

SKRITTER.COM INDEPENDENT AFFILIATE MARKETING AGREEMENT

This Independent Affiliate Marketing Agreement (herein the “Agreement”) is entered into today (herein “Effective Date”) by and between Skritter, Inc., an Ohio corporation with its principal place of business at Oberlin (herein “Skritter”) and yourself (hereafter known as “Affiliate”).

WHEREAS, Skritter developed and owns all right, title and interest in certain works of authorship and invention including without limitation an Internet-based language teaching application together with licensed copyrighted information of which are licensed on the skritter.com website (herein the “Application”); and

WHEREAS, Affiliate desires to market and promote the Application to prospective End Users, as defined in the Agreement herein, utilizing non-electronic forms of communication; and

NOW THEREFORE, in consideration of the mutual promises contained herein, Skritter and Affiliate agree as follows:

- 1. Grant of License.** Skritter, which shall refer to Skritter, Inc., its employees, directors, parent companies, subsidiaries, affiliated entities, and authorized agents, grants to Affiliate a revocable, non-exclusive, worldwide, royalty-free license for the term of this Agreement, solely for purposes of facilitating referrals to Skritter through the use of physical coupons. Skritter will provide you with guidelines and graphical artwork to use in the generation of such coupons. To permit accurate tracking, reporting, and referral fee accrual, Skritter will provide Affiliate with unique coupon codes that Affiliate will use on all coupons it distributes. Affiliate will only utilize each coupon code once. Skritter is not obligated to honor any coupons utilizing a previously used coupon code and Skritter may, at its sole discretion, reduce any fees owed to Affiliate under this Agreement for each unique coupon code distributed to more than one individual. Affiliate acknowledges and agrees that as a party to this Agreement, Skritter may from time to time send Affiliate email updates about the coupons and Affiliates participation in marketing and promotion activities. Affiliate acknowledges that this Agreement constitutes consent to Skritter sending Affiliate such email updates. This license provides for Affiliate to distribute coupons and coupon codes through Affiliates own marketing and promotional activates and expressly forbids Affiliate from selling or trading any coupon or coupon code for money, goods, or services.
- 2. Barred States of Operation or Residency.** Affiliate warrants and represents it is not principally located in, or a resident of, North Carolina or Rhode Island. If, at any time following the Effective Date, Affiliate becomes principally located in, or a resident of, North Carolina or Rhode Island, Affiliate will notify Skritter of this fact and this Agreement will automatically terminate on the date Affiliate established principal business operations or residency in North Carolina or Rhode Island.
- 3. Order Processing.** Skritter will process orders placed by Affiliates who utilize coupon codes from your printed coupons. Skritter reserves the right to reject orders that do not comply with any requirements that it already has established, or may establish in the future, at its sole option. Skritter will be responsible for all aspects of order processing and fulfillment. Among other things, Skritter will prepare order forms, process payments, cancellations, and returns, and handle all aspects of customer service. Skritter will track sales made to customers who purchase Skritter’s products utilizing Affiliate’s coupon codes and Skritter will make available to Affiliate reports summarizing such sales activity. The form, content, and frequency of the reports may vary from time to time in Skritter’s sole discretion.
- 4. Referral Fees.** Skritter will pay you referral fees on the sale or license of certain Skritter products or subscriptions (collectively referred to as “Subscriptions”) to third parties who utilize Affiliate’s coupon codes. For any sale or license to be eligible to earn a referral fee, the customer must utilize a unique Affiliate coupon code provided to customer on a physical coupon during a single session at the time the customer first creates an account on the Website, defined as the skritter.com Internet website and any other websites owned by Skritter. Skritter shall only be obligated to pay referral fees on eligible purchases after it receives order and payment. For the purpose of clarity, Skritter shall have no obligation to honor any coupon codes provided to the customer by electronic means.

