

Notice: This is a legally binding agreement between you and the owner of VRBangers.com, including any successor or affiliated company or entity. You must be at least 18-years old and have reached the age of majority and legal consent in the jurisdiction in which you live or reside to agree to this agreement. By clicking on the words "I agree," "Submit," or similar syntax, you are electronically signing this agreement, and therefore agree to be bound by and acknowledge your complete acceptance of all the express and incorporated terms of this agreement. If you do not agree to this agreement or do not meet the age requirements, you must not register.

VRBCash.com Affiliate Marketing Agreement

Last Updated: May 13, 2021

This affiliate marketing agreement is between **Swearl, LLC** (DBA VR Bangers), a California limited liability company (the "**Company**"), and you, the individual or entity signing up to become an affiliate (the "**Affiliate**").

The Company has developed the affiliate program (the "**Program**") for the websites located at www.vrbangers.com, www.vrbtrans.com, www.vrbgay.com, www.vrconk.com, www.dezyred.com and any other websites that the Company may add in the future (collectively, the "**Program Sites**").

The Affiliate wants to participate in the Program and wants to refer potential affiliates to the Program and refer webmasters or members to the Program Sites through one or more affiliate sites (the "**Affiliate Sites**").

The parties therefore agree as follows:

1. Enrollment in the Program

- 1.1 **Eligibility.** The Affiliate must be at least 18-years old and the age of majority (the age at which the Affiliate can legally consent and enter into contracts) in the Affiliate's place of residence to enroll in the Program. If the Affiliate is an entity, all individuals involved in the entity must be at least 18-years old and the age of majority in their place of residence.
- 1.2 **Registration.** To begin the enrollment process, the Affiliate must submit a completed Program application available online at <https://vrbangers.com/affiliate/>.
- 1.3 **Evaluation of Application.** The Company will evaluate the Affiliate's application and will notify the Affiliate of its acceptance or rejection. Among other reasons for rejection, the Company may reject the Affiliate's application if it determines, in its sole discretion, that one or more affiliate sites are unsuitable for the Program. Unsuitable affiliate sites include those that:
 - (a) promote or facilitate the prostitution of another person or otherwise promote escort services;
 - (b) promote child pornography;

- (c) promote obscene materials;
- (d) promote violence;
- (e) promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age;
- (f) promote illegal activities; or
- (g) violate intellectual-property rights.

1.4 **Reapplication.** If the Company rejects the Affiliate’s application, the Affiliate may reapply to the Program at any time.

2. License

2.1 **License Grant.** The Company hereby grants the Affiliate a revocable, nonexclusive, non transferable, non sublicensable, worldwide license to use, reproduce, transmit, publicly display, and publicly perform the materials provided by the Company to the Affiliate (the “**Licensed Materials**”) on one or more Affiliate Sites to direct Internet traffic to the Program Sites solely in connection with the Program. This license includes the right to use the Company’s service marks, trademarks, logos, the video content provided by the Company and its partners, and any other Licensed Materials provided by the Company for the Affiliate’s use.

2.2 **License Limitations.** The following limitations apply to the Affiliate’s use of the Licensed Materials:

- (a) **Use Restrictions.** All unauthorized access or duplication of the Licensed Materials is a material breach of this agreement and an infringement of the Company’s and potentially others’ trademarks, copyrights, or other rights, including privacy and publicity rights. The Affiliate will not remove any branding from the Licensed Materials or put links in the Licensed Materials that lead to non-Program Sites. The Affiliate will not add a watermark on the Licensed Materials. The Affiliate will not remove any intros from the beginning of any trailers provided as part of the Licensed Materials.
- (b) **Other Prohibited Actions.** Unless expressly authorized in advance by the Company in writing, the Affiliate will not:
 - (i) Modify, translate, reverse engineer, decompile, or disassemble the Licensed Materials;
 - (ii) Create derivative works based on the Licensed Materials;
 - (iii) Rent, lease, or transfer any rights in the Licensed Materials;
 - (iv) Remove any proprietary notices or labels on the Licensed Materials; or

(v) Make any other unauthorized use of the Licensed Materials.

(c) **Ownership of Licensed Materials and Intellectual Property.** Except for material in the public domain or licensed to the Company, the Company owns the Licensed Materials. United States law, international treaties, and other laws and regulations protect the Licensed Materials. The Company retains all rights in the Licensed Materials.

2.3 **No License for Other Material.** The Company does not grant a license for any other material published on any other Company website unless it makes that material available to the Affiliate through the Program and the Company designates it as Licensed Materials.

2.4 **Reservation of Rights.** Except as expressly granted in this agreement, the Company does not grant any other rights to the Affiliate. The Company reserves all rights to select, alter, add, or remove all Licensed Materials used for the Program.

2.5 **Termination or Withdrawal of License.** On termination of this agreement or the Affiliate's withdrawal from the Program, the Affiliate's license to download and use the Licensed Materials automatically terminates and all rights automatically revert to the Company. At that time, the Affiliate will promptly delete all copies of the Licensed Materials that might reside on any computer system, storage device, server, or website owned by the Affiliate or under its control.

3. **Promotional Links.** The Affiliate may receive—or the Company may make available to the Affiliate—banner, button, or text links to the Program Sites (the "**Promotional Links**"). The Promotional Links may contain logos or identifying marks. The Affiliate's use of the Promotional Links will at all times be subject to this agreement. The Affiliate may display the Promotional Links in accordance with its own site design, on condition that the Affiliate does not alter, modify, or expand the Promotional Links in any way without the Company's advance written consent.

4. **Program Requirements**

4.1 **Compliance with Law.** The Affiliate will comply with all applicable laws and regulations.

4.2 **Prohibited Conduct.** The Affiliate is responsible for all content posted on the Affiliate Sites. The Affiliate will not engage in the following prohibited conduct:

(a) **Depictions of Minors.** The Affiliate will not disseminate, post on the Affiliate Sites, or provide links to any material that involves depictions of nudity or sexuality by an age inappropriate-appearing model (that is, a model who looks younger than 18-years old) or by a model who is portrayed or made to appear as a person under 18-years old by virtue of the script, make-up, costuming, demeanor, setting, etc.

(b) **Illegal or Objectionable Content.** The Affiliate will not disseminate, post on the Affiliate Sites, or provide links to any obscene material, including any material depicting child pornography, incest, scat, defecation, feces, urination,

menstruation, genital mutilation, necrophilia, bestiality, sadomasochistic abuse or bondage, actual or simulated rape, sexual violence, actual violence inflicted on individuals by themselves or others, torture, or death. Nor will the Affiliate disseminate, post on the Affiliate Sites, or provide links to any content or materials of the following nature: warez, distribution of pirated content, prostitution or escort services, human trafficking, gambling, or controlled substances (including related paraphernalia).

(c) **Spam.** The Affiliate will not disseminate spam in connection with the Program. Although United States federal and state law does not prohibit all forms of spamming, the Company imposes a strict, no-spam policy for participants in the Program. What is spamming will evolve over time as new technologies and methodologies emerge for spammers to find new ways to abuse the Program. Some of the facts that the Company takes into account when determining what is spamming include the following:

- (i) If the Affiliate has violated a U.S. federal or state anti-spamming law, including any part of the CAN-SPAM Act of 2003 ([15 U.S.C. §§ 7701–7713](#)) or any of the federal regulations promulgated under the CAN-SPAM Act ([16 C.F.R. Part 316](#));
- (ii) If the Affiliate has violated another country’s anti-spamming law;
- (iii) If the Affiliate has violated any third-party anti-spamming policy;
- (iv) If the Affiliate has sent unsolicited bulk messages to nonconsenting recipients;
- (v) If the Affiliate has misleading or false information contained in its messages, subject line, or message headers;
- (vi) If the Affiliate uses automated means to collect, transmit, or sell email addresses of others;
- (vii) If the Affiliate uses a third-party website or program to automatically generate and send messages or content;
- (viii) If the primary purpose of the Affiliate’s message is commercial in nature; and
- (ix) The number of spam or abuse complaints that have been lodged against the Affiliate.

No one factor is controlling, and the Company will look to the particular circumstances of each case to determine what is spamming. When in doubt, don’t do it—you spam, you’re out.

(d) **Fraudulent and Deceptive Trade Practices.** The Affiliate will not engage in any fraudulent, deceptive, or unfair transactions or trade practices. The Affiliate will

comply with the Federal Trade Commission (FTC) statutes and regulations and all related rules, policies, and advisory opinions in advertising, marketing, and promoting the Program and the Program Sites, including the Restore Online Shoppers' Confidence Act ([15 U.S.C. §§ 8401–8405](#)); Guides Against Deceptive Pricing ([16 C.F.R. Part 233](#)); Guides Against Bait Advertising ([16 C.F.R. Part 238](#)); Guides Concerning Use of the Word “Free” and Similar Representations ([16 C.F.R. Part 251](#)); Guides Concerning Use of Endorsements and Testimonials in Advertising ([16 C.F.R. Part 255](#)); Use of Pre-Notification Negative Option Plans ([16 C.F.R. Part 425](#)); [FTC Policy Statement on Deception](#); [FTC Policy Statement on Advertising Substantiation](#); [FTC Policy Statement on Unfairness](#); and [FTC .com Disclosures: How to Make Effective Disclosures in Digital Advertising](#).

- (e) **Defamation and Related Conduct.** The Affiliate will not publish content on the Affiliate Sites that is defamatory, libelous, threatening, abusive, hateful, derogatory, disparaging, or otherwise injurious to any person or the reputation of anyone.
- (f) **United States Federal Record Keeping and Labeling Requirements.** The Affiliate and the Affiliate Sites will comply with the federal record keeping and labeling requirements codified at 18 U.S.C. §§ [2257–2257A](#) and the implementing regulations codified at [28 C.F.R. Part 75](#) (collectively, the “**§ 2257 Requirements**”). The Affiliate will act as the required “Custodian of Records” under the § 2257 Requirements for all content depicting actual sexually explicit conduct of an actual human being that may be used to promote or market the Program Sites regardless of who produced the content. The Affiliate will post a 2257 statement on the Affiliate Sites in the manner and locations required by the § 2257 Requirements.
- (g) **Intellectual Property Rights.** The Affiliate will not publish content on the Affiliate Sites that infringes the intellectual-property rights or other legal rights of any person, including copyright, patent, trademark, service mark, trade secret, trade dress, right of privacy, right of publicity, moral right, and any other proprietary right.
- (h) **Cybersquatting or Typosquatting.** The Affiliate will not use or register or try to use or register any domain name (including second-level, third-level, fourth-level, fifth-level, and so on), subdomain name, or directory that is identical or confusingly similar to a trademark or service mark in which the Company or another person has intellectual property or other legal rights.
- (i) **Paid Search Advertising Schemes.** The Affiliate will not bid on or purchase any online paid advertising schemes that incorporate or are confusingly similar to the Company’s trademarks, service marks, domain names, or URLs. The prohibited advertising schemes include pay-per-click models, sponsored links, search engine keywords, AdWords, or similar advertising schemes.
- (j) **Metatags.** The Affiliate will not use any false, misleading, or infringing metatags tied to the Affiliate Sites. In addition, the Affiliate will not use any metatags that

would imply or suggest that underage or illegal content may be found on the Affiliate Sites.

