

## Affiliate Agreement

Between

Freebay AG  
Müligässli 1  
[CH-8598 Böttighofen](#)  
[Switzerland](#)

Registered at: Switzerland, Böttighofen  
Number: TR 3668  
Company Number: CHE-249.310.833

authorised recipient: Freebay AG

- hereinafter referred to as “Freebay” -

and

the Affiliate

together with Freebay, jointly referred to as “Contracting parties” – the following agreement is made:

### § 1

#### Subject matter of the agreement, marketing plan

1. Freebay mainly sells and develops adult education programs, software based algo-trading solutions and other products, as well as, merchandise articles in form of LifeCards which include precious metals according to the latest product Details. (hereinafter briefly referred to as: Freebay contract products). The qualified Affiliate shall have the right to recommend Freebay contract products as an independent, free and autonomous recommender for Freebay in accordance with the Affiliate’s respective national laws and the following provisions.
2. This agreement regulates the fundamental cooperation between the contracting parties. Incorporated with this agreement by reference, enclosure, link, back office download, and/or addendum is the current applicable marketing plan of Freebay, which contains the compensation guidelines for Affiliates. The current marketing plan is linked as “Compensation Plan”.
3. The Affiliate confirms that it has thoroughly checked, understood and accepted the currently applicable marketing plan. It explicitly declares that it acknowledges and approves this enclosure fully and completely.

4. Any deviation, contradictory, or supplementary changes coming from the Affiliate or from third parties shall become a part of the agreement only if and insofar as Freebay has consented to their validity explicitly and in writing.
5. This agreement transfers to the Affiliate only the limited right to use all product, trademark and industrial property rights. The Affiliate may not use or copy these rights at any time for its own account without consulting the rights holders. This also includes corresponding advertising material and product statements.

## § 2

### **Contractual prerequisites and relationship of the contracting parties with each other**

1. The Affiliate declares and assures that it fulfills all legal prerequisites and official conditions in order to commercially recommend precious metal sales in its respective country and to recommend Freebay contract products.
  - a. Where required by law, the Affiliate must independently register its trade with the competent authorities and institutions – even with its locally competent tax office;
  - b. Upon demand, the Affiliate must immediately furnish proof of all permits to Freebay and the Affiliate must maintain these documents in a current state.
  - c. The Affiliate shall be responsible for the fulfilment of all legal requirements including but not limited to: trade-law-related, tax-related, labour-law-related, competition-law-related and other legal obligations without any exceptions.
  - d. The Affiliate must properly declare compensation received for referrals to the appropriate tax authorities and pay tax on the same.

If the Affiliate has not fulfilled the stated prerequisites, it may not commence its activity. It is not Freebay's responsibility to verify the information. The affiliate keeps Freebay free from all possible legal consequences of false statements.

2. The Affiliate shall not have an employment relationship with Freebay under any labour law or jurisdiction. The Affiliate shall particularly determine the place, time, commencement and end as well as the type of its activity by itself; it shall itself bear the entrepreneurial commission risk and shall also not be entitled to remuneration during holidays or illness. The Affiliate shall be an independent contractor and must apply the diligence of a prudent businessman in its business. The Affiliate must follow their national laws as well as the applicable European Union Law regarding fair competition, the company's internal statutes and guidelines as well as Freebay' directives for business transactions. It must always ensure that its behaviour does not violate laws, regulations or official instructions. The Affiliate must follow Freebay compliance guidelines and instructions for the proper representation of Freebay contract products and will promote the free-affiliate program and marketing plan.
3. The Affiliate declares that, in addition to the Affiliate activity for Freebay, it works for third parties to a considerable extent. If the Affiliate is working or would work exclusively or primarily only for Freebay, it shall be obligated to immediately notify Freebay and if necessary, make applications for an exemption from the obligation to contribute to social

security with the competent institutions. If an exemption is not possible, the Affiliate must immediately notify Freebay. If it fails to do so, Freebay shall be authorised to recover any costs or liabilities for social security contributions from the Affiliate to the extent they are payable. This provision shall otherwise survive the termination of this agreement. In any case, the Affiliate will hold Freebay harmless in any form, in any jurisdiction and in any situation from possible claims for damages.