- 5. Barred Activities.** Affiliate will not purchase or license products or services utilizing coupon codes for resale or commercial use of any kind. This includes orders for customers or on behalf of customers or orders for products to be used by Affiliate or its employees, agents, parent companies, subsidiaries, friends, relatives, or associates in any manner. Such purchases may result in the withholding of referral fees and/or the termination of this Agreement, all at the sole discretion of Skritter. In addition, you may not:
- a. Directly or indirectly offer any person or entity any consideration or incentive (including, without limitation, payment of money (including any rebate), or granting of any discount or other benefit) for using coupon codes to access Skritter (e.g., by implementing any "rewards" program for persons or entities who use Affiliate's coupon codes access Skritter);
 - b. Make any orders or subscription requests, or engage in other transactions of any kind on Skritter on behalf of any third party, or authorize, assist, or encourage any other person or entity to do so;
 - c. Take any action that could reasonably cause any customer confusion as to the relationship between Skritter and Affiliate;
 - d. Other than providing physical coupons in accordance with this Agreement, post or serve any advertisements or promotional content promoting Skritter or otherwise around or in conjunction with the display of Skritter, or assist, authorize, or encourage any third party to take any such action;
- 6. Referral Fees.**
- a. **Qualifying Subscriptions.** Subscriptions that are eligible to earn referral fees under the terms of this Agreement are referred to as "Qualifying Subscriptions" unless those Subscriptions are purchased by a customer referred to Skritter through means other than Affiliate's printed coupons. Where customer's purchase of a Subscription references both Affiliate's printed coupons and electronic referral offers through Affiliate or any other party, Skritter, at its sole discretion, will honor only Affiliate's printed coupon and Skritter will not honor all other referral methods, all for the purpose of referral fee calculations. Subscriptions deemed by Skritter to not meet the requirements of Qualifying Subscriptions and are not eligible to earn referral fees of any kind.
 - b. **Referral Fee Structure.** During each calendar month, for Qualifying Subscriptions sold pursuant to the terms of this Agreement, Affiliate will earn the first sixteen dollars (US \$16.00) of "Qualifying Revenues" (defined as the revenue derived by Skritter from a customer as a result of sales of Qualifying Subscriptions sold through the use of Affiliate's printed coupons). For explanatory purposes, Skritter may charge customers nine dollars and ninety-five cents (US \$9.95/month) per month. Under such a pricing model, customer must continue to subscribe to Skritter's products and services for greater than one (1) month. Should Qualifying Revenues for a customer be below sixteen dollars (US \$16.00), Affiliate will receive 100% of the Qualifying Revenues. Qualifying Revenues in excess of sixteen dollars (US \$16.00) per customer will be the sole property of Skritter and in no event will be obligated to pay more than sixteen dollars (US \$16.00) to Affiliate for any single subscriber. Affiliate acknowledges and agrees that Skritter may establish Subscription fees in its sole discretion.
 - c. **Referral Fee Payment** Skritter will pay Affiliate referral fees calculated on a monthly basis for Qualifying Subscriptions purchased in the applicable month within sixty (60) days of the end of each calendar month, provided Affiliate's referral fees exceed fifty dollars (US \$50.00). Skritter will pay Affiliate all referral fees earned through any payment means of Skritter's choice, at its sole discretion, which may include payment through Paypal. Skritter makes no commitment expressed or otherwise to pay affiliates via wire transfer. Payments of less than fifty dollars (US \$50.00) will be withheld until a payment period ends in which the payable balance exceeds fifty dollars (US \$50.00). Skritter will not have any obligation to make payments except within sixty (60) days of the end of each calendar month regardless of affiliate account balances.
- 7. Policies and Pricing.** Customers who buy subscriptions utilizing coupon codes will be deemed Skritter's customers. Accordingly, all of Skritter's rules, policies, and operating procedures concerning customer orders, customer service, and subscription sales will apply to such customers. Skritter may change its policies and

operating procedures at any time in its sole discretion. For explanatory purposes, Skritter will determine the prices charged for products sold under this Agreement in accordance with Skritter's own pricing policies. Affiliate acknowledges and agrees that Subscription prices and availability may vary from time to time.

8. Identifying Yourself as an Affiliate.

- a. Promotional Releases.** Skritter encourages Affiliate to issue a press release with respect to Affiliates authorization to provide physical coupons. If Affiliate opts to issue such press release, Affiliate shall utilize graphics, quotes, or additional information from Skritter, by request, through the contact or press form on the Website. Affiliate shall not in any manner misrepresent or embellish the relationship between Skritter and Affiliate, or express or imply any relationship or affiliation between Skritter and Affiliate or any other person or entity except as expressly permitted by this Agreement (including by expressing or implying that Skritter supports, sponsors, endorses, or contributes money to any charity or other cause).
- b. Limited License.** The license granted in this Section 8 is a nonexclusive, revocable right to use the graphic image and text described herein and such other text or images for which Skritter may grant express permission, solely for the purpose of identifying Affiliate's authorization to provide coupon codes. Affiliate shall not use such images or text in any manner other than described herein. Affiliate may not modify the graphic image or text, or any other of our images, in any way. Skritter reserves all rights in the graphic image and text, any other images, its trade names and trademarks, and all other intellectual property rights. Skritter may revoke Affiliates license to use said graphics and text at any time by giving written notice to Affiliate.

9. Trademarks Restrictions; Quality Control.

- a. No Alterations.** Affiliate will not, and will not authorize anyone to, change or modify any Skritter trademarks, or create any design variation thereof, in any advertising, marketing, distribution or sales materials, or any other materials, except with the prior written consent of Skritter.
- b. No Combinations.** Affiliate will not, and will not authorize anyone to, without the prior written consent of Skritter, join any name, domain name, mark or logo with any Skritter trademarks so as to form a composite trade name, mark or domain name, except with prior written consent of Skritter. Violations of this provision include, but are not limited to (i) combining any Skritter in any username, group name, or other identifier on any social networking website. Examples of such violations include, but are not limited to, a username such as "Skritter Chinese," or "Skritter Japan" registered on a social networking site such as Twitter or Facebook; and (ii) including any Skritter trademark, or any variation or misspelling of any Skritter trademark, in any domain name such as, but not limited to, "skritter.mydomain.com", "skrittor.com", "skritter.net", or "facebook.com/skritterdealsgroup."
- c. Improper Appearances.** Affiliate will not, and will not authorize anyone to, knowingly utilize Skritter trademarks in any manner that might reasonably be expected to tarnish, disparage or reflect adversely upon Skritter or any Skritter trademarks, or the goodwill associated therewith. Furthermore, unless expressly authorized by Skritter, Affiliate will not utilize Skritter's branding in any manner that promotes another company, product, or service not contemplated by the Agreement herein. Violations of this provision include, but are not limited to, use of the Skritter trademarks with (i) sexually explicit materials; (ii) depictions of violent acts to humans or animals, or the promotion of such violent acts; (iii) the promotion of discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age; or (iv) The depiction or promotion of any illegal activities in violation of any federal or state laws;
- d. Similar Marks.** Affiliate will not, and will not authorize anyone to, adopt as a trademark, service mark, trade name, domain name or other designation any word, symbol or other form of identification that is the same as or confusingly similar to any of the Skritter trademarks (a "Similar Mark"). In addition to constituting a breach of this Agreement, initiation of use of any such Similar Mark shall be deemed to be for the benefit of Skritter and all right, title and interest in and to any such Similar Mark, together with all goodwill thereof, shall belong exclusively to Skritter.

- e. **Compliance with Law.** Affiliate shall undertake all measures necessary to ensure that its use of the Skritter trademarks complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties or the Skritter trademarks.
 - f. **No Transfer; Sublicensing.** Affiliate will not, and will not authorize anyone to, assign, sublicense, market, sell, lease, rent, distribute, convey or otherwise transfer, or pledge as security or otherwise encumber, the rights and licenses granted hereunder with respect to the Skritter trademarks.
 - g. **No Contest.** Affiliate acknowledges and admits the validity of the Skritter trademarks. Affiliate will not, directly or indirectly, challenge the validity of the Skritter trademarks, or any registrations thereof and/or applications therefore in any jurisdiction, or the right, title and interest of the Skritter trademarks therein and thereto, nor will it claim any interest in the Skritter trademarks in any jurisdiction, other than the rights expressly granted hereunder.
- 10. Compliance with Laws.** Affiliate agrees that it will comply with all laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions or other requirements of any governmental authority that has jurisdiction over Affiliate, whether those laws, etc. are now in effect or later come into effect during the term of this Agreement. Without limiting the foregoing obligation, Affiliate agrees that it will comply with all applicable laws (federal, state or otherwise) that may govern its marketing and promotional activities. Affiliates outside of the United States agree to be bound by the provisions United States Federal and State laws when engaging in marketing and promotional activities with customers located in the United States of America.
- 11. Term of the Agreement.** The term of this Agreement will begin upon the Effective Date and will end when terminated by either party, at any time, with or without cause, following written notice of termination to the other party. Upon the termination of this Agreement for any reason, both parties will immediately cease use of all coupons and coupon codes, cease all marketing activities, discontinue use of any Skritter trademarks or copyrighted information, and discontinue use all other materials provided by either party pursuant hereto or in connection with this Agreement. Skritter will not have any obligation to pay referral fees to Affiliate following termination of this Agreement.
- 12. Notification.** The parties hereby agree and understand that any and all written notices identified in this agreement shall be sent via email to skritter@skritter.com and the respective Affiliate email address (for the purposes of this agreement, this will be the address used to register for the affiliate program).
- 13. Disclaimers.** Skritter makes no express or implied warranties or representations with respect to the subject matter of the Agreement herein or any products or services offered, sold, or licensed by Skritter (including, without limitation, warranties of fitness, merchantability, noninfringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, Skritter makes no representation that the operation of Skritter's products and services will be uninterrupted or error-free, and Skritter will not be liable for the consequences of any interruptions or errors.
- 14. Limitation of Liability.** SKRITTER SHALL HAVE NO LIABILITY WITH RESPECT TO THEIR OBLIGATIONS UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, SKRITTER'S AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT AND THE PROGRAM WILL NOT EXCEED THE TOTAL REFERRAL FEES PAID OR PAYABLE TO AFFILIATE UNDER THIS AGREEMENT.
- 15. Assignment.** Affiliate hereby agrees and understands that Affiliate is not permitted to assign or transfer its rights or obligations as set forth in this Agreement, whether by operation of law or otherwise.
- 16. Independent Investigation.** AFFILIATE ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND AGREES TO ALL ITS TERMS AND CONDITIONS. AFFILIATE UNDERSTANDS THAT SKRITTER MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE

WEB SITES OR PROMOTIONAL ACTIVITIES THAT ARE SIMILAR TO OR COMPETE WITH AFFILIATE'S WEB SITE(S) OR PROMOTIONAL ACTIVITIES, IF ANY. AFFILIATE HAS INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND IS NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

17. Miscellaneous.

- a.** Skritter makes no representations or warranties, express or implied, by operation of law or otherwise except as expressly stated herein. Affiliate shall take such steps and execute such further documents as Skritter may reasonably request in order to protect Skritter's interest in, and ownership of the above noted copyrights. Affiliate shall fully cooperate and assist Skritter in preparing and conducting any litigation pertaining to any of its proprietary property or interests.
- b.** This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof, and supersedes all previous communications, representations or agreements either oral or written, with respect to the subject matter hereof and no representation or statements of any kind made by any representative of Skritter, which are not stated herein, shall be binding on Skritter. Except as otherwise stated herein, Skritter may modify any of the terms and conditions contained in this Agreement, at any time and in its sole discretion, by notifying you in writing. Modifications may include, for example, changes in the scope of available referral fees, referral fee schedules, payment procedures, and rules regarding the provision of physical coupons. AFFILIATE ACKNOWLEDGES AND AGREES THAT IF ANY MODIFICATION IS UNACCEPTABLE TO AFFILIATE, ITS ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. AFFILIATE'S CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING SKRITTER'S DISSEMINATION OF A NOTICE OF CHANGES IN THE TERMS OF THIS AGREEMENT WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.
- c.** This Agreement shall be deemed to be a contract made under the laws of the State of Ohio, and for all purposes shall be interpreted in its entirety in accordance with the laws of said State, without regard to rules regarding conflicts of laws principles. Any dispute relating in any way to the Program or this Agreement will be adjudicated in any state or federal court in Lorain County, Ohio. Each party agrees to subject itself to the personal jurisdiction of such court and shall not contest such jurisdiction or the venue of such court or the convenience of the forum. Affiliate further acknowledges and agrees that Skritter's rights in all aspects of its products, services, brands, copyrights, and trademarks are of a special, unique, extraordinary character, giving them peculiar value, the loss of which cannot be readily estimated and may not be adequately compensated for in monetary damages. Therefore, notwithstanding anything to the contrary in this Agreement, Skritter may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of our or any other person or entity's intellectual property or proprietary rights.
- d.** No course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this Agreement. If any portion of this contract is found to be invalid, such invalidity shall only affect such portion and all other portions of this contract shall remain in full force and effect. Skritter is not responsible for failure to fulfill its obligation under this contract due to causes beyond its control. In the performance of this Agreement, it is agreed that the parties shall be independent contractors. Neither this Agreement nor the performance thereof is intended to create an agency, joint venture, partnership or affiliation relationship between Affiliate and Skritter.
- e.** Skritter's failure to enforce Affiliate's strict performance of any provision of this Agreement will not constitute a waiver of Skritter's right to subsequently enforce such provision or any other provision of this Agreement.
- f.** This Agreement may be executed in several counterparts and may be executed by different parties on different counterparts, through facsimile, digital signature, or emailed PDF-format document (or other mutually agreeable document format), all of which together shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties. Facsimile, digital, or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof.