

Recitals

- A) SQ operates a range of services allowing Affiliates to transfer visitors from their own Affiliate Websites to the Merchant and thereby earn commission according to the terms of the relevant service.
- B) In order to benefit from one or more of the services, you must read and accept the terms and conditions of this Agreement, which shall apply to any and all services joined by you as an Affiliate, and receive confirmation of your acceptance by SQ as an Affiliate. Please read this Agreement carefully.
- C) The Company wishes to become a Merchant in respect of those services offered by SQ as described and on the terms and conditions contained in this Agreement. The Company may wish to take up further additional services as may be offered by SQ.

1. Definitions and Interpretation

In this Agreement unless the context otherwise requires the following words and expressions shall bear the following meanings:

Affiliate - Means the individual person partnership company or other entity entering into this Agreement with SQ

Affiliate Account - Means the secure area of the SQ Website to which the Affiliate shall be granted access in accordance with clause 2

Affiliate Hosted Content - Means web pages, links and data provided to the Affiliate by SQ and hosted by the Affiliate on the Affiliate Website or otherwise

Affiliate Website - Means the website edited run managed administered or displayed by the Affiliate

Chargeback - Means Commission already paid to an Affiliate in respect of a Referral from which no sale has resulted

Commission - Means sums payable by SQ to the Affiliate as specified by SQ in relation to each Service as the Affiliate may join from time to time and in accordance with clause 5.1

Commission Rates - Means the rate of Commission payable by SQ to the Affiliate in respect of any Service taken by the Affiliate and as notified by SQ to the Affiliate on application by the Affiliate for that Service (and as may be varied and notified to the Affiliate by SQ from time to time).

Confidential Information - Means in relation to either party any and all confidential information that it may acquire in relation to the business or affairs, know how or trade secrets of the other party as more particularly referred to in clause 7.4 and shall include any such information relating to the business or affairs of any Merchant.

Intellectual Property - Means patents, design rights, trade marks, trading business or domain names and e-mail addresses, copyrights (including any such rights in typographical arrangements of websites or software) whether registered or not and any application to register or rights to apply for registration of any of the foregoing, rights in inventions, know-how, trade secrets and other confidential information, rights in databases and all other intellectual property rights of a similar or corresponding character that subsist now or in the future in any part of the world

Merchant - Means a company, partnership or other commercial entity participating in the Services for the purposes of selling or promoting its goods and services.

Merchant Account - Means the secure area of the SQ Website to which a Merchant has access.

Merchant Commission - Means any payment due to SQ from a Merchant arising from any Referral.

Merchant Links - Means any link between an Affiliate Website and a Merchant Website and including any Intellectual Property, logos or banners incorporated in or connected with such link.

Merchant Website - Means any website maintained by a Merchant as notified to the Affiliate from time to time.

SQ - Means Smart Quotes Limited

SQ Website - Means the website maintained by SQ at <http://www.smart-quotes.com> and smartquotes.net or such other domain name as may be notified to the Affiliate from time to time

Payment Terms - Means the additional terms and conditions (if any) relating to the payment of Commission in relation to any Service as displayed via the Affiliate Account and as may be varied by SQ from time to time and which shall be deemed incorporated into this Agreement.

Prohibited Site - Means a website containing any information or materials which are in breach of any third party intellectual property rights or are or may be objectively considered to be defamatory, obscene, pornographic, offensive, threatening, blasphemous, or liable to incite racial hatred or which promote any illegal activity including but not limited to ware, cracking or hacking and/or such websites as may from time to time be specified as Prohibited Websites on the SQ Website.

Referral - Means an introduction or lead made or obtained as a result of a visitor to the Affiliate Website or other link by the Affiliate to a Merchant Website

Territory - Means United Kingdom, Republic of Ireland, Germany, France, Italy, Spain, Switzerland, Sweden, Norway and Denmark and such other countries as SQ may notify to the Affiliate from time to time

Service - Means such services as SQ may make available to Affiliates from time to time by way of the demonstrations and application procedures contained at [www.SQuk.com] or otherwise made available through the SQ Website.

