



**Reseller Agreement - Terms & Conditions**

## 1. Definitions and interpretation

### 1.1 In the Agreement:

“**VoucherCart Ltd (VC)**” is, a company incorporated in Scotland (registration number 457630) having its registered office at Rutherford House, West Linton, UK, EH46 7AS;

“**VC Website**” means the website accessible via the following URL: , <https://voucher-cart.com> (plus any other websites notified by VC to the Reseller from time to time);

“**Reseller**” means the person (natural or legal) specified as the applicant on the Registration Form for the VC Reseller Programme.

“**Registration Form**” means the HTML form on the VC Website enabling individuals or companies to apply to become Resellers;

“**Reseller Programme**” means the VC Reseller Programme outlined on the VC Website and detailed in the Agreement.

“**Reseller Website**” means the website or websites owned and operated by the Reseller and specified by the Reseller on the Registration Form;

“**Acceptance Email**” means an email sent by VC to the Reseller in accordance with Clause 2.3 confirming that the Reseller has been accepted into the Reseller Programme.

“**Agreement**” means the agreement between VC and the Reseller incorporating the Reseller Terms and Conditions, the Registration Form and the Acceptance Email, any amendments to the Agreement from time to time and all Appendices defining payment terms and KPI requirements.

“**Effective Date**” means the date the Agreement comes into force as specified in Clause 2;

“**VoucherCart Customer (VCC)**” means an organisation registered with VC and engaged in providing the services or goods purchased by the voucher buyers.

“**Voucher Buyer (VB)**” means a person (natural or legal) who uses the services of VC to purchase good or services from a VCC.

“**Link**” means a hyperlink (whether in text or in an image or otherwise) from the Reseller Website(s), email or other electronic form of communication to the VC Website enabling VC to track visitors from the Reseller Website to the VC Website using its Reseller tracking system.

“**Payment Trigger**” means the purchase of goods or services from a VCC which meets all the “Qualifying Criteria” required for a “Payment” to be made. VC will verify that all purchases comply with the criteria.

“**Payments**” means payments to the Reseller in response to a Payment Trigger.

“**Qualifying Criteria**” means the conditions which must be met to allow a payment to be made in response to a Payment Trigger.

“**Subscription**” means the monthly payment made by the VCC to VC.

**Key Performance Indicators (KPIs)** mean a measure of the performance of each Reseller against a series of targets set by VC annually. The critical performance issues are set out in Appendix B of the Agreement.

**“Force Majeure Event”** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, denial of service attacks, virus or other malicious software infections or attacks, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**“Intellectual Property Rights”** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**“Prohibited Materials”** means content, works or other materials that constitute, or that VC reasonably determines constitute:

- (a) material that breaches any applicable laws, regulations or legally binding codes;
- (b) material that infringes any third party intellectual property rights or other rights;
- (c) indecent, obscene, pornographic or lewd material;
- (d) material that is offensive or abusive, or is likely to cause annoyance, inconvenience or anxiety to another internet user;
- (e) computer viruses, spyware, trojan horses or other malicious or harmful routines, programs or software; and/or
- (f) spam or unsolicited bulk email or unsolicited commercial email.

**“Term”** means the conditions that control the Agreement including, but not limited to, payment and payment arrangements as set out in Clause 2.5.

**1.2** In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

**1.3** The Clause headings do not affect the interpretation of the Agreement.

**1.4** The ejusdem generis rule is not intended to be used in the interpretation of the Agreement.

## **2. The Agreement**

**2.1** The Reseller will submit a VC Reseller Registration Form via <https://voucherart.com> for approval by VC. Submission of the VC Reseller Registration Form will be taken to mean acceptance of all the Terms of the current VoucherCart Agreement Terms and Conditions Document.

- 2.2 On approval VC will issue an Acceptance Email.
- 2.3 The Agreement will come into force on the date and time of the Acceptance Email.
- 2.4 The Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause 11.
- 2.5 VC will make monthly payments direct to the Resellers Bank Account in response to Payment Triggers which comply with the qualifying conditions set out in Clauses 6.1 and 6.2. The payment Terms are set out in Appendix A to this Agreement, and are subject to all the conditions of the Agreement.
- 2.6 In the event of transfer of ownership or sale of VoucherCart Ltd to a third party this Agreement will continue in force with the third party.

