

Terms of Woodpecker.co Partner Program

Effective: January 1, 2017 Last Updated: December 27, 2018

Below, you will find the Terms and Conditions under which we operate Woodpecker.co Partner Program. We tried our best to keep it simple, nonetheless we sometimes have to use terms and expressions normally found in legal documents. In case of any questions, please contact our Partner Program Manager directly at partners@woodpecker.co.

§1 Introduction

These Terms of Partner Program (henceforth referred to as “Terms”, “Agreement”, “Document”) regulate Your access to and participation in Woodpecker.co Partner Program (“Program”) accessible at <https://woodpecker.co/partner-program/> (“Website”) or directly via email at partners@woodpecker.co, and hosted by Woodpecker.co (“Woodpecker”, “We”, “Us”, “Our”, “Ours” or related capitalized term). This Document does not alter in any way the Terms of Service or any other possible agreement You may have with Woodpecker. This Document together with Woodpecker GDPR Compliance constitutes an entire agreement regulating Partner Program. Please note that this Agreement affects Your legal rights and obligations. If You do not agree to be bound by all of its contents, do not participate in the Program. By participating in Our Partner Program, it is implied that You accept this document.

§2 Definitions

“Service” means the services supplied by the Company to the Customer under this Agreement specified below at <https://app.woodpecker.co> in a form of web application accessible online.

“Account” means the access to the Service enabled with personalized login and password.

“Partner” (“Partner”, “You”, “Your” or related capitalized term) means any entity or affiliated person that has registered for the Program via the Website or direct email to Woodpecker, which will also be contracted by the general Woodpecker Terms of Service and this Document.

“Referral fee” (“Referral fee”, “Commission”) means any outstanding payment earned by the Partner during their participation in the Program.

“Referral link” (“Referral link”, “Handle”, “Link”) means a unique link to Woodpecker’s Website and Blog granted to every Partner participating in the Program. The Link is used to track new Customers’ registrations and link them with Partners sharing the Link in accordance with the guidelines of these Terms.

“Income” means any payments received by Woodpecker from the Customers.

“Seat” (“Seat”, “Subscription”) means one access to Woodpecker Service given to a Premium Customer. One Customer can occupy multiple Seats if they extend the usage to their coworkers and/or connect additional email accounts for themselves.

“Agreement” means this Terms of Woodpecker.co Partner Program and any other written amendment or addendum if applicable.

“User or Customer” mean respectively any person who uses Woodpecker Service with the access to an active Account regardless of its type and/or Partner Program Panel. Woodpecker Account type may be either Premium – delivered upon payment and in line with [Subscription Plans](#) (“Premium Subscription”) or Trial – delivered upon free trial registration via <https://app.woodpecker.co/signup> (“Trial Subscription”).

§3 General Statements

1. To participate in the Program the Partner:
 - a. must be at least 18 years old;
 - b. must have an active and verified PayPal account;
 - c. if the Partner is a Polish citizen, they must represent a registered business and be able to issue an invoice.
2. We reserve the right in Our sole discretion at any time to refuse anyone’s participation in the Program and change any of the Terms of Our Partner Program. You agree that every change We may make to this Agreement will affect You as well if You choose to continue to participate in the Program after the changes are made.
3. We reserve Our right to change, update or adjust this Terms of Partner Program with no prior notice. This page shall always represent the up-to-date Agreement.
4. Providing false information in the registration form will result in immediate exclusion from the Program and will forfeit all due Referral fees.

§4 Data Processing

1. Woodpecker.co stays compliant with GDPR (General Data Protection Regulation) and obliges the Partners of the Program to respect the principles of the regulation when processing Personal Data of EU citizens. Please find more

details about how Woodpecker complies with GDPR and what actions You should take as a User in order to be compliant with it as well in the [GDPR Compliance](#). The GDPR Compliance document should be treated as an inherent part of the these Terms.

2. All communication sent from Woodpecker needs to be performed in line with General Data Protection Regulation EU 2016/697 and all applicable data protection laws.
3. In providing Service to the Customer, Woodpecker may Process Personal Data relating to the Data Subject, on behalf of the Customer. The Customer acknowledges and confirms that he is the sole Controller of Personal Data and Woodpecker is the Processor of Personal Data, which means that Woodpecker Processes Personal Data on behalf of the Controller. Both Parties agree to comply with the following provisions with respect to any Personal Data stored and/or otherwise Processed through Woodpecker.
4. Once Partner Processes data of potential Clients interested in Woodpecker Service, the Partner acts as Data Controller. Woodpecker shall bare no responsibility for data Processing conducted by Partners.
5. Woodpecker shall Process Personal Data of Partners upon becoming Trial or Premium User.

§5 Partner Program Rules

1. You, as Our Partner participating in the Program, are entitled to the Referral fee based on the Income that Customers referred by You generate for Woodpecker.
2. To generate the Referral fee, the Customer to which the Partner recommended Woodpecker has to:
 - a. use a browser that has its cookies setting enabled;
 - b. follow a Referral link;

- c. purchase any amount of Subscriptions (“Seats”) for Woodpecker Service and successfully pay Woodpecker a Subscription fee;
 - d. remain a Woodpecker Customer for at least 30 days.
- 3. You will receive a Referral fee in the amount of 20% gross of net Income of every Woodpecker Subscription that is connected to You through the Referral link. In case of specific Clients having an active Woodpecker Subscription for more than 3 years we reserve the right to change the Commission rate to 10%; the change of the Commission rate will only consider those particular transactions.
- 4. Referral fee is reported as due to You within 30 days from beginning of the Subscription term of the Customer to avoid any technical issues and refunds that might happen.
- 5. Referral fee may be a subject for adjustments for the credit card chargebacks and refunds. Cancelled, fraudulent or voided transactions do not qualify as basis for Referral fee. This means that Partners, who were previously credited with Referral fee for a Subscription that was later due to be refunded, may find the relevant amount to be deducted from their Partner Program account. In such case, the next positive Referral fee generated by the Partner shall be reduced by the relevant amount of the refunded fee.
- 6. We can transfer You Referral fees generated during Your participation in the Program to Your PayPal account when a total of granted Commissions exceeds 100 USD.
- 7. We trace the Referral fees through the use of cookies. If it is not possible to track traffic from the Your site to the Woodpecker Website because the visitor is using cookie-blocking software, or the Link was altered in ways that do not follow the official guidelines, Woodpecker will only pay Commissions on the basis of sales that can be traced by cookies back to You.
- 8. Only the Partner whose Link is automatically reported by Woodpecker as connected to the Customer, will get Referral fee for the sale. Woodpecker does not connect Customers to Partners with manual actions.
- 9. We reserve Our exclusive right and responsibility for processing all Subscriptions and payments made by Customers. The Partner acknowledges that all

agreements relating to sales to Customers will be between Woodpecker and the Customer and that the prices for the Woodpecker Service will be set solely by Woodpecker in its discretion.

10. If the total amount of Referral fees exceeds 100 USD, You may request a transfer of the funds from Your Partner account for up to the value of the funds earned. The funds will be transferred to Your PayPal account to the 20th day of the month following the month for which the Commission was granted (e.g. if You generated Commission in January, We will send it to Your PayPal account to 20th of February).
11. In order to receive a Commission payment from Partners who's permanent place of residence is outside of Poland, below information is essential:
 - a. first name;
 - b. last name;
 - c. parents names;
 - d. date of birth;
 - e. place of birth;
 - f. ID number and country of issuing;
 - g. address.

This information will be used for tax reporting purposes and only if applicable.

12. In the situation that a Partner did not provide Woodpecker with the above information, all payments of Commissions will be withheld.
13. You will not be entitled to receive any Referral fees for a Subscription of the Customer who:
 - a. has been introduced in breach of any term of these Terms;
 - b. makes a payment which is subject to a chargeback or which is reversed for any reason;
 - c. has insufficient amount of credit to continue their Subscription;
 - d. is located in a territory from which Woodpecker may not accept Customers;

- e. is suspected by Woodpecker of acting in breach of the Terms of Service and Conditions governing his/her Account, or any fraudulent or dishonest activity.
- 14. All payments made by Woodpecker under this Agreement are deemed inclusive of any VAT or other tax payable and will be paid in USD exclusively via PayPal. Any additional fees connected with withdrawing funds, such as PayPal transaction fee, will be covered by the Partner.

§6 Partner's Responsibilities

1. The Partner will introduce Woodpecker Service to current and prospective Customers and will comply with all laws, as well those that govern email marketing and anti-spam laws. Partners are obliged to promote and obey the usage of Woodpecker Service in line with the Applicable Use of Service Policy from Exhibit A.
2. The Partner may post as many Referral links to Woodpecker as he or she finds necessary, as well as register in any search, referral, or advertising service (such as e.g. Google AdWords program), provided that Partner ensures that each website containing a Referral link meets the terms of these Partner Program Terms.
3. The Partner will not:
 - a. purchase or register search engine keywords, AdWords, search terms or other identifying terms that Woodpecker considers in its sole discretion as promoting sexually explicit materials, violence, weapons or firearms, illegal activities, fake or counterfeit items, promote betting or gambling, any form of discrimination based on sex, race, religion, nationality, disability, sexual orientation, or infringing upon others' intellectual property rights;
 - b. register any domain names which are identical or similar to Woodpecker

or any other trademarks owned by Woodpecker and Partner will at all times comply with reasonable guidelines for the use of such trademarks as may be issued from time to time;