User - Means an internet user who accesses the Affiliate Website

- 1.1. In this Agreement, unless the context otherwise requires;
- 1.2. Words denoting the singular number shall include the plural and vice versa;
- 1.3. Words denoting any gender shall include all genders;
- 1.4. References to persons shall include firms corporations and other associations or bodies of persons whether or not incorporated and any government state or agency of a state whether or not any of the foregoing has any separate legal personality;
- 1.5. Any reference to a statute or statutory provision shall be construed as including a reference to any statutory modification consolidation or re-enactment (whether before or in the case of consolidation or re-enactment only after the date hereof) from time to time and shall include reference to any provision of which it is a re-enactment (whether with or without modification) and any bye-laws, statutory instruments, rules, regulations, orders, directions, consents and permissions made or given thereunder and any conditions attaching thereto;
- 1.6. Clause headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- 1.7. Any reference to Clauses, sub-Clauses and paragraphs is to Clauses, sub-clauses and paragraphs of this Agreement.

2. Becoming an Affiliate

- 2.1. In consideration of the Affiliate entering into the obligations and restrictions contained herein, SQ has issued to the Affiliate a username and password which enables the Affiliate to access the SQ Website.
- 2.2. The Affiliate shall keep such password secure at all times and shall not disclose the same to any third party.

3. Taking a Service

- 3.1. SQ shall post on the SQ Website details of all Services managed by SQ and relevant or appropriate to the Affiliate with applicable Commission Rates and Payment Terms , together with details of all Merchants taking part in such Services.

- 3.2. At any time during the continuance of this Agreement, the Affiliate may apply to take up any Service or Services using the on-line procedure provided within the Affiliate Account or at such URL or hypertext link as may be posted on the SQ Website.
- 3.3. The Affiliate shall apply to take at least one Service in relation to at least one Merchant within 30 days of confirming its acceptance of this Agreement.
- 3.4. SQ reserves the right at its sole discretion to reject an Affiliate's application to join a Service or to exclude from any Service provided to the Affiliate any Merchant or Merchants.

4. Obligations of the Affiliate

- 4.1. The Affiliate shall at all times
- 4.2. Provide such information and complete such forms as may reasonably be required by SQ;
- 4.3. ensure that all information provided to SQ is complete and accurate and not misleading.
- 4.4. SQ shall be entitled to act upon any information or requests that it reasonably believes comes from the Affiliate and SQ shall not be liable for any loss, damage costs or expenses howsoever arising directly or indirectly from its reliance on such requests.
- 4.5. The Affiliate shall not use or enable any third party to use information or data obtained through use of the Affiliate Account or any of the Services for the purpose of sending or generating unsolicited bulk e-mail or spam.
- 4.6. The Affiliate shall immediately notify SQ by email at justin.bond@smartquotes.com or such other e-mail address as SQ shall notify to the Affiliate for this purpose if:
 - 4.6.1. it believes that any unauthorised use has been or may be made of the password referred to in clause 2; or
 - 4.6.2. it suspects or is aware of any other actual or possible abuse of the Affiliate Programme by agents or employees of the Affiliate or by any third party.
- 4.7. The Affiliate shall not at any time use a Prohibited Site for any purpose directly or indirectly connected with this Agreement.
- 4.8. The Affiliate warrants that
 - 4.8.1. it owns or has the right to use all intellectual property rights in and relating to the Affiliate Website;

