

# Kinsta Inc. Affiliate Program Terms and Conditions

Updated on: February 7, 2020

Thank you for joining the Kinsta Affiliate Program (the “**Program**”)! **PLEASE READ THESE AFFILIATE PROGRAM TERMS AND CONDITIONS CAREFULLY.**

By registering for the Program, you agree to these Terms and Conditions. If you do not accept these Terms and Conditions, do not register for the Program.

## 1. Introduction

1. These Affiliate Program Terms and Conditions (“**Agreement**” or “**Terms**”) are a legal agreement between (a) the affiliate program participant (the “**Affiliate**”, “**you**”, or “**your**”), and (b) Kinsta Inc. (“**Kinsta**,” “**we**,” “**us**,” or “**our**”), the owner and operator of managed WordPress hosting services, software, and support through our MyKinsta application, website, and other related applications, services, and personnel (collectively, the “**Services**”).
2. You represent, warrant, and agree (a) that you have the full power and authority to enter into and perform under these Terms, or (b) if you are joining the Program on behalf of an organization, entity, or group that you are authorized to accept these Terms on such organization’s, entity’s, or group’s behalf.
3. **Updates to the Terms.** We reserve the right to make changes to these Terms at any time at our sole discretion. If we make changes to these

Terms, we will provide notice of such changes by revising the date at the top of these Terms. Your continued participation in the Program following any changes will constitute your acceptance of such changes. Please periodically review these Terms and check for any updates.

## 2. Eligibility and Registration

1. Kinsta may approve or deny any application for membership in the Program for any lawful reason or no reason.
2. You must be at least eighteen (18) years of age, or any higher minimum age in the jurisdiction where you reside, to register for a Program account (an “**Account**”).
3. You are not eligible for the Program if (a) you are located in, under the control of, or a national or resident of any country to which the United States has embargoed goods or services, including Iran, Syria, Cuba, and North Korea, or (b) you are subject to economic or other sanctions by the United States, European Union, United Nations, or any other government or international body.
4. By applying for the Program, you agree to (a) provide accurate, truthful, current, and complete information; (b) maintain and promptly update your information upon any changes; (c) maintain the security of your Account by protecting your password and restricting access to your Account; (d) promptly notify Kinsta if you discover or otherwise suspect any security breaches or unauthorized access related to your Account, the Services, or the Program; and (e) take responsibility for all activities that occur under your Account and accept all risks of any authorized or unauthorized access to your Account.

5. If there is a dispute about the ownership of an Account, we reserve the right to investigate and determine ownership of the Account based on our reasonable judgment.

### **3. Affiliate Websites**

1. Affiliate's websites from which the Affiliate promotes Kinsta and the Services (collectively, the "**Affiliate Websites**") shall not (a) infringe, misappropriate, or violate any patent, copyright, trademark, trade secret, confidentiality, moral, or privacy right, or any other proprietary or intellectual property right; (b) violate or promote the violation of any law; (c) be defamatory, fraudulent, false, misleading, or deceptive; (d) constitute spam, phishing attempts, "chain letters", "pyramid schemes", or similar unethical marketing or advertising; (e) be pornographic, vulgar, exploitative of children, or otherwise obscene; (f) include sex or adult-themed products, services, or other material; or (g) promote violence, discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group.
2. Affiliate is fully responsible for and retains all rights and ownership in its Affiliate Websites. The Affiliate acknowledges and agrees that Kinsta (a) has no obligation to review, monitor, validate, correct, or update Affiliate Websites in any way, and (b) expressly disclaims any liability arising from the Affiliate Websites.

### **4. Affiliate Responsibilities & Restrictions**

1. Affiliate shall comply with all applicable local, state, national, and international laws and regulations, including, but not limited to,

consumer protection, advertising, anti-bribery, export-control, and data privacy laws.

2. Affiliate agrees to promptly assist Kinsta in complying with any applicable laws, including data subject requests that Kinsta may receive from any individuals referred to Kinsta by Affiliate. Affiliate further agrees to promptly assist Kinsta in complying with any duties to cooperate with supervisory authorities under applicable data protection laws.
3. Affiliate shall only refer potential customers to Kinsta who (a) have provided valid contact information; (b) are not bots, fake, illegitimate, or otherwise fraudulent; and (c) meet the eligibility requirements set in Kinsta's Terms of Service (<https://kinsta.com/legal/terms-service/>).

#### 4. **Affiliate Advertising**

- a. Subject to the restrictions set forth in these Terms, Affiliate is responsible for the content, communications, and materials, including the form and format thereof, used by the Affiliate to promote Kinsta or the Services in connection with the Program ("**Promotional Content**"). Affiliate shall not modify, change, customize, copy, or imitate any of Kinsta's Property (defined below), including Kinsta's trademarks, logos, banners, and graphics, when using any of Kinsta's Property in or as part of the Promotional Content. Authorized versions of Kinsta's Property that may be used in Promotional Content are available in the Affiliate's Account at <https://affiliate.kinsta.com/materials> and at Kinsta's website at <https://kinsta.com/press>. Affiliate may also visit <https://kinsta.com/knowledgebase/multilingual-support/#affiliate-la>

[anguages-support](#) or <https://kinsta.com/affiliates/> for support regarding Affiliate's promotional activity.

- b. Affiliate shall promptly comply with Kinsta's instructions to modify or remove Promotional Content.
- c. Promotional Content shall include a disclosure that Affiliate is a member of the Program and has a marketing relationship with Kinsta. Affiliate shall not conceal its relationship with Kinsta or obscure its participation in the Program in any way; nor shall Affiliate represent or imply that it is a Kinsta partner, employee, or other representative of Kinsta.

**5. Affiliate Code of Conduct.** Affiliate shall abide by the highest standards of ethics and professionalism. Without limiting the generality of the foregoing, Affiliate and/or your Promotional Content shall not, in connection with the Program:

- a. Misrepresent the Services in any way, including its prices, plans, discounts, or functionality;
- b. Offer or provide any warranties, guarantees, incentives, rewards, or indemnities, except as set forth in the [Kinsta Inc. Terms of Service](#) or approved in writing by Kinsta;
- c. Disparage Kinsta and its representatives, the Services, or the Program;
- d. Use any illegal or spam method of advertising;
- e. Compete or interfere with Kinsta's direct advertising efforts. From time to time Kinsta may opt to engage in direct online advertising. The Affiliate shall not place advertisements targeting Kinsta's trademarks and service marks or place advertisements that in any way advertise or display Kinsta's trademarks or service marks.

This means, among other things, that the Affiliate shall not bid (in regards to online advertising, including but not limited to Pay per Click or Pay per Impression campaigns) on any keywords or phrases containing Kinsta trademarks, service marks, registered trademarks, or registered URLs, or on any variations, abbreviations, or misspellings of the same.

- f. Refer traffic to Kinsta through any pay to read, pay to click, banner exchanges, click exchanges, PPC advertising, pop-up/under, or similar methods. Referrals must be made from the Affiliate Websites;
- g. Using iframes or any other techniques or technology to add the Affiliates tracking cookie to a referral by any means other than an actual click-through;
- h. Using link cloaking, or masking techniques or technology, with the goal of promoting Kinsta on websites and/or networks not explicitly mentioned in your Account;
- i. Display Kinsta.com, “Kinsta”, Kinsta’s logos or trade names, or any variation, abbreviation, or misspelling thereof in any URL, domain name, social media profile, or any other online or offline presence.
- j. Place links to Kinsta or refer to Kinsta in any way on coupon websites;
- k. Engage in incentivized programs or business-opportunity sites;
- l. Self-refer or refer yourself in any fashion. This includes referral of any operation or website in which the Affiliate has a controlling, proprietary, or equitable interest. Any referral where payment is

made utilizing a form of payment controlled by or belonging to the Affiliate shall be considered a violation of these Terms.

## 5. Referral Commissions

1. Affiliate shall place a hyperlink on the applicable Affiliate Websites, in a format approved by Kinsta, which redirects a potential Kinsta customer to the Kinsta website (the "**Affiliate Link**"). A "**Referred Customer**" is a potential Kinsta customer who clicks an Affiliate Link, registers for a Kinsta account, and selects a Service plan.
2. Kinsta reserves the right in its sole discretion to deactivate and remove Referred Customers from the Program which have failed to maintain an active Service plan or otherwise violate the Terms of Service.
3. Affiliate is eligible for one-time and/or recurring referral payments from Kinsta ("**Commission**") upon the following conditions:
  - a. Referred Customer has never previously been a customer of Kinsta;
  - b. Referred Customer has made payment to Kinsta for the Services (the "**Fee**");
  - c. Affiliate's Account is active at the time the Referred Customer pays its Fees to Kinsta; and
  - d. Kinsta has received all requested tax documents (e.g., Form W-9) from Affiliate.
4. The amount of and methodology of calculating Commissions are determined, and subject to change by, Kinsta in its sole discretion. Commission amounts and methodology, and updates thereto, are

available at <https://kinsta.com/affiliates/> and <https://kinsta.com/knowledgebase/recurring-commissions/>.

5. Commissions are calculated based on the actual Fees paid by the Referred Customer, exclusive of any taxes (such as value added tax, sales tax, goods and services tax, etc.), levies or duties owed by the Referred Customer. If the Referred Customer has received a discount, the Commission is calculated from the discounted Fee. One-time or overage fees and add-on subscriptions shall not be considered in the calculation of Commissions. If any Fees are refunded to a Referred Customer for any reason, Kinsta may setoff such amounts from Affiliate's future Commissions.
6. Commissions shall only be paid to one Affiliate for each Referred Customer. If there is a dispute as to which Affiliate should receive Commission, at its own discretion Kinsta shall make a determination as to which Affiliate shall receive the Commission, and Kinsta's decision in this matter shall be final.
7. When a potential Kinsta customer clicks on an Affiliate Link a tracking cookie will be stored by the web browser used by the potential Kinsta customer when they click on the Affiliate Link. The tracking cookie will have a validity of 60 days. During those 60 days if the potential Kinsta customer clicks on a different Affiliate Link while using the same web browser, a new cookie will not be placed and the original cookie will persist. After 60 days have passed the original tracking cookie will expire and a new cookie will be placed if the potential Kinsta customer clicks on any Affiliate Link. Tracking cookies are stored by individual web browsers. If a potential Kinsta customer clicks on different Affiliate Links using different web browsers each web browser will store a



tracking cookie associated with the Affiliate Link that was accessed within that web browser. At signup, the Referred Customer will be assigned to the Affiliate whose Affiliate Link is identified by the tracking cookie stored by the web browser used by the Referred Customer to sign up.

8. Kinsta is not responsible for tracking cookies that have been either intentionally or unintentionally deleted. No Commission will be paid for tracking errors of any kind, including, without limitation, any tracking errors caused by Affiliate's editing, masking, or tampering with an Affiliate Link.
9. Commissions are paid via PayPal or another payment method selected by Kinsta. Kinsta is not responsible for any transaction fees charged by PayPal or any other payment provider.
10. Commissions shall only be paid when the balance of all Commissions due is more than \$50.00.
11. Kinsta is not responsible for lost, stolen, or misdirected Commission payments.
12. You are solely responsible for all tax obligations due to all taxing authorities arising from or in connection with your participation in our Program. Kinsta will not withhold any taxes of any kind from your Commissions.

## **6. Termination**

1. Kinsta may in its discretion terminate the Program, this Agreement, and/or your Account at any time without formal notice, and Affiliate may

terminate this Agreement at any time by providing written notice to Kinsta (collectively, “**Termination**”).

2. Upon Termination, (a) Affiliate shall (i) immediately cease all use of Kinsta's Property, including Kinsta's logos, marks, banners, images, content, trademarks, and software, (ii) remove and return or destroy all Promotional Content, and (b) Kinsta shall have no further obligations to Affiliate under this Agreement, including the payment of any pending or prior earned Commissions.
3. Upon any termination, expiration, discontinuance, or suspension of these Terms or the Program, any provision that, in order to give proper effect to its intent, should survive the termination, expiration, discontinuance, or suspension of these Terms or the Program, will survive such termination, expiration, discontinuance, or suspension of these Terms or the Program, including, but not limited to Sections 6, 7, 8, 9, 10, 12, 13, 14, and 15.

## **7. Kinsta's Property**

1. The Services and the Program, and all proprietary rights related thereto, are the sole and exclusive property of Kinsta. Without limiting the generality of the foregoing, all rights, title, and interest in and to the Services and the Program, including any and all servers, artwork, graphics, images, website templates and widgets, literary work, source and object code, computer code (including html), applications, audio, music, video and other media, designs, animations, interfaces, documentation, derivatives and versions thereof, the look, feel, and arrangement of the Services and the Program, methods, products,

algorithms, data, interactive features and objects, advertising and acquisition tools and methods, inventions, trade secrets, logos, domains, customized URLs, trademarks, service marks, trade names and other proprietary identifiers, whether or not registered and/or capable of being registered, and any derivations thereof (collectively, “**Kinsta’s Property**”) are owned by and/or licensed to Kinsta.

2. Affiliate shall not assert any claim of ownership of, or any claim to, Kinsta’s Property and shall not take and shall not permit any action or omission in derogation of any of the rights in Kinsta’s Property, either during the term of this Agreement or thereafter.

## 8. Submissions

1. We welcome questions, comments, suggestions, and ideas about Kinsta and our Program (“**Submissions**”). If you provide a Submission, whether by email or otherwise, you agree that it is non-confidential (unless we state otherwise in writing) and shall become the sole property of Kinsta.
2. Kinsta shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of Submissions for any purpose, commercial or otherwise. You agree that Kinsta is not obligated to provide acknowledgment or compensation to you in exchange for Submissions.