4. The Affiliate shall not be authorised to represent Freebay in legal or contractual transactions, particularly to make any declarations for Freebay at any time. Any declaration shall and will not bind Freebay, but the Affiliate itself that shall be solely responsible for any claims against Freebay. The Affiliate shall not have the power to represent Freebay. He does not have a power of attorney or any comparable legal means. It itself shall be liable for its declarations and must, if necessary, indemnify Freebay from all consequences of unauthorised declarations. Other entitlements and rights of Freebay shall remain unaffected.
5. Specifically, the Affiliate shall not be authorised to accept payments on behalf of Freebay. Customers cannot pay the Affiliate for products and services of Freebay. The Affiliate shall not have collection or payee authority for Freebay.

### § 3

#### Tasks and duties of the Affiliate

1. The Affiliate has a duty to protect Freebay' interests in all manners and to undertake that Freebay's reputation is not damaged by its actions.
2. The Affiliate shall have the task of recommending the Freebay contract products released by Freebay to customers. While doing so, it must inform the customers about the Freebay products truthfully and professionally. Upon the successful conclusion of a purchase contract personally recommended by the Affiliate, it shall be entitled to compensation in accordance with this Affiliate Agreement and the current marketing plan.
3. The Affiliate shall further be obligated to recommend other customers and Affiliates (down-line-affiliates). If these down-line-affiliates successfully recommend Freebay contract products resulting in the sale of Freebay contract products by Freebay, the Affiliate and the down-line-affiliate shall both receive compensation in accordance with this Affiliate Agreement and the current marketing plan.
4. The Affiliate may only recommend the sale of Freebay contract products which are released for sale in writing by Freebay and available in accordance with the laws and other legal provisions of the Affiliates' respective country.
5. The Affiliate shall not have any territorial protection. The Affiliate shall however be prohibited to headhunt customers or affiliates of Freebay for third parties, particularly for other affiliate marketing systems, or to induce directly, or indirectly, other affiliates to abandon, neglect, sell, or trade their existing account. The Affiliate shall further be prohibited from headhunting customers, affiliates, or down-line-affiliates of other affiliates of Freebay, which have an active account with Freebay, for itself or for third parties (so-called cross-recruiting). "Active account" within this meaning refers to an account, for which documents

have already been uploaded and/or through which at least one purchase of Freebay contract products has taken place.

6. The Affiliate shall be authorized to take advertising measures in the fair promotion of Freebay and Freebay contract products; the Affiliate must have prior approval by Freebay of any external presentation or promotion which concerns Freebay or uses any copyright or trademarks.
7. The Affiliate must regularly participate in web seminars of Freebay and forward the knowledge obtained there to its down-line-affiliates.
8. The Affiliate must constantly keep itself and the downstream recommendation partners supervised by it (down-line-affiliates) informed about the current Freebay contract products in the log-in of the Freebay website, the recommendation system and all the data and facts that are important for customers.
9. The Affiliate shall not be authorized to assign its claims against Freebay to third parties at any time. Set-off with counterclaims of the Affiliate, or retention of payments due to such claims, shall be permissible only if and as far as the counterclaims are undisputed, legally determined valid, or recognized by the company.
10. The Affiliate is entitled, and obliged, to have one Affiliate account during the agreement period. If the Affiliate operates more than one Affiliate account, then Freebay is entitled to terminate those accounts. Any other rights of Freebay remain unaffected.
11. The Affiliate guarantees that any form of advertising do not and will not violate laws, regulations, statutes or other legal or contractual provisions and do not infringe rights of third parties. It further guarantees that it shall not use any illegal marketing strategies or marketing strategies that violate this agreement.
12. The Affiliate shall indemnify Freebay from all claims of third parties, which are based on illegal behaviour, on behaviour that violates this agreement, or on behaviour that otherwise infringes on the rights of third parties. This shall also refer to the costs of appropriate prosecution and legal defense.
13. The Affiliate shall be authorized to deploy its own employees, sub-agents and other auxiliary persons for its activity. The Affiliate must ensure that these persons also adhere to the duties of this Affiliate Agreement.