### **3. Reseller Programme**

- 3.1 The Reseller will within 7 days following the Effective Date include at least one Link from the Reseller website to the VoucherCart Website, and will maintain at least one Link on the Reseller Website until termination of the Agreement.
- 3.2 The Reseller Programme will include continuous monitoring of KPIs leading to an annual review of the performance of each Reseller.

### **4. Reseller obligations**

- 4.1 The Reseller will provide VC with:
  - (a) such co-operation and information as is required by VC (acting reasonably) in connection with the Reseller Programme;
- 4.2 The Reseller must not:
  - (a) include any Prohibited Materials on the Reseller Website, or include any hyperlink to any Prohibited Materials on the Reseller Website;
  - (b) market the Reseller or VC Website using spam or unsolicited emails or other unsolicited communications, or using any form of spyware, parasiteware, adware or similar software, or using any other antisocial or deceptive methods;
  - (c) increase or seek to increase the number of Payment Trigger events using any fraudulent or deceptive method.
- 4.3 The Reseller will not take any action in connection with the Reseller Programme which might reasonably be expected to lead to the possibility of damage to the reputation and goodwill of VC and/or the VC Website.

### **5. Intellectual Property Rights**

- 5.1 All rights (including goodwill and, where relevant, trade marks) in the "VoucherCart" names are owned by VoucherCart or its licensors.

All IPR in association with this Site and Services, information and any other content on the Site or accessed as part of the Site or associated Services, data or database, rich media files, source code and software shall remain our property (or that of our licensors). You shall not, and shall not attempt to, obtain title to any such intellectual property rights. All rights are reserved.

- 5.2** Without prejudice to Clauses 5.8 and 5.9, the Reseller recognises that the IPR in the VoucherCart name, logo or branding are owned entirely by VoucherCart, and agrees that it may only use the VoucherCart name, logo or branding on any promotional material, packaging or elsewhere, whether in hard or electronic format, in accordance with these Conditions or with the prior written consent of VoucherCart.
- 5.3** Any IPR created by VoucherCart in the course of the performance of these Conditions or otherwise in the provision of the Services shall remain the property of VoucherCart.
- 5.4** VoucherCart hereby grants to the Reseller a non-exclusive, non-transferable revocable and limited licence for the duration of the Conditions only to use any software or documentation for the sole purpose of accessing and using the Services. Subject thereto, nothing in the Conditions shall be deemed to have given the Reseller a licence or any other right to use any of VoucherCart's IPR.
- 5.5** The Reseller may not bid or trade on the VoucherCart Site name, VoucherCart brand or brand name, or variations of them, on Google or any other search engines.
- 5.6** With the exception of those resources explicitly provided for your use in the Marketing Content section of your Reseller Dashboard, you may not distribute, reproduce, modify, copy or use any of the materials or content on the Site or associated services without our permission, under any circumstances or for any purposes.
- 5.7** Any material you transmit or post or submit to the Site will be treated as non-confidential and may be used by us, subject to our obligations under the Data Protection Act 1998. You grant us full royalty-free, perpetual and irrevocable, non-exclusive licence to use, copy, modify, adapt, translate, publish and distribute world-wide any such material provided by you for the purpose of operating the Site and providing the Services without limitation.
- 5.8** From the Effective date until Termination of the Agreement VC grants to the Reseller a worldwide, non-exclusive, royalty-free licence to reproduce, distribute and otherwise communicate the Links and Materials provided in the Marketing Content section of the Reseller Dashboard electronically and to publish the Links on the Reseller Website.
- 5.9** VC does not warrant that the use of the Links by the Reseller will not infringe any third party Intellectual Property Rights or give rise to any other liability on the Reseller.

## **6 Payments**

### **6.1 Qualifying Subscription Payment Triggers**

In order for Reseller Subscription Commission Payments to be released to Reseller, the following conditions must be met.

- VCC account has active Credit/Debit Card details.
- VCC subscription status must be active.
- The Reseller must be the registered Reseller for the VCC paying the subscription.
- No conflict or dispute exists between any parties as to rights to payment in relation to the VCC subscription.

