

## ELEVEN41 SOFTWARE INC.

### Skeddly Referral Program Terms and Conditions

**Last Modified: January 18, 2018**

Eleven41 Software Inc., operating under the Skeddly trademark, is a corporation formed pursuant to the *Canada Business Corporations Act* in Canada. In consideration for permitting you access to our Skeddly Referral Program and other good and valuable consideration, you agree as follows:

These terms and conditions (the "**Terms**") form a legally binding agreement which govern your access to and use of Eleven41 Software Inc.'s, ("**we**", "**us**" or "**our**") referral program (the "**Skeddly Referral Program**"). These Terms are in addition to our Terms of Service, Privacy Policy and Acceptable Use Policy, which are incorporated by reference.

By submitting a request to join our referral program, you, the user ("you" or "your"), represent and warrant that; (a) you are of the age of majority in your jurisdiction; (b) you have read and understand these Terms and agree to be bound by them; and (c) if you are joining the Skeddly Referral Program on behalf of, or in the employ of, an organization (corporation, trust, partnership, etc.), you are also agreeing to these terms for that organization and representing and warranting that you have the authority to bind that organization to these terms. In such a case, "you" and "your" will refer to that organization.

In these Terms, there are provisions which limit our liability and impose obligations on you. You must review these terms, along with any policies incorporated by reference, before joining our Skeddly Referral Program.

#### **Privacy**

We use your personal and business information in accordance with our Privacy Policy (which is incorporated by reference). By using our website and the Skeddly Referral Program, you consent to such processing and you warrant that all information provided by you is accurate.

#### **About Our Skeddly Referral Program**

We are a software as a service company. To incentivize people to tell the world about our service, we offer referral fees to members of the Skeddly Referral Program who refer customers to us.

We use third-party software, FirstPromoter, provided by IGIL Webs SRL (the "**Affiliate Software Provider**"), to administer our Skeddly Referral Program. Their services are used to track and calculate sales made and amounts owing to you. While the Affiliate Software Provider's service may be hosted on our domain or sub-

domain, you are accessing their service, hosted by them, when you are logged in to your Skeddly Referral Program account.

If you successfully establish a referral account with us, you will be provided with a Skeddly Referral Program tracking link (“**Tracking Code**”) to track sales caused by you. The Affiliate Software Provider uses ‘cookies’ to track sales. Affiliate referral payments are only paid, in accordance with these Terms, directly to you, for actual sales made arising from the use of your Tracking Code.

The cookie is used by the Affiliate Software Provider to track people who click on your Tracking Code link and subsequently establish an account with us, from the same computer, within 120 days (the “**Cookie Tracking Period**”). Unless the above conditions are met, as recorded by the Affiliate Software Provider’s software, no commissions or other payments will become due and owing to you under these Terms.

### **Establishing a Skeddly Referral Program Account**

To establish an account and become a Skeddly Referral Program member, you will be required to fill out an application, agree to these Terms and provide certain personal and business contact information, as set out in our Privacy Policy and on our website.

We reserve the right to approve and deny Skeddly Referral Program account applications in our sole and absolute discretion. You agree that you have no legal recourse against us for the rejection of your Skeddly Referral Program application or the suspension or termination of your account.

If your application is approved, upon establishing an account, we will grant you access to your Tracking Code information in accordance with these Terms, but reserve the right to revoke your access to the Skeddly Referral Program, and your Tracking Code, without cause or justification.

### **Account Not Transferable, Updating Your Account and Security**

If you establish an account, access to your account is not transferrable and is only intended for the individual or entity that established the account. Upon setting up an account, you will be required to create a username and password. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree that you are responsible for any activity on your account, whether or not you authorized that activity. You agree to immediately notify us, and the Affiliate Software Provider, of any unauthorized use of your account.

### **Your Relationship with Us**

If your Skeddly Referral Program account is approved, you agree, understand, represent and warrant that you are not an employee, shareholder, joint venturer, agent or partner of ours (and expressly waive the application of the Ontario *Partnerships Act*, R.S.O. 1990, c. P.5, or any similar legislation in any other jurisdiction). You agree that you are an independent party with the limited rights set out in these Terms. You have no entitlement to any profits of Eleven41 Software Inc., or any profit sharing, or other financial compensation aside from the referral fee commission payments set out in these Terms.

