

VAR Incentive Program (VIP) Agreement

Last Updated: April 29, 2022

This VAR Incentive Program (VIP) Agreement (together with the applicable Program Document, collectively this “**Agreement**”) is entered into by (i) you on behalf of the company identified in the applicable Program Document (“**Partner**”), and (ii) the BigCommerce entity identified in the applicable Program Document (“**BigCommerce**”). By executing a Program Document which references this VAR Incentive Program (VIP) Agreement or otherwise referring Merchants to BigCommerce under the VAR Incentive Program, Partner acknowledges that it has reviewed and accepts all of the terms and conditions of this Agreement and that you are duly authorized to act on behalf of Partner and bind it to this Agreement.

1. Commission Terms.

1.1. **Commission.** For each Referred Merchant, BigCommerce shall pay Partner the Commission Percentage (as defined in the applicable Program Document) of Commissionable Revenue (“**Commission**”) for so long as (a) such Referred Merchant remains an active customer of BigCommerce under a valid Services Agreement, and (b) BigCommerce has an active partnership with the Technology Provider.

- a) “**Commissionable Revenue**” means the fees actually collected and retained by BigCommerce from each Referred Merchant under such Referred Merchant’s Services Agreement, less: (i) any third-party payment or credit card processing fees, and (ii) any chargebacks, refunds, return credits or similar costs. Additionally, Commissionable Revenue excludes Third Party Service and Product Fees (as defined below) and any other fees received by BigCommerce in connection with any other service provided by BigCommerce (e.g., professional services).
- b) “**Third Party Service and Product Fees**” means the fees charged for domain and SSL certificates, any third-party applications and themes, or any other third-party services and products purchased or used by Partner Referred Merchants in connection with the purchased Qualified Subscription Plan. The Commission provided for herein shall be the sole and complete compensation to which Partner or anyone on its behalf shall be entitled in connection with the referral of customers to BigCommerce.
- c) “**Qualified Subscription Plan**” means a BigCommerce Enterprise online store subscription plan. For the avoidance of doubt, Standard, Plus and Pro online store plans are not “Qualified Subscription Plans”.
- d) “**Referred Merchant**” means a Partner customer that: (i) is referred to BigCommerce by Partner through the BigCommerce Partner Portal (<https://partners.bigcommerce.com>); (ii) is not already a BigCommerce customer or previously listed in BigCommerce’s qualified leads database; and (iii) executes a Services Agreement and purchases a Qualified Subscription Plan within six (6) months from Partner’s referral of the customer.
- e) “**Services Agreement**” means a written agreement between BigCommerce and a Referred Merchant that includes terms and conditions for BigCommerce’s provision of a Qualified Subscription Plan to such Referred Merchant.

1.2. **Registration and Tracking of Referrals.** Referrals will be registered and tracked through the BigCommerce Partner Portal (<https://partners.bigcommerce.com/>).

1.3. Payment.

- a) **Generally.** Subject Section ‘Threshold’ below, during the Term of this Agreement, BigCommerce will pay Commissions on a monthly basis, within forty-five (45) days from the end of each calendar month during which the Commissionable Revenue was received by BigCommerce. All Commission payments will be made in U.S. Dollars.
- b) **Threshold.** BigCommerce will not pay a Commission for a Referred Merchant unless (i) the first billing cycle for the Referred Merchant is completed, (ii) BigCommerce has received its first payment from the Referred Merchant, and (iii) the Commission balance due to Partner exceeds \$100 USD.

1.4. **Reporting.** Each Commission payment will be accompanied by a report containing information on the amount and calculation of Commission earned by Partner. The parties agree to use good faith efforts to resolve any discrepancy between their respective records relating to Commissions, should any occur.

- 1.5. **Notice of Error.** In the event that Partner reasonably believes that BigCommerce has failed to pay a Commission or that the amount paid is not in compliance with this Agreement, Partner agrees to promptly provide written notice to BigCommerce specifically describing such failure. In no event will BigCommerce be liable to Partner for any failure that should have been reported pursuant to this Section, or which failure first occurred, whether or not discovered or reported, more than 180 days prior to BigCommerce's receipt of Partner's written notice of the failure.
- 1.6. **Taxes.** Each party will be responsible for payment of all taxes assessed against it as a result of this Agreement.
- 1.7. **Effect of Expiration or Termination.** Except as otherwise provided in this provision, upon expiration or termination of this Agreement, BigCommerce will continue to pay Commissions hereunder for each referral that becomes a Referred Merchant prior to the effective date of such expiration or termination, until the first to occur of the following events (at which time BigCommerce's obligation to pay further Commissions on such Referred Merchant will automatically cease): **(a)** the expiration or termination of such Referred Merchant's Services Agreement, or **(b)** the expiration or termination of BigCommerce's partnership with the Technology Provider. Notwithstanding the foregoing, if BigCommerce terminates this Agreement due to Partner's uncured material breach, then BigCommerce will not be required to continue to pay such Commissions to Partner after termination of this Agreement.

2. Term.

- 2.1. **Term.** This Agreement will commence on the Effective Date and continue until terminated in accordance with the terms of this Agreement.
- 2.2. **Termination.** Either party shall have the right to terminate this Agreement with immediate effect by written notice in the event that: **(i)** the other party ceases operation without a successor; **(ii)** the other party seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter); **(iii)** the other party commits any material breach of the terms of this Agreement and fails to remedy any material breach within 30 days of receipt of prior written notice of such breach; or **(iv)** the other party breaches its confidentiality obligations hereunder and such breach is not capable of cure.
- 2.3. **Additional Termination Rights.** Either party may terminate this Agreement upon at least thirty (30) days prior written notice to the other party.
- 2.4. **Remedies.** Except as otherwise expressly stated herein, termination of this Agreement by either party will be a nonexclusive remedy and will be without prejudice to any other right or remedy of such party. Except as otherwise expressly stated herein, the rights and remedies of the parties to this Agreement are cumulative and not alternative.
- 2.5. **Survival.** The rights and obligations of the parties contained herein which by their nature are intended to survive, will survive the termination of this Agreement including, but not limited to, payment, confidentiality, warranties and warranty disclaimers, limitations of liability, and indemnities.

3. Promotion; Referral.

- 3.1. **Promotion.** Partner will promote BigCommerce's services and refer merchants to BigCommerce in accordance with this Agreement.
- 3.2. **Contacts.** Each party will designate a business contact person who will serve as that party's primary business contact for this Agreement. Either party may change its contact upon written notice to the other party.
- 3.3. **Use of BigCommerce Trademarks.**
 - a) **General.** BigCommerce grants Partner a limited, non-exclusive, non-transferrable, revocable, royalty free, paid-up license during the Term to use BigCommerce's Trademarks provided to Partner by BigCommerce solely for the promotion of BigCommerce's services as contemplated by this Agreement and in compliance with BigCommerce's Trademark Guidelines. Partner will reasonably cooperate with BigCommerce in facilitating BigCommerce's monitoring of Partner's use of BigCommerce's Trademarks. BigCommerce will have the right to immediately suspend Partner's use of BigCommerce's Trademarks if such usage is improper or inconsistent with the terms of this Agreement. Upon termination or expiration of this Agreement, Partner will cease all use of BigCommerce's Trademarks.

- i. **“Trademarks”** means trademarks, trade names, service marks, logos and domain names.
 - ii. **“Trademark Guidelines”** means the BigCommerce Trademark Guidelines located at https://partners.bigcommerce.com/English/bc_trademark_usage.aspx.
- b) **Ownership.** BigCommerce is the sole owner of its Trademarks and Partner will not acquire any right, title or interest in BigCommerce’s Trademarks because of Partner’s use of BigCommerce’s Trademarks. All use and goodwill associated with BigCommerce’s Trademarks will inure to the benefit of BigCommerce.
- c) **Restrictions.** Partner will not **(i)** adopt or use any name, trademark, domain name or other designation that includes all or part of any of BigCommerce’s Trademarks or any term that is confusingly similar, **(ii)** alter, animate or distort BigCommerce’s Trademarks nor combine them with any other symbols, words, images or design elements (including, without limitation, those of Partner), **(iii)** challenge or assist others to challenge BigCommerce’s Trademarks or the registration thereof, or **(iv)** attempt to register or cause to be registered BigCommerce’s Trademarks or any trademarks, marks, trade names, service marks, logos, marketing messages or other proprietary words, symbols and branding confusingly similar to those of BigCommerce’s Trademarks.
- 3.4. **Publicity.** Neither party shall issue any press release or make any other public statement regarding this Agreement without the other party’s prior written consent.
- 3.5. **Services Agreements.** BigCommerce will have no obligation to enter into a Services Agreement with a Partner referral, or to sell or continue to sell any BigCommerce product or service to such Partner referral, and BigCommerce may refuse to do so for any or no reason. If BigCommerce enters into a Services Agreement with a Referred Merchant, such Services Agreement shall be deemed a separate and independent agreement solely between BigCommerce and the applicable Referred Merchant and shall be separately and independently enforceable notwithstanding any provision to the contrary in this Agreement or any agreement between Partner and such Referred Merchant. Partner shall not be deemed a third-party beneficiary under any Services Agreement.
- 3.6. **No Authority to Bind.** Except as expressly provided herein, neither party will have any right or authority to act on behalf of or bind the other party, and neither party shall represent that it has such right or authority.
- 3.7. **No Representations.** Neither party shall make any representations concerning the other party’s products or services without such party’s prior written approval of the contents of such representations.

4. Indemnification.

- 4.1. **Mutual Indemnification.** Subject to the limitations in this Agreement, each party (“**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other party (“**Indemnified Party**”) from and against any third party demands, claims, causes of action or suits of any kind or nature, including reasonable attorney’s fees and costs of litigation, incurred by the Indemnified Party based on or arising as a result of the Indemnifying Party’s: **(i)** violation of applicable laws, rules, or regulations; **(ii)** breach or nonperformance of any provision of this Agreement; **(iii)** breach of the Compliance Supplement; and/or **(iv)** gross negligence or willful misconduct, or fraud.
- 4