this Agreement.
8. "Customer" means any person or entity who (i) successfully purchases a Company Product or Service from the Company Site (ii) using a Link and (iii) through such Link provides a valid email address and valid credit card information to facilitate such purchase via the Company Site, and (iv) provided that the person or entity has not previously purchased a product or service through the Company Site.
9. "Intellectual Property Rights" means all rights in and to trade secrets, patents, copyrights, trademarks, know-how, as well as moral rights and similar rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to any of the foregoing.
10. "Link" means an embedded graphic, icon or text containing a unique hypertext pointer to the URL address for the Company Site that is embedded in an Advertisement and that identifies consumers that become Customers via the Advertisement.
11. "Paid Search Placement" means an advertisement purchased through bidding on keywords, search terms, or other identifiers (including Proprietary Terms) or other participation in keyword auctions.
12. "Program" means the Affiliate Program as further described in, and contemplated by, this Agreement.

13. “Proprietary Term” means keywords, search terms, or other identifiers that include Company Brand Features, the word “MindGenius” and “Barvas”
14. “Redirecting Link” means a link that sends users indirectly to the Company Site via an intermediate site or webpage and without requiring the user to click on a link or take some other affirmative action on that intermediate site or webpage.
15. “Referral Fee” is defined in Section 4.
16. “Search Engine” means Google, Yahoo, Bing, or any other search engine, portal, sponsored advertising service, or other search or referral service, or any site that participates in any of their respective networks.
17. “Term” is defined in Section 2.
18. “Website(s)” or “your Website(s)” shall mean any and all internet sites that you own, operate or otherwise control.

## 2. Term and Termination

1. The term of this Agreement (“Term”) will begin upon our acceptance of your application and will end when terminated by either party in writing, including, without limitation, by email.
2. The Term of this Agreement shall be continuous, unless and until either party properly terminates this Agreement, in accordance with the following: (i) either party may terminate this Agreement immediately by giving written notice to the other party; or (ii) Affiliate agrees and acknowledges that if Affiliate breaches any provision of this Affiliate Agreement Company may immediately terminate Affiliate from the Affiliate Program. Upon termination of this Agreement, Affiliate must immediately remove from Affiliate’s Website(s), and cease from using, referencing or otherwise associating with the Company, including, without limitation, (i) any Advertising or Links, (ii) any Company Brand Features, and (iii) any Company Products and Services. Following termination of this Affiliate Agreement, Affiliate agrees to refund any amounts that were earned from Company in breach of this Agreement.
3. Upon termination of this Agreement, Affiliate shall immediately cease serving or using Advertisements.

4. Upon termination of this Agreement, Affiliate shall no longer be eligible for future commissions on previously referred customers.
5. No Referral Fees or bonuses shall be due with respect to Customers who register after the date of termination. We reserve the right to withhold your final payment for up to 120 days as necessary to calculate properly any amount due to you.
6. Upon termination of this Agreement, all rights and obligations of the parties under this Agreement will be extinguished, except for those rights and obligations that either by their express terms survive or that are otherwise necessary for the enforcement of this Agreement. Sections 1, 2, 4, 5, 6, 7, 10, 12, 14, 16 - 27 of this Agreement, inclusive, and the provisions of this Agreement that impose obligations on Affiliate, shall survive any termination of this Agreement.
7. Company may terminate Affiliate from its Program and Affiliate will forfeit all monies resulting therefrom if:
  1. Affiliate has become or is likely to become subject to litigation or other regulatory legal action that may adversely affect the Company's business;
  2. Affiliate sends unsolicited emails to Company users, provides false account information, or falsely or wrongfully increases the amount of Referral Fees payable; or
  3. Affiliate does not comply with any provision of this Agreement as determined in the Company's sole discretion.

### 3. Obligations of Company

1. Upon acceptance of your application, you will have the ability to enter the password-protected site for the Affiliate Program ("Program Site"). The Program Site will contain certain sales reports related to your Affiliate relationship with Company. These reports will contain estimates of (i) the number of users registered on the Company Site from your use of Advertising and (ii) the Referral Fees payable to you pursuant to Section 4, below. Affiliate acknowledges that there may be delays in the reporting of information and the Referral Fees paid to you, and adjustments for chargebacks may be made after reporting of any sale.

2. Company shall provide you with all Advertising and you shall only use Advertising provided by Company in promoting Company and/or the Company Products and Services. The Advertising available for your use will be made available on the Program Site. Company shall be solely responsible for creating and modifying all Advertising.

## 4. Referral Fee

1. During the term of this agreement, Company shall pay Affiliate 2/12<sup>th</sup> of the total paid annual subscription made by a customer referred to the Company by Affiliate (as determined by the Company's sole discretion) for all annual contracts which is in effect the first two months subscription costs of a 12 month annual contract.
2. Company will pay Affiliate the full commission via PayPal into Affiliate's personal, premier or business PayPal account, with a minimum payment threshold of US \$100.00 (one hundred US dollars). Affiliate will be responsible for any fees (including PayPal fees), if any, for receiving the payment.
3. Company reserves the right to adjust the Referral Fee payable to Affiliate the extent of any reporting errors, fraudulent sales, fraudulent or automated clicks or intentional manipulations of the registration or sales process, all as determined in our sole discretion.
4. Company reserves the right to change the Referral Fees payable hereunder by providing notice to you (including by email) and/or reflecting such changes on the Affiliate Program Site. Any decrease to the Referral Fees shall become effective immediately upon the earlier of (i) providing notice to you, or (ii) posting of the new Referral Fee on the Affiliate Program Site.
5. Each one-time Referral Fee is calculated based on the type of subscription plan for which the qualifying referral initially subscribes when it upgrades to a paid plan.
6. The Referral Fee will be verified by Company 45 days after the customer payment to avoid refunds, chargebacks, and downgrades. If the Customer downgrades to free, deletes an account or demands a refund during the verification period, no commission is paid.
7. Company shall pay you any such Referral Fees approximately 30 days after the date when the payment was verified. Notwithstanding anything herein to the contrary, there may be up to 35

days delay between the reporting of a sale and the reporting of Affiliate's Referral Fee through Affiliate's Account page in our service, and adjustments for chargebacks may be made up to 45 days after the reporting of the purchase.

8. In order to receive Referral Fee payments, you must maintain a valid Paypal account. If you do not provide us with your PayPal account, we will email you when you first earn a Referral Fee to ask for a Paypal email address, in which case we will use commercially reasonable efforts to notify you in 45 days from the date on which you earn a Referral Fee. We will pay all Referral Fee to the email address you provide, and you are solely responsible to ensure the accuracy of the Paypal account information.

## 5. Restrictions and Limitations

1. Notwithstanding any provision of this Referral Agreement, we will not be obligated to pay commissions if (a) we determine, in our reasonable discretion, that referrals are not bona fide transactions, including without limitation for self-referrals; (b) the Customer does not maintain its paid account (at the same or higher price tier) for longer than two (2) months; (c) you engage in any fraudulent or deceitful behavior in connection with the Program, including without limitation directly or indirectly offering any person a financial incentive to follow a Referral Link or attempting to redirect traffic from, or divert a MindGenius Affiliate from, any other participant in the Program.

## 6. Promotion Restrictions

1. Affiliate shall not promote the Company via Paid Search Placement in any Search Engine, including but not limited to:
  - using the Company Brand Features in ad text (both headlines and descriptions).
  - bidding on keywords containing the Company's name or Brand Features.
  - use [www.MindGenius.com](http://www.MindGenius.com) or its affiliate link, including the Redirecting Link as a display URL or landing page URL.

No commissions from sales generated through keyword bidding or other paid search in Search Engines will be earned or paid.

Only banners listed in the “Promotional Materials” section of the Affiliate Program are allowed to be used for promoting the Company Products and Services. No modifications to such banners are allowed, including, without limitation, with respect to size, color, text, or other visual changes. Any modified banners shall be removed immediately by Affiliate upon the Company’s request. If such banners are not removed, Affiliate agrees and acknowledges that no existing or future commissions shall be deemed to be earned or payable to Affiliate by the Company.