You agree that you are an independent contractor and nothing contained in these Terms shall be interpreted as creating any relationship other than that of independent contracting parties. You have no power or authority to bind us to any obligation, agreement, debt or liability, nor shall you hold yourself out as an agent or representative of us.

### **Your Duties, Responsibilities and Obligations**

You acknowledge that, in acting as a Skeddly Referral Program member, you are operating your own business and earning income which you are likely required to declare for tax purposes in various jurisdictions.

- **TAXES. YOU ARE RESPONSIBLE FOR COLLECTING AND REMITTING SALES AND INCOME TAX. YOU AGREE TO PAY ANY AND ALL SALES AND INCOME TAXES, WHETHER U.S., CANADIAN OR FOREIGN, APPLICABLE TO THIS AGREEMENT OR ARISING IN ANY WAY FROM YOUR ACCOUNT OR AMOUNTS PAID TO YOU. YOU AGREE THAT IF A SALES TAX APPLIES TO PAYMENTS MADE TO YOU, YOU SHALL DEDUCT THOSE TAXES FROM THE BALANCES WE PAY YOU. WE SHALL NOT BE LIABLE FOR ANY ADDITIONAL PAYMENTS TO YOU.**
- **NO MISREPRESENTATIONS. YOU AGREE NOT TO MAKE ANY REPRESENTATIONS OR WARRANTIES ABOUT OUR PRODUCTS OR OUR BUSINESS THAT WE HAVE NOT MADE OURSELVES IN OUR OWN MARKETING MATERIALS. FOR MORE INFORMATION ON WHAT MARKETING MATERIALS YOU ARE PERMITTED TO USE, PLEASE SEE THE SECTION BELOW ENTITLED 'INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS'.**
- **BUSINESS REGISTRATION. YOU ARE RESPONSIBLE FOR MAKING ALL REQUIRED BUSINESS REGISTRATIONS AND OBTAINING SUCH LICENSES REQUIRED BY LAW, IN THE JURISDICTIONS IN WHICH YOU OPERATE.**
- **DISCLOSURES. YOU AGREE THAT YOU ARE RESPONSIBLE FOR MAKING DISCLOSURES ABOUT YOUR STATUS AS AN AFFILIATE WHEN PROMOTING OR ENDORSING OUR PRODUCTS AND THE FACT THAT YOU MAY BE ENTITLED TO A PAYMENT FROM US. FOR MORE**

INFORMATION, PLEASE OBTAIN YOUR OWN LEGAL ADVICE AND VISIT THE U.S. FEDERAL TRADE COMMISSION'S [WEBSITE](#) IN THE UNITED STATES OR YOUR APPLICABLE REGULATORY AUTHORITY IN YOUR OWN JURISDICTION.

- **COSTS.** YOU AGREE THAT YOU ARE FULLY RESPONSIBLE FOR ALL COSTS AND EXPENSES IN TAKING YOUR OWN MEASURES TO PROMOTE OUR PRODUCTS AND SERVICES OR OTHERWISE PARTICIPATE IN THE PROGRAM AND ATTEMPT TO EARN COMMISSIONS. YOU AGREE TO HOLD US HARMLESS FROM OR AGAINST ALL SUCH COSTS, EXPENSES OR ANY OTHER LIABILITIES THAT MAY ARISE.
- **YOUR OWN ACTS AND OMISSIONS.** YOU ARE COMPLETELY RESPONSIBLE FOR ALL ITEMS YOU PUBLISH, STATEMENTS YOU MAKE, ACTIONS OR OMISSIONS YOU TAKE (OR FAIL TO TAKE) AND FOR ASSURING THAT SUCH ACTS OR OMISSIONS DO NOT INFRINGE UPON OR VIOLATE THE RIGHTS OF ANY OTHER PARTY OR ANY APPLICABLE LAWS, RULES OR REGULATIONS. WE ARE NOT RESPONSIBLE FOR ANY MATTER PERTAINING TO YOUR OWN ONLINE PRESENCE AND YOU AGREE TO HOLD US HARMLESS AND INDEMNIFY US FROM ANY AND ALL CLAIMS, SUITS, THREATS, DEMANDS, LIABILITIES, ACTIONS, CAUSES OF ACTION RELATED IN ANY WAY TO YOUR ONLINE PRESENCE, PUBLICATIONS, MARKETING MATERIALS, STATEMENTS, BUSINESS OPERATIONS OR OTHER ACTIONS OR OMISSIONS RELATED, IN ANY WAY, TO THESE TERMS OR THE AFFILIATE PROGRAM. SUCH INDEMNITY INCLUDES OUR COSTS AND ATTORNEY FEES IN DEFENDING ANY SUCH MATTER. YOU REPRESENT AND WARRANT TO US THAT YOU WILL COMPLY, AT ALL TIMES, WITH OUR ACCEPTABLE USE POLICY.