- (k) **Unethical Marketing Practices.** The Affiliate will not try to intercept, direct, redirect, divert, or usurp traffic (including through user-installed software) from, or divert fees from, any other participant in the Program. The Affiliate will not directly or indirectly offer any person any consideration or incentive (including payment of money or granting of any discounts or other benefits) to go to a Program Site using the Promotional Links on the Affiliate Sites; nor will the Affiliate require any person to join a Program Site as a prerequisite to accessing other products or services. The Affiliate will not try to directly or indirectly obtain usernames or passwords from end users of a Program Site, including persons whom the Affiliate referred to a Program Site.
- (l) **Misrepresentation of Relationship.** The Affiliate will not misrepresent the Affiliate's contractual relationship with the Company or imply that any relationship exists with the Company except as expressly provided in this agreement. For example, the Affiliate will not publish any statement indicating that the Company supports, endorses, or contributes to the Affiliate Sites except as expressly provided in this agreement.
- (m) **Unauthorized Distribution/Access.** The Affiliate will not post the Licensed Materials (or any other Company content) to any other website or VR application not owned by the Affiliate without the Company's advance written permission. Nor will the Affiliate use or distribute the Licensed Materials (or any other Company content) to any other person on a subscription-based method or otherwise provide access to the Licensed Materials (or any other Company content) for a bulk price. Affiliate's unauthorized distribution, access, or duplication of any content that the Affiliate obtains directly or indirectly through its participation in the Program is a material breach of this agreement.
- (n) **Malicious Code, Viruses, Etc.** The Affiliate will not use or offer for download any material that contains a virus malware, or malicious code, for example, a trojan horse, that has the potential of causing disruption or damage to any computer system, network, or server. The Affiliate will be liable to the Company for all damage caused by any program of this nature.
- (o) **Links to and Content of Others.** The Affiliate will not use the Licensed Materials, the Company marks, or any other of the Company's intellectual property to promote or link to any other website. No links to other sites are permitted on pages where the Licensed Materials are used.
- (p) **Use of Unapproved Promotional Materials.** The Affiliate will only use the Licensed Materials provided by the Company unless the Company states otherwise in writing. The Affiliate will not use any other material, whether created by the Affiliate or others, to promote the Program or the Program Sites unless the Company states otherwise in writing.

- (q) **Abuse of Promotional Links.** The Affiliate will not abuse the Promotional Links, including by using the Promotional Links to purchase credits on a Program Site; sharing, posting, or spamming the Promotional Links in any area of a Program Site; and recruiting existing customers to create a new user account via the Promotional Links. You should not engage in any blackhat seo/spam link building techniques in order to generate more referrals for VRB Cash. If we detect a pattern in your affiliate practices that in our reasonable opinion violates any aspect of the T&C, we reserve the right to suspend or terminate your affiliate account and cancel all outstanding commission payments due.

4.3 **Breach of Program Requirements.** The Company may withhold payments or terminate this agreement if the Affiliate breaches or otherwise violates this section 4.

- 5. **Affiliate's Duty to Notify.** The Affiliate will promptly notify the Company (a) of all URLs where the Affiliate will use the Licensed Materials; (b) whenever there are inquiries or concerns by any person regarding any questionable activities; or (c) if the Affiliate receives any inquiries or requests for information regarding any of the following: (i) prostitution; (ii) obscenity; (iii) child pornography or depictions of nudity or sexuality by minors; (iv) spam complaints; (v) infringement of intellectual-property rights; (vi) deceptive trade or unfair business practices; (vii) misleading search terms; (viii) invasion of publicity or privacy issues; (ix) fraudulent activities, including credit card fraud; and (x) any civil or criminal investigation or subpoena that pertains to the Affiliate unless applicable law prohibits the Affiliate from notifying the Company. The Affiliate's failure to comply with section 5 will constitute a material breach of this agreement. The Affiliate will be responsible for any damages to the Company based on the Affiliate's failure to notify the Company as required by section 5.

6. **Compensation**

6.1 **Commissions.** The Company will pay the Affiliate commissions based on the commission option chosen by the Affiliate. The Company currently offers the following commission options:

- (a) **Revenue Share.** The Company will pay the Affiliate a commission of up to 60% of the net revenues that the Company earns from each member referred through the Affiliate's Promotional Links for the life of that member's membership.
- (b) **Pay-Per Signup.** The Company will pay the Affiliate \$20 per trial and full signup referred through the Affiliate's Promotional Links.
- (c) **Affiliate Referrals.** For each new affiliate that the Affiliate refers to the Program through the Affiliate's Promotional Links, the Company will pay the Affiliate 5% of that affiliate's revenues for life.

6.2 **Payout Procedure**

- (a) The Company or its designated agent will make payouts to the Affiliate in accordance with the payout schedule set out in the affiliate portal, on condition that the Affiliate satisfies the minimum payout amount.

- (b) The Affiliate is responsible for ensuring that the payment information the Affiliate provides to receive payments is accurate. Neither the Company nor its designated agent will be liable for any payments that cannot be transmitted to

the Affiliate due to inaccurate payment information, or due to any technical or other problems with the Affiliate's chosen payment provider's system.

- (c) The Company will make all payouts in U.S. dollars. Unless the parties agree otherwise, the Company is not responsible for making payouts in any other currency, for any currency conversion charges or fees the Affiliate may incur as a result, or for any fluctuations in the respective value of any currency as compared to the U.S. dollar.
- (d) The Company is not responsible for any third-party fees charged by banks or financial institutions used to receive commissions. The Company may deduct third-party processing fees from the Affiliate's payout.
- (e) The Company will remove refunds, chargebacks and any wire fees from the Affiliate's commissions before disbursing payouts. If the chargebacks and refunds are greater than the Affiliate's last payout, the Company will withhold payment until the Affiliate's account stops incurring chargebacks and refunds.
- (f) The Affiliate will pay all taxes attributable to revenues earned under this agreement. On one or more occasions, the Company may request the Affiliate to provide tax information depending on the jurisdiction in which the Affiliate resides or is organized. The Affiliate will promptly comply with any request by the Company for tax information. If the Company requests tax information from the Affiliate and the Affiliate fails to provide it to the Company, the Company may withhold payment from the Affiliate until the Affiliate provides this information or otherwise satisfies the Company that the Affiliate is not a person from whom the Company is required to obtain tax information.
- (g) If the Affiliate disputes a payment or the calculation of a commission, the Affiliate will notify the Company in writing of the dispute or discrepancy no later than 30 days after the end of the pay period in which the disputed payment occurred. The Affiliate will include in its written notice a detailed statement describing the nature and amount of the dispute and all supporting evidence. The Affiliate will cooperate fully and in good faith with the Company to promptly address and try to resolve the dispute. If the Affiliate fails to timely notify the Company in writing, the parties will consider the Company's determination correct and binding on the Affiliate, and the Affiliate will not dispute the Company's determination.
- (h) The Company may cancel or change the payout methods available to the Affiliate, the timing of payouts, the minimum earnings required for a payout, and any other payout terms in its own discretion. The Company will generally provide notice of changes in the payout terms in the same way as it provides notice of changes to this agreement, but the Affiliate acknowledges that it is the Affiliate's responsibility to review the affiliate portal periodically for any changes to the payout terms.

