

# envala Affiliate Terms and Conditions

The purpose of this Agreement (hereafter referred to as the "Agreement") is to set forth envala's Affiliate Terms and Conditions.

## Terms and Conditions

This Agreement contains the complete terms and conditions that apply to your participation as an affiliate in the Affiliate Program of envala, and the establishment of links from your affiliate web site to our web site <http://www.envala.com>. As used in this Agreement, "we," "us," "our," or "Company" means envala and "you" or "your" means the Affiliate, and "Product" means any and all software services offered for sale by us on the envala web site.

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND Envala. BY CLICKING THE "I AGREE" BUTTON ON THE AFFILIATE APPLICATION, YOU ARE AFFIRMATIVELY STATING THAT YOU HAVE READ THE AFFILIATE AGREEMENT AND UNDERSTAND THE TERMS SET FORTH HEREIN AND ARE AFFIRMATIVELY INDICATING YOUR ACCEPTANCE OF THIS AFFILIATE AGREEMENT AND YOU AGREE TO BE BOUND BY THE TERMS HEREOF.

### 1. Enrollment in the Affiliate Program.

To begin the enrollment process, you will submit a completed Affiliate Application via our web site. Once your application has been approved, you will receive your affiliate code and password to allow you to start marketing the Company products. We may reject your application if we determine (in our sole discretion) that your site is unsuitable as an Affiliate for any reason, including, but not limited to, if your site incorporates images or content that is in any way unlawful, harmful, threatening, defamatory, obscene; harassing or racially, ethically, or otherwise objectionable; such as sites that facilitate illegal activity; depict sexually explicit images; promote violence; promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age; promote illegal activities or incorporate any materials that infringe or assist others to infringe on any copyright, trademark, or other intellectual property rights (collectively "Content Restrictions").

### 2. Using Our Links on Your Site.

Link means a hyperlink to the envala web site that is copied and pasted from your individual password-protected affiliate administration area on our site. If the HTML code is altered in any way after copying from that web page, we take no responsibility for you receiving credit for any sale. Any change you make may cause the tracking to no longer function correctly.

As an affiliate site, we will make available to you banners, button links to our web site and/or text links to our web site, containing company logo and words identifying envala. In using the links, you agree that you will take full responsibility in maintaining all such links. All Affiliate sites shall display such graphic images prominently throughout your site as you see fit and with our consent. You shall not alter, modify, or expand the links in any way without our written consent. Each link connecting users of your web site to our web site will in no way alter the look, feel, or functionality of our web site. We have the right in our sole discretion to monitor your web site at any time and from time to time to determine if you are in compliance with the terms of this Agreement.

Affiliate should place the appropriate copyright and trademark notices.

You are allowed to use the prices of the envala services on your web site but you are responsible for keeping your information on pricing up-to-date as envala from time to time will post specials, discounts or change product pricing in their sole discretion.

### 3. Order Processing.

We will be responsible for providing all information necessary to allow you to make appropriate links from your web site to our web site. However, all links must be approved by envala. We will process orders placed by cus-

tomers who follow the links from your web site to the envala web site. We reserve the right to reject orders that do not comply with certain requirements, that we periodically may establish. We will be solely responsible for all aspects of order processing, including order entry, payment processing, and related customer service. We will track the volume and amount of sales generated by your web site and will make unaudited reports available for your review through your affiliate account on our web site. The form, content, and frequency of the reports may vary from time to time to our discretion. To permit accurate tracking, reporting, and fee accrual, you must ensure that the links between your web site and our web site are properly formatted. It is your sole responsibility to ensure that the links that you have placed on your web site are always working properly.

#### **4. Commissions.**

Commissions (Commission Rate) on trackable online sales are paid on net sales (i.e., the net is the remaining amount after any of these deductions: sales tax, credit card fees and similar charges. The Commission Rate is subject to change at any time or from time to time, in our sole and absolute discretion. You will be notified of any change in the Commission Rate. Commissions will also be reduced for amounts due to credit card fraud, bad debts, cancellations, and any credits. A commission will be paid only if the visitor to our web site is tracked by the system from the time of the link to the time of the sale. No commission will be paid if the visitor to our web site cannot be tracked by our system.

##### **Affiliate and Net Sales Percentage**

1) Month one revenue.

The above fee schedule is subject to change without notice.

Our cookies are non-expiring, so repeat visitors that do not come directly from your web site will still count toward your commissions if the cookie is not otherwise removed by the user. For a sale to generate a commission, the customer must follow the link from your web site to envala, purchase the software services in question using our online ordering system, and remit full payment to us.