### **Payment of Fees**

If you are a Skeddly Referral Program account holder, you will be paid a fee (the "**Commission**"), calculated based on a percentage of sales made to customers who signed up for our service using your Tracking Code. Commission fees payable to you will be calculated in accordance with these Terms and our pricing and payment policy available online at <https://www.skeddly.com/partners/referral-program/> (the "**Pricing URL**").

In order to be eligible for a Commission fee, customers referred to us using your Tracking Code must establish an account on our website within the Cookie Tracking Period. We cannot pay you a Commission unless your Tracking Code is identified during the sales process, as administered and recorded by the Affiliate Software Provider. You acknowledge that where a prospective customer disables or deletes their cookies, our Affiliate Software Provider will not be able to track or link sales to

your account. As such, we can only offer the Commission where cookies are enabled by the prospective customer when they are establishing an account on our website.

The Commission fee is only payable, in respect of each customer you refer us, for the first 24-months following their account being created (“**Commission Duration**”).

Commissions will be calculated monthly based upon the gross sales made to each applicable customer, but not including any tax, late charges, interest or any other payments made to us that are not included as the purchase price for our services. Commissions will not be calculated or paid on amounts that are attributable to credit card fraud, charge backs, credits given to customers or bad or uncollected debts.

Commissions will only be payable to you a monthly basis. We reserve the right to withhold payment to you if the total Commission due to you is not at least CAD \$50.00. Amounts under CAD \$50.00 will accrue to your account and payment will be made for the month when your total Commissions achieve the minimum amount. We reserve the right to amend the minimum commission payment amount at any time.

You agree that we are not obligated to cause Commission payments to you until sixty (60) days after we have been paid by the corresponding customer. We reserve the right to deduct, in subsequent months, any Commission that we paid to you for services that are subsequently refunded or, for any other reason, if the previous monthly Commission was overpaid or later subject to reduction. We also reserve all other rights available to us as to legal and equitable set-off or the right to have you reimburse us for any over payments.

Our pricing formula, rates and Commission Duration may change from time to time. However, it is agreed that any changes shall not apply retroactively to customers who signed up for our service prior to such changes being posted on the Pricing URL.

Where two or more members of our Skeddly Referral Program provided a Tracking Code link used by a customer, a Commission payment shall only be due and owing to the Skeddly Referral Program member whose Tracking Code link was last used by the customer prior to them establishing an account.

We make no representations or warranties regarding potential income that may result from your participation in the Skeddly Referral Program and we specifically disclaim any and all warranties relative to earning potential from your referral source status or Skeddly Referral Program account.

### **Currency**

We will pay your Commission in Canadian Dollars. Any fees payable to convert currencies, whether via our payment provider or your bank, shall be your responsibility and be deducted from any payments owing to you.

### **Customers**

All parties who make purchases through our website, regardless of whether they may have reached it from your site or your own links, are deemed to be our customers relative to our products and services. You agree that we will have the right to contact these customers and send future marketing offers to them.

