

ARTICLE 1 PURPOSE AND ELIGIBILITY

This document sets forth the terms of services applicable to Partner, in addition to the Partner Access Form, the MCO Terms of Services and the Acceptable Use Policy.

From time-to-time and subject to a reasonable written notice addressed to Partner, Mirakl may modify the Additional Terms of Services. By continuing using MCO after the entry into force of the updated version of the Additional Terms of Services, Partner confirms its acceptance of it.

Partner is entitled by Mirakl to provide its services through MCO to Sellers and/or Operators. The services provided can be of different types, such as consulting services (Partner is an “Expert Partner”) and/or developing an application that access MCO via Mirakl API, hereinafter the “Application” and made available to Users (Partner is a “Developer Partner”). Both Developer Partners and Expert Partners are referred as “Partner”.

If Partner is an individual, he must be older than (i) 18 years, or (ii) at least the age of majority in the jurisdiction where he resides and from where he carries out its activity.

ARTICLE 2 PARTNER’S OBLIGATIONS

2.1 Obligations applicable to all Partners:

2.1.1 Compliance with laws and regulations

In addition to, and without limiting the provisions of MCO Terms of Services, Partner will obtain any licenses required in order to operate and offer the services associated with Partner’s activity on MCO.

In particular, Partner is reminded that the exercise of any commercial or professional activity on a regular basis must be declared to the appropriate administrative authorities and be carried out under a status authorized by law and regulations. Partner is personally responsible for making the declarations and obtaining the authorizations necessary for the performance of the services it intends to offer to other Users.

Partner is responsible for all applicable taxes that arise from or as a result of any activities on MCO or with respect to Partner’s dealings with a User.

2.1.2 Content published by a Partner

Any content created by Partner regarding services it may provide to other Users shall describe the services offered as precisely as possible. Where pictures or illustrations are attached to the publication, it must represent the services offered by Partner as truthfully as possible.

Partner is solely responsible for the contents including the creation of hypertext links to third party sites it publishes on MCO, even if the creation of such links has been authorized by Mirakl and/or if Mirakl was aware that such links were created.

If the service offer includes pricing, Partner must mention an all-inclusive pricing (fees, taxes, etc.).

2.1.3 Quality of services

Partner shall perform the services it offers on MCO to other Users in accordance with the highest applicable industry standards. Partner shall ensure its actions shall not cause any damage to the image of Mirakl and or MCO.

While using MCO Partner will behave professionally towards Mirakl and other Users. In the event of fraud and/or other unacceptable behavior by Partner, Mirakl may suspend Partner’s access to MCO and/or terminate the Agreement.

Partner acknowledges that Mirakl may offer a system within MCO for Users to evaluate Partner’s quality of service, which shall be public and may be consulted by other Users. Mirakl will make its best efforts to prevent opinions contrary to legal or regulatory provisions, or more generally to the Agreement, from being accessible on MCO. Reviews published are the sole and exclusive responsibility of their authors and are not subject to prior moderation by Mirakl. In the event the aforementioned evaluation system reveals that the quality of services offered by Partner does not meet the industry standards reasonably expected by Mirakl, Mirakl may in its sole discretion suspend Partner’s account or access to MCO and may also terminate the Agreement.

2.2 Specific conditions applicable to Developer Partner:

“Developer Partner” means a Partner that develops an Application (i.e. a Partner that provides a customized experience for Users that requires usage and access to Mirakl APIs).

Developer Partner is entitled by Mirakl to develop Applications.

Subject to compliance with the Agreement, Mirakl will grant Developer Partner access to Mirakl API and their related Documentation. This access is granted solely for the purpose of developing services or Applications in relation to MCO and in order to provide services to other Users.

Developer Partner shall not (1) provide incentives in exchange for reviews of their Applications or services, (2) include code in an Application that is not related to the services provided by the Application, or (3) distribute an Application with the purpose of criminal or unlawful activity.

Mirakl grants Developer Partner a limited right to use the Mirakl trademarks or Mirakl’s intellectual property rights for the sole purpose of notifying Users (Operators or Sellers) that its Application or service is compatible with MCO.

Developer Partner’s Applications or service offers in relation with MCO are subject to approval and acceptance by Mirakl, and Mirakl retains the right to take any action it deems necessary in respect of an Application or a service at any time for any reason.

Developer Partner must follow all Mirakl guidelines set out in the Documentation provided by Mirakl (i.e. “Getting your App approved”) with respect to their Application or service.

Developer Partner grants to Mirakl a worldwide, non-exclusive, royalty-free, transferable and sub-licensable right to use and display in any manner Partner’s Application in connection with and for the purpose of performing its obligations and exercising its rights under the Agreement.

2.3 Specific conditions applicable to Expert Partner: The terms of this section apply exclusively to Expert Partners.

“Expert Partner” means a Partner that will provide business services to other Users, such as consulting services. Expert Partner will not use Mirakl API and will not build an “Application”.

Expert Partners are entitled by Mirakl to offer business services through MCO to other Users (e.g. consulting services).

Expert Partner acknowledges and agrees that Mirakl receives and may review all communications exchanged via MCO or in any reply emails that originate within MCO (directly or indirectly) between Expert Partners and other Users.

Expert Partner consents to being contacted by other Users at the email address provided by Expert Partner to Mirakl.

ARTICLE 3 LIABILITY

Limitation of liability. THE TOTAL LIABILITY OF MIRAKL (AND ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS) FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF (i) THE AGGREGATE AMOUNT PAID BY PARTNER TO MIRAKL PURSUANT TO THE PARTNER ACCESS FORM DURING THE SIX (6) MONTHS PRIOR TO THE FIRST EVENT OUT OF WHICH THE LIABILITY AROSE, OR (ii) TEN THOUSAND (10 000) EUROS.

Independency: The Parties are independent contractors. Neither Mirakl nor Partner will have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or otherwise bind, the other Party, except where Partner expressly authorizes Mirakl to act on its behalf for the purpose of creating a direct technical link between Partner’s services and an Operator’s system.

Mirakl remains at all times a third party to any contracts or agreements executed by Partner and other Users. Given its status as a third party to the relationship between Partner and other Users, Mirakl will in no way be held responsible for the non-performance or improper performance by Partner of its obligations toward another User, nor by the other User to Partner. It is expressly recalled that it is Partner’s responsibility to address any complaints related to its services on MCO (including all legal guarantees). Under no circumstances may Mirakl be asked to intervene in this context.

ARTICLE 4 NON-CIRCUMVENT

The Parties acknowledge that their business involves, among other activities, introducing, participating, effectuating and consummating transactions between their respective contacts, including Sellers and Operators (each, a “Transaction”). During the term of the Agreement, Partner hereby irrevocably agrees and warrants that it shall not, directly or indirectly, interfere with, circumvent, attempt to circumvent, avoid or bypass Mirakl from any Transactions or obviate or interfere with the relationship of Mirakl and any Sellers or Operators for the purpose of gaining any benefit, whether such benefit is monetary or otherwise. Partner also undertakes not to make use of any third party to circumvent Partner’s obligations as set forth in this Section.

Following termination of the Agreement Partner shall be entitled to continue its business relationships with Users and enter into a business relationship with new Users. The fees received by Partner from such Users shall be taken into account in the Success Fee calculation for either (a) twenty-four (24) months from the date of termination for existing business relationships or (b) a period of twenty-four (24) months from the start of the business relationship of Partner end-user for a new User having contracted with Partner during the year following the termination date of the Agreement.

To that extent, and for the sake of clarity, the Partner Access Form, section 2.1.4 of the Partner’s Additional Terms of Services as well as any other section of the Agreement Mirakl may use to enforce payments (including, but not limited to section 5 “Audit Right”) shall survive termination of the Agreement.

ARTICLE 5 FEES AND PAYMENT CONDITIONS

5.1 Partner shall pay the fees as agreed in the Partner Access Form.

The fees will be calculated based on the monitoring by Mirakl of the use of Mirakl API by Partner according to the Documentation of, when not possible on the revenue declaration provided by Partner.

When the data are not accessible to Mirakl, Partner shall submit to Mirakl within thirty (30) days following the end of each quarter, via email at app-commissions@mirakl.com, a report indicating its total revenues for the previous quarter and all information requested by Mirakl to issue the related invoice.

Mirakl will issue an invoice for the fees due in accordance with the Information retrieved via Mirakl API or the revenue declaration provided by Partner.

In the event of termination of MCO the Agreement, Partner shall immediately transmit a report indicating the total revenues for the ongoing quarter to Mirakl, and Mirakl will issue the associated invoice to Partner.

5.2 The payment conditions are detailed In the Partner Access Form.

Pursuant to the provisions of section L.441-10 of the French commercial code, any fees not paid by Partner upon their due date shall be automatically subject, in addition to the payment of a fixed 40 (forty) euros compensation for collection costs, to the payment of late interest at the rate applied by the Central European Bank corresponding to its most recent refinancing operation increased by ten (10) percentage points.

In the event Partner fails to pay the fees on time, Mirakl may, at its sole option, and upon written notification (including by email) suspend the provision of all or part of MCO until complete payment of the fees by Partner.

All fees payable to Mirakl under this Agreement are exclusive of any value added tax or similar taxes, levy or similar governmental charge. If, as a result of any tax or levy, Partner is required to withhold any amount on any payment to Mirakl, then the amount of the payment to Mirakl shall be automatically increased to totally offset such tax, so that the amount actually remitted to Mirakl, net of all taxes, equals the amount invoiced or otherwise due. Partner will promptly furnish Mirakl with the official receipt of payment of these taxes to the appropriate taxing authority. Partner may provide Mirakl with a certificate of exemption acceptable to an applicable taxing authority.

ARTICLE 6 AUDIT RIGHT

Mirakl will have the right to appoint an independent auditor, under appropriate non-disclosure conditions, to audit Partner’s records to confirm Partner’s compliance with the Agreement. If such audit reveals non-compliance, the independent auditor appointed by Mirakl will provide the Parties with a report (along with supporting documentation) indicating the amount by which Partner has overstated or understated the payments due by to Mirakl, and any other failures by Partner to fulfill its obligations under the Agreement.

Prompt adjustment will be made by the proper Party to compensate for any overpayments or underpayments revealed by any such audit. Mirakl will bear all costs of any such audit, unless such audit reveals underpayment by Partner by more than five percent (5%) for the audited period, in which case, Partner will reimburse Mirakl for all of the costs of such audit. In addition to the foregoing audit rights, Mirakl will also have the right to use the capabilities of MCO to confirm the revenue associated with services offered by Partner, or the Application.

ARTICLE 7 PUBLICITY

Partner shall have all external communications and press releases relating to Mirakl or MCO approved by Mirakl. Any changes or translations of the communication in question will require further validation by Mirakl.