#### **5. Commission Payment.**

Commissions on sales are paid on net sales actually collected from customers. Orders are not eligible for a commission due to credit card fraud, bad debts, cancellations, and credits. If a commission has been paid, the commission will be deducted from future commissions. Commissions will be paid 90 days after payment. All commissions are paid at the end of any given month. The Commission base is subject to change at any time or from time to time, in our sole and absolute discretion. You will be notified of any change in the Commission base.

All commission payments will be mailed to Affiliate address via standard U.S. mail unless special arrangements are made.

You agree that you are solely responsible for all tax obligations due to all taxing authorities arising from or in connection with your participation in our Affiliate Program. Company shall not withhold taxes of any kind from your commission checks.

Company is not responsible for resending lost or missing payments past 90 days from payment date.

#### **6. Reports of Sales.**

You will be given a password and have the ability to enter a password-protected web site to receive your sales statistics on a daily basis.

#### **7. Policies and Pricing.**

Customers who buy software services through the Affiliate Program will be deemed to be customers of envala. Accordingly, all envala rules, policies, and operating procedures concerning customer orders, customer service,

and sales will apply to those customers. We may change our policies and operating procedures at any time. For example, we will determine the prices to be charged for software services sold under the Affiliate Program in accordance with our own pricing policies. Software service prices may vary from time to time. Because price changes may affect listings that you already have on your web site, you will be responsible for maintaining the correct current prices on your web site at all times.

## **8. Non-Exclusive Limited License and Use of Company Logos and Trademarks.**

We grant you a non-exclusive, non-transferable, revocable right to (i) access our web site through links solely in accordance with the terms of this Agreement, and (ii) solely in connection with such links, to use our logos, trade names, trademarks and similar identifying material (collectively " Marks"), solely for the purpose of selling software services on your web site for envala. You may not alter, modify, or change the Company logos, trademarks or any other text content provided to you through the envala affiliate section. The use of any of the logos, trademarks or text content are only extended to members in good standing in the envala Affiliate Program.

If you see logos, trademarked items or text content that is not in the materials available to affiliates in the marketing section and you wish to use on your web site, you may not use them without prior written permission. Permission is not to be construed as envala giving you any legal ownership or rights to these logos, trademarks, or text content. Envala's own use of any logos, trademarks, or text content in the display or marketing of envala services does not automatically make it acceptable for affiliates to assume usage of same materials. Affiliates should assume that ONLY materials directly made available from envala to Affiliate for the purpose of selling software services for envala shall be acceptable to use.

The rights granted to you pursuant to this section shall terminate upon the effective date of the expiration or termination of this Agreement.

Additionally, we reserve the right to secure the highest position in pay-per-click and pay-per-position search engines and advertising sites by submitting a bid for URLs or other search terms considered as trademarks, sales marks, service marks, registered trademarks, or registered URLs (or any variations or abbreviations of same) of envala. At no time shall you submit bids or use other methods that would cause listings for your site to rank higher than Company rankings for trademarks, sales marks, service marks, registered trademarks, or registered URLs (or any variations or abbreviations of same) of envala.

## **9. Publicity, Email, and Spam Policies.**

You shall not create, publish, distribute or permit any written material that makes reference to envala, without first submitting such material to us and receiving our written consent.

Be careful about your advertising methods using email. Envala will not tolerate any forms of Spam. We will hear both sides of a Spam complaint but we will remove one affiliate before we risk all affiliates losing email privileges. In the event an affiliate is charged with spamming practices, envala shall not be held liable for any legal action taken against said affiliate nor be financially responsible for fines owed by said affiliate.

## **10. Responsibility for Your Site.**

You will be solely responsible for the development, operation, and maintenance of your web site and for all materials that appear on your web site. We shall have no responsibility for the development, operation, and maintenance of your web site and for all materials that appear on your web site. You hereby represent and warrant to us that materials posted on your web site do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights), and that materials posted on your web site are not libelous or otherwise illegal. You must have express permission to use copyrighted material owned by another party or other proprietary material. We will not be responsible if you use copyrighted material from another party or other proprietary material in violation of the law.