### **6.2 Qualifying Voucher Sales Commission Payment Triggers:**

In order for Reseller Voucher Sales Commission Payments to be released to Reseller, the following conditions must be met:

- VCC account has active Credit/Debit Card details.
- The Reseller must be the registered Reseller for the VCC selling the vouchers.
- There is no conflict or dispute between any parties as to rights to payment in relation to the purchase which initiated the trigger.

**6.3** VC will account to the Reseller for all Payments due in respect of a calendar month before the end of the following calendar month.

**6.4** If the Reseller is registered for VAT in the European Union then:

- (a)** all Payments amounts stated in or in relation to the Agreement or on the VC Website are stated inclusive of VAT payable by VC to the Reseller;
- (b)** the Reseller is solely responsible for accounting for such VAT to the relevant tax authorities;
- (c)** the Reseller must provide to VC within 30 days following the making of a Payment under this Clause 6 a valid VAT receipt in respect of such Payment.

**6.5** If VC is required by law to deduct, withholding tax or any other taxes or duties from any Payments, then VC will deduct such amounts from the Payments before paying them to the Reseller.

**6.6** Payments to the Reseller will be made in the Resellers chosen currency where practicable, minus any currency conversion and/or international banking transfer fees by PayPal or bank transfer (using such payment details as are provided by the Reseller).

**6.7** If VC does not pay any amount properly due to the Reseller under or in connection with the Agreement, the Reseller may charge VC simple interest on the overdue amount at the rate of 3% per year above the UK base rate of Royal Bank of Scotland Plc from time to time.

**6.8** No Payments will be due in respect of:

- (a)** any visits to or actions upon the VC Website made by or on behalf of:
  - (i)** the Reseller;
  - (ii)** any parent undertaking or subsidiary of the Reseller;

- (iii) any employee, agent or officer of the Reseller or any parent undertaking or subsidiary of the Reseller; or
    - (iv) any natural person related to any of the above;
  - (b) any amount received by VC by means of the fraudulent or unlawful use of a credit, debit or other payment card, or by any other fraudulent or unlawful means; or
  - (c) any purchases on the VC Website which are subsequently cancelled, refunded, reversed, or charged-back,

and VC will be entitled to require repayment of Payments made as a result of such visits, actions and purchases.

- 6.9** Both before and after termination, VC will be entitled to set off any amount owed to the Reseller against any amount the Reseller owes to VC whether under the Agreement or otherwise, and against any loss or damage suffered by the VC whether in relation to the Agreement or otherwise arising out of the Reseller's acts or omissions.

## **7 Warranties**

- 7.1** Each party warrants to the other party:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) that it will perform its obligations under the Agreement with reasonable care and skill.

- 7.2** All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the Agreement. To the maximum extent permitted by applicable law and subject to Clause 9.1, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **8. Indemnity**

The Reseller will indemnify and keep indemnified VC, and VC officers, employees, representatives, agents and subcontractors, against all damages, liabilities, losses, costs and expenses (including legal expenses) arising out of or as a result of any breach by the Reseller of any term of the Agreement.

## **9. Limitations and exclusions of liability**

- 9.1** Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

- (c) limit any liability of a party in any way that is not permitted under applicable law; or
  - (d) exclude any liability of a party that may not be excluded under applicable law.
- 9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in the Agreement:
  - (a) are subject to Clause 9.1;
  - (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
  - (c) will not limit or exclude the liability of the parties under the express indemnities set out in the Agreement.
- 9.3 VC will not be liable to the Reseller in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 9.4 VC will not be liable to the Reseller for any loss of business, contracts or commercial opportunities.
- 9.5 VC will not be liable to the Reseller for any loss of or damage to goodwill or reputation.
- 9.6 VC will not be liable to the Reseller in respect of any loss or corruption of any data, database or software.
- 9.7 VC will not be liable to the Reseller in respect of any special, indirect or consequential loss or damage.
- 9.8 VC will not be liable to the Reseller for any losses arising out of a Force Majeure Event.
- 9.9 VC's liability to the Reseller in relation to any event or series of related events will not exceed the greater of:
  - (a) £100; and
  - (b) the total amount paid and payable by VC to the Reseller under the Agreement during the one month period immediately preceding the event or events giving rise to the claim.

## 10. Force Majeure Events

- 10.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure Event.
- 10.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will promptly notify the other.
- 10.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

## **11. Termination**

- 11.1** Either party may terminate the Agreement with immediate effect at any time by giving written notice to the other party.
- 11.2** VC may terminate the Agreement immediately by cancelling the Reseller's account on the VC Website or by giving written notice to the Reseller if the Reseller:
- (a)** commits any material breach of any term of the Agreement;
  - (b)** becomes insolvent or bankrupt or enters into any insolvency or bankruptcy process or procedure; or
  - (c)** where the Reseller is an individual, the Reseller dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs.

## **12 Effects of termination**

- 12.1** Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their provisions or otherwise indefinitely): Clauses 1, 8, 9, 12 and 13.3 to 13.11.
- 12.2** If the Agreement is terminated by VC under Clause 11.2 or in the circumstances described in Clause 11.2, VC will not have any obligation to make any further Payments to the Reseller.
- 12.3** Subject to Clause 12.2:
- (a)** VC will pay to the Reseller all Payments arising from Verified Payment Triggers activated on or before the date of effective termination of the Agreement in accordance with the Agreement; and
  - (b)** termination of the Agreement will not affect either party's accrued rights as at the date of termination.

## **13 General**

- 13.1** Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by recorded signed-for post, or sent by email, for the attention of the relevant person, and to the relevant address, or email address specified on the Registration Form (in the case of the Reseller) or the VC Website (in the case of VC) (or as notified by one party to the other in accordance with this Clause).
- 13.2** A notice will be deemed to have been received at the relevant time set out below:
- (a)** where the notice is delivered personally, at the time of delivery;
  - (b)** where the notice sent by recorded signed-for post, 48 hours after posting; and
  - (c)** where the notice sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 13.3** No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

- 13.4** If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 13.5** Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties. The Reseller will not make any statement on the Reseller Website or otherwise which expressly or impliedly suggest that there is any such relationship between the parties.
- 13.6** The Agreement may be varied by VC posting a new version of the Agreement on the VC Website and notifying the Reseller in writing that the Agreement has been varied. The Reseller's continued participation in the Reseller Programme after receipt of such a notice will constitute the Reseller's acceptance of the varied Agreement.
- 13.7** The Reseller hereby agrees that VC may freely assign any or all of its rights and/or obligations under the Agreement to any successor to all or substantial part of the business of VC from time to time. The Reseller may not without the prior written consent of VC assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any of its rights or obligations under the Agreement.
- 13.8** Save as provided for in Clause 8, the Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 13.9** The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause 9.1, each party acknowledges that no representations or promises not expressly contained in the Agreement have been made by or on behalf of the other party.
- 13.10** The Agreement will be governed by and construed in accordance with the laws of Scotland.
- 13.11** The courts of Scotland will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

## **Appendix A**

**Payment Terms.** Twenty percent (20%) commission on the VCC monthly subscription fee.  
One half per cent (0.5%) commission on VCC sales.

## **Appendix B**

### **Key Performance Indicators.**

This programme is intended to encourage Continuous improvement and focus effort on Customer Care issues.

Outcomes will be considered by VC when deciding on the allocation or reallocation of VCCs.

Listed below are KPI targets for the areas of best practice which are monitored.

#### **The Reseller must use best endeavors at all times to:**

Respond promptly to all enquiries from potential VCCs,

Promote immediate Registration of new VCCs,

Ensure VCC Voucher Sales Page link is added as a main/top navigation element on the VCC Website and that the link is maintained for the duration of the VCC Agreement. **KPI Target: Complete @ 10 Days after VCCRegistration**

Ensure VCC Facebook and Twitter Accounts are connected to VCC Account in VCC Dashboard where these exist. **KPI Target: Complete @ 10 Days after VCCRegistration**

Convert 30 day free trial clients to full VCC status, as soon as possible.- **KPI target:- 30 days**

Achieve target voucher numbers available for sale - **KPI target:- 6 voucher for sale from all VCCs**

Maintain regular contact with the VCC.

Demonstrate understanding and working knowledge of VCC growth opportunities.

Secure continuing growth from the VCC group - **KPI target will be set after a period of operation.**

Seek to ensure a zero complaints status with all VCCs. - **KPI target:- zero complaints.**

Provide regular feedback to VC on opportunities, ideas and problems - **KPI target:- 12 per year.**

Last Update: 01/09/2016