6.3 Payout Limitations

- (a) The Company will pay the Affiliate for qualified signups only, that is the Company will only pay the Affiliate commissions if its system can track an end user to a Program Site from the time the end user clicks on a Promotional Link to the time of signup.
- (b) The Company will not pay the Affiliate a commission if (i) its system cannot process the Promotional Link; (ii) the referred webmaster does not make any money or the referred member does not make full payment; or (iii) if a Promotional Link directs a webmaster or member to a Program Site, but that webmaster or member leaves the Program Site and returns to sign up over 24 hours later without going through the Promotional Link.
- (c) The Company will not pay the Affiliate for any activity that the Company considers fraudulent, including (i) credit card numbers in a negative bin number database, (ii) multiple subscriptions/purchases from a single email address, (iii) multiple subscriptions/purchases with the same credit card number, (iv) subscriptions with past memberships to the Program Sites, (v) sequential names or patterns of names, (vi) many subscriptions/purchases from a Program Site in a short time span, and (vii) multiple attempts to subscribe/purchase from the same credit card. The Company reserves sole judgment in determining fraud and all determinations will bind the Affiliate. The Company may also deny or withhold commissions for any signups coming from any practices that breach this agreement. If the Company determines that the Affiliate is engaging in practices that breach this agreement, the Affiliate will not receive any credit or payment and will forfeit all credits or payments earned.
- (d) The Company may deny or withhold any payment to the Affiliate or terminate the Affiliate's participation in the Program if there has been an abnormal number of chargebacks, refunds, or cancellations of memberships from end users referred to the Company through the Affiliate's Promotional Links. The Company will determine what is an abnormal number of chargebacks, refunds, or cancellations based on its review of the situation and its experience with other affiliates. In addition, the Company may also deny or withhold payment to the Affiliate or terminate the Affiliate's participation in the Program due to any other suspicious behavior, including unusual conversion ratios, lack of or low quantity of referred user logins, or low referred user usage. The company may also deny payment if the company has determined or suspects that the affiliate has violated the terms of this agreement or used any black hat SEO techniques in order to ruin the companies SEO rank on the search engines.

7. **Affiliate's Actions and Responsibilities.** The Affiliate will be solely responsible for developing, operating, and maintaining the Affiliate Sites and for all materials that appear on the Affiliate Sites. The Affiliate's responsibilities include:

- 7.1 The technical operation of the Affiliate Sites and all related equipment;
- 7.2 Displaying the Promotional Links and Licensed Materials on the Affiliate Sites in compliance with this agreement;

7.3 Creating, posting, and ensuring the accuracy of materials posted on the Affiliate Sites;

- 7.4 Using the Licensed Materials, the Affiliate Sites, and the materials on the Affiliate Sites in a way that does not infringe any of the Company's rights or those of any other person (including copyrights, trademarks, privacy, publicity, or other intellectual property or proprietary rights);
- 7.5 Disclosing on the Affiliate Sites accurately and adequately, either through a privacy policy or otherwise, how the Affiliate collects, uses, stores, and discloses data collected from Affiliate Site visitors, including, where applicable, that third parties (including the Company and other advertisers) may serve content and advertisements, collect information directly from Affiliate Site visitors, and place or recognize cookies on Affiliate Site visitors' browsers; and
- 7.6 Making sure that any use that the Affiliate makes of the Licensed Materials complies with this agreement.
- 7.7 You are responsible for providing us with full and accurate account information and for keeping that information up to date. Such information includes, but is not limited to: contact details, all website URL(s) where our websites will be promoted, promotional practices and means, payment details, tax information and any other details we may require. We reserve the right to request additional data regarding all the websites where you promote our websites and the promotional practices you use. Failure to provide accurate information may result in exclusion from the Program, suspension or termination of your Affiliate account and forfeiture of any commissions.
- 7.8 You should not take actions or make recommendations to your referrals that result in a potential revenue loss for VRB Cash and its websites.

The Company will not be liable to the Affiliate or any other person for the Affiliate's acts or omissions under this section 7.

8. Signup Processing; Statistics and Reporting

- 8.1 The Company will process all signups from end users who follow the Promotional Links on the Affiliate Sites to the Program Sites. The Company may reject signups that do not comply with the Program Sites' requirements, which may be updated from time to time.
- 8.2 The Company will track qualified signups for reporting and commission accrual purposes. The Company will use reasonable efforts to provide the Affiliate with access to real-time traffic reporting, qualified signups, and revenue statistics. The Affiliate acknowledges that in calculating the Affiliate's earnings, the Company's good faith determination of any amount owed will be the final and binding determination. The Affiliate will not try to artificially inflate its traffic reporting, qualified signups, and revenue statistics by misleading or abusive practices.

9. **Policies and Pricing.** Webmasters and members referred through the Promotional Links are the Company's webmasters and members with respect to all activities they undertake in connection with the Program or the Program Sites. Thus, as between the Affiliate and the Company, all commissions, pricing, terms, rules, policies, and operating procedures concerning webmaster signups, member signups, and customer service set out on the Program Sites will apply to those webmasters and members, and the Company may change them at any time without notifying the Affiliate.
10. **Data Ownership.** The Company will have sole ownership of and full right to use all webmaster and member information generated by the Affiliate in connection with this agreement. The Affiliate will not have any rights in and to any webmaster or member information or data behind that webmaster or member information. The Affiliate will not (a) transfer, export, display, forward, or otherwise share any webmaster or member information or data contained in it to or with any third party; or (b) use any webmaster or member information or data contained in it on the Affiliate's own behalf in any way not expressly authorized by the Company in writing.
11. **Affiliate Site Privacy Requirements.** The Affiliate will conspicuously post a privacy policy on the

Affiliate Sites. The Affiliate's privacy policy will fully, accurately, and concisely describe (1) what information is being collected by the Affiliate; (2) the purpose of collection; (3) how information is used and shared; and (4) that other parties (i.e., ad networks, analytics providers, etc.) may collect personally identifiable information about an individual consumer's online activities over time and across different websites when the individual uses the Affiliate Sites or services. The Affiliate's privacy policy must comply with the EU General Data Protection Regulation (GDPR) if the Affiliate solicits individual webmasters or members from the European Economic Area. The Affiliate's privacy and data security practices must make sure that email, telephone, and other marketing practices, and applicable opt in and opt out policies and procedures, comply with all applicable laws.

12. **Electronic Consent.** The Affiliate will conspicuously post an electronic consent policy to the Affiliate Sites. The Affiliate will obtain consent to provide required disclosures, documents, and information to the Affiliate's end users electronically.

13. **Statements of Fact**

13.1 **By the Affiliate.** The Affiliate states that the following facts are accurate and will continue to be accurate during this agreement:

- (a) If the Affiliate is an individual, the Affiliate is at least 18-years old and has the legal capacity to enter into this agreement. If the Affiliate is an entity, it is duly organized, validly existing, and in good standing as a legal entity under the laws of its jurisdiction of incorporation, organization, or chartering.
- (b) The Affiliate has the power to enter into this agreement and to perform its obligations under this agreement.
- (c) The Affiliate owns or has the right to operate the Affiliate Sites.
- (d) The Affiliate owns or has a license for all content found on each Affiliate Site, including all text, audio, images, and videos displayed on each Affiliate Site.
- (e) The Affiliate has independently evaluated the desirability of participating in the Program.
- (f) The revenue the Affiliate earns through the Program is and will be directed solely to the Affiliate, and the Affiliate is not authorized to transfer the Affiliate's checks to or deposit the Affiliate's checks with any third parties other than bona fide financial institutions.
- (g) The Affiliate is not an individual, organization, or entity listed on The Office of Foreign Assets Control Specially Designated Nationals or Blocked Persons list, as published and updated by the United States Department of Treasury.
- (h) Each Affiliate Site and the content on each Affiliate Site
 - (i) does not infringe the Company's or any other person's intellectual property rights;

- (ii) does not violate third-party publicity or privacy rights;
 - (iii) does not promote violence, racial intolerance, or illegal activities;
 - (iv) does not promote or facilitate the prostitution of another person or otherwise promote escort services;
 - (v) does not depict bestiality, necrophilia, genital mutilation, sadomasochistic abuse or bondage, defecation, urination, bleeding, enema play, menstruation, rape, extreme violence, torture, incest, or any other obscene material;
 - (vi) does not depict minors in adult or sexual situations or otherwise target persons under 18-years old or the age of majority, whichever is greater;
 - (vii) does not violate any law governing false or deceptive advertising, sweepstakes, gambling, comparative advertising, or trade disparagement;
 - (viii) is free of any "worm," "virus," malware, or other device or code that could impair or injure any person or any person's property;
 - (ix) is not otherwise defamatory, vulgar, or obscene; and
 - (x) complies with the program requirements set out in section 4.
- (i) The Affiliate is generally familiar with the nature of the Internet and complies with all laws and industry standards.
 - (j) The Affiliate's performance under this agreement does not breach any agreement or obligation between the Affiliate and a third party or violate any law.
 - (k) The Affiliate's collection and use of personally identifiable information does not breach the privacy policy or violate any law that governs the Affiliate's collection and use of personal information.
 - (l) The Affiliate has obtained opt-in consent from any individual whose information the Affiliate transfers to the Company for that individual to be contacted by and marketed to by the Affiliate and third parties.
 - (m) The Affiliate and each Affiliate Site complies with 18 U.S.C. §§ 2257–2257A and the implementing regulations codified at 28 C.F.R. Part 75.

13.2 By the Company. The Company states that the following facts are accurate:

- (a) It is duly organized, validly existing, and in good standing as a limited liability company under the laws of the state of California.

- (b) It has the power to enter into this agreement and to perform its obligations under this agreement.
- (c) It owns or has the right to operate the Program and the Program Sites.
- (d) It owns or has the right to license the Licensed Materials.

14. **Confidentiality**

14.1 Neither party will use or disclose to any third party the other party's Confidential Information except as necessary for the performance of this agreement or to enforce this agreement. The confidentiality obligations will not restrict either party from disclosing Confidential Information of the other party in accordance with a court order from a court of competent jurisdiction, on condition that the party required to make the disclosure gives reasonable advance written notice to the other party so that it may contest the order and if that disclosure is required, only discloses the part of the Confidential Information that its legal counsel advises is legally required.

14.2 "**Confidential Information**" consists of (a) any technical information or plans concerning the Program or any software or other technology of the Company; (b) any financial information of the other party; (c) other information disclosed by one party to the other party that is marked as confidential or should reasonably be assumed to be confidential under the circumstances; and (d) the content of this agreement. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of or breach of the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is obtained by the receiving party rightfully from a third party who has no duty of confidentiality to the disclosing party.

15. **Publicity.** The Company may use the Affiliate's trade names, trademarks, service marks, or logos in presentations, marketing materials, affiliate lists, financial reports, website listings of affiliates, or advertisements without advance written approval. The Affiliate may use the Company's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features solely in connection with performing under this agreement so long as the Affiliate complies with this agreement.

16. **Privacy.** For information about how the Company collects, uses, and shares the Affiliate's information, please review the [Privacy Policy](#). The Affiliate acknowledges that by participating in the Program, the Affiliate consents to the Company's collection, use, and sharing of this information (including the transfer of this information to the United States or other countries for the Company's storage, processing, and use).

17. **Non Disparagement.** During this agreement and for two years after its termination, the Affiliate will not take any action that is intended, or would reasonably be expected, to harm the Company or its reputation or that would reasonably be expected to lead to unwanted or unfavorable publicity to the Company. But nothing will prevent the Affiliate from making any truthful statement in connection with any legal proceeding or investigation by the Company or any government body.

18. Warranty Disclaimers

- 18.1 The Company is not making any guarantee of profitability or about the amount of money the Affiliate will earn through the Program. The Affiliate acknowledges that past affiliate earnings do not guarantee or suggest similar future earnings.
- 18.2 The Company is not making any warranty—express, implied, oral, or otherwise—that
- (a) the Program, the Program Sites, or the Licensed Materials will be timely, uninterrupted, or error-free (whether as a result of technical failure, acts or omissions of third parties, or other causes) or will operate in combination with any other hardware, software, system, or data;
 - (b) the Program, the Program Sites, or the Licensed Materials will be suitable or otherwise meet the Affiliate’s requirements or expectations;
 - (c) the Program, the Program Sites, or the Licensed Materials will be accurate or reliable;
 - (d) errors or defects in the Program, the Program Sites, or the Licensed Materials will be corrected; or
 - (e) the servers that make the Program, the Program Sites, and the Licensed Materials available are free of viruses and other harmful components.
- 18.3 The Company offers the Program, the Program Sites, and the Licensed Materials “as is.” The Company is not making any warranty, either express or implied, including the implied warranty of merchantability, fitness for a particular purpose, and noninfringement for the Program, the Program Sites, and the Licensed Materials. No advice or information, whether oral or written, obtained from the Company or elsewhere will create any warranty not expressly stated in this agreement.

19. Limit of Liability

- 19.1 The Program, the Program Sites, or the Licensed Materials may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. The Company is not liable for any delays, delivery failures, or other damage resulting from these problems.
- 19.2 The Company will not be liable to the Affiliate for any of the following:
- (a) Errors, mistakes, or inaccuracies in the Program, the Program Sites, or the Licensed Materials;
 - (b) Content or conduct that is infringing, inaccurate, obscene, indecent, offensive, threatening, harassing, defamatory, libelous, abusive, invasive of privacy, or illegal;
 - (c) Unauthorized access to or use of the Company’s servers and any personal or

financial information stored in them, including unauthorized access or changes to the Affiliate's account, transmissions, or data;

- (d) Interruption or cessation of transmission to or from the Program or the Program Sites;
- (e) Denial-of-service attack (DoS) or distributed denial-of-service attack (DDoS);
- (f) Bugs, viruses, Trojan horses, malware, ransomware, or other disabling code that may be transmitted to or through the Program, the Program Sites, or the Licensed Materials by any person or that might infect the Affiliate's computer or affect the Affiliate's access to or use of the Program, the Program Sites, the Licensed Materials, or the Affiliate's other services, hardware, or software;
- (g) Incompatibility between the Program, the Program Sites, or the Licensed Materials and the Affiliate's other services, hardware, or software;
- (h) Delays or failures the Affiliate might experience in starting, conducting, or completing any transmissions to or transactions through or with the Program, the Program Sites, or the Licensed Materials; or
- (i) Loss or damage incurred because of the use of any content posted, emailed, sent, or otherwise made available through the Program or the Program Sites.

19.3 The Company will not be liable to the Affiliate for breach-of-contract damages that the Company could not reasonably have foreseen on entry into this agreement. The Company also will not be liable to the Affiliate—regardless of theory of liability and even if the Affiliate advised the Company of the possibility of these damages—for any damages for: (a) loss of use; (b) loss of services; (c) loss of profits; (d) loss of revenue; (e) loss of goodwill; (f) loss of contracts; (g) loss of data; (h) loss of privacy; (i) loss of business or opportunity; or (j) cost of obtaining substitute services related to the Program, the Program Sites, or the Licensed Materials.

19.4 Except as stated in this agreement, neither party will be liable to the other party for indirect, incidental, special, statutory, exemplary, or punitive damages arising from or relating to this agreement, regardless of theory of liability and even if that party knew or should have known of the possibility of these damages, including loss of revenue or anticipated profits or lost business.

19.5 The Company's total cumulative liability to the Affiliate for any breach of this agreement will not exceed the greater of the total amount owed to the Affiliate under this agreement and \$500.

20. **Scope of Disclaimers and Limitations.** The disclaimers and limits stated in sections 18 and 19 apply to the greatest extent allowed by law, but no more. The Company does not intend to deprive the Affiliate of any mandatory protections provided to the Affiliate by law. Because some jurisdictions may prohibit the disclaimer of some warranties, the limitation of some damages or other matters, one or more of the disclaimers or limitations might not apply to the Affiliate.

21. Indemnification

21.1 **In General.** The Affiliate will pay the Company for any loss of the Company's that is caused by the Affiliate's (a) use of the Program, the Program Sites, or the Licensed Materials; (b) failure to pay taxes in connection with revenues earned under this agreement; (c) dispute with any affiliate, member, or any other person; (d) breach of this agreement, including any statement of fact in section 13.1; (e) infringement of any third party's intellectual property rights; (f) violation of any applicable law; (g) fraudulent or deceptive conduct or trade practices; or (h) tortious or criminal acts or omissions. But the Affiliate is not required to pay if the loss was caused by the Company's intentional misconduct.

21.2 Definitions

(a) **"Loss"** means an amount that the Company is legally responsible for or pays in any form. Amounts include, for example, a judgment, a settlement, a fine, damages, injunctive relief, staff compensation, a decrease in property value, and expenses for defending against a claim for a loss (including fees for legal counsel, expert witnesses, and other advisers). A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes incidental, direct, and consequential damages.

(b) A loss is **"caused by"** an event if the loss would not have occurred without the event, even if the event is not a proximate cause of the loss.

21.3 **Company's Duty to Notify.** The Company will notify the Affiliate before the 15th business day after the Company knows or should reasonably have known of a claim for a loss that the Affiliate might be obligated to pay. The Company's failure to give the Affiliate timely notice does not terminate the Affiliate's obligation, except to the extent that the failure prejudices the Affiliate's ability to defend the claim or mitigate losses.

21.4 Legal Defense of a Claim

(a) **Company's Control.** The Company has control over defending a claim for a loss (including settling it) unless the Company directs the Affiliate to control the defense.

(b) **Direction to Control.** If the Company directs the Affiliate to control the defense, each of the following applies:

(i) The Affiliate may choose and retain legal counsel.

(ii) The Company may retain its own legal counsel at its expense.

(iii) The Affiliate will not settle any litigation without the Company's written consent if the settlement (1) imposes a penalty or limitation on the Company, (2) admits the Company's fault, or (3) does not fully release the Company from liability.

- (c) **Good Faith.** The Company and the Affiliate will cooperate with each other in good faith on a claim.

21.5 **No Exclusivity.** The Company's rights under this section 21 do not affect other rights that the Company might have.

22. **Dispute Resolution**

22.1 **Litigation Election.** Either party may elect to litigate the following type of case or controversy: (a) an action seeking injunctive relief; (b) an action seeking to enforce or protect intellectual-property rights; (c) a dispute related to claims subject to indemnification under section 21; or (d) a suit to compel compliance with this dispute resolution provision.

22.2 **Negotiation.** Each party will give the other a reasonable opportunity to comply before it claims that the other has not met its obligations under this agreement. The parties will first meet and negotiate with each other in good faith to try to resolve all disputes between the parties relating to this agreement. The party raising a dispute will submit to the other party a written notice and supporting material describing all issues and circumstances related to the dispute (a "**dispute notice**"). A primary representative designated by each party will try to resolve the dispute.

22.3 **Mediation.** If the parties' primary representatives are unable to resolve the dispute within 30 days after receiving the dispute notice, either party may, by notice to the other party and the American Arbitration Association, demand mediation under the Commercial Mediation Rules of the American Arbitration Association. Mediation will take place in Los Angeles County, California, and the language of the mediation will be English. Each party will bear its own costs in mediation and the parties will share equally between them all third-party mediation costs unless the parties agree otherwise in writing. Each party will participate actively and constructively in mediation proceedings once started and will attend at least one joint meeting between the mediator and the parties. Any party may terminate mediation at any time after an initial meeting between the mediator and the parties.

22.4 **Arbitration**

- (a) If the parties fail to settle a dispute through mediation, the parties will settle any unresolved dispute arising out of or relating to this agreement, or the breach of it, by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve any dispute arising under or relating to the interpretation, applicability, enforceability, or formation of this agreement, including any claim that any part of this agreement is void or voidable.
- (b) A single arbitrator will preside over the arbitration. The arbitrator may grant whatever relief would be available in a court under law or in equity, except that the arbitrator will not award punitive or exemplary damages, or damages otherwise limited or excluded in this agreement. The arbitrator will issue a final

award on all issues submitted to the arbitrator, which award must set out findings of fact and conclusions of law. The arbitrator's award will be binding on the parties and may be entered as a judgment in any court of competent jurisdiction.

- (c) Arbitration will take place in Los Angeles County, California, and the language of the arbitration will be English. Subject to the prevailing party's rights under section 22.7, the parties will bear equally the costs of arbitration, including the fees and expenses of the arbitrator, and each party will bear the costs associated with its case.
- (d) Unless required by law, neither a party nor an arbitrator will disclose the existence, content, or results of any arbitration under this agreement without the advance written consent of both parties.

22.5 **Injunctive Relief.** The Affiliate acknowledges that breach by it of its obligations under this agreement could cause irreparable harm for which damages would be an inadequate remedy. If any breach occurs or is threatened, the Company may seek an injunction or a restraining order, in each case without posting a bond or other security.

22.6 **Jurisdiction and Venue**

- (a) If a party brings any proceeding authorized under section 22.1, that party will bring that proceeding only in the United States District Court for the Central District of California or any state court of competent jurisdiction in Los Angeles County, California, and each party hereby submits to the exclusive jurisdiction and venue of those courts for purposes of any proceeding.
- (b) Each party hereby waives any claim that any proceeding brought in accordance with section 22.6(a) has been brought in an inconvenient forum or that the venue of that proceeding is improper.

22.7 **Recovery of Expenses.** In any proceedings between the parties arising out of this agreement or relating to the subject matter of this agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs in those proceedings, including legal fees and expenses. For purposes of this section 22.7, "**prevailing party**" means, for any proceedings, the party in whose favor an award is rendered, except that if in those proceedings the award finds in favor of one party on one or more claims or counterclaims and in favor of the other party on one or more other claims or counterclaims, neither party will be the prevailing party. If any proceedings are voluntarily dismissed or are dismissed as part of settlement of that dispute, neither party will be the prevailing party in those proceedings.

22.8 **Jury Trial Waiver.** Each party hereby waives its right to a trial by jury in any proceedings arising out of or related to the subject matter of this agreement. Either party may enforce this waiver up to and including the first day of trial.

22.9 **Class Action Waiver.** The parties will conduct all proceedings to resolve a dispute in any

forum on an individual basis only. Neither the Affiliate nor the Company will seek to have any dispute heard as a class action or participate in any other proceeding in which either party acts or proposes to act in a representative capacity. The parties will not combine any proceeding with another without the advanced written consent of all parties to all affected proceedings.

- 22.10 **Limited Time to Bring Claims.** A party will not bring a claim arising out of, or related to the subject matter of, this agreement more than one year after the cause of action first arose. Any claim brought after one year is barred.

23. **Term and Termination; Survival**

- 23.1 **Term.** This agreement begins on the Affiliate's signup and ends when terminated by either party.
- 23.2 **Termination.** Either party may terminate this agreement for any reason by giving the other party a written notice of termination. The Affiliate's breach of this agreement may result in the Affiliate's immediate dismissal from the Program, with no obligation to the Company except to pay for earned commissions up to the point of termination unless this agreement provides otherwise. The Affiliate will forfeit all commissions due if the Company terminates the Affiliate from the Program because of the Affiliate's fraudulent activity or for any breach of the program requirements set out in section 4.
- 23.3 **Survival.** Any part of this agreement that imposes an obligation after termination will survive the termination, including all disclaimers and limitations of liability.

24. **General**

- 24.1 **Entire Agreement.** This agreement and the [Terms-of-Service Agreement](#) constitutes the entire agreement of the parties concerning the subject matter of this agreement. It supersedes all earlier written or oral discussions, negotiations, proposals, undertakings, understandings, and agreements between the parties concerning the subject matter. If any conflict or inconsistent exists between this agreement and the [Terms-of-Service Agreement](#), this agreement will govern.
- 24.2 **Amendment.** The Company may change this agreement on one or more occasions, except that changes will not apply to ongoing disputes or to disputes arising out of events occurring before the posted changes. The Company will notify the Affiliate through the affiliate portal of any changes to this agreement. Changes will become effective when posted in the affiliate portal. It is the Affiliate's responsibility to check the affiliate portal periodically for changes to this agreement. If the Affiliate continues to participate in the Program after any change, the Company will consider the Affiliate's continued participation as acceptance of the change unless the Affiliate notifies the Company in writing of the Affiliate's disagreement and the reasons for the Affiliate's disagreement no later than 15 days after the change. The Company will contact the Affiliate no later than 15 days after receiving the Affiliate's written notice to try to reach a mutually amicable resolution. If the Company is unable to resolve the Affiliate's disagreement with the changes, the Affiliate's sole remedy is to terminate this agreement.

- 24.3 **Assignment and Delegation.** The Affiliate will not assign any of its rights or delegate any performance under this agreement, except with the Company's advance written consent. The Company may assign its rights or delegate its performances under this agreement without the Affiliate's consent. Any purported assignment of rights or delegation of performance in breach of this section 24.3 is void.
- 24.4 **Waivers.** The parties may waive any provision in this agreement only by a writing signed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this agreement, and no act, omission, or course of dealing between the parties, operate as a waiver or estoppel of any right, remedy, or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.
- 24.5 **Severability.** The parties intend as follows:
- (a) that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
 - (b) that if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, the entire agreement will be held unenforceable;
 - (c) that if an unenforceable provision is modified or disregarded in accordance with this section 24.5, then the rest of the agreement will remain in effect as written; and
 - (d) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.
- 24.6 **Notices.** All notices and other communications between the parties will be in writing. The Affiliate may send notice to the Company by email at legal@vrbangers.com. The Company may notify the Affiliate by email using email address identified in the Affiliate's account. The Company will consider an email notice received by it only when the Company's server sends a return message to the Affiliate acknowledging receipt. The Company will consider notices sent to the Affiliate by email received when the Company's email service shows transmission to the Affiliate's email address. All other notices will be effective on receipt by the party to which notice is given, or on the fifth day after mailing, whichever occurs first.
- 24.7 **Governing Law.** California law, without giving effect to its conflicts of law principles, governs all matters arising out of or relating to this agreement, including its validity, interpretation, construction, performance, and enforcement.
- 24.8 **Force Majeure**

- (a) If a force majeure event prevents a party from complying with any one or more obligations under this agreement, that inability will not constitute a breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that force majeure event or (B) develop and keep a reasonable contingency plan to respond to events or circumstances of the same type as that force majeure event, and (3) that party complies with its obligations under section 24.8(c).
- (b) For purposes of this agreement, "**force majeure event**" means, for any party, any event or circumstance, whether or not foreseeable, that was not caused by that party (other than a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstances that results in that party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance.
- (c) If a force majeure event occurs, the noncomplying party will promptly notify the other party of occurrence of that force majeure event, its effect on performance, and how long the noncomplying party expects it to last. From then on, the noncomplying party will update that information as reasonably necessary. During a force majeure event, the noncomplying party will use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

- 24.9 **No Third-Party Beneficiaries.** This agreement does not, and the parties do not intend it to, confer any rights or remedies on any person other than the parties to this agreement.
- 24.10 **Relationship of the Parties.** The parties intend that their relationship will be that of independent contractors and not business partners. This agreement does not, and the parties do not intend it to, create a partnership, joint venture, agency, franchise, or employment relationship between the parties and the parties expressly disclaim the existence of any of these relationships between them. Neither of the parties is the agent for the other, and neither party has the right to bind the other on any agreement with a third party.
- 24.11 **Successors and Assigns.** This agreement binds and inures to the benefit of the parties and their respective successors and assigns. This section 24.11 does not address, directly or indirectly, whether a party may assign its rights or delegate its obligations under this agreement. Section 24.3 addresses these matters.
- 24.12 **Electronic Signatures.** The Affiliate acknowledges that any affirmation, assent, or agreement the Affiliate sends through the affiliate portal in response to a prompt binds the Affiliate. The Affiliate further acknowledges that when the Affiliate clicks on an "I agree," "I consent," or other similarly worded "button" or entry field using a finger (for touch enabled devices), mouse, keystroke, or other device, this action is the legal

equivalent of the Affiliate's handwritten signature and binds the Affiliate in the same way.

- 24.13 **Voluntary Agreement.** The parties acknowledge that they (i) have carefully read this agreement, (ii) discussed it with their attorneys or other advisors, (iii) understand all the terms, and (iv) will comply with it. The parties have relied on the advice of their attorneys or other advisors about the terms of this agreement and waive any claim that the terms should be construed against the drafter.
- 24.14 **No Reliance.** Each party acknowledges that in signing this agreement, that party does not rely and has not relied on any statement by the other party or its agents, except those statements contained in this agreement.
- 24.15 **Permission to Send Emails to the Affiliate.** The Affiliate grants the Company permission to email notices, advertisements, and other communications to the Affiliate, including emails, advertisements, notices, and other communications containing adult oriented material, sexual content and language, and images of nudity unsuitable for minors. The Affiliate's permission will continue until the Affiliate asks the Company to remove the Affiliate from the Company's email list. For more information, please see the [Privacy Policy](#).
- 24.16 **Feedback.** The Company encourages the Affiliate to give feedback about the Company, the Program, the Program Sites, or the Licensed Materials. But the Company will not treat as confidential any suggestion or idea the Affiliate gives, and nothing in this agreement will restrict the Company's right to use, profit from, disclose, publish, or otherwise exploit any feedback, without payment to the Affiliate.
- 24.17 **English Language.** The parties have drafted this agreement in the English language, and no translation into any other language will be used to interpret or construe this agreement. All services, support, notices, designations, specifications, and communications will be provided in the English language.