## 7. Certain Obligations of Affiliate

1. As an Affiliate, you are permitted to promote the Company Products and Services only through Advertisements made in the following manner: (i) Links from your Website(s) to the Company Site, (ii) Links or pop-ups or pop-under placements on Website(s) for which you have received express written permission from such Website(s) to serve such links or placements and as otherwise subject to the limitations set forth in this Agreement, and (iii) emails in compliance with applicable law, the Company’s Privacy Policy (as may be amended from time to time on the Company Site) and this Agreement.
2. All promotional activities undertaken by you to promote the Company Products or Services shall be made in accordance with reasonable and prudent business practices, the Companies policies (which is may amend from time to time in its sole discretion) and in accordance with all applicable laws and regulations. All information obtained at the Company Site from individuals linking to the Company Site shall be the sole and exclusive property of Company and, except as specifically provided herein, you shall neither have access to such information nor use any device, technique or software to obtain information from the Company Site.
3. You shall replace any Advertising displayed on your Website(s) with any new Advertising provided by Company within three (3) days after receiving notice from Company of the new Advertising. You shall not modify any Advertisement in any way.
4. Your Website(s) shall not in any way copy or resemble the look and feel of the Company Site, nor shall you create the impression that your Website(s) is the Company Site or a part of the

Company Site. You shall not use the name of the Company or the Company Site or any variation or misspellings thereof in your URL. You shall not frame or permit the framing of any page of the Company Site.

5. During and after the Term, you will not disparage Company, the Company Site or the Company Products or Services, or portray any of these in a derogatory or negative manner.
6. You will be solely responsible for the development, operation, and maintenance of your Website(s) and for all materials related thereto. For example, you will be solely responsible for:
  1. the technical operation of your Website(s) and related equipment
  2. creating and posting Company descriptions on your Website(s) and linking those descriptions to the Company Site.
  3. the accuracy and appropriateness of materials posted on your Website(s) (including, among other things, all product-related materials).
  4. ensuring that materials posted on your Website(s) do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights).
  5. ensuring that materials posted on your Website(s) are not libelous, illegal or otherwise objectionable.
  6. ensuring that your Website(s) accurately and adequately discloses, either through a privacy policy or otherwise, how you collect, use, store, and disclose data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers.
7. We disclaim all liability for these matters. Further, you agree to indemnify and hold us harmless from all claims, damages, losses, and expenses (including, without limitation, attorneys' fees, payable as incurred) relating to the development, operation, maintenance, and contents of your Website(s), use of the Advertising, violation of this Agreement, and/or violation of any right of another party.



8. This Agreement may not be assigned or otherwise transferred by you without the express written consent of Company.
9. You shall not provide any Advertisement to any third party, subaffiliate or agent (“Agent”) without the written permission of Company. Any such permission must clearly identify the third party, subaffiliate or agent and include their business name, physical address, and Website URL(s). It is within the sole and exclusive discretion of Company to grant or deny any such permission and, even if granted, such permission may be revoked by Company for any reason or for no reason at any time.
10. Company shall not be a party to any agreement that you have with an Agent and you are not authorized to make any commitments on behalf of Company to any such Agent, including commitments regarding payment of fees to the Agent by Company or commitments for licenses to Company’s name, logo(s), any provided images, or other intellectual property. Agents are not third party beneficiaries of this Agreement with Company. Any breach by your Agents of the terms and conditions of this Agreement shall be deemed a breach of this Agreement by you and Company shall have full recourse against you with respect to such breach.

## 8. Ongoing Compliance

Affiliate’s continuing compliance with this Agreement is a condition of continuing participation in the Program. Company reserves the right to review and audit Affiliate’s Website(s) from time to time to determine if Affiliate is in continued compliance with this Agreement. Affiliate’s Website(s) must be and remain fully functional.

## 9. Adult Content and Other Unacceptable Content

Affiliate may not post adult-oriented content on any page on which Advertising appears. Company considers content to be “adult” if it contains nudity, is sexually explicit, pornographic, lewd, obscene, primarily intended for sexual gratification or is otherwise inappropriate for minors, as determined in Company’s sole discretion. Affiliate may not post any offensive or incorporate images or content that is in any way harmful, threatening, obscene, harassing or racially, ethnically or otherwise objectionable, or promote discrimination based on race, sex,

religion, nationality, disability, sexual orientation, or age, as determined in Company's sole discretion.

## 10. Use of Advertiser Content

1. Affiliate agrees that it is sublicensed only the exact Advertising provided by Company and only in the form and manner available from and as specified by Company. Advertiser shall have complete discretion to evaluate Affiliate's use to decide whether that use violates any applicable terms and conditions.
2. Affiliate may not distribute, transfer, sublicense or otherwise use the Advertising in a manner inconsistent with this Agreement.
3. Affiliate acknowledges that Company owns and will retain all right, title, and interest in the Advertising, including, without limitation, any proprietary rights that may be developed in the future.
4. Affiliate will ensure that the presentation of the Advertising is consistent with Company's own use of the Advertising in comparable media.
5. Affiliate will not remove or modify any trademark, service mark, or privacy policy notices from the Advertising.
6. Affiliate will not present or use the Advertising: (i) in a manner that could be reasonably interpreted to suggest editorial content has been authored by, or represents the views or opinions of Company, or Company's representatives; (ii) in a manner that is misleading, defamatory, libelous, obscene, or otherwise objectionable, in Company's reasonable opinion; (iii) in a way that infringes, derogates, dilutes, or impairs the rights of the Advertising; or (iv) as part of a name of a product or service of a company other than Company.
7. Affiliate will immediately make any changes to its use of the Advertising as are requested by Company.
8. Affiliate will not publish any prices, special offers or discounts in connection with the Advertising on its Website(s), unless such prices, special offers or discounts were included by Company in the unmodified Advertising.

9. ALTERING OR ANY UNAUTHORIZED USE OF THE ADVERTISING IS STRICTLY PROHIBITED. YOU AGREE THAT BREACH OF THIS SECTION 10 MAY RESULT IN IMMEDIATE TERMINATION FROM THE PROGRAM IN WHICH CASE YOU AGREE TO FORFEIT ALL FEES PAYABLE TO YOU. ALL RIGHTS NOT EXPRESSLY GRANTED BY COMPANY ARE RESERVED.

## 11. Modification

Company may modify any of the terms and conditions contained in this Agreement at any time in our sole and absolute discretion effective immediately upon notice to you. Modifications may include, but are not limited to, changes in Referral Fees, payment procedures, and permitted promotional activities. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE AFFILIATE PROGRAM FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON OUR SITE WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE OR NEW AGREEMENT, AS APPLICABLE.

## 12. Enrollment

To begin the enrollment process, you must submit a complete and accurate Program application.

You must identify your Website(s) in your application. We will evaluate your application and notify you of its acceptance or rejection. We may reject your application if we determine that your Website(s) is/are unsuitable. Unsuitable sites include, without limitation, sites that:

- a. promote or contain sexually explicit materials;
- b. promote violence or contain violent materials;
- c. promote or contain libelous or defamatory materials;
- d. promote discrimination, or employ discriminatory practices, based on race, sex, religion, nationality, disability, sexual orientation, or age;
- e. promote or undertake illegal activities;

- f. are directed toward children under 13 years of age, as defined by the Children’s Online Privacy Protection Act (15 U.S.C. §§ 6501-6506) and any regulations promulgated thereunder;
- g. include any trademark of the Company or its affiliates, or a variant or misspelling of a trademark of the Company or its affiliates, in any domain name, subdomain name, or in any username, group name, or other identifier on any social networking site; or
- h. otherwise violate any intellectual property rights.

If we reject your application, you are welcome to reapply at any time. However, if we accept your application and we later determine that your Website(s) is unsuitable, we may terminate this Agreement.

You will ensure that the information in your Program application and otherwise associated with your account, including your email address and other contact information and identification of your Website(s), is at all times complete, accurate, and up-to-date. We may send notifications (if any), approvals (if any), and other communications relating to the Program and this Agreement to the email address then-currently associated with your Program account. You will be deemed to have received all notifications, approvals, and other communications sent to that email address, even if the email address associated with your account is no longer current.

If you are a non-US person participating in the Program, you agree that you will perform all services under the Agreement outside the United States. If, for any reason, you cannot comply with this requirement, you must notify us using this [link](#) for an exception.

## 13. Limited License

Subject to the terms of this Agreement and solely for the limited purposes of advertising Company Products and Services on, and directing end users to, the Company Site in connection with the Program, we hereby grant you a limited, revocable, non-transferable, non-sublicensable, non-exclusive, royalty-free license to (a) copy and display the Advertising solely on your Website(s); and (b) use only those of our trademarks and logos that we may make available to you as part of Advertising solely on your Website(s).

The license set forth in this Section 13 shall immediately and automatically terminate if at any time you do not timely comply with any obligation under this Agreement or otherwise upon termination of this Agreement. In addition, we may terminate the license set forth in this Section 13 in whole or in part upon written notice to you. You will promptly remove from your Website(s) and delete or otherwise destroy all of the Advertising with respect to which the license set forth in this Section 13 is terminated or as we may otherwise request from time to time.

## 14. Reservation of Rights; Submissions

Other than the limited licenses expressly set forth in Section 13, we reserve all right, title and interest (including all intellectual property and proprietary rights) in and to, and you do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in or to, the Program, Links, link formats, Advertising, content, any domain name owned or operated by us or our affiliates, documentation, our and our affiliates' trademarks and logos, and any other intellectual property and technology that we provide or use in connection with the Program (including, without limitation, any application program interfaces, software development kits, libraries, sample code, and related materials). If you provide us or any of our affiliates with suggestions, reviews, modifications, data, images, text, or other information or content about a product or in connection with this Agreement, any content, or your participation in the Program, or if you modify any content in any way, (collectively, "Your Submission"), you hereby irrevocably assign to us all right, title, and interest in and to Your Submission and grant us (even if you have designated Your Submission as confidential) a perpetual, paid-up royalty-free, nonexclusive, worldwide, irrevocable, freely transferable right and license to (a) use, reproduce, perform, display, and distribute Your Submission in any manner; (b) adapt, modify, re-format, and create derivative works of Your Submission for any purpose; (c) use and publish your name in the form of a credit in conjunction with Your Submission (however, we will not have any obligation to do so); and (d) sublicense the foregoing rights to any other person or entity. Additionally, you hereby warrant that: (y) Your Submission is your original work, or you obtained Your Submission in a lawful manner; and (z) our and our sublicensees' exercise of rights under the license above will not violate any person's or entity's rights, including any copyright rights. You agree to provide us such assistance as we may require to document, perfect, or maintain our rights in and to Your Submission.

## 15. Compliance with Laws

In connection with your participation in the Program you will comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions, and other requirements of any governmental authority that has jurisdiction over you, including, without limitation, laws (federal, state, or otherwise) that govern marketing email (e.g., the CAN-SPAM Act of 2003).

## 16. Disclaimer

THE COMPANY SITE AND RELATED PRODUCTS AND SERVICES ARE PROVIDED “AS IS” WITH NO WARRANTY, AND COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING THE COMPANY SITE AND THE COMPANY PRODUCTS AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, COMPANY MAKES NO REPRESENTATION OR WARRANTY THAT THE LINKS, THE TRACKING DATA, THE OPERATION OF THE COMPANY SITE, THE COMPANY PRODUCTS AND SERVICES, OR ANY THIRD-PARTY’S PROCEDURES AND SYSTEMS FOR TRACKING AND REPORTING SALES GENERATED BY YOUR SITE WILL BE UNINTERRUPTED OR ERROR-FREE, AND COMPANY SHALL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA. COMPANY SHALL HAVE NO LIABILITIES OR OBLIGATIONS UNDER WARRANTY OR OTHERWISE TO ANY OF YOUR CUSTOMERS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF COMPANY’S PRODUCTS OR SERVICES.

## 17. Limitation of Liability

UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE WHETHER IN TORT, CONTRACT OR OTHERWISE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR ANY LOSS OF REVENUE, PROFITS, BUSINESS INTERRUPTION, LOSS OF

BUSINESS INFORMATION OR DATA, LOSS OF GOODWILL, WORK STOPPAGE, HARDWARE OR SOFTWARE FAILURE, OR OTHER PECUNIARY LOSS) ARISING FROM OR RELATING TO ANY PROVISION OF THIS AGREEMENT OR THE AFFILIATE PROGRAM. EXCEPT WITH RESPECT TO ANY OUTSTANDING REFERRAL FEES WHICH ARE PAYABLE TO AFFILIATE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, COMPANY'S AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF (I) THE AMOUNT OF FEES PAID TO AFFILIATE PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING ANY CLAIM, OR (II) \$1,000.

## 18. Relationship of Parties

Affiliate and Company are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship, or the relationship of principal and agent between the parties. Affiliate will have no authority to make or accept any offers or representations on Company's behalf. Affiliate will not make any statement, whether on the Affiliate's Website(s) or otherwise, that reasonably would contradict anything in this section. Affiliate, as an independent contractor, will have sole responsibility for its expenses, taxes, employees, sales representatives and agents, and shall indemnify Company to the extent that the Company incurs any liability with respect to the foregoing items.

## 19. Public Announcements

Affiliate may not make any public announcement or press release about the terms or existence of the Agreement without Company's prior written approval and consent.

## 20. Confidentiality

1. Affiliate acknowledges that by reason of its relationship to Company hereunder it will have access to certain information and materials concerning Company's business, plans, customers, technology, products and services that are confidential and of substantial value to Company, which value would be impaired if such information were disclosed to third parties. In particular, the parties hereto acknowledge that the information regarding Customers obtained during the

Term and the effectiveness of Advertising hereunder are highly confidential and valuable to Company. Affiliate agrees that it shall not use in any way for its own account or the account of any third party, nor disclose to any third party, any such information revealed to it as a result of or arising out of the relationship hereunder (other than to fulfill its obligations under this Agreement). Affiliate shall take every reasonable precaution to protect the confidentiality of such information.

2. Notwithstanding anything in this section to the contrary, any information (i) required by legal process to be disclosed, (ii) already in the public domain through no fault of Affiliate, will not be considered confidential information hereunder.

## 21. Reservation of Rights

Company reserves all rights other than those expressly granted in this Agreement, and no licenses are granted except as expressly set forth herein. Company retains all right, title, and interest in and to the Company Brand Features and the Company Site, together with all Intellectual Property Rights thereto.

## 22. Program Information

Company will own all right, title and interest in and to all information that is created or collected in the operation of the Company Site including, without limitation: (i) any contact information collected from any Customers (the “Contact Information”); and (ii) any information collected about product or services sales at the Company Site generated through the Affiliate Link(s) (the “Sales Information”). Company may make certain Sales Information available online to Affiliate from time to time. Affiliate will not disclose any Sales Information to any third party without Company’s prior written approval and not use such Sales Information without the written approval of Company.

## 23. Order of Precedence

In the event of an inconsistency between other agreements between Company and Affiliate (if any), and this Agreement, this Agreement will control.



## 24. Miscellaneous

1. This Agreement shall be treated as though it were executed and performed in Glasgow Scotland, and shall be governed by and construed in accordance with the laws of Scotland (without regard to conflict of law principles).
2. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
3. This Agreement may be automatically assigned by us in our sole discretion, including, without limitation, to a third party in the event of an acquisition, sale or merger.
4. If any provision of this Agreement is held illegal, invalid or unenforceable for any reason, that provision shall be enforced to the maximum extent permissible, and the other provisions of this Agreement shall remain in full force and effect. If any provision of this Agreement is held illegal, invalid or unenforceable, it shall be replaced, to the extent possible, with a legal, valid, and unenforceable provision that is similar in tenor to the illegal, invalid, or unenforceable provision as is legally possible.
5. No waiver of any provision of this Agreement shall constitute a continuing waiver, and no waiver shall be effective unless made in a signed writing.
6. Our rights under this Agreement shall survive any termination of this Agreement.
7. The title, headings and captions of this Agreement are provided for convenience only and shall have no effect on the construction of the terms of this agreement.
8. Notices may be made by Company by email or through posting on the Company Site.
9. Notices and other communications to you, as required or permitted to be given hereunder, that are posted on the Company Site and/or otherwise emailed to the email address provided in your application, shall be deemed effective upon posting or emailing. Notice or other communications to Company shall be sent by email to [customer support](#) and shall be deemed effective one business day after emailing.

10. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and valid assigns of the parties hereto. This Agreement contains the entire agreement between Company and Affiliate with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements or understandings, written or oral, between Company and Affiliate with respect to the subject matter hereof.
11. Each party hereby represents that it has the authority and capacity to enter into this Agreement, including that all individuals executing this Agreement are 18 years of age or older.
12. This Agreement constitute the entire agreement between Company and Affiliate and govern participation in the Affiliate Program, superseding any prior or contemporaneous agreements between Company and Affiliate.

## **25. Arbitration**

This Agreement shall be governed by and interpreted in accordance with laws of Scotland. The parties submit to the exclusive jurisdiction of the Scottish courts in all matters relating to the subject matter hereof. In the event of any controversy or claim arising out of or relating to this Affiliate Agreement, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties.

## **26. Independent Investigation**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEBSITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEBSITE(S). YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

## **27. Acknowledgement**

BY APPLYING FOR THE COMPANY AFFILIATE PROGRAM, YOU ACKNOWLEDGE THAT YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT TO THE SAME EXTENT AS IF YOU HAD PERSONALLY SIGNED THIS DOCUMENT