## **Prices**

As our prices are subject to change, you shall not advertise or publish our prices. You may only refer potential customers to our website where prices are listed. You acknowledge that prices listed by us on our website are an invitation to potential customers to make an offer and are subject to acceptance by us. Even in the event of an automated acceptance by us, we have the opportunity to review and accept such orders.

Where prices are listed on our website and/or the Skeddly Referral Program, they are also subject to change without notice. Such pricing changes may affect your Commission rate. We also may offer discounts to customers you refer to us and you agree that your Commission is calculated on the price of our products after such discounts.

We reserve the right to amend any of our terms, conditions, policies, procedures, pricing, payment policies, collection policies and all other items relative to our business and sale of products and services to customers at any time, in our sole discretion.

If any information or terms posted on our website or your Skeddly Referral Program account concerning price, tax, discounts, refunds or cancellations are posted in error, we reserve the right to amend those terms. Misprints, errors, omissions (including incorrect specifications) or other errors may sometimes occur. As a result, we reserve the right to:

- Correct any error, inaccuracy or omission at any time without prior notice or liability to you or any other person;
- Change, at any time, the prices, fees, taxes, Commissions, charges and specifications, any promotional offers and any other content without any notice or liability to you or any other person; and
- Reject, correct, cancel or terminate any subscription or order, including accepted orders for any reason.

## **ACCEPTANCE OF RISK AND DISCLAIMERS**

**EVERYTHING ON OUR WEBSITE AND PROVIDED AS PART OF OUR SKEDDLY REFERRAL PROGRAM IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY.**

YOU AGREE THAT, WHILE WE STRIVE TO HAVE AN ERROR FREE AND UNINTERRUPTED WEBSITE AND AFFILIATE PROGRAM, WE DO NOT GUARANTEE THE ABSENCE OF INTERRUPTIONS NOR SHALL YOU HOLD US LIABLE FOR ANY DAMAGE SUCH INTERRUPTIONS MAY CAUSE.

**DISCLOSURE PURSUANT TO COURT ORDER, SUBPOENA OR OTHER LEGAL PROCESS**

WE RESERVE THE RIGHT TO PROVIDE YOUR CONTENT AND INFORMATION (INCLUDING, BUT NOT LIMITED TO, YOUR PERSONAL AND BUSINESS INFORMATION) UPLOADED OR COLLECTED BY OUR WEBSITE OR REFERRAL PROGRAM TO THIRD PARTIES IF REQUIRED BY LAW (SUCH AS IN RESPONSE TO A SUBPOENA, COURT ORDER OR OTHER LEGAL PROCESS IN ANY JURISDICTION), AND TO COOPERATE WITH LAW ENFORCEMENT AUTHORITIES IN THE INVESTIGATION OF ANY CRIMINAL OR CIVIL MATTER.

IF WE ARE REQUIRED BY LAW TO MAKE ANY DISCLOSURE OF YOUR CONTENT OR PERSONAL OR BUSINESS INFORMATION, WE *MAY* (BUT ARE NOT OBLIGATED TO) PROVIDE YOU WITH WRITTEN NOTICE (TO THE EXTENT PERMITTED BY LAW) PRIOR TO SUCH DISCLOSURE SO THAT YOU MAY TAKE APPROPRIATE ACTION.

**LIMITATION OF OUR LIABILITY**

YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE, OUR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE, HOWSOEVER CAUSED, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, REGARDLESS OF LEGAL THEORY AND WHETHER OR NOT WE HAVE BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER THOSE DAMAGES WERE FORESEEABLE OR NOT.

IF YOU ARE DISSATISFIED WITH THE WEBSITE OR AFFILIATE PROGRAM, OR DO NOT AGREE WITH ANY PART OF THESE TERMS, OR HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST US, OUR AFFILATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, CONTRACTORS, AGENTS, SUPPLIERS OR LICENSORS, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO CLAIM ANY UNPAID COMMISSIONS AND DISCONTINUE ACCESSING AND USING THE WEBSITE AND SKEDDLY REFERRAL PROGRAM.

**YOU AGREE AND ACKNOWLEDGE THAT ACCESS TO OUR WEBSITE AND SKEDDLY REFERRAL PROGRAM REFLECTS THE ALLOCATION OF RISK SET FORTH IN THESE TERMS AND THAT WE WOULD NOT ENTER THIS AGREEMENT OR GRANT ACCESS TO THE WEBSITE OR REFERRAL PROGRAM WITHOUT THESE RESTRICTIONS AND LIMITATIONS ON OUR LIABILITY.**

IN ADDITION TO YOUR AGREEMENT TO NOT HOLD THE ABOVE ENTITIES AND PERSONS LIABLE FOR ANY DAMAGES, IN THE EVENT A COURT OR ARBITRATOR OF COMPETENT JURISDICTION DECLINES TO UPHOLD SAID CLAUSE, OR OTHERWISE FINDS US LIABLE TO YOU, YOU AGREE THAT IN NO CIRCUMSTANCES SHALL THE AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS RELATING TO OR IN ANY WAY ARISING FROM THE USE OF OUR WEBSITE OR SKEDDLY REFERRAL PROGRAM, OR IN ANY WAY RELATED TO THESE TERMS, BE MORE THAN (I) USD \$20.00; OR (II) ANY OUTSTANDING COMMISSION AMOUNTS DUE AND PAYABLE TO YOU, WHICHEVER IS MORE.

### **INDEMNIFICATION AND HOLD HARMLESS**

YOU AGREE TO INDEMNIFY US, OUR AFFILIATES, EMPLOYEES, SHAREHOLDERS, DIRECTORS, AGENTS, REPRESENTATIVES AND CONTRACTORS, AND TO DEFEND AND HOLD EACH OF THEM HARMLESS, FROM ANY AND ALL CLAIMS AND LIABILITIES (INCLUDING REASONABLE LEGAL FEES) WHICH MAY ARISE FROM, AMONG OTHER THINGS (I) YOUR VIOLATION OF THESE TERMS, OR ANY POLICY INCORPORATED BY REFERENCE; (II) YOUR VIOLATION OF ANY THIRD PARTY RIGHT; (III) ANY BREACH OF A REPRESENTATION OR WARRANTY MADE BY YOU TO US, EITHER IN THESE TERMS, PRIVACY POLICY OR OTHERWISE; OR (IV) YOUR PARTICIPATION IN THE AFFILIATE PROGRAM.

### **Intellectual Property and Proprietary Rights**

Upon being granted a Skeddly Referral Program account, you will have a non-exclusive, limited term license to use our trademarks, logos and copyrighted material that we provide to all account holders to share with their network ("**Affiliate Marketing Materials**"). This license shall immediately terminate upon your termination from the Skeddly Referral Program or your Skeddly Referral Program account. We may terminate the license upon notice to you in the event that your use of these items is contrary to or does not conform with our standards, such standards to be determined in its sole and absolute discretion.

You may only use Affiliate Marketing Materials that we specifically make available to you in your Skeddly Referral Program account or on a section of our Website that is specifically designated as approved images for the Skeddly Referral Program. You may not modify or amend such Affiliate Marketing Materials in any way. You are not permitted to use any other proprietary materials, including but not limited to trademarks, copyrights, logos, text and any other materials that belong to us or to any other party, even to the extent such other materials are posted by us online.

You may use Affiliate Marketing Materials only for the purposes of promoting our products in compliance with the Skeddly Referral Program policies, procedures and these Terms. The license is subject to complete compliance with all these Terms, your ongoing access to your Skeddly Referral Program account and any policies we may create and amend from time to time regarding the Skeddly Referral Program.



You agree that we retain all right, title and interest in and to all such Affiliate Marketing Materials. We also retain all goodwill and other value associated with any of the Affiliate Marketing Materials. You will not gain any trademark, copyright or other proprietary rights to such materials.

You agree not to take any action that is contrary to or inconsistent with our rights to the Affiliate Marketing Materials.

You will not use the Affiliate Marketing Materials, any other intellectual property owned by us or any other content in a way that is damaging, defamatory, disparaging, derogatory, or negative to us, our brand or our products or that paints us in a false or negative light.

We may revoke the limited license granted hereunder at any time by terminating your Affiliate Account and/or in writing (including via email) to you. Upon termination or revocation, you will immediately cease using the Affiliate Marketing Materials and remove same from any places you have posted them online or offline.

### **Your Content and Proprietary Property**

You grant us a non-exclusive right and license to use your trademarks, trade names, service marks, business names, webpage titles, slogans, logos and copyrighted materials for the purposes of promoting, advertising, announcing or marketing your participation in our Skeddly Referral Program. You represent and warrant to us that no other party has any rights in and to any of these materials and that these materials do not infringe upon or otherwise interfere with the rights of any other party.

You represent and warrant to be the absolute, sole and exclusive owner of all such materials you provide us or make available to us and the owner of all trademark rights, copyrights, and other proprietary rights in and to the same. You represent and warrant that you have the right, power, and authority to license said materials to us and that you are not under any legal or contractual limitation on the right to so license these materials. We have no obligation to announce, advertise, market, or promote your participation in the Skeddly Referral Program, but reserve the right to do so.

### **Posting Rules**

In addition to our Acceptable Use Policy, you agree not to use our website or the Skeddly Referral Program in any manner which may infringe copyright or other intellectual property rights of any third party or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or in violation of these Terms.

You agree to:

- Only publish your Tracking Code in a lawful manner, including making appropriate disclosures that you are a member of the Skeddly Referral Program;

- Only publish your Tracking Code and information about us and our products in a manner that does not bring Eleven41 Software Inc. and its brand into disrepute or negatively affect our image; and
- Immediately remove your Tracking Code or other information you post online about us or our products from any websites, social media accounts or other online spaces you control or have access to, upon our request. Without limiting the generality of the foregoing, you agree that we may demand that you remove the Tracking Code and reference to Eleven41 Software Inc., our brand and our products if your website(s), online social media accounts, or other online or offline materials contain images or content that are not acceptable to us or are inconsistent with the image that we wish to create for our services or, if your materials contain any illegal, immoral, repulsive, defamatory, derogatory, harassing, harmful, threatening, obscene, vulgar, pornographic, racial or ethnic objectionable materials, depicts sexual situations, promotes discrimination on the basis of race, sex, sexual preference, national origin, ethnicity, nationality, disability, religious preference, or if your materials contain anything that appears to us to violate any patent, trademark, copyright, trade secret, confidential information, or other property rights of any other party.

### **Linked Sites**

Whether or not we are affiliated with sites or third-party vendors that may be linked to our Website or the Skeddly Referral Program, we are not responsible for their content (the "**Linked Sites**"). The Linked Sites are for your convenience only and you access them at your own risk. We and other users provide links and references to material on other websites not owned or operated by us. Links found on our Website or the Skeddly Referral Program are not an endorsement and we do not represent or warrant the accuracy or truth of the contents of information found on said websites. You access those links and corresponding sites at your own risk.

### **Law of the Contract (Governing Law) and Jurisdiction**

These Terms, all documents incorporated by reference and your relationship with us shall be governed by, construed and enforced in accordance with the laws of the Province of Ontario, Canada, (and any Canadian federal laws applicable therein) as it is applied to agreements entered into and to be performed entirely within such province.

You hereby agree to irrevocably and unconditionally submit to the exclusive jurisdiction of the courts and tribunals of Ontario, Canada (including the Federal courts and tribunals as applicable therein) to settle any disputes arising out of or in any way related to these Terms, all documents incorporated by reference and your relationship with us.

### **Severability**

If any provision of these Terms are found to be unlawful, void or, for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

Where a provision in these terms is found to be unlawful, void or for any reason unenforceable, a lawful or enforceable term which best reflects the intention of the provision, as originally drafted, shall substitute.

### **No Construction Against Drafter**

If an ambiguity or question of intent arises with respect to any provision of these Terms, the Terms shall be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favouring or disfavouring either party by virtue of authorship of any of the provisions of these Terms.

### **Waiver of Class Proceedings and Trial by Jury**

To the extent permitted by law, you hereby waive your right to participate in any class action lawsuits against us, our contractors, employees, shareholders, successors, assigns and directors. To the extent permitted by law, you further waive any right to a trial by jury, should such a right exist, in relation to any legal dispute connected to or in any way arising out of these Terms.

### **Incorporation by Reference**

All policies referred to in these Terms or anywhere on our Website or Skeddly Referral Program are hereby incorporated by reference including, but not limited to, our Privacy Policy and Acceptable Use Policy.

### **Termination**

You can stop using our Website and the Skeddly Referral Program at any time. Please contact us to learn more about cancelling your Skeddly Referral Program account or follow the links within your Skeddly Referral Program account.

We make no representations or warranties as to the ongoing availability of our Website, online services or the Skeddly Referral Program.

We reserve the right to terminate your Tracking Code at any time, in which case, you will not be entitled to Commissions from any new customers. We further reserve the right to suspend your account or access to our Website or Skeddly Referral Program at any time, with or without cause, and with or without notice. Upon such suspension or termination, we will pay you any Commissions due and payable to you (arising from existing customers) as and when they fall due (if any).

Your cancellation, suspension or termination of access to our Website or Skeddly Referral Program shall not terminate this agreement. In particular, and without limiting the generality of the foregoing, any provision concerning the limitation of our

liability, your indemnification obligations, settling disputes (including the jurisdiction and choice of law) shall remain binding.

### **Assignment of this Agreement**

These Terms shall enure to the benefit of and is binding upon the parties and their respective successors and permitted assigns. You agree that we may assign this agreement to any successor or assignee, whether pursuant to the purchase of our Website or business, the transfer of control of Eleven41 Software Inc., or otherwise.

### **Right to Seek Injunction**

Violation of these Terms may cause us irreparable harm and, therefore, you agree that we will be entitled to seek extraordinary relief including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting a bond or other security, in addition to and without prejudice to any other rights or remedies that we may have for a breach of these Terms.

### **Waiver**

Our failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

### **AMENDMENTS**

**AS OUR WEBSITE, PRODUCTS, SERVICES AND THE AFFILIATE PROGRAM CONTINUE TO CHANGE, WE MAY, AT ANY TIME, REVISE THESE TERMS AND OUR POLICIES BY UPDATING THIS PAGE OR THE PAGE HOSTING THE RELEVANT POLICY. THE DATE OF THE LAST VERSION OF THESE TERMS IS POSTED ABOVE. AS YOU ARE BOUND BY THESE TERMS, EACH TIME YOU VISIT OUR WEBSITE OR USE OUR AFFILIATE PROGRAM, YOU ARE RESPONSIBLE FOR PERIODICALLY REVIEWING THE AMENDMENTS TO THESE TERMS AND YOU ARE DEEMED TO HAVE ACCEPTED AND AGREED TO SUCH AMENDMENTS BY ACCESSING AND USING THE WEBSITE AND AFFILIATE PROGRAM AFTER SUCH AMENDMENTS HAVE BEEN POSTED. IF YOU DO NOT AGREE WITH THE AMENDMENTS, YOU SHALL IMMEDIATELY STOP ACCESSING THE WEBSITE AND AFFILIATE PROGRAM AND TERMINATE YOUR ACCOUNT, SUBJECT TO THE TERMS PROVIDED FOR HEREIN. WE MAY ALSO UNDERTAKE TO SEND YOU NOTICE OF ANY CHANGES TO THE TERMS OR POLICIES.**

### **Other Terms**

In the course of using your account with us or using our Website and Skeddlly Referral Program, you may be required or by your actions may be deemed, to consent to the terms of agreements provided by certain third-party providers, including but not limited to payment processors, credit card companies and banks.

You agree that nothing in those agreements shall, in any way, alter these Terms or your obligations hereunder.

Any new features that augment or enhance the current website and Skeddly Referral Program, including the release of new versions, new products or services, tools and resources, shall be subject to these Terms. Continued use of the Website and Skeddly Referral Program after any such changes shall constitute your consent to such changes.

### **Entire Agreement**

This is the entire agreement between the parties relating to the matters contained herein and shall not be modified except in writing and signed by a duly authorized representative of Eleven41 Software Inc.