

# SELLERDECK AFFILIATE PROGRAMME v3

This agreement ("Agreement") is an agreement between SellerDeck Ltd ("SellerDeck") a Company incorporated in England and Wales (no 03221222) whose registered office is at Rosemount House, Rosemount Avenue, West Byfleet, Surrey KT14 6LB and you the ("Affiliate") (together "The Parties") and governs the provision of services or products by SellerDeck or SellerDeck's supplier to a customer introduced by the Affiliate to SellerDeck ("the Customer").

The Affiliate may be an individual, an organisation, a company of limited liability or otherwise, a partnership of limited liability or otherwise or a charity or any other legal entity able to enter into a contract.

The Affiliate will provide and maintain details of their name, address, phone number, email address and bank account details ("Affiliate Data") and SellerDeck will use these details to communicate with and pay the Affiliate.

The Affiliate joins the Affiliate Programme and signifies their consent to these terms of the Affiliate Programme by providing their Affiliate Data or checking the box on the web site when registering and providing their details ("Registration"), and the person doing so thereby also acknowledges that they are a duly authorised person to make this agreement and that they have read and understood this agreement.

## 1 PURPOSE

The purpose of this Agreement is to enable SellerDeck and SellerDeck's suppliers to make additional sales of their products and services with the help of the Affiliate and for the Affiliate to receive accrued commission payments in return for their help. Commission payments may potentially be accrued on any of SellerDeck's or SellerDeck's Supplier's services or products.

## 2 DEFINITIONS

2.1 "SellerDeck Products" - SellerDeck's and SellerDeck's supplier's products and services made available to customers.

2.2 "Qualifying Sales" - revenue derived from SellerDeck Products that were sold to SellerDeck customers which in the sole judgement of SellerDeck were sold as a result of their introduction by the Affiliate.

2.3 "Commission Percentage" - the proportion of Qualifying Sales by SellerDeck Product that will be attributed to the Affiliate and which is subject to conditions stated below.

2.4 "Minimum Payment" - the amount of commission on the Affiliate's account that must be owed under this agreement to the Affiliate by SellerDeck prior to a payment being made to the Affiliate by SellerDeck which is set at fifty pounds at November 2010 but may be varied as described elsewhere.

2.5 "Time Delay" - the time delay in days before commission will accrue to the Affiliate's account.

## 3 SERVICE PROVIDED

3.1 SellerDeck shall provide an access code and password to allow the Affiliate to access their account and a unique Affiliate Identifier to identify the Affiliate. SellerDeck shall provide a telephone number for contacting SellerDeck which may be made available on SellerDeck's web site.

3.2 SellerDeck and SellerDeck's Suppliers reserve the right at any time and in their sole discretion to modify or withdraw any of its SellerDeck Products provided to the Affiliate, a third party introduced by the Affiliate or any other party without notice to the Affiliate.

## 4 TAX AND OTHER DUTIES

4.1 All amounts quoted are always exclusive of VAT and any other applicable tax, import, and all other duties which will be levied as required by law.

## 5 COMMENCEMENT OF AGREEMENT

5.1 The Agreement will commence on the latter of the date a duly authorised representative of the Affiliate agrees to these terms and conditions and commences promoting SellerDeck Products on the Affiliate's web site.

## 6 COMMISSION DUE TO THE AFFILIATE

6.1 SellerDeck will communicate from time to time the Time Delay and Minimum Payment.

6.1 SellerDeck will communicate from time to time the Commission Percentages by SellerDeck Product that apply to the Affiliate.

6.2 Commission shall be attributed on Qualifying Sales at the Commission Percentage.

6.3 Commission will only accrue Time Delay days after SellerDeck has received payment (such delay being to cover any refunds etc) and shall be calculated monthly.

6.4 Commission is not due where the Customer fails to pay SellerDeck or where the payment is refunded or partially refunded for any reason and SellerDeck has the right to deduct such sales from commission calculations and/or receive a corresponding refund from the Affiliate.

## 7 PAYMENT

7.1 Payment of commission shall be made monthly in arrears by SellerDeck to the Affiliate electronically subject to the Minimum Payment.

7.2 SellerDeck will make available a self billing invoice to the Affiliate when a payment becomes due. SellerDeck will not be liable for any lost payments due to the Affiliate failing to maintain correct bank account details.

7.3 SellerDeck has the right to offset any fees owing under this agreement against any monies owing from the Affiliate to SellerDeck.

7.4 If either the total outstanding commission fails to reach the Minimum Payment for a period of 12 months or the Affiliate cannot be reached using their Affiliate Data for a continuous period of 3 months or no additional commission becomes due for 3 months then the commission balance due will be reset to zero.

## 8 SELLERDECK'S DIRECT RELATIONSHIP WITH THE CUSTOMER

8.1 Every customer who buys a product through this Affiliate Programme is a customer of SellerDeck's. The Affiliate does not have the authority to make or

accept any offer on SellerDeck's behalf and no warranties to the Affiliate of any nature are provided concerning any aspect of the provision of products and services by SellerDeck or SellerDeck's Supplier to the Customer.

## 9 RESPONSIBILITIES OF THE AFFILIATE

9.1 The Affiliate shall initially provide and inform SellerDeck of any changes to any of the Affiliate Data using the prevailing method published by SellerDeck to do so. Any changes must be given to SellerDeck 14 days before the next due payment date.

9.2 The Affiliate agrees that they are solely responsible for identifying to SellerDeck the Customers that they are referring to SellerDeck and for ensuring that the Customer quotes the Affiliate identifier before placing orders with SellerDeck. SellerDeck will consider retrospectively assigning customers to the Affiliate but will not retrospectively assign such Customers where there is doubt in SellerDeck's sole opinion that the Customer was solely introduced to SellerDeck by the Affiliate.

9.3 The Affiliate agrees to actively promote SellerDeck Products as its primary offering into those markets that it address and to positively promote SellerDeck on its web site and in any online material published by the Affiliate and provide at least one link from the Affiliate's web site to the relevant SellerDeck web site in the format prescribed and as varied from time to time by SellerDeck.

9.4 The Affiliate shall not misrepresent SellerDeck Products, or otherwise make any claims, representations, or warranties in connection with SellerDeck other than as expressly authorized by SellerDeck.

## 10 SELLERDECK'S RESPONSIBILITIES

10.1 SellerDeck grants the Affiliate a non-exclusive, revocable right to use SellerDeck trademarks and Intellectual Property for the sole purpose of identifying the Affiliate's web site as an Affiliate Programme participant and linking to SellerDeck's site.

10.2 As part of the registration process, SellerDeck will provide a unique identifier to include in the URL the Affiliate uses to link to SellerDeck's web site. Each sale or referral that is generated from this URL will be automatically attributed to the Affiliate for commission.

## 11 THE AFFILIATE'S RIGHT TO TERMINATE

11.1 The Affiliate shall have the right to terminate this agreement for any reason at any time using the prevailing method communicated by SellerDeck (this will normally be achieved by changes to the Affiliate's online account provided by SellerDeck).

## 12 SELLERDECK'S RIGHT TO VARIATION AND TERMINATION

12.1 The Affiliate accepts that SellerDeck will update the terms and conditions contained in this Agreement by posting a new agreement on the SellerDeck web site and notifying the Affiliate by email. If any change is unacceptable, the Affiliate may terminate the agreement with immediate effect. The Affiliate's continued participation in the Affiliate program following notification of changes will constitute binding acceptance of the changes.

12.2 SellerDeck has the right, upon notice to the Affiliate, to terminate this agreement immediately or suspend provision of any part or all of the SellerDeck Service where SellerDeck believes, in its sole opinion that: (a) the Affiliate has failed to timely pay SellerDeck any amount due to SellerDeck under this or any other agreement between the parties; (b) the Affiliate has materially breached any term or condition of this agreement or (c) the Affiliate has entered into any form of insolvency or administration or (d) the Affiliate has performed, or threatened to perform, any act which might undermine the technical, commercial or other viability or integrity of any of the SellerDeck Products or (e) a third party related in any way to the Affiliate is abusing the facilities made available by the Affiliate across the Internet using SellerDeck Services so as to undermine the commercial, technical or other viability or integrity of any of the SellerDeck Products or (f) the Affiliate's use of the SellerDeck Product adversely affects the use of the SellerDeck Product by other parties or (g) the Affiliate promotes products or services that are directly competing with SellerDeck to existing SellerDeck customers. Such termination shall not prejudice any of SellerDeck's rights or claims.

12.3 SellerDeck may reject the Affiliate's registration if SellerDeck determines in its sole discretion that the Affiliate's site is unsuitable for the Affiliate Programme. SellerDeck has the right to terminate this agreement upon 3 months notice.

## 13 EFFECTS OF TERMINATION

13.1 On termination, SellerDeck will pay the Affiliate the outstanding balance on their Affiliate account, less a £20 administration fee.

13.2 Upon termination of this agreement the Affiliate shall: (a) remove all affiliate links and graphics from its web site, and refrain from publishing same in any manner; (b) be entitled only to those commissions, if any, earned prior to the date of termination excluding amounts due to actual fraud, payment card fraud, payment card charge backs and bad debt and credits for cancelled services; (c) in no event be entitled to commissions with respect to referrals delivered after the date of termination, irrespective of whether any service or product order, contract, or commitment relating thereto was entered into prior to the date of termination; (d) lose all rights and licenses under this agreement; (e) return to SellerDeck any confidential information, and all copies thereof, in its possession, custody and control and will cease all uses of any trade names, trademarks, service marks, logos and other designations of SellerDeck and the Affiliate Programme; (f) the Affiliate's access to, and use of, their Affiliate Account shall terminate and (g) the Affiliate's right to use any of SellerDeck's intellectual property granted under this agreement shall terminate.

13.3 Following termination SellerDeck reserves the right to delete from its and its suppliers servers all information associated with the Affiliate without liability for any loss, costs, expense or damage suffered by the Affiliate.

## 14 TRANSFERABILITY

14.1 This agreement is made with the Affiliate only. The Affiliate is not permitted to transfer, assign or give away the agreement without prior written agreement of SellerDeck.

## 15 EXCLUSION AND LIMITATION OF LIABILITY

15.1 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury resulting from the negligence of that party or in respect of fraud or of any statements made fraudulently by that party, or arising under Part 1 of the Consumer Protection Act 1987 in respect of any defect in SellerDeck Products.

15.2 Subject to the exception set out above and to the extent permissible by law, SellerDeck will not be liable to the Affiliate for any direct, indirect or consequential loss.

15.3 Subject to the exception set out in the paragraph above and to the extent permissible by law, in the event that SellerDeck is liable to the Affiliate its liability shall be limited in total to 20% of the fees paid to SellerDeck by Customers introduced by the Affiliate during the previous 12 months prior to the date the claim was lodged.

15.4 For purposes of this section, "SellerDeck" includes its employees, sub-contractors and suppliers.

15.5 The Affiliate acknowledges that given the price paid for SellerDeck Products the above limitations and exclusions are reasonable in all the circumstances.

15.6 Other than as expressly set out elsewhere in this Agreement all representations, warranties, conditions and terms express or implied whether statutory or otherwise are expressly excluded by SellerDeck and by their suppliers who are participating in supplying services to the fullest extent permitted by law.

## 16 INTELLECTUAL PROPERTY RIGHTS

16.1 All intellectual property rights relating to the provision of SellerDeck Products are the property of SellerDeck or SellerDeck's suppliers or other third parties that have licensed the use of such rights to SellerDeck or SellerDeck's suppliers.

16.2 The Affiliate acknowledges and agrees that content available from SellerDeck, including but not limited to web links, text, software, music, sound, logos, trade marks, service marks, photographs, graphics, or video, is protected by copyright, trade mark, patent, or other proprietary rights and laws, and may not be used in any manner other than on the same restricted basis as specified for the purposes of this agreement.

16.3 The Affiliate will respect the intellectual property and copyrights of all third parties.

16.4 Nothing in this Agreement shall prevent or restrict SellerDeck from using and exploiting any intellectual property rights, techniques, tools, ideas or know-how created, used or developed during the provision of the SellerDeck Products for any purpose whatsoever.

16.5 SellerDeck will keep the Affiliate fully indemnified against all reasonable costs, claims, expenses, judgments and liabilities suffered by the Affiliate howsoever arising through SellerDeck's infringement of third party intellectual property rights which have not been caused by actions of the Affiliate.

16.6 The Affiliate will keep SellerDeck fully indemnified against all reasonable costs, claims, expenses, judgments and liabilities suffered by SellerDeck howsoever arising through the Affiliate's infringement of third party intellectual property rights which have not been caused by actions of SellerDeck.

16.7 All intellectual property rights and any analogous rights of any nature created during the provision of support by SellerDeck for any SellerDeck Products are the property of SellerDeck. The Affiliate hereby assigns all right, title and interest in any such intellectual property rights and agree to provide any assistance that SellerDeck may require to perfect its title to such rights.

## 17 TRADEMARKS

17.1 "SellerDeck" is a registered trademark of SellerDeck Software Ltd in the United Kingdom and the EU. "SellerDeck" is a registered trademark of SellerDeck Software Ltd in Canada, Australia, Japan and the USA. The Affiliate may not use the SellerDeck trademarks or those of any of SellerDeck's suppliers in any way without SellerDeck's prior written consent.

## 18 FORCE MAJEURE

18.1 SellerDeck shall not be liable for any failure in performing its obligations under this Agreement due to circumstances beyond its reasonable control. Neither party shall be deemed in default of this agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, or any other cause beyond the reasonable control of such party; provided, that the

party whose performance is affected by any such event gives the other party notice thereof within ten (10) business days of such event or occurrence where such event has not made it impossible to do so.

## 19 DATA PROTECTION

19.1 Both parties undertake to comply with provisions of the Data Protection Act 1998 ("the Act") in relation to the disclosure, use and storage of any personal information as defined in the Act.

19.2 The Affiliate Data and other data related to the provision of the SellerDeck Service will be put onto the SellerDeck database and processed by SellerDeck in servicing the relationship with the Affiliate, including disclosure to third party suppliers and consultants. SellerDeck will communicate with the Affiliate using the Affiliate Data in connection with the operation of this Agreement. By submitting the Affiliate Data to SellerDeck the Affiliate agrees to SellerDeck's storage, use and disclosure of that data.

19.3 Unless the Affiliate notifies SellerDeck otherwise the Affiliate agrees that SellerDeck may use and analyse the Affiliate's Data to give information about SellerDeck Products which may be of interest to the Affiliate. If the Affiliate does not wish to be contacted for marketing purposes by SellerDeck or by third parties the Affiliate should send an email to the following address: marketing@SellerDeck.co.uk.

19.4 The Affiliate agrees that for the purposes described above their Data may be transferred to countries outside the EEA.

19.5 The Affiliate expressly agrees that data pertaining to their service, including but not limited to transaction data relating to payments can be viewed by SellerDeck and by SellerDeck's suppliers in the normal course of their commercial activities but such data cannot be made available to other parties except where required by the law or where a suitable non disclosure agreement has been signed with such parties.

## 20 CHOICE OF LAW AND JURISDICTION AND GENERAL

20.1 This agreement shall be governed by and construed in accordance with English and Welsh law and the parties hereby submit to the exclusive jurisdiction of the English and Welsh Courts. This Agreement contains the whole agreement between the parties in relation to the operation of the Affiliate Programme and supersedes any prior written or oral agreements relating to the same other than being subject to the SellerDeck End User Agreement and SellerDeck Services Agreement where applicable.

20.2 If any provisions of this agreement are held to be invalid under any applicable statute or rule of law, they are to that extent omitted from the agreement without affecting the validity or enforceability of the remainder.

20.3 The failure or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or a waiver of other rights or remedies.

20.4 No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

20.5 Any action against SellerDeck must be brought within 2 years after the cause of action arises.

20.6 The parties do not intend any third party (other than as expressly provided for herein) to have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Any rights conferred on any third party hereunder may be altered or extinguished by the written agreement between the parties without the consent of the third party.

20.7 All acts or omissions that occur in connection with this agreement involving the Affiliate's account or password are the sole responsibility of the Affiliate.

20.8 The Affiliate will report to SellerDeck as soon as practicable after they become aware of a) any abuse or threatened abuse of any SellerDeck Product b) malfunction of any SellerDeck Product c) any factors affecting the performance of any SellerDeck Product.

20.9 This agreement replaces any previous affiliate agreement between SellerDeck and the Affiliate governing the payment of rewards for introducing Customers or leads to SellerDeck.

### Change Log (not part of the Agreement)

v3 Change to SellerDeck, tidy up and numbering of terms

