

Miva Affiliate Program Terms & Conditions

These *Miva Affiliate Program Terms & Conditions* (the “Program Terms”) sets forth the terms and conditions of your Business’s participation as an affiliate (“you” or “Affiliate”) in the Miva Affiliate Program (the “Program”), subject to the approval of your *Miva Affiliate Application* (“Application”) by Miva, Inc. (“Miva”). By submitting your Application, you warrant that (i) the information you provide in the Application is true and correct, (ii) you are authorized to submit the Application on behalf of the entity (“Business”) named in your Application, (iii) you are at least eighteen (18) years of age and authorized to bind the Business to the Program Terms, and (iv) that you have read, understand, and agree to be bound by the Program Terms.

These Program Terms shall take effect the later of November 1, 2019, or the date on which Miva approves your Application (“Effective Date”). These Program Terms contain the entire agreement between Miva and Affiliate with respect to the subject matter hereof, and supersede all prior and/or contemporaneous agreements or understandings, written or oral, between Miva and Affiliate, with respect to the subject matter hereof.

1. Definitions.

“Advertisements” or “Advertising” means, as provided or otherwise approved by Miva, any and all banner or box-style advertisements, pop-up or pop-under placements, text links or other similar solicitations through the Internet that promote Miva Services, as defined in these Program Terms, and/or that contain a link to Miva’s Website.

“Affiliate Lead” means any person or entity, other than Affiliate, who (i) has not previously purchased a product or service from Miva, communicated with Miva directly, or been referred to Miva by a third party, and (ii) who has communicated with Affiliate directly, and expressed an interest in Miva Services.

“Affiliate’s Website” means the Website address provided by Affiliate in its Application for the participation in the Program.

“Miva Services” means Miva’s proprietary, subscription-based Miva Merchant Software-as-a-Service. No other products or services offered by Miva are eligible for Commission. Such excluded products and services include, but are not limited to, Miva’s professional and technical support services, additional hosting resources (e.g. disk, bandwidth, server cores, RAM), additional Miva Merchant admin seats, SSL certificates, domain registration/renewal, and any other fees that Miva may otherwise receive from a Referred Customer.

“Miva’s Website” means www.miva.com, or any page, section, subsection or subdirectory thereof.

“Net Revenue” means gross revenue collected from Referred Customer for its subscription to Miva Services, calculated as of the Order Date, less any discounts, credits or refunds. Net Revenue excludes any fees collected from Referred Customer as a result

of subscription changes, price changes, or any websites added by the Referred Customer after the Order Date.

“Order Date” means the date on which a Referred Customer initiated its first subscription to Miva Services.

“Referred Customer” means an Affiliate Lead who subscribes to Miva Services within three (3) months of Affiliate Lead submission pursuant to section 2.1 herein.

“Successful Referral” means an Affiliate Lead has converted to a Referred Customer, effective as of the Order Date.

2. Affiliate Obligations.

2.1 Affiliate shall provide Miva with Affiliate Leads by personally introducing Miva to Affiliate Leads, or by emailing affiliate_referrals@miva.com with the following information: Affiliate Lead’s company name, domain, and point of contact’s name, phone number and email address.

2.2 To continue to qualify for the Program, Affiliate must make at least one (1) Successful Referral, during any trailing twelve (12) month period, which shall initially be calculated from the Effective Date of these Program Terms, and thereafter shall be calculated from the date of Affiliate’s last Successful Referral. For example, if Affiliate joins the Program on November 1, 2019, Affiliate must make a Successful Referral before November 1, 2020; if Affiliate makes a Successful Referral on January 1, 2020, Affiliate will then have through December 31, 2020, to refer another Referred Customer (unless the 12-month period is again reset by another Successful Referral by Affiliate). Affiliate’s participation in the Program shall automatically terminate, and Affiliate shall thereafter no longer be eligible to earn Commissions (defined in section 3.1 below), following any twelve (12) month period in which Affiliate fails to provide at least one (1) Successful Referral, unless otherwise approved by Miva, in its sole discretion.

3. Commissions.

3.1 During the Term of these Program Terms, Miva will pay you a percentage (“Commission Rate”) of the Net Revenue received for each Active Referred Customer’s subscription to Miva Services (“Commission”). A Referred Customer shall be considered “Active” as long as the Referred Customer continues to subscribe to Miva Services.