#### **§ 4**

##### **Advertising guidelines**

1. As advertising materials, the Affiliate may exclusively use the original advertising materials provided to it by Freebay. The use of altered and modified advertising materials shall not be permitted at any time.
2. The Affiliate shall be responsible for the placement of the advertising materials. It shall also bear the costs associated with the implementation or placement and delivery of the advertising materials.

3. Advertisement on websites, which could damage Freebay's reputation, shall be prohibited. This includes, particularly but not exclusively, websites with illegal content, websites with pornographic or violence-glorifying content, websites discriminating against race, gender, religion, nationality, disability, sexual orientation or age, as well as websites promoting illegal acts or websites violating intellectual property.
4. The Affiliate must adhere to the terms of use of the websites, which it selects as advertising spaces.
5. The Affiliate must design on its own advertising spaces in accordance with the provisions of the Telemedia Act, consumer protection and data protection, particularly provide proper contact information. It must immediately remove illegal contents or contents violating rights of third parties and take suitable measures in order to not repeat such violations.
6. The Affiliate must ensure that the advertising materials are flawlessly integrated and delivered.
7. Freebay shall any time be authorized to re-design the advertising materials or replace them with new advertising materials. The Affiliate must ensure that it always uses the latest advertising materials.
8. The Affiliate must refrain from impermissible forms of Internet marketing, particularly (but not exclusively):
  - a. improper use of cookies, especially cookie-dropping;
  - b. sending advertising e-mails to recipients, who have not explicitly consented to the receipt of such e-mails including the advertisement contained therein;
  - c. violation of terms of use and applicable guidelines of search engines;
  - d. maintaining websites, which can result in a risk of confusion with the web presence of Freebay.
9. The Affiliate shall be prohibited from executing the following advertising measures without explicit prior written consent and approval of Freebay:
  - a. promising or distributing rewards to users for the interaction with the advertising materials ("incentivised traffic");
  - b. any form of Search Engine Marketing;
  - c. use, registration or purchase of domains, which are similar to the name of Freebay, i.e. typo-squatting (use of so-called typing mistake domains).

## **§ 5**

### **Confidentiality**

1. The Affiliate shall be obligated for confidentiality regarding all the internal knowledge about the business model, corporate policy and operating procedures of Freebay as well as for extensive customer and resource protection. Violation of its confidentiality obligation shall not only make the Affiliate liable for compensation, but possibly also liable to prosecution.
2. All the stated contents, mainly advertising materials, work documents such as pre-printed forms, brochures, training and business documents, contracts – even this agreement – shall

be subject to copyright protection. The Affiliate may neither use these contents outside the business relationship nor forward these – even partly – to third parties, have these forwarded or duplicate these, except for third parties that are legally obligated for confidentiality.

3. The duties of the Affiliate described in § 5.1 shall remain applicable without any restrictions even after the end of this agreement, unless there is a separate written agreement supplemental to this agreement. If this agreement ends or if the Affiliate no longer requires documents of any type from this business relationship, it may not use these materials further. This shall mainly be applicable for brochures, pre-printed forms and training documents. A right of retention of the Affiliate – for any reason whatsoever – is ruled out.
4. The Affiliate agrees to sign a separate non-disclosure agreement at any time and without special request - even after the end of the cooperation.