## **11. Term of the Agreement.**

The term of this Agreement will begin when your affiliate application has been received by envala through the envala web site and you have accepted the Terms and Conditions in this Agreement. This Agreement will end when terminated by either party. The Agreement may be terminated by envala or the affiliate for any reason upon thirty (30) days prior email or written notice, or immediately upon notice of any breach of the provisions of this Agreement. Upon termination you may no longer use envala banners, images, content, trademarks, etc., on your web site, or provide hyperlinks to the envala web site. If this Agreement is terminated because you have violated the terms of this Agreement or if this Agreement is terminated because your web site becomes subject to the Content Restrictions set forth in Section 1, you are not eligible to receive any commission payments, even for commissions earned prior to the date of termination. If this Agreement is terminated for any other reason, you are eligible to earn a commission only on sales occurring during the term of the Agreement, and commissions earned through the date of termination will remain payable only if envala received month one payment in full.

## **12. Modification.**

We may modify any of the terms and conditions contained in this Agreement, at any time and in our sole discretion. Notice of any change by email to your address on our records, or the posting on our web site of a change notice or a new agreement, is considered sufficient notice for notifying you of a modification to the terms and conditions of this Agreement. Modifications may include, but are not limited to, changes in the scope of available commission fees, commission schedules, payment procedures, and Affiliate Program rules. All such modifications shall take effect 48 hours after we serve notice as provided above, unless we indicate otherwise. If any modification is unacceptable to you, your only recourse is to terminate this Agreement. Your continued participation in the Affiliate Program, following our posting of a change notice or new agreement on our web site, will constitute binding acceptance of the change.

## **13. Relationship of Parties.**

You and envala are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your site or otherwise, that reasonably would contradict anything in this Section.

## **14. Limitation of Liability.**

We will not be liable for indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data arising in connection with this Agreement, the Affiliate Program, or Company performance of services or of any other obligations relating to the Agreement, even if we have been advised of the possibility of such damages. Further, our aggregate liability arising with respect to this Agreement and the Affiliate Program will not exceed the total commissions paid or payable to you under this Agreement.

The foregoing limitation of liability shall apply regardless of the cause of action under which such damages are sought.

## **15. Disclaimers.**

We make no express or implied warranties or representations with respect to the Affiliate Program or any software services sold through the Affiliate Program (including, without limitation, warranties of fitness for a particular purpose, merchantability, non-infringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, we make no representation that the operation of our web site will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

## **16. Representations and Warranties.**

You hereby represent and warrant to us that this Agreement has been duly and validly executed and delivered by you and constitutes your legal, valid and binding obligation, enforceable against you in accordance with its terms; and that the execution, delivery and performance by you of this Agreement are within your legal capacity and power; have been duly authorized by all requisite action on your part; require the approval or consent of no

other persons; and neither violate nor constitute a default under the (i) provision of any law, rule, regulation, order, judgment, or decree to which you are subject or which is binding upon you, or (ii) the terms of any other agreement, document, or instrument applicable to you or binding upon you.

#### **17. Confidentiality.**

We may disclose to you certain information as a result of your participation as part of the Affiliate Program, which information we consider to be confidential (herein referred to as "Confidential Information"). For purposes of this Agreement, the term "Confidential Information" shall include, but not be limited to, any modifications to the terms and provisions of this Affiliate Program Agreement. Confidential Information shall also include any information that we designate as confidential during the term of this Agreement.

You agree not to disclose any Confidential Information and that such Confidential Information shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by you for your own business purposes or for any other purpose except and solely to the extent that any such information is generally known or available to the public or if same is required by law or legal process. We make no warranty, expressed or implied, with respect to any information delivered hereunder, including implied warranties of merchantability, fitness for a particular purpose or freedom from patent, trademark or copyright infringements, whether arising by law, custom or conduct, or as to the accuracy or completeness of the information and we shall not have any liability to you or to any other person resulting from your or third-party use of the information.

#### **18. Indemnification.**

You hereby agree to indemnify, defend, and hold harmless Envala, its shareholders, officers, directors, employees, agents, affiliates, successors and assigns, from and against any and all claims, demands, losses, liabilities, damages or expenses (including attorney fees and costs) of any nature whatsoever incurred or suffered by us (collectively the "Losses"), in so far as such Losses (or actions in respect thereof) arise out of, are related to, or are based on (i) any claim or threatened claim that our use of the Affiliate Trademarks infringes on the rights of any third party; (ii) the breach of any representation or warranty made by you herein; or (iii) or any claim related to your web site.

#### **19. Independent Investigation.**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE 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 THAT ARE SIMILAR TO OR COMPETITIVE WITH YOUR WEB SITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE AFFILIATE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE, OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

#### **20. Miscellaneous.**

This Agreement will be governed by the laws of the United States and the State of Florida, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in Tampa, Florida and you irrevocably consent to the jurisdiction of such courts. You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and enforceable against the parties and their respective successors and assigns. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such provision or any other provision of this Agreement.

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