- c. install spyware on another person's computer; cause spyware to be installed on another person's computer, or use a context based triggering mechanism to display an advertisement that partially or wholly covers or obscures paid advertising other content on a website in a way that interferes with a person's ability to view that website;
 - d. use their own Referral link to receive any benefits that come with the participation in the Program for Woodpecker Accounts handled directly by them or their companies;
 - e. use Woodpecker logos, application screenshots, or any graphic materials produced or redesigned on its own. The only acceptable use of any graphic content related to Woodpecker is the one included in the Brand Kit.
4. Woodpecker reserves the right to judge whether any of the rules mentioned above have been violated.

§7 Woodpecker's Responsibilities

1. We will pay You Referral fees on the basis of sales of Woodpecker Services referred directly by You, if the Customer has accessed Woodpecker's Website and purchased the Service via Your Referral link.
2. Upon joining the Program, We will grant You:
 - a. the Referral link which redirects to Woodpecker's Website with a unique Handle assigned. This information is saved on the computer of the visitor, who enters Woodpecker Website through the Referral link, in the form of a cookie which is active for the period of 30 days;

- b. the access to membership-only discussion group hosted on Facebook.
- 3. Woodpecker will exclusively handle the sales process, technical support and customer success of any Customer brought by the Partner.

§8 Termination

1. We may terminate this Agreement for any reason, at any time. In particular We reserve the right to terminate the Agreement with the Partner immediately and without notice and forfeit all Referral fees if the Partner is involved with any of the following:
 - a. providing false information in the registration form;
 - b. violating any Partner's responsibilities stated in these Terms;
 - c. any attempt to artificially inflate Referral fees will result in immediate termination of this Agreement and will forfeit all amassed Referral fees.
2. You are able to cancel Your Partner account by requesting it from Our Partner Program Manager via email (partners@woodpecker.co).

§9 Disclaimer of Warranties

1. Unless otherwise mutually agreed to by the parties in writing, the Website is provided by Woodpecker on an "as is", "as available" and "with all faults" basis and hereby Woodpecker and its directors, employees, content providers, agents and affiliates exclude, to the fullest extent permitted by applicable law, any warranty, express or implied as to the Website.
2. The functions embodied on or in the Website are not warranted to be uninterrupted or without error.

3. Woodpecker will not be liable for any damages of any kind arising from the use of the Website and makes no representations or warranties of any kind concerning the work, express, implied, statutory or otherwise, including, without limitation, warranties of title, merchantability, fitness for a particular purpose, noninfringement, or the absence of latent or other defects, accuracy, or the presence of absence of errors, whether or not discoverable.

§10 Limitation of Liability

1. Woodpecker does not guarantee compatibility of offered Services and products with other producers' software. The User will bear responsibility for the choice and consequences following from the use of other software including its applicability to User's objectives.
2. These Terms of Use are in lieu of all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, cause of dealing or otherwise, all of which are hereby excluded to the fullest point of law.
3. In no event and under no circumstances will Woodpecker, its directors, members, employees or agents be liable to You for any direct, special, indirect or consequential loss or damages, or any other damages of any kind, including but not limited to loss of use, loss of profits or loss of data, whether in an action in contract, tort (including but not limited to negligence) or otherwise in any way connected with:
 - a. the Website, Your use of or inability to use the Website, the performance of the Website,
 - b. any errors or omissions in the Website's operation; any action taken in connection with the Subscription, copyright or other intellectual property owners,
 - c. any damage to any User's computer, mobile device, or other equipment or

technology including, without limitation, damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line or net failure or any other technical or other malfunction, including, without limitation, damages for lost profits, loss of goodwill, loss of data, stoppage, accuracy of results, or computer failure or malfunction, even if foreseeable or even if Woodpecker parties have been advised of or should have known of the possibility of such damages, whether in an action of contract, negligence, strict liability or tort (including, without limitation, whether caused in whole or in part by negligence, acts of god, telecommunications failure, or theft or destruction of the Service).

4. By downloading any materials shared by Woodpecker, You understand that You may be waiving rights with respect to claims that are at this time unknown or unsuspected, and in accordance with such waiver, You acknowledge that You have read and understand, and hereby expressly waive.

§11 Miscellaneous

1. If any clause or provision in these Terms will become unenforceable, wherever possible this will not affect any other clause and each will remain in full force and effect.
2. Any waiver of any provision of the Terms of Use will be effective only if in writing and signed by Woodpecker.

§12 Applicable Law

1. All disputes arising in connection with this Document will be primarily resolved amicably.
2. These Terms of Use will not be governed by the United Nations conventions on contracts for the international sale of goods, if otherwise applicable.
3. You agree that all disputes You have with Woodpecker in connection to these Terms of Woodpecker.co Partner Program that cannot be amicably resolved will be submitted for resolution by Common Court of Law at the location of Woodpecker's registered office.

EXHIBIT A – Applicable Use Policy

- I. This Acceptable Use Policy applies to Woodpecker Services accessible at <https://app.woodpecker.co>, Woodpecker Chrome plug-in extension and any URLs related to the domain or subdomain.
- II. To ensure proper maintenance of the Service, the User shall not misuse the Service and as a consequence, the Customer is obliged not to:
 - A. intentionally or unintentionally hinder the functioning of the Services, for example by reverse engineering or hacking the Services, attempting to gain unauthorized access to the Services (or any portion thereof) or related systems, networks or data;
 - B. overcross API requests limit causing downtime to the Service or hindering its partial operational ability;
 - C. misrepresent or hide the data origin, content or other information submitted to the Service, for example by Spoofing, Phishing, manipulating headers or other identifiers, impersonating anyone else or access the Services via another User's Account without their permission.
- III. To ensure legal transparency of Our Service, the User shall not send content which may be deemed to be malicious or inappropriate, as for example, but not limited to:
 - A. content deemed to be SPAM, Spoofing, Phishing;
 - B. content related to pornography, sexual content, content displaying images or texts objectively recognized as offensive or cruel;
 - C. content related to racism, xenophobia, discrimination, hate speech, incitement to violence;
 - D. content related to or inciting to fraudulent behaviours.
- IV. The User is obliged to obey to this Terms of Service and subsequent documents constituting an Agreement. Woodpecker reserves its right to permanently delete the Account of a person who violates this Agreement without any prior notice and shall have no responsibility for any costs arising as a result of such deletion.
- V. The User is responsible for the accuracy, legality and adequacy of data of

Prospects entered into the Service, as well as for content shared through Woodpecker.

- VI. Users can upload documents, Prospects' and Customers' information, and other content to the Service. Users can then use the Prospects' and the Customers' information, as well as all the previously updated content to communicate with Customers and Prospects via email automated by the Service. Users retain all rights to all the data and content they upload to the Service and are fully responsible for it.
- VII. Woodpecker shall have no responsibility for how User Process data through the Service. Upon using the Service, the Users should abide by the law of their native country, as well as the law of the countries they send their emails to.
- VIII. As a condition of using the Service, the User shall:
 - A. as required by applicable law, provide notice to its Prospects and obtain consent if required to outreach to the persons;
 - B. be responsible for its employees, representatives, affiliates that have access to the Services;
 - C. comply with any limitations or restrictions set forth in this Agreement;
 - D. use the Services only in compliance with applicable law both national and international including court orders.
- IX. The User is responsible for secure storage of passwords and logins leading to the Accounts related to the Service. Woodpecker shall have no responsibility arising out of reckless or negligent credentials storage by the User.

EXHIBIT B – General Data Protection Clauses

This Exhibit is based upon the guidelines provided by European Commission in the form of contractual clauses between Data Controller and Data Processor.

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that Processing, including the transfer itself, of the Personal Data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the Personal Data-Processing services will instruct the data importer to Process Personal Data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures;
- (d) that after the assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where Processing involves the transmission of data over a network, and against all other unlawful forms of Processing, and that these measures ensure a level of security appropriate to the risks presented by Processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any Sub-processor to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in

which case it may remove such commercial information;

- (i) that, in the event of sub-processing, the processing activity is carried out in providing at least the same level of protection for the Personal Data and the rights of data subject as the data importer under the Clauses; and

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process Personal Data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures which ensures an adequate level of protection;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of Personal Data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
 - (ii) any accidental or unauthorised access; and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its Processing of Personal Data subject to the transfer and to abide by the advice of the supervisory authority with regard to Processing of the data transferred;

- (f) at the request of the data exporter to submit its data-processing facilities for audit of the Processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) to send promptly a copy of any Sub-processor agreement it concludes under the Clauses to the data exporter.

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this Contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any Sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any Sub-processor preventing the conduct of an audit of the data importer, or any Sub-processor.

Obligation after the termination of Personal Data-Processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the Sub-processor shall, at the choice of the data exporter, return all the Personal Data transferred and the copies thereof to the data exporter or shall destroy all the Personal Data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer

prevents it from returning or destroying all or part of Personal Data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of Personal Data transferred and will not actively process Personal Data transferred anymore.

2. The data importer and the Sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures.