

Cleverbridge Master Subscription Agreement

Last updated November 1, 2023

This Master Subscription Agreement (“**MSA**”) collectively with any Solution-Specific Terms and/or Subscription Schedules (as defined below) (“the “**Agreement**”) is entered into effective as of the last date of signature of the first-executed Subscription Schedule (the “**Effective Date**”) by Client (as identified on the Subscription Schedule signature page, “**Client**”) and **Cleverbridge GmbH**, with its principal place of business at Gereonstraße 43-65 in 50670 Cologne, Germany (“**Cleverbridge**”). Client and Cleverbridge are individually/jointly referred to as **Party/Parties** in this Agreement.

1 Overview

- 1.1 **Solutions; Subscription Schedules.** Cleverbridge offers its clients subscriptions to various e-commerce-related software and service solutions (each, a “**Solution**”). The specific Solution subscriptions are identified in one or more separate, written schedules that are signed by both Parties and reference this Agreement (each, a “**Subscription Schedule**”).
- 1.2 **Contract Hierarchy.** Client and Cleverbridge shall enter Subscription Schedules to enable Cleverbridge to provide the Solution(s). Subscription Schedules incorporate this MSA, which further incorporates any relevant Solution-Specific Terms and Statements of Work (SOWs), which collectively detail the scope of work and fees associated with a specific subset of work. Any Subscription Schedule(s) (including any corresponding Solution-Specific Terms or SOWs) signed by both Parties will form a part of this Agreement and are incorporated herein by reference. Should any provision of a Subscription Schedule conflict with any provision of this Agreement, the provision set forth in the Subscription Schedule shall control.

2 Fees and Payment

- 2.1 **Fees.** The fees to be paid by Client to Cleverbridge under this Agreement (the “**Fees**”) shall be set forth and agreed in the respective Subscription Schedule. All Fees are non-refundable.
- 2.2 **Invoicing and Payment.** Cleverbridge shall invoice Client for all Fees monthly in arrears, or as otherwise agreed in the applicable Subscription Schedule. Client will pay such invoices within thirty (30) days of receipt. Client irrevocably waives any objections to any invoice, and any calculations of amounts contained therein, that Client does not raise by written Notice to Cleverbridge within thirty (30) calendar days after receipt of the invoice.
- 2.3 **Late Payment.** Late payments will bear interest at the rate of 2% of the outstanding balance per month or the maximum amount permitted by law, if lower. If any amount owed by Client is overdue, Cleverbridge may, without limiting its other rights and remedies, suspend providing the Solution(s) to Client until such amounts are paid in full or terminate this Agreement pursuant to Section 10.3 (“**Termination**”).

3 Taxes

- 3.1 **Taxes on Cleverbridge Fees.** All fees are exclusive of all applicable VAT, sales, use, and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Client will be responsible for payment of all such taxes (including any virtual corporate income tax, but excluding other taxes based on Cleverbridge’s net income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees. Cleverbridge shall apply VAT to any fees and other charges on the invoice. Client shall make all fee payments to Cleverbridge free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Cleverbridge shall be Client’s sole responsibility.



- 3.2 **Tax Withholding.** Client shall compensate Cleverbridge for any withholding tax or other applicable taxes, fees, duties, other governmental charges (excluding taxes on Cleverbridge's net income), and related expenses applicable to the Solutions provided hereunder that Client may be obliged to deduct from payments to Cleverbridge.

4 Confidentiality

- 4.1 **Definition.** Confidential Information means any confidential or proprietary information of either Party (the "Disclosing Party") that is disclosed to the other Party (the "Receiving Party"), whether orally or in writing or through any media, including financial, business, Documentation and other technical information, ideas, trade secrets, procedures, methods, systems, and concepts. The Parties agree that all fees under this Agreement and any Solution performance data (e.g., authorization rates) shall be deemed Cleverbridge's Confidential Information and not Client's Confidential Information. Confidential Information shall not include information that Receiving Party can demonstrate was: (i) in the public domain or otherwise publicly available when disclosed to Receiving Party; (ii) communicated to Receiving Party by a third party without any confidentiality obligation and without any breach of confidentiality by such third party; (iii) in Receiving Party's possession free of any confidentiality obligation when disclosed to Receiving Party; or (iv) independently developed by Receiving Party without use of the Confidential Information and without breach of any confidentiality obligation.
- 4.2 **Protection.** Receiving Party acknowledges that Confidential Information may contain valuable trade secrets and other proprietary information of Disclosing Party and remains the property of Disclosing Party. Receiving Party shall (a) use Confidential Information for only the purpose for which it is provided, (b) restrict disclosure of Confidential Information to its employees and consultants with a need to know, (c) not disclose Confidential Information to any third party without Disclosing Party's prior written consent, and (d) protect Confidential Information in the same way it protects its own Confidential Information of a similar nature, but in no event exercising less than reasonable care.
- 4.3 **Compelled Disclosure.** Receiving Party shall not be considered in violation of this section for disclosing Confidential Information in response to a valid order by a court or other governmental body, if it promptly notifies Disclosing Party of such impending disclosure and reasonable assistance (at Disclosing Party's expense) to permit Disclosing Party to contest said order or seek confidential treatment.

5 License Grant and Marketing

- 5.1 **Right to Use the Solutions.** Cleverbridge grants Client a nonexclusive, nontransferable (except as permitted under Section 11.3), worldwide right to access and use the Solutions set forth in each Subscription Schedule (including any required documentation) during the Subscription Term (as defined in the Subscription Schedule), solely for Client's internal business operations. Client will not: (i) use any Solution in violation of this Agreement or any applicable 6.1) and s or regulations, or for any fraudulent purpose, or (ii) engage in any activity that interferes with or disrupts the operation of any Solution.
- 5.2 **License Grant.** Client grants to Cleverbridge a non-exclusive, nontransferable (except as permitted under Section 11.3), royalty-free license (sublicensable to affiliates and service providers) to use, distribute, and reproduce Client's Intellectual Property to perform its obligations under this Agreement. "Intellectual Property" means all intangible property protected by "Intellectual Property Rights," defined as present and future worldwide copyrights, trademarks, trade secrets, patents, patent rights, moral rights, and other proprietary rights of any nature.
- 5.3 **Cleverbridge Intellectual Property.** To the extent they are not Client Intellectual Property Rights, any and all Intellectual Property Rights, including any and all patents, copyrights, trademarks, trade secrets, and designs related to (non-) customized formats and web-designs to be implemented for Client by Cleverbridge are the exclusive property of Cleverbridge.



- 5.4 **Marketing Permission.** Cleverbridge may use Client's name, trademark, and logo, as well as basic facts about the services provided for Client in connection with marketing and sales activities. Cleverbridge also, after receiving prior written or email approval from Client, may publish selected Client performance facts in its marketing material in a case-study format (e.g., relative conversion rate improvements, return on investment, or churn rate improvements) without disclosing specific proprietary financial details of Client.
- 5.5 **Press Release; Reference Account.** Upon Cleverbridge's request, Client agrees to issue a joint press release with Cleverbridge no later than ninety days after (1) Client is live on the Cleverbridge platform (if using the Resale Solution), and/or (2) Cleverbridge has implemented the solution(s) procured, announcing the engagement of Cleverbridge by Client. Client further agrees to be a reference client of Cleverbridge.

6 Legal Compliance

- 6.1 **Data Protection.** The Parties agree to comply with global data protection laws and to execute any necessary data protection agreements or country-specific clauses for the Solutions provided.
- 6.2 **General Compliance.** Client warrants and covenants that it shall not use the Solution(s) in any way that violates any laws, regulations, or applicable certification standards nor shall it instruct Cleverbridge to act in a way that would violate any laws, regulations, or applicable certification standards.

7 Indemnification

- 7.1 **Cleverbridge Indemnification.** Cleverbridge shall indemnify, defend and hold harmless Client and its respective Affiliates, directors, officers, employees, and agents, 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 infringement of any third party Intellectual Property Rights by a Solution, provided, however, that this indemnity will not apply to the extent the third party claim is caused by: (i) any alteration or modification of a Solution by Client not authorized by Cleverbridge, (ii) use of a Solution in violation of this Agreement, (iii) the combination, operation or use of a Solution with any product, device, software or service not supplied by Cleverbridge if the combination creates or contributes to the infringement, or (iv) Cleverbridge's compliance with Client's designs, specifications, requests, or instructions if the third party claim is based on such compliance. **"Affiliate"** means any other entity that, directly or indirectly, through one or more intermediaries, is controlled by or under common control with a Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of shares, the holding of voting power, by contract or otherwise.
- 7.2 **Client Indemnification.** Client shall indemnify, defend and hold harmless Cleverbridge and its respective Affiliates, including its and their directors, officers, employees, and agents, 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, (a) Client marketing activities not performed by Cleverbridge; (b) changes to Solutions requested or performed by Client, (c) Client's failure to fulfill its obligations in Section 3 (Taxes), (d) all acts or omissions of Client's employees and agents not occurring at the direction of any upon the specific initiative of Cleverbridge, (e) all acts or omissions of Cleverbridge's employees and agents occurring at the direction of and upon the specific initiative of Client, and/or (f) Client's misuse of a Solution.
- 7.3 **Indemnification Procedures.** If any proceeding shall be brought or threatened against the indemnified Party by reason of or in connection with the events described in this section, as a condition of indemnity hereunder such indemnified Party shall notify the indemnifying Party in writing (provided,



however, that the failure to provide such notice shall not relieve the indemnifying Party of its obligations hereunder, except to the extent such failure materially prejudices the indemnifying Party's defense of such proceeding) and the indemnifying Party shall assume the defense thereof, including the employment of counsel approved by such indemnified Party (provided, that such approval by the indemnified Party shall not be unreasonably withheld) and the payment of all costs, fees, and expenses of defending any source of indemnification identified above in Section 7 (e.g. any claim, loss, etc.), irrespective of whether litigation has been initiated.

8 Governing Law

- 8.1 **Governing Law.** The governing law depends on Client's location. Illinois law shall govern the Agreement if Client is a US-based entity. German law shall govern this Agreement for all other Clients.
- 8.2 **Venue.** Exclusive venue shall be Cook County if Illinois law applies, and Cologne if German law applies. Cleverbridge may sue Client at Client's place of business unless prohibited by a compulsive statutory exclusive venue.
- 8.3 **Application of CISG and UCC.** The United Nations Convention on Contracts for the International Sale of Goods and Article 2 of the Uniform Commercial Code shall not apply.

9 Limitation of Liability

- 9.1 **Warranty Disclaimer:** Except for any representations and warranties that are expressly stated in this Agreement, all Solutions and services are provided on an "AS IS" basis and Cleverbridge disclaims all other express and implied representations and warranties, including any implied warranties of merchantability, fitness for a particular purpose, non-infringement, and error-free or uninterrupted operation, as well as any warranties arising from a course of dealing, course of performance or usage of trade. To the extent that a Party may not as a matter of applicable law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.
- 9.2 **Where Illinois Law Applies:**
- 9.2.1 **Amount of Damages.** IN NO EVENT, INCLUDING FOR CLAIMS BROUGHT UNDER SECTION 7, SHALL CLEVERBRIDGE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SOLUTION, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID BY CLIENT TO CLEVERBRIDGE UNDER THE APPLICABLE SUBSCRIPTION SCHEDULE DURING THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE FIRST CLAIM.
- 9.2.2 **Limitation of Liability.** IN NO EVENT SHALL CLEVERBRIDGE BE LIABLE TO CLIENT FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES; INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY CLIENT OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SOLUTION, WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS AND TO THE EXTENT OTHERWISE PROHIBITED BY LAW.
- 9.2.3 **Time-Bar.** Subject to the limitations and other provisions of this Agreement, no claims arising from or relating to this Agreement or any Solution may be made by a Party more than one year after the date on which such Party became aware of the facts giving rise to such claim.
- 9.2.4 **Limitation Carve-Outs.** The limitations on liability set forth in Sections 9.1-9.3 shall not apply to (a) any losses or damages that are solely caused by a Party's gross negligence or willful misconduct; or (b) claims of personal injury or death. It is agreed that the limitations set forth in Sections 9.1-9.3 apply on an aggregate basis to claims asserted by Client against Cleverbridge and any third party who may be jointly and severally liable with Cleverbridge or who may have contribution rights against Cleverbridge.
- 9.3 **Survival.** The limitations of liability set forth in this Section shall survive and continue in full force and effect despite any failure of consideration or of any exclusive remedy. The Parties acknowledge that the fees have



been agreed, and the Agreement entered, in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties

- 9.3.1 **Remedies.** Unless otherwise expressly agreed to the contrary, the rights and remedies of the Parties will be cumulative (and not alternative).
- 9.4 **Where German Law Applies:**
- 9.4.1 **Unlimited Liability.** Cleverbridge's liability shall not be limited for damages caused by intent, gross negligence, injury to life, body or health, malicious concealment of a defect, assumption of a guarantee or a procurement risk or any mandatory statutory liability, including without limitation under the Product Liability Act.
- 9.4.2 **Limitation of Liability.** Cleverbridge's liability for damages caused by slightly negligent breach of material obligations of this Agreement, meaning obligations that (a) enable the fulfillment of this Agreement, and (b) on whose fulfillment the Client generally relies on and is entitled to rely on shall be limited to the typically foreseeable damage.
- 9.4.3 **Foreseeable Damages.** The Parties agree that the typically foreseeable damage shall equal no more than the aggregate amount of fees for the relevant services at issue in the claim paid by Client to Cleverbridge during the 12-month period preceding the event giving rise to the claim.
- 9.4.4 **Liability Exclusion.** Any further liability of Cleverbridge to Client shall be excluded.
- 9.4.5 **Time-Bar.** All Client claims against Cleverbridge shall become statute-barred one year after knowledge of the facts giving rise to the claim, but no later than three years after performance of the service, unless Cleverbridge's liability is unlimited according to this section.

10 Term and Termination

- 10.1 **Term.** The initial term of this Agreement commences on the Effective Date and remains in effect for a period of three years (the "Initial Term") unless terminated earlier as set forth below. Upon expiration of the Initial Term or any Renewal Term (as defined below) the term of this Agreement shall be automatically renewed for consecutive one-year terms (each, a "Renewal Term") unless either Party provides written notice to terminate under Sections 10.2 or 10.3. The Initial Term and any Renewal Term shall be collectively referred to as the "Term".
- 10.2 **Termination for Convenience.** Either Party can terminate this Agreement in whole or any Subscription Schedule for convenience at any time by notifying the other Party in writing ninety (90) days in advance.
- 10.3 **Termination for Cause.** Either Party may terminate the Agreement immediately upon written notice to the other Party, if the other Party commits a material breach of this Agreement, and such breach remains uncured more than ten business days after receipt of written notice of such breach. Such termination shall also affect all active Subscription Schedules unless otherwise agreed in writing.
- 10.4 **Effect of Termination; Survival.** Upon any termination of this Agreement or a Subscription Schedule, Client's right to access and use any Solution that is subject to such termination shall immediately terminate. The following provisions will survive any termination of this Agreement: sections 2.2, 3.1, 4, 5.3, 6, 7.2, 8, 9, and 10.5.
- 10.5 **Early Termination Fee.** If this Agreement or any Subscription Schedule is terminated during the first three (3) years after the Effective Date for any reason other than termination by Client pursuant to Section 10.3 or termination by Cleverbridge under Section 10.3, Client shall pay to Cleverbridge any applicable early termination fee that is provided for in the applicable Subscription Schedule.

11 General

- 11.1 **Notifications.** Each Party shall notify the other Party of any relevant changes in the notifying Party's legal form or corporate structure.



- 11.2 **Electronic Signatures.** The Parties agree that they may sign or amend this Agreement and any Subscription Schedule or an SOW using electronic signature services. The Parties agree that any electronically signed document deemed (a) to be “in writing”, (b) to have been properly signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed.
- 11.3 **Assignment.** Neither Party may assign or transfer any of its rights under this Agreement or delegate any of its obligations or duties under this Agreement without the other Party’s prior written consent. Notwithstanding the foregoing, Cleverbridge may assign, transfer, and/or delegate this Agreement (complying with the obligation in Section 11.1 this Agreement), without Client’s consent, (a) to an Affiliate; or (b) in connection with a merger, consolidation, sale of equity interests, the sale of all or a material portion of its assets (or of the assets of any subsidiary, division, or business unit, or line of business of the assigning Party to which this Agreement relates) or change of control transaction. Any assignment by Client, is contingent upon the proposed assignee’s successful completion of and approval by Cleverbridge’s due diligence process.
- 11.4 **Right to set off.** Client may only set off any due payments with claims against Cleverbridge that are undisputed or confirmed by a court of law. Client may not retain payments due to counterclaims resulting from a different agreement with Cleverbridge.
- 11.5 **Waiver.** All waivers must be in writing and signed by an authorized representative of the Party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.6 **Solution Terms Updates.** Client agrees that its use of and access to certain Solutions are subject to the relevant Solution-Specific Terms published online by Cleverbridge at <https://grow.cleverbridge.com/legal-info>, form a part of this Agreement. Cleverbridge reserves the right to modify the its Terms from time to time, including this MSA. Cleverbridge shall inform Client by email about any change in any applicable Terms at least thirty calendar days in advance.
- 11.7 **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, pandemic, or earthquake); war or act of terrorism, including governmental acts, orders, or restrictions, including any and all laws, rules, and regulations, 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, it shall be excused from such performance to the extent of such prevention, restriction, or interference, including a reasonable time period for the resumption of performance after said event.
- 11.8 **Entire Agreement.** The Agreement (including any Subscription Schedules and/or SOWs) contains the entire understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and/or communications with respect to such subject matter. Except as provided in Section 11.6, this Agreement may not be amended, modified, altered, or supplemented other than by means of a written instrument duly executed by both Parties.
- 11.9 **Severability.** If any provision of this Agreement or the application of any such provision to any Person or circumstance, will be declared judicially to be invalid, unenforceable, or void, such decision will not have the effect of invalidating or voiding the remainder of the Agreement, and it is the intent and agreement of the Parties that the Agreement will be deemed amended by modifying such provision to the extent necessary to render it valid, legal, and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is legal, enforceable, and that achieves the same objective.
- 11.10 **Notices.** When serving a notice to Cleverbridge, Client shall email legal@Cleverbridge.com. Cleverbridge shall notify Client at the contact information provided in Cleverbridge’s systems or that provided below, whichever is more current, and Client shall keep such contact information updated in all Cleverbridge systems it has access to. Email shall constitute written notice.