## **§ 6**

### **Remuneration**

1. Development and amount of a remuneration claims of the Affiliate are regulated in the Marketing plan within the remuneration guidelines. The Affiliate shall not have any payment claims against the customer and may not demand any remuneration from the customer.
2. The Affiliate shall be entitled to remuneration only after the receipt of the customer's payment by Freebay and according to the amount actually received by Freebay. Every remuneration payment to the Affiliate shall be subject to the condition that the customer makes an unconditional payment to Freebay for the respective products ordered by it and the Affiliate has not violated any regulation of this agreement. Remuneration claims of the Affiliate against Freebay shall be subject to a prohibition of assignment.
3. In case of a so-called charge-back or a comparable return debit (e.g. in case of credit card payments) of payments already made to Freebay, Freebay shall be authorized to offset the commissions already paid to the Affiliate for such cases with future commission payments or distributions. The same shall be applicable in case of criminally relevant acts by the Affiliate or by the customer (for instance but not exclusively: in case of submission of forged documents, in case of use of stolen or otherwise abstracted credit cards). Further claims of Freebay shall remain unaffected by this.

## **§ 7**

### **Statements**

1. The Affiliate can check the statements online using its personal account login. Objections to a statement must be raised within 10 business days. After this, the statement shall be deemed acknowledged. If the Affiliate is hindered from raising objections by force majeure, the term shall be extended by 10 more business days from the elimination of the hindering reason.
2. Remuneration payments to the Affiliate shall take place exclusively through a debit card issued by Freebay to the Affiliate. As soon as the Affiliate has acquired a commission entitlement of at least € 20.00, Freebay shall provide it with a reloadable debit card. The costs for the issue of the debit card in the amount of € 20.00 shall be borne by the Affiliate or shall be deducted from the remuneration payment.

## **§ 8**

### **Turnover tax / Value added tax**

For remunerations pursuant to § 6 of the Affiliate Agreement, the following shall be applicable with regard to turnover tax / value added tax (VAT):

Remunerations for referrals and so-called packages: Remunerations for pure gold referrals are turnover-tax-exempt in Switzerland and are basically paid net, i.e. without showing VAT. If the Affiliate is liable for payment of value added tax in its country, this must be paid by the Affiliate from the received amount.

If the Affiliate wants the payment of the value added tax, it must fulfill the required legal prerequisites of the respective country and furnish proofs for the same to Freebay.

In this case, the Affiliate shall be obligated to prepare a legally compliant invoice for Freebay, which shows the VAT.

All conditions and specifications of the competent tax authority in the respective country must be clarified by the Affiliate and provided to Freebay along with Freebay' possible obligations to cooperate.

If the Affiliate fails to notify Freebay accordingly, it shall solely be liable for the resulting damage and must exempt Freebay from all claims.

Freebay also receives the right of independent verification of any payment obligations at any time.

Remunerations for the referral of Freebay' products in the EU as well as in non-European countries shall be paid net (without turnover tax/value added tax).

## **§ 9**

### **Duties of Freebay**

1. Freebay maintains a website that serves for general information and is continuously updated. The Affiliate can get all the required information and forms through the links provided there.
2. Freebay shall provide the Affiliate with advertising, sales and training documents, as well as all printable contracts online in a download section, from where the Affiliate can download the required documents.
3. If the Affiliate wants supporting material as hard copies, it can purchase this according to the price list on the website.
4. For queries, Freebay has a Support Centre, which supports the Affiliate in various world languages in case of ambiguities.
5. Freebay offers regular training opportunities on the Internet (webinars) so that the Affiliate can always have up-to-date information about all areas regarding its activities.
6. Freebay informs the Affiliate immediately about product changes, about changes in the sales or accounting system as well as news which could be interesting for the Affiliate.

7. Freebay has the remuneration claims of the Affiliate accounted for on a daily basis through an accredited, professional international contractual partner. Freebay must pay due remunerations once a month/week to the Affiliate according to the respectively applicable remuneration guidelines in the latest marketing plan.
8. While doing so, Freebay must consider the structures of down-line-affiliates built up by the Affiliate and pay attention to the hierarchies established.
9. Freebay periodically offers incentive programs under separate terms which are published prior to the incentive and are available during the incentive period as part of the incentive report found in the Affiliate back office.

## **§ 10**

### **Freebay's authorities**

1. The Affiliate shall allow Freebay to contact it any time necessary for the execution of this Affiliate Agreement.
2. Freebay shall be authorized to give instructions to the Affiliate, if this is necessary for successful business. In all other cases, the Affiliate shall not be bound by instructions.
3. Freebay shall be authorized to modify this agreement and the enclosed remuneration guidelines including the marketing plan any time at a month end with a notice period of three (3) months. The Affiliate shall be authorized to object to a change of the agreement or of its enclosures within two weeks of the announcement and to terminate the agreement extraordinarily. Other reasons for termination shall remain unaffected by this. If the Affiliate does not raise objection within the objection period, the change shall be deemed accepted and shall become part of the agreement. The new regulation shall then replace the old regulation.
4. Freebay shall any time be authorized to change the user name(s) used by the Affiliate, particularly if a user name violates laws, morality, trademarks, or is not in the best interest of Freebay. Freebay shall immediately notify the Affiliate. Other claims and rights of Freebay shall remain unaffected.
5. Freebay shall be authorized to have the account blocked if, and as long as necessary, should the legal successor of the Affiliate does not prove its legal succession to Freebay with the help of written documents.
6. Freebay shall be authorized to assign its rights and duties from this agreement at any time to a third party (legal successor). It must inform the Affiliate immediately. In this case, the Affiliate shall be authorized to terminate the agreement extraordinarily within a period of four weeks.

## § 11

### Freebay' liability

1. Freebay shall not be liable for the uninterrupted and error-free accessibility and functioning of the Freebay website.
2. Freebay shall be liable for compensation according to statutory regulations. If it is at fault, Freebay shall however be liable in the case of ordinary negligence only for:
  - a. damage from injury to life, body or health;
  - b. damage from the violation of an essential contractual obligation (essential contractual obligations are those, whose fulfillment facilitates proper execution of the agreement and which the customer may regularly trust); in this case, Freebay' liability shall however be limited to the compensation of foreseeable, typically occurring damage.
  - c. any damage is limited to the legal minimum.
3. The aforementioned liability limitations shall be applicable to the same extent in favour of bodies, legal representatives, employees and vicarious agents of Freebay.
4. The aforementioned liability limitations shall however not be applicable if Freebay has maliciously concealed a defect or has taken a procurement risk or a guarantee for the condition of the product. Claims pursuant to the Product Liability Act or other mandatory legal prerequisites for liability shall remain unaffected.

## § 12

### Term of the agreement / Termination

1. This agreement is indefinite in time.
2. The agreement may be terminated by each contracting party at the end of a quarter with an advance notice of 6 weeks.
3. Furthermore, it may be terminated in writing at any time by each of the contracting parties for a compelling reason according to the respective legal regulations of the country.

Freebay shall, for instance (but not exclusively), be authorized for extraordinary termination for a compelling reason if:

- the Affiliate proves to be unreliable, mainly if a claim is made on Freebay due to culpable behaviour of the Affiliate or if a notice is given to Freebay due to a culpable violation by the Affiliate;
- the Affiliate has culpably committed serious agreement infringements, which could affect the reputation or rights of Freebay, of another partner or of a customer. This shall particularly (but not exclusively) include violations of confidentiality and data protection obligations and the prohibition of collecting monies due Freebay, or the prohibition to headhunt external customers or employees;
- the Affiliate provides false data to Freebay;
- the Affiliate provides false data to customers;
- the Affiliate renders itself liable to prosecution;

- the Affiliate continues to violate the agreement in spite of a written warning from Freebay; or but not limited to,
  - the activity of the Affiliate and/or of Freebay is restricted or excluded in the field of activity of the Affiliate and/or in a country/state, where the Affiliate operates; particularly if a country/state restricts or prohibits the import and/or export of precious metals (e.g. of gold).
4. In the event of a termination, the Affiliate must immediately and completely remove and delete all links, banners, and other Freebay advertising materials installed by it. There shall be no right of retention in this regard.
  5. In case of a pronounced cancellation/termination as well as for a compelling reason (for instance but not exclusively in the cases stated in § 6.3), Freebay shall any time be authorized to change the Affiliate's account into the so-called Investigate Status and/or to revoke this status. In the Investigate Status, the Affiliate cannot modify the profile data in the account, and commissions are no longer distributed to it from this account; the Affiliate can however continue to log in, acquire and register customers as well as generate commissions. Possible remuneration claims of the Affiliate shall remain unaffected by this. After reversal of the Investigate Status, due remuneration claims of the Affiliate shall be paid with the next payment cycle according to the marketing plan.

## § 13

### Data protection

1. The Affiliate must use the data of any type and all forms, accumulated within the scope of this Agreement exclusively for contractual purposes. It must adhere to all data protection regulations in their respectively valid version, particularly the regulations of the Federal Data Protection Act (BDSG). If the Affiliate employs staff or uses third parties, it must obligate these also for the adherence to the data protection regulations.
2. Freebay shall essentially save personal data only as far as this is necessary for the service provision or for the execution of the agreement. It may therefore be necessary to forward personal data of the Affiliate to companies, which are used for the service provision or for the agreement processing. These can, for instance, be transport companies or other service providers. There shall be no further forwarding unless there is a legal or judicial obligation for this. Freebay' employees are obligated for confidentiality in writing. The general terms and conditions and privacy policy apply.
3. The Affiliate shall issue its consent to credit assessment or age verification in order to facilitate the services or payment methods of Freebay.
4. After the termination of the agreement, the data of the Affiliate shall be deleted. Data, except for which there are legal retention obligations, shall first be blocked and shall be deleted after the expiry of the retention periods, or the latest after six (6) months.
5. The Affiliate shall any time receive free information about its saved data without giving reasons. It may any time have its collected data blocked or corrected. Also, it may any time revoke the issued consent for the data collection and use without giving reasons under the address specified in the imprint on Freebay' website.

## **§ 14**

### **Contractual language**

The contractual language shall be English. In case of correspondence in other languages, the Affiliate must have it translated into German at its own costs, risk and responsibility. Translations errors shall be borne by the Affiliate.

## **§ 15**

### **Applicable law / Legal domicile / Written form requirement**

1. This Agreement shall be exclusively subject to the laws and jurisdiction of Switzerland, and not subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. For all disputes arising from and in connection with this Agreement, the contracting parties agree upon the exclusive competence of the district court at the headquarters of Freebay as far as this is legally permissible. Freebay shall however also be authorized (but not obligated) to address all claims to the competent court in the jurisdiction for the headquarters of the Affiliate.
3. Changes or additions to this Agreement must be in written form in order for them to be effective; proof e-mail or fax shall be sufficient for observing the written form requirement within the scope of this Agreement. This shall also be applicable for modifying this written form provision.
4. The English language version of this Agreement is the only binding version of the affiliate Agreement.
5. Freebay may at any time choose mandatory arbitration in the event of a legal dispute. This means that the normal legal process is inhibited until during the mediation. If an arbitration decision is reached, the legal procedure is finally finished and the decision is binding. The relevant international rules for arbitration apply.

## **§ 16**

### **Severability clause**

1. If one or multiple regulations of this agreement become ineffective, the parties shall agree upon a substitute regulation that comes closest to the ineffective regulation.
2. The ineffectiveness of one or multiple regulations of this agreement shall not affect the validity of the rest of the regulations.
3. An ineffective regulation shall automatically be replaced by an effective regulation, which comes closest to the economic purpose of this agreement.