3.2 Commission Rate will be determined according to the number of Active Referred Customers from Affiliate:

Number of Active Referred Customers	% of Net Revenue
1 – 4	15%
5+	20%

3.3 Commission will be calculated each month, and paid to Affiliate within forty-five (45) days of the end of each month in which Net Revenue is collected. Net Revenue received by Miva in the form of late payments by Referred Customers, or timely payments by Referred Customers on a quarterly or annual payment schedule, will be paid within forty-five (45) days of the end of the month in which such payments are collected by Miva.

3.4 Miva reserves the right to adjust the Commissions payable to you, for up to one (1) year after payment, as a result of: chargebacks, reporting errors, fraudulent sales, fraudulent or automated clicks or intentional manipulation of the registration or sales process, all as determined in Miva's sole and absolute discretion. No Commission will be paid with respect to any Referred Customer obtained as a result of promotional efforts that violate these Program Terms.

4. Term & Termination.

4.1 These Program Terms shall remain in effect until terminated (the "Term"): (a) by automatic operation pursuant to section 2.2 herein, or (b) by Miva, for any or no reason, following at least thirty (30) days prior written notice to Affiliate. Following termination, Affiliate will immediately cease using any Advertising and remove Advertising from Affiliate's Website and any third party websites, upon request from Miva. No Commission shall be payable with respect to any Referred Customers, following termination of the Program Terms. Miva reserves the right to withhold final payment for up to 120 days as necessary to properly calculate final Commission payments due. Following termination of these Program Terms, Affiliate agrees to refund any Commission received during such time as Affiliate was in breach of these Program Terms.

4.2 Upon termination of these Program Terms, or termination of your participation in the Program, all rights and obligations of the parties under these Program Terms will be extinguished, except for those rights and obligations that either by their express terms survive, or that are otherwise necessary for the enforcement of these Program Terms.

5. Advertising Guidelines.

5.1 Unless otherwise approved by Miva, you may promote Miva Services, only through Advertisements on Affiliate's Website(s) or on third party websites for which you have received express written permission to place such Advertisements.

5.2 All promotional activities undertaken by Affiliate to promote Miva Services shall be made in accordance with prudent business practices, in accordance with all applicable laws and regulations and these Program Terms.

5.3 You agree to not create or modify any Advertising without the Miva's prior authorization. ALTERATION OR UNAUTHORIZED USE OF ADVERTISING IS STRICTLY PROHIBITED AND WILL RESULT IN TERMINATION OF YOUR PARTICIPATION IN THE PROGRAM.

- 5.4 You agree to not publish any prices, special offers or discounts in connection with Advertising, unless such prices, special offers or discounts were included by Miva in its unmodified Advertising, or were otherwise pre-approved in writing by Miva. You agree to make any changes to your use of the Advertising, as requested by Miva, and agree to replace any Advertising with new Advertising provided by Miva, within three (3) days after receiving notice from Miva of the new Advertising.
- 5.5 Affiliate shall not provide any Advertisement to any third party, sub-affiliate or agent without the written permission of Miva.
- 5.6 You agree to not post any of the following on any page on which Advertising appears: adult-oriented, sexually explicit or offensive content, images or content that is in any way harmful, threatening, obscene, harassing or racially, ethnically or otherwise legally or morally objectionable, as determined in Miva's sole discretion.
- 5.7 You agree that you will not bid on any of Miva's trademarked terms, including any variations or misspellings thereof, or in combination with any other keywords.
- 5.8 Affiliate's Websites shall not in any way copy or resemble the look and feel of Miva's Websites, frame any page of Miva's Websites, create the impression that Affiliate's Website is Miva's Website or a part of Miva's Website, or use Miva's name or any variation or misspellings thereof in its URL.
- 5.9 You may not make any public announcement or press release about these Program Terms without Miva's prior written approval.
6. **Non-Disparagement.** During and after the Term, Affiliate will not disparage Miva, the Miva's Website or any of Miva's products or services, or portray any of these in a derogatory or negative manner.
7. **Rights and Obligations of Miva.** Affiliate acknowledges that Miva owns all right, title, and interest in the following: (a) Miva's Website and any Advertising that Miva may provide to Affiliate, including, without limitation, any proprietary or trade secret information, patents, copyrights, trademarks, know-how, as well as moral rights and intellectual property rights; and (b) all information created or collected in the operation of Miva's Website, including without limitation: (i) contact information collected from any Affiliate Leads or Referred Customers; and (ii) information regarding pricing and/or sale of Miva products or services ("Sales Information"), which Affiliate agrees to not use or disclose to any third party without Miva's prior written approval. Miva shall have no liability or obligation to Affiliate for damages arising out of, or in connection with, the delivery, use or performance of Miva's products or services by a Referred Customer.
8. **Indemnification.** Affiliate agrees to indemnify, defend and hold Miva harmless from all claims, damages, losses, and expenses (including, without limitation, attorneys' fees and costs, payable as incurred) relating to the development, operation, maintenance, and

content of Affiliate's Website, violation of these Program Terms, and/or violation of the rights of any third party.

9. **Program Disclaimers.** YOU UNDERSTAND THAT THE MIVA (MAY AT ANY TIME (DIRECTLY OR INDIRECTLY) SOLICIT CUSTOMER REFERRALS ON TERMS THAT DIFFER FROM THOSE CONTAINED IN THESE PROGRAM TERMS OR MAY OPERATE WEBSITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEBSITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN MIVA'S AFFILIATE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THESE PROGRAM TERMS.
10. **Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL MIVA BE LIABLE, WHETHER IN TORT, CONTRACT OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR ANY LOSS OF REVENUE, PROFITS, BUSINESS INTERRUPTION, LOSS OF GOODWILL) ARISING FROM OR RELATED TO THESE PROGRAM TERMS OR MIVA'S AFFILIATE PROGRAM. WITHOUT LIMITING THE FOREGOING, MIVA'S AGGREGATE LIABILITY ARISING OUT OF THESE PROGRAM TERMS SHALL NOT EXCEED THE GREATER OF: TOTAL COMMISSIONS PAID OR PAYABLE TO AFFILIATE UNDER THESE PROGRAM TERMS OR \$25,000.
11. **Headings.** The headings of sections of these Program Terms are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of these Program Terms.
12. **Governing Law, Venue.** These Program Terms shall be deemed to have been executed and performed in San Diego, California, and shall be governed by and construed in accordance with the laws of the State of California (without regard to conflict of law principles).
13. **No Waiver.** No waiver of any provision of these Program Terms shall constitute a continuing waiver, and no waiver shall be effective unless made in a signed writing.
14. **Modifications.** Miva reserves the right to modify these Program Terms, at any time, by posting updated Program Terms to Miva's Website and notifying Affiliate of same. By continuing to participate in the Affiliate Program, Affiliate agrees to be bound by such modifications to the Program Terms.
15. **Independent Contractors.** Affiliate and Miva are independent contractors, and nothing in these Program Terms will create any partnership, joint venture, agency, franchise, sales representative, or employment or agency relationship between the parties. Affiliate, as an independent contractor, will have sole responsibility for its expenses, taxes, employees, sales representatives and agents. Affiliate has no authority to make or accept any offers or representations on Miva's behalf. Affiliate will not make any statement, whether on

Affiliate's Website or otherwise, that reasonably would contradict anything in these Program Terms.

16. **Assignment.** These Program Terms may not be assigned or otherwise transferred by Affiliate without the express written consent of Miva, which shall not be unreasonably withheld. Miva reserves the right to assign these Program Terms to a third party, in the event of an acquisition, sale or merger of Miva.
17. **Severability.** If any provision of these Program Terms is held illegal, invalid or unenforceable for any reason, that provision shall be enforced to the maximum extent permissible, and the other provisions of these Program Terms shall remain in full force and effect.
18. **Notice.** Notices and other communications to you, as required or permitted to be given hereunder, that are posted on Miva's Website and/or otherwise e-mailed to the e-mail address you have designated on your Application or by subsequent notice to Miva, shall be deemed effective upon posting or e-mailing. Notice or other communications to Miva shall be sent by e-mail to support@miva.com and shall be deemed effective one business day after e-mailing.