

MSA Appendix

Cleverbridge Solution-Specific Terms: Reseller Services

Last updated November 1, 2023

These Reseller Terms apply to Client's subscription(s) for Cleverbridge's reseller services, and incorporate and become a part of the MSA, found at grow.cleverbridge.com/MSA. Capitalized terms not defined within the Reseller Terms shall have the meaning set forth in the MSA or corresponding subscription schedule.

1 Grant of Reseller License to Cleverbridge

- 1.1 **Online Store.** Cleverbridge's reseller services are offered through its proprietary e-commerce solution through which Customers can place Orders for Products, called the "Online Store". A "**Customer**" is any entity or person placing an Order on the Online Store. An "**Order**" is either (a) a new purchase request from a Customer for a Product, or (b) the renewal of an existing Order. A "**Product**" is any Client-supplied merchandise offered by Cleverbridge to Customers for sale using the Online Store.
- 1.2 **Grant of Reseller License.** Client grants to Cleverbridge a non-exclusive, nontransferable (except as permitted in the MSA) right throughout the Territory specified in the applicable Subscription Schedule to (a) resell Products through Online Store and (b) use, distribute, and reproduce the Products (including all incorporated Intellectual Property Rights) in connection with such resale of the Product. The foregoing rights and licenses are sublicensable only to other entities that, directly or indirectly, through one or more intermediaries, are controlled by or under common control with Cleverbridge (a "**Cleverbridge Affiliate**"). Cleverbridge shall not (a) modify, adapt, alter, or translate any Product, or create derivative works from same; (b) integrate any Product into other software; or (c) reverse engineer, decompile or disassemble any Product.

2 Product Distribution Conditions and Requirements

- 2.1 **Product Listing.** To be available for sale in the Online Store, Client (or Cleverbridge, at Client's request) must first provide the relevant Product info to Cleverbridge via the Commerce Assistant ("CA"), Subscription Commerce Manager ("SCM"), or available APIs (collectively, the "Platform"). The CA is an application operated and maintained by Cleverbridge through which Client may manage Client Products and configure the Online Store on behalf of Cleverbridge pursuant to this Agreement and to the extent permitted by Cleverbridge. The SCM is the online or web-version of the CA.
- 2.2 **Suspension of Product Distribution.** If (a) a third party threatens or announces legal measures or other proceedings against Cleverbridge, or (b) Client breaches this Agreement or its agreements with a Customer, or (c) Cleverbridge reasonably determines that the continued distribution of Products bears any legal or commercial risk, Cleverbridge may, in its sole discretion, suspend the resale of Products and subscription renewals at any time without incurring liability to Client.
- 2.3 **Notice of Product Restrictions.** Although Cleverbridge endeavors to keep up-to-date on the most recent product distribution restrictions for the products it sells, Client may have information about the Product or aspects of the Product that Cleverbridge is not aware of or does not have access to. Client shall therefore notify Cleverbridge in writing of any trade restrictions or license requirements related to the Products. Client shall provide such notice to Cleverbridge immediately upon learning of any such restriction or requirement, but no later than the date on which such restriction or requirement comes into effect.
- 2.4 **No Cash Payments.** Cleverbridge does not accept cash payments from Customers.
- 2.5 **No Resale of Physical Items.** The Products will not include any equipment or other physical items without Cleverbridge's prior written approval.



3 Product Pricing

- 3.1 **Product Price.** Cleverbridge shall pay Client the “**Product Price**” for each Client Product resold by Cleverbridge hereunder (including Client Products later added to the Platform by Client). Client’s right to the Product Price shall accrue upon Cleverbridge’s receipt of payment from the Customer for each such Client Product (the “**Customer Payment**”).
- 3.2 **Calculation.** The Product Price for Client Products shall be calculated as follows:
- The Suggested Retail Price of the Client Product (less any applicable discounts if specified by Client), minus all Cleverbridge Fees.
- 3.3 **Suggested Retail Price/Resale Price.** The Suggested Retail Price for the Client Products can be changed online by the Client at any time during the Term using the Platform. Cleverbridge maintains full and sole discretion in setting the price in the Online Store at which it resells the Products to Customers.

4 Taxes

- 4.1 **Withholding and Other Taxes.** Any withholding tax, digital services taxes, or other applicable taxes, fees, duties, other governmental charges (including the tax defined in Section 4.2, but excluding other taxes related to Cleverbridge’s net income) and related expenses applicable to the Order or to payments due to Client, which Cleverbridge must bear or pay, shall be payable by Client, and Cleverbridge shall be entitled to deduct them from the Client Payout. Where withholding taxes on a Client Payout can be reduced due to a double taxation treaty, the Parties shall use commercially reasonable tax reduction efforts.
- 4.2 **Virtual Corporate Income Taxes.** Should Cleverbridge become subject to corporate income taxes in a country in which Cleverbridge has no registered trading entity, by virtue of its sales of the Products, Cleverbridge shall be entitled to deduct such corporate income taxes from the Client Payout using a suitable sales/taxable profit ratio.
- 4.3 **VAT and Similar Taxes.** For VAT, sales tax, or any similar tax purposes, and irrespective of how a Customer receives a Product, Cleverbridge acts as the seller and/or supplier of the Product, purchased and resold by Cleverbridge on the Customer invoice. Cleverbridge shall collect as part of the Gross Resale Price and remit to the competent tax authorities any VAT, sales taxes, and any similar taxes applicable to Customer payments. Client shall notify Cleverbridge at once if Client believes that there is any additional or non-standard tax liability for Client regarding Orders for which Cleverbridge processed, collected, and remitted taxes. Any payments by Cleverbridge to Client are net of any taxes. Client shall be solely responsible for the remittance of any taxes in Client’s country of residence.
- 4.4 **Duty to inform.** Client shall notify Cleverbridge of any changes that might impact the Order taxation and maintain all relevant information in Cleverbridge’s systems.

5 Client Payouts

- 5.1 **Resale Report.** Before a Client Payout—which is the total payment that Cleverbridge is obligated to pay to Client for reselling and distributing a Product, after deductions for Refunds and Chargebacks, and otherwise calculated by Cleverbridge pursuant to the terms of the Agreement—Cleverbridge will provide Client with a report stating (a) the number of Products resold during the clearing period; (b) the sum of the Product prices payable to Client during the clearing period; (c) any Refunds (as defined below) processed; and (d) any Chargebacks (as defined below) that Cleverbridge received. Client irrevocably waives any objections to any report, and any calculations of amounts contained therein, that Client does not raise by written notice to Cleverbridge within thirty days after receipt of this report.
- 5.2 **Revenue Thresholds.** Any Fee changes because of defined revenue thresholds, if agreed in the Subscription Schedule, shall become effective within five days of the beginning of the next billing cycle (e.g. the next calendar month if Client pays monthly, or at the beginning of the next contracting year if Client pays annually).



- 5.2.1 **Standard Payout Currency.** All Client Payouts will be made in U.S. Dollars, or such other Payout Currency that is set forth in the applicable Subscription Schedule or that are added in accordance with the procedure set forth below for adding additional payout currencies (the “**Payout Currency**”).
- 5.2.2 **Currency Conversion.** If Customer Payments are credited to Cleverbridge’s bank in the Payout Currency, Cleverbridge shall pay the Product Price for the Client Products in the Payment Currency to Client. If Customer Payments are credited to Cleverbridge’s bank in a currency that is different from the Payout Currency and for which Client has defined a Suggested Retail Price, Cleverbridge shall convert the Product Price for Client Products to the Payment Currency using the FX Rate (as defined below), plus the applicable surcharge set forth in the applicable Subscription Schedule. “**Order Date**” is the date on which a Customer places an Order or the date on which Cleverbridge processes the renewal of a subscription Order.
- 5.2.3 **FX Rate.** “**FX Rate**” means the exchange rate applied by Reseller for a currency conversion. In determining that rate, Reseller shall at its discretion, use either (a) the lowest bid rate published (by a publicly available market data provider), either on the Order Date or on the last day of the clearing period, or (b) the average rate of the clearing period published (by a publicly available market data provider).

- 5.3 **Change in Payout Account.** To avoid fraud during a potential change in Client’s bank account, Client must request a change of the payout banking details by providing a written and duly signed notice to Cleverbridge who will confirm the request using the same communication channel.
- 5.4 **Unpaid or Refunded Customer Orders.** For unpaid Customer Orders, Cleverbridge shall take commercially reasonable steps to remind Customers of due payments. Cleverbridge shall not be obligated to take any further steps to collect overdue payments. Cleverbridge shall not be obliged to pay Client for unpaid Customer Orders. Cleverbridge shall be entitled to deduct Customer Orders that have been subject to a Refund or a Chargeback from a subsequent Client Payout per Section 8.3 below.
- 5.5 **Retainer.** Cleverbridge shall be entitled to withhold from payments due to Client in case of (a) any notice of termination or non-renewal of the Agreement or a Subscription Schedule, an amount equal to the sum of all Refunds and all Chargebacks (using the applicable Chargeback Fee) during the six-month period immediately preceding the issuing of the termination or non-renewal notice (provided that this sum shall be doubled in case of termination within six months after the applicable Subscription Schedule Effective Date), and (b) 3% of all revenue resulting from deferred delivery products, e.g. vouchers. Cleverbridge may recoup from such retainer any amounts due to it under the Agreement. Any unused balance of the retainer described in subsection (a) of this section shall be returned to Client six months after the termination or expiration becomes effective or six months after the expiration of the last subscription renewal, whichever is later. Any unused balance of the retainer described in subsection (b) of this section shall be returned to Client six weeks after completion of delivery or performance.

6 Payments to Cleverbridge.

- 6.1 **Payments to Cleverbridge.** Client shall pay to Cleverbridge (a) all Fees in accordance with the applicable Subscription Schedule, and (b) any amount by which the sum of the Chargeback charges (defined in Section 9) incurred and Refunds processed exceeds the amount payable by Cleverbridge to Client within 30 days after receipt of the invoice.
- 6.2 **Set-Off.** Cleverbridge may, at its option, deduct from any amounts payable to Client any amount payable to Cleverbridge.

7 Fees

- 7.1 **Resale Fees.** For each Order (as defined on Appendix A), Client will pay Cleverbridge a “Resale Fee”, calculated by multiplying the applicable resale percentage listed in the “Resale Fee” section of the Fees Table found in the relevant Subscription Schedule by Total Cart Value, and then adding the applicable fixed amount listed in the “Resale Fee” section of that table. “Total Cart Value” means



the value of an Order, including any applicable charges, sales tax, VAT or any similar tax required to be collected.