## 9. Confidentiality

Any information provided to Affiliate relating to Kinsta’s business, customers, vendors, software, technology, or financial condition, or any other information

designated as confidential by Kinsta (collectively, the “**Confidential Information**”) is a valuable asset which Kinsta desires to retain in confidence. Affiliate shall keep in confidence, and ensure its employees and subcontractors keep in confidence, all Confidential Information provided to or acquired by Affiliate and shall not disclose, divulge, or reveal the same, or any part thereof, directly or indirectly, to any person or persons, or make any use of such Confidential Information (other than in the performance of its obligations under this Agreement), without the express written consent of Kinsta.

## **10. Relationship of Parties**

The relationship between you and Kinsta is solely that of independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership, franchise, or other form of joint enterprise, employment, or fiduciary relationship between us. Neither Kinsta nor you have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

## **11. Audit and Inspection**

Kinsta reserves the right to request from the Affiliate information, documents, data, personnel, and other materials regarding the Affiliate Websites and Promotional Content. The Affiliate is required to provide complete, accurate, truthful, and detailed information to Kinsta upon request.

## **12. Limitation Of Liability**

1. NEITHER KINSTA, ITS OWNERS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS, AFFILIATES, SUPPLIERS, OR LICENSORS, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR PROGRAM WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUE OR PROFITS, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT KINSTA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
2. IN NO EVENT WILL KINSTA'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS EXCEED THE AMOUNT OF YOUR EARNED AND UNPAID COMMISSIONS.
3. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN KINSTA AND YOU.

## **13. Indemnity**

1. You agree to defend, indemnify, and hold harmless Kinsta (and each of our owners, officers, directors, employees, agents, contractors, licensors, and affiliates) (collectively the "**Kinsta Indemnitees**") from and against any and all losses, costs, expenses, damages, injuries, and/or liability of any kind, including attorney's fees, that a Kinsta Indemnitee may incur or suffer as a result of any claims, suits, proceedings, or investigations asserted or commenced by any third

party, which arise out of or are in any way connected with (a) your participation in the Program; (b) Affiliate Websites or Promotional Content; (c) your breach or alleged breach of these Terms; or (d) your violation or alleged violation of any law or the rights of another.

2. We reserve the right, in our sole discretion, to control any action or proceeding, including selection of counsel, and determine whether we wish to settle it, and if so, on what terms, in which event you will cooperate with us in asserting any available defenses.

## **14. Dispute Resolution**

1. PLEASE READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES WITH KINSTA AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.
2. We want to address your concerns without resorting to a formal legal case. Before filing a formal legal claim against Kinsta, please contact us at [legal@kinsta.com](mailto:legal@kinsta.com). We'll try to resolve the dispute and address your concerns. If a dispute is not resolved within 15 days after submission, you or Kinsta may bring a formal proceeding as set forth in this Section 14.
3. Any dispute, controversy, or claim arising out of or relating to the Program or these Terms, or the breach thereof, shall be exclusively settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; provided, however, that you and Kinsta are not required to arbitrate any dispute in which either party seeks

equitable or injunctive relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, patents, or other confidential information or intellectual property.

4. You and Kinsta agree that arbitration will occur exclusively in metropolitan Atlanta, Georgia (i.e., the city of Atlanta or its surrounding suburbs or cities), and that arbitration will be conducted confidentially by a single arbitrator.
5. If for any reason this agreement to arbitrate does not apply to the dispute, you and Kinsta agree that any judicial proceeding, including any appeal of an arbitration award, will be brought exclusively in the federal or state courts located in the County of Fulton, State of Georgia. Both you and Kinsta exclusively consent to venue and personal jurisdiction in the County of Fulton, State of Georgia, and we both agree to waive our right to a jury trial. If a judicial proceeding is brought in the state courts of Georgia under this section 14.5, the parties consent and agree to the transfer of such proceeding to the Metro Atlanta Business Case Division.
6. The Terms and the resolution of any disputes shall be governed by and construed in accordance with the laws of the State of Georgia, USA without regard to its conflict of laws principles.
7. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU WAIVE ANY RIGHT TO COMMENCE A CLASS ACTION, CLASS ARBITRATION, OR OTHER REPRESENTATIVE ACTION OR PROCEEDING.

## **15. Miscellaneous**

1. Our [Privacy Policy](#) is incorporated herein by reference and, together with these Terms, constitute the entire agreement of the parties and supersede all prior and contemporaneous understandings between the parties regarding their collective subject matter.
2. You may not assign any of your rights or obligations under these Terms without prior written consent from Kinsta. Kinsta may assign any or all of its rights under these Terms, in whole or in part, without obtaining your consent or approval.
3. Our failure or delay in exercising any right, power, or privilege under these Terms shall not operate as a waiver thereof.
4. The invalidity or unenforceability of any of these Terms shall not affect the validity or enforceability of any other of these Terms, all of which shall remain in full force and effect.