- 4.8.2. the Affiliate Website complies with all applicable laws, government rules and regulations and industry codes including (without limitation) those relating to data protection, advertising and the Financial Services and Markets Act 2000 (including without limiting the general nature of the foregoing, obtaining Permission from the Financial Services Authority to carry on Insurance Intermediation Activities, where required). For the avoidance of doubt, it shall remain the responsibility of the Affiliate to ensure that it has such licences and meets such industry requirements as may be applicable to any Service which it takes;
- 4.8.3. the Affiliate Website does not and shall not display or contain any information or materials or hypertext links to information or materials which are in breach of the Intellectual Property Rights of any Merchant, SQ or any third party;
- 4.8.4. the Affiliate Website does not and shall not display or contain any information or materials or hyper text links to information or materials which are or may be objectively considered to be defamatory, obscene, pornographic, offensive, threatening, blasphemous or liable to incite racial hatred or which promote any illegal activity including (but not limited to) cracking or hacking;
- 4.8.5. the Affiliate shall not generate transactions by means which in the opinion of SQ, and communicated from time to time, are either fraudulent, unethical or that carry an unacceptable brand risk to the Merchant. No Commission will be payable where traffic has been generated by such means.
- 4.8.6. the Affiliate shall comply with the specific Terms and Conditions of each Merchant campaign or Service that they participate in as notified to them through the SQ Website or otherwise from time to time;
- 4.8.7. The Affiliate shall at all times respect the Intellectual Property and other rights of SQ, Merchants and third parties. The Affiliate shall indemnify and keep indemnified SQ against any and all damages costs losses and expenses arising directly or indirectly from any breach or infringement by the Affiliate of such Intellectual Property
- 4.8.8. The Affiliate shall not alter, edit or amend and shall not procure or attempt to procure the alteration, editing or amendment of any material provided to it by SQ or any Merchant for inclusion on the Affiliate Website including but not limited to Merchant Links or Intellectual Property of Merchants or SQ, editorial or creative without the prior consent in writing of SQ or the Merchant as the case may be.
- 4.8.9. the Affiliate shall not either directly or indirectly alter edit amend or vary Affiliate Hosted Content (if any).
- 4.9. Whilst accepting no responsibility of any kind for the contents of any Affiliate Website, SQ reserves the right to monitor the Affiliate Website and any links from or to it, including but not limited to Merchant Links for the purpose of overseeing and administering the Services. If, in SQ's reasonable opinion, it considers that the Affiliate Website is unsuitable for the Services or any of them it may in its sole discretion require amendments or alterations to the Affiliate Website.
- 4.10. In the event that SQ receives a complaint from any Merchant or any third party relating to the Affiliate Website or any methods employed by the Affiliate to direct internet traffic to or through it, the Affiliate shall co-operate with SQ to facilitate the investigation of such complaint. SQ may in its sole discretion require the Affiliate to amend or remove the subject matter or methods complained of.
- 4.11. During this Agreement and for the period of six months following termination of this Agreement, the Affiliate shall not:
- 4.11.1. without SQ's prior written consent communicate directly with a Merchant in relation to any matters involving the provision of Services covered by this Agreement. The Affiliate shall promptly notify SQ if it is approached by any Merchant directly in relation to the provision of introductory services or services of a nature similar to or competing with the Services;

- 4.11.2. be concerned or interested directly or indirectly in the setting up, administration or management of any programme or website which, in the reasonable opinion of SQ, competes with the Services.
- 4.12. SQ reserves the right to vary this Agreement and any such variation which is likely to materially affect the Affiliate shall be notified to it by e-mail or within its Affiliate Account giving not less than 14 days notice of such variation or change. For the avoidance of doubt, the Agreement shall be deemed effective as varied at the expiry of such notice.
- 4.13. The Affiliate shall acquire no rights following the termination of this Agreement to use any Intellectual Property rights of the Merchant or SQ including but not limited to registered or unregistered trade or domain names or any text, or images, banners or any other works created by or for SQ or any Merchant
- 4.14. If at any time the Affiliate is unable to access the Affiliate Account or Services, it shall immediately notify SQ. SQ will use reasonable endeavours to resolve any such problem as soon as is practicable.
- 5. Commission**
- 5.1. Subject to clause 5.3, SQ shall pay to the Affiliate Commission at the Commission Rates and on the Payment Terms.
- 5.2. Where Chargeback is specifically applied to a Service by virtue of the Payment Terms, and in the event that SQ receives notification from a Merchant that a purported Referral within that Service has failed to produce a sale for that Merchant, SQ shall be entitled forthwith to recover the Chargeback from the Affiliate. For the avoidance of doubt, Chargeback shall not apply to a Service unless specified in the Payment Terms
- 5.3. Commission in relation to any Service and/or any Merchant shall not be payable by SQ to the Affiliate until such time as SQ has received the corresponding Merchant Commission.
- 5.4. Where Commission is specified in the Payment Terms as being on a cost per click basis, such Commission shall not be payable by SQ to the Affiliate where and to the extent that tracking or other records carried out by SQ or any third party shows or appears to show, in the opinion of SQ, that:
- 5.5. clicks originate from an ISP whose domain name falls outside the Territory
- 5.6. any other method or activity was undertaken or employed by the Affiliate or User which had the effect, whether intentional or otherwise, of increasing the number of clicks beyond that deemed by SQ to be reasonable or realistic.
- 6. Limitation of Liability and Indemnity**
- 6.1. Subject to clause 6.4 below save in respect of death or personal injury, SQ's total aggregate liability to the Affiliate under or in connection with this Agreement, including contract and tort (including the tort of negligence) shall not exceed GBP 10,000.00
- 6.2. SQ cannot warrant usual functionality of the Affiliate Account or the Services at all times, but will use reasonable endeavours to ensure that downtime is kept to a minimum.
- 6.3. SQ shall not be deemed to be in breach of this Agreement, or otherwise be liable to the Affiliate by reason of any delay in performance, or non-performance, of any of its obligations or any other matters under this Agreement to the extent that the same is caused by any circumstances beyond its reasonable control
- 6.4. The Affiliate shall immediately indemnify and keep indemnified SQ against all proceedings, fees, losses, expenses, payments, liabilities, injury, costs and damages arising out of:
- 6.5. the breach by the Affiliate, its agents or employees of any of its obligations under this Agreement;
- 6.6. any express or implied warranties, representations, confirmations or acknowledgements which are given by the Affiliate and prove to be untrue or are otherwise breached by the Affiliate.
- 6.7. The Affiliate undertakes to immediately indemnify and keep indemnified Merchants against all proceedings, fees, losses, expenses, payments, liabilities, injury, costs and damages arising out of:
- 6.7.1. the breach by the Affiliate, its agents or employees of any of its obligations under this Agreement;
- 6.7.2. any express or implied warranties, representations, confirmations or acknowledgements which are given by the Affiliate and prove to be untrue or are otherwise breached by the Affiliate.
- 7. Confidentiality**
- 7.1. The Affiliate grants to SQ the right to post the following information within Merchant Accounts or to publish the following information within literature supplied to Merchants:
- 7.1.1. the Affiliate's identity as an Affiliate;
- 7.1.2. any information (other than Confidential Information) that is submitted by the Affiliate to SQ.
- 7.2. The Affiliate confirms that in order to enable SQ to monitor, administer, improve, promote or market the Services;

- 7.2.1. SQ may publish statistics or summaries relating to the Services, save that any such statistics or summaries will not be identifiable as relating to the Affiliate unless previously agreed and approved by the Affiliate; and
- 7.2.2. SQ may contact the Affiliate by email, telephone or post to request feedback regarding the Services it offers including any ways in which it might be improved
- 7.3. Subject to the provisions of clauses 7.1 and 7.2 each party confirms that it shall keep confidential all Confidential Information obtained as a result of this Agreement and SQ confirms that it shall not use any such Confidential Information for any purpose other than the performance of its obligations under this Agreement. For the avoidance of doubt, Confidential Information shall include information acquired from the Affiliate about the methods of acquiring traffic used by the Affiliate.
- 7.4. Confidential Information shall not include information which:
- 7.4.1. is or becomes generally available to the public or enters the public domain other than as a result of the unauthorised disclosure by the receiving party;
- 7.4.2. is available to or in the possession of the receiving party free of any restriction as to its use or disclosure prior to its being furnished by the disclosing party provided that the source of such information is not subject to any agreement or other duties relating to confidentiality in respect of that information;
- 7.4.3. otherwise becomes lawfully available to the receiving party otherwise than from the disclosing party pursuant to this agreement provided that the source of such information is not subject to any obligation relating to confidentiality in respect of such information.
- 8. Withdrawal of Services or Merchants**
- 8.1. SQ reserves the right to withdraw from the Affiliate with immediate effect the provision of any Services or Services in the event of:
- 8.1.1. Any problem with the functionality of the Service in question which SQ is unable to resolve within 48 hours of becoming aware of the same
- 8.1.2. on receipt of any complaint received by SQ from any Merchant or third party regarding the Affiliate's conduct in relation to any Service or Services
- 8.1.3. any breach of this Agreement by the Affiliate
- 8.1.4. any failure by the Affiliate to comply with any reasonable instruction given by SQ under clauses 4.10 and 4.11
- 8.2. SQ may remove or exclude from any Service or Services any Merchant or Merchants with immediate effect in the event of:
- 8.2.1. Any problem with the functionality of the Service in question which SQ is unable to resolve within 48 hours of becoming aware of the same
- 8.2.2. the receipt by SQ of a request from a Merchant that the Merchant be removed from any Services provided to that Affiliate
- 8.2.3. any breach of this Agreement by the Affiliate
- 8.2.4. any failure by the Affiliate to comply with any reasonable instruction given by SQ under clauses 4.10 and 4.11
- 8.3. The Affiliate may withdraw from any Service or Services provided to it or may request the removal of any Merchant from any Service or Services provided to it on 28 days notice in writing to SQ.
- 8.4. Upon the exercise by SQ or by the Affiliate of their respective rights under clauses 8.1 or 8.2 or 8.3 above:
- 8.4.1. any licence or consent granted hereby for the use of any intellectual property of SQ or any Merchant in respect of that Service or Merchant shall be considered to be revoked forthwith;
- 8.4.2. the Affiliate shall immediately remove or co-operate with SQ to allow it to remove from the Affiliate Website all relevant material issued by SQ including but not limited to all or any references to the Services or Merchants in question, copy, banners, logos or editorial; and
- 8.4.3. the Affiliate shall cease to be entitled to Commission in relation to such Service or Merchant.
- 9. Term and Termination**
- 9.1. This Agreement shall come into force upon confirmation by the Affiliate of its acceptance of the terms of this Agreement and shall continue in effect until terminated by either party at any time on thirty days notice in writing.
- 9.2. SQ shall be entitled to terminate this Agreement forthwith if:
- 9.2.1. the other party commits any repudiatory breach of any of the provisions of this Agreement;
- 9.2.2. the Affiliate breaches any of clauses 4.6.4 or 4.6.5.

- 9.2.3. in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 9.2.4. an encumbrancer takes possession or a receiver or trustee is appointed over any of the property or assets of that other party;
- 9.2.5. that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- 9.2.6. that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agreed to be bound by or assume the obligations imposed on that other party under this Agreement);
- 9.2.7. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
- 9.2.8. that other party ceases, or threatens to cease, to carry on business
- 9.2.9. the number of Referrals produced or obtained through the Affiliate Website falls below a level which is acceptable in the reasonable opinion of SQ.
- 9.3. For the purposes of clause 9.2.1 but without limitation, the following may be considered by SQ to be a repudiatory breach of this Agreement:
- 9.3.1. any breach by the Affiliate of clauses 4.5, 4.6, 4.8, 4.9 and 7;
- 9.3.2. any failure by the Affiliate to comply with a reasonable instruction from SQ under clauses 4.10 and 4.11
- 9.4. For the purposes of clause 9.2.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 9.5. Upon termination of this Agreement for any reason:
- 9.5.1. any licence or consent granted hereby for the use of the any Intellectual Property of SQ or any Merchant shall be considered to be revoked forthwith;
- 9.5.2. the Affiliate shall immediately remove or co-operate with SQ to allow it to remove from the Affiliate Website all relevant material issued by SQ or Merchants including but not limited to all or any references to the Services or Merchants, and all copy, banners, logos or editorial.
- 9.5.3. the Affiliate shall indemnify SQ and Merchants against all losses damage costs and expenses arising directly or indirectly from any failure to comply with clauses 9.5.1 or 9.5.2
- 9.6. The Affiliate shall not be entitled to receive Commission on any Referrals made after the date of termination of this Agreement.
- 9.7. Clauses 4.3, 4.7, 4.12, 4.15, 6, 7, 9.5, and 9.6 shall survive the termination of this Agreement.
- 10. General**
- 10.1. This Agreement is personal to the Affiliate and the Affiliate may not without the written consent of SQ, assign, transfer sub-contract or otherwise dispose of any of its rights or obligations under it
- 10.2. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.
- 10.3. Except as provided elsewhere in this Agreement all notices proceedings or other formal documents to be served by either party on the other shall be delivered:
- 10.3.1. by e-mail to the e-mail address of the Affiliate as provided by it to SQ through the Affiliate Account,
- 10.3.2. by posting on the Affiliate Account
- 10.3.3. by hand to the other's address as set out at the head of this Agreement (or as subsequently notified in writing); or
- 10.3.4. by recorded delivery to the other's address as set out at the head of this Agreement (or as subsequently notified in writing) and shall be deemed received where sent by post, on the 2nd day after posting if within the United Kingdom or 7 days if elsewhere, or where sent by e-mail, by 9am GMT on the date after transmission.
- 10.4. This Agreement contains the entire agreement between the parties with respect to the subject matter, supersedes all previous agreements and understandings between the parties, and may not be modified otherwise than in accordance with clause 4.13.
- 10.5. Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor the relationship of employer and employee under a contract of service nor the relationship of principal and agent.
- 10.6. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- 10.7. This Agreement shall be governed by and construed in all respects in accordance with the laws of England and any dispute shall be subject to the exclusive jurisdiction of the English courts.