- 7.1.1 **Monthly Target Shortfall Fees.** If for any given calendar month during the Subscription Term, the sum of all Resale Fees accumulated during such month (the “Monthly Total Fee”) is less than the Monthly Target Fee listed in the above table, Client shall pay to Cleverbridge the difference between the Monthly Target Fee and the Monthly Total Fee (the “Monthly Target Shortfall Fee”). Such payment shall be (a) due upon Cleverbridge informing Client (including by email) of such difference and (b) made within fourteen (14) days of with such communication.
- 7.1.2 **Initial Review Period.** For a three (3) month period beginning on the earlier of (a) the first sale of a Client Product (as defined on Appendix A) to a Customer (as defined on Appendix A) under this Subscription Schedule or (b) four (4) weeks after the Subscription Schedule Effective Date (the “Initial Review Period”), the parties will review the monthly development of the Monthly Total Fee and no payments of Monthly Target Shortfall Fees will be due and payable during the Initial Review Period. If at the end of the Initial Review Period the sum of the Monthly Total Fees for the duration of the Initial Review Period is less than the sum of the Monthly Target Fees for the Initial Review Period, Client shall pay to Cleverbridge the respective difference and such payment shall be due within fourteen (14) days after the end of the Initial Review Period.
- 7.1.3 **Termination Right.** If, for any two (2) consecutive months, the Monthly Total Fee is less than the Monthly Target Fee, Cleverbridge shall have the right to terminate this Subscription Schedule by providing Client ninety (90) days prior written notice.
- 7.2 **Enhanced Retry Logic Fee.** Cleverbridge offers an optional enhanced retry logic for up to seven extra attempts to charge a declined credit card against a fee.
- 7.3 **Professional Services Fees.** The scope of work for such services shall be set forth in a separate SOW at the time client requests the work. Client may purchase optional additional Professional Services from Cleverbridge as specified in a separate SOW that is agreed upon by the parties, at the applicable rate set forth in the above table.
- 7.4 **Support Fees.**
 - 7.4.1 **Premium Center of Excellence Support Fees.** Client may purchase optional premium support services from Cleverbridge as specified in a separate SOW that is agreed upon by the parties (“Premium Center of Excellence Support Services”), at the applicable rate set forth in the above table. Premium Center of Excellence Support Services may include prioritized day-to-day support from a Cleverbridge Client Success Manager who understands Client’ business, automated KPI reporting and analysis, and partnership with Account Management on regular business reviews.
 - 7.4.2 **Per Contact Customer Support Fee.** Client will pay Cleverbridge a per contact fee at the rate set forth in the above table for each contact by Client or Customer to Cleverbridge’s customer support team, regardless of the means of contact (e.g., email, chat, or otherwise).
- 7.5 **Currency Conversion Fees.** When Cleverbridge performs a currency conversion Client will pay Cleverbridge a currency conversion fee for the Total Cart Value at the applicable rate set forth in the above table. The Base Currency is the default currency Client selects to be used as the default currency for any price defined in a currency that is not a Payout Currency.



7.5.1 **Base Currency:** [EURO]

7.5.2 **Payout Currency:** [EURO]

7.5.3 **Additional Payout Currency Fee.** Client may optionally request additional available Payout Currencies to eliminate the Currency Conversion Fee. The availability of a new Payout Currency is subject to a minimum aggregate annual sum of all Customer payments to Cleverbridge under this Agreement during the previous 12 months in the requested new Payout Currency (the "Aggregate Annual Currency Volume") of one million Euro per currency. While additional Payout Currencies are active, the Additional Payment Currency Fee shall apply to all Orders in all additional Payout Currencies (as an example, this fee would amount to 0.4% for one base and two additional Payout Currencies if the Additional Payout Currency fee is 0.2%). This fee is waived while the Aggregate Annual Currency Volume for all Payout Currencies exceeds the equivalent of ten million Euro per Payout Currency during the previous 12 consecutive calendar months. While there is more than one Payout Currency, Cleverbridge shall be entitled to deactivate any additional Payout Currency that falls below a monthly minimum payout threshold of \$100,000 for three consecutive months.

8 Refunds

8.1 **Refund Policy.** The Parties will mutually agree a refund policy for Customer Orders.

8.2 **Cleverbridge-induced Refunds.** Notwithstanding Section 8.1, Cleverbridge shall be entitled, in its sole discretion, to cancel an Order and grant the Customer a refund of the price paid by the Customer (a "**Refund**") if (a) Cleverbridge believes that the Order was placed in error or fraudulently; (b) Customer requests Cleverbridge to grant a Refund, and Client does not respond within two (2) business days after Cleverbridge informs Client of such request; (c) Client has not performed or ceases performing in accordance with the Order terms, any applicable agreement between Client and the Customer (a "**Customer Agreement**") or this Agreement; (d) legal proceedings appear reasonably likely to result from the Order; (e) Cleverbridge determines that an Order is likely to cause a Chargeback; or (f) if required by applicable law.

8.3 **Recoupment of Refund/Chargeback Amount.** For each Chargeback and Refund granted, Cleverbridge shall deduct the Suggested Retail Price (the price the client enters into the CA) for the applicable Order from a subsequent Client Payout. In the event Customer later pays for the refunded/charged-back order, the subsequent Customer payment shall be treated as a separate Order for the purposes of Client Payout.

8.4 **Limitation of Duties.** Except as expressly agreed, Cleverbridge shall not be obliged to process returns, warranty claims, Refund claims, or other claims for Client. It shall be Client's obligation to prevent a Customer from continuing to use a Product that has been subject to a Refund.

9 Chargebacks

9.1 **Chargeback Limit.** The Parties agree that the maximum acceptable level of attempted or completed Order payment reversals for any payment method (including credit card and direct debit payments), requested by Customer directly from its bank ("**Chargebacks**") shall be governed by the thresholds as defined and occasionally updated by MasterCard (Excessive Chargeback Program, Excessive Fraud Merchant Compliance Program), Visa (Visa Dispute Monitoring Program), and other payment providers in their respective risk tier (or any comparable or successor program) (the "**Chargeback Ratios**"). The then-current lowest Chargeback Ratio value of all applicable programs (currently 0.5%) is referred to herein as the "**Chargeback Limit**". The Parties agree that additional Chargeback Ratios may apply for certain geographic regions or for certain payment methods or Product types, as determined by the respective payment provider.

9.2 **Acceptable Chargeback Ratio.** The Parties consider a ratio of Chargebacks to Orders processed by a specific payment provider as measured by said payment provider (the "**Chargeback Rate**") acceptable if it is less or equal than 50% of the Chargeback Limit (the "**Acceptable Chargeback Ratio**", currently 0.25%).



- 9.3 **Chargeback Charges.** For each month during which the Chargeback Rate exceeds the Acceptable Chargeback Ratio, Cleverbridge shall be entitled to charge Client the Chargeback Fee set forth in the applicable Subscription Schedule for all Chargebacks. For each month during which the Chargeback Rate exceeds the Acceptable Chargeback Ratio by 0.2 percentage points or more, an “**Excessive Chargeback Fee**” shall apply to all Chargebacks, equal to 200% of the Chargeback Fee that otherwise would apply to such Chargebacks.
- 9.4 **Chargeback Prevention Services.** Cleverbridge shall provide Chargeback prevention services aimed at preventing Chargebacks before they occur. For each Order where Cleverbridge provides a refund that would otherwise likely have resulted in a Chargeback (“Prevented Chargeback”), Cleverbridge shall apply the Chargeback Prevention Fee listed in the Fee table of the Subscription Schedule. Cleverbridge shall exclude all Prevented Chargebacks from the calculation of the Chargeback Rate. Cleverbridge does not warrant prevention of all Chargebacks.
- 9.5 **Suspension Right.** When Cleverbridge, in its sole discretion, considers a Chargeback Rate excessive, and so long as the Client has at least 10 Chargebacks requested against its Products in a given month, Cleverbridge shall be entitled to suspend certain payment methods, suspend the Product sale, and/or disable any automatic Order renewals.

10 Warranties and Covenants

- 10.1 **Appropriate Business Conduct.** Client warrants and covenants that it will refrain from using illegal, false, deceptive, or otherwise misleading business practices when promoting Products directly or indirectly, including through marketing affiliates.
- 10.2 **Software Warranty.** Client warrants and covenants that it is and always will be properly authorized to sell every Product to Cleverbridge, Cleverbridge is and always will be authorized to resell every Product to Customer unless or until Client removes such authority in writing or by removing the Product from the CA, and that Client complies and at all times will comply with all licensing obligations applicable to third-party content (whether open-source or commercial) incorporated in any Product.
- 10.3 **Product Updates.** Client warrants and covenants that, where applicable, it will comply with the EU Directive 2019/770 (on certain aspects concerning contracts for the supply of digital content and digital services), provide Customers with ongoing Product Updates (including security updates) during a subscription, and inform all Customers accordingly.
- 10.4 **Support and Maintenance.** Client warrants and covenants that it will be solely responsible for performing all Customer training, support, and maintenance for any Product, any distribution of upgrades and updates of the Client Software, and any other services that Client may agree to provide to Customers. Client will not refer any Customer to Cleverbridge for any aspect of training, support or maintenance of the Products, unless agreed by the Parties in writing.
- 10.5 **Product Information.** Client warrants and covenants to provide Cleverbridge with information about Products (including, information as required by Cleverbridge to properly invoice and collect any taxes) and regarding the delivery details or subscription durations for any Deferred Delivery Product. Client is responsible for sharing such information as necessary and to update the information as required.
- 10.6 **Customer Agreement Compliance.** Client warrants and covenants that it shall not enter any agreement with a Customer that contradicts Cleverbridge’s then-current Customer terms and conditions.
- 10.7 **Payment Provider Performance Information.** Client warrants and covenants that it shall not publish performance details of individual payment providers without Cleverbridge’s prior written permission.

11 Data Protection

- 11.1 **Separate Controllers.** Under this Agreement, the Parties function as separate controllers of Customer Information. Client shall procure the necessary consent from any Customer for any contact that does not relate to its obligations to Customers regarding their Orders.



- 11.2 **Tracking Tools.** Client warrants that it will not utilize any marketing, tracking or analytics tool invoked by the Online Store that has not been authorized by Cleverbridge in writing. Client also warrants that it will not use any Customer Information received from Cleverbridge for purposes that violate any applicable data privacy laws.
- 11.3 **Data Transfer.** If Client has procured Data Transfer services in its Solution Subscription, then upon termination of this Agreement and at Client's request, Cleverbridge will take all commercially reasonable steps to transfer Customer Information without undue delay, including payment information, to Client or its agent, subject to applicable laws & regulation, payment organization rules or policies, third-party contractual obligations, or security standards, including PCI DSS. Such a transfer will be subject to the termination transfer costs set forth in the Subscription Schedule. Cleverbridge will retain Customer Information following a transfer only as required by law or to fulfill any ongoing obligations to the Customer and/or related to this Agreement.

12 Export Compliance

- 12.1 **Order Denial.** Cleverbridge shall be entitled to deny processing of Customer Orders at its discretion as part of its program to comply with the relevant laws and regulations forbidding transacting in sanctioned countries or with individuals who are named on a denied parties list.
- 12.2 **Export Control Information.** Before selling a Product to Cleverbridge, Client shall provide Cleverbridge with all relevant export control classification information under all applicable laws regarding such Product (in consideration of all included proprietary and open-source components), including, but not limited to, country restrictions and classification information under U.S. and EU Export Control Laws (e.g. the export control classification number (ECCN) and EAR99 information).
- 12.3 **Distribution Restrictions.** In addition to the Client obligations under Section 12.2, Client shall communicate to Cleverbridge any specific countries in which Client does not wish Cleverbridge to sell a Product, including which countries prohibit sales of the Product due to the Product's characteristics, which Client is better positioned to know than Cleverbridge. Cleverbridge shall furthermore use commercially reasonable efforts to refrain from distributing Products to persons or entities that are listed on governmental sanction lists applicable to Cleverbridge. Client acknowledges that sanction-lists checks are automatically processed, and decisions may be based on incomplete or wrong Customer Information. Cleverbridge shall therefore have no liability towards Client for any negligent distribution of a Product to a person on a sanction or denied parties list where the error was due to the Customer providing inaccurate information or where it is or incomplete Product information to Cleverbridge.
- 12.4 **Product Distribution by Client.** If Client fulfils the Product delivery to Customer, Client shall be solely responsible to comply with all applicable laws and regulations. Client's warranties pursuant to Section 10 remain unaffected.

13 Indemnification

- 13.1 **Client Indemnification.** The indemnification agreed in Section 7 of the MSA shall apply equally to the obligations contained herein, including but not limited to those found in Sections 4 (Taxes), 10.110.1 (Appropriate Business Conduct), 10.2 (Software Warranty), and 10.3 (Product Updates). It further applies to (a) any actual or alleged infringement of any third party rights (including Intellectual Property Rights) by any product that Client sells or offers for sale using a Solution, including but not limited to those sold by Cleverbridge as Client's reseller (a "Client Product"); (b) any inaccuracy in the Product Information provided by Client to Cleverbridge pursuant to Section 10.5 or a breach of Section 10.610.6; (c) any use of Product by a Customer and/or any third-party transferee of a Customer, including Product faults (d) any modification to or reinstatement of an Order by Client, unless directed to do so by Cleverbridge, and/or (e) Client's misuse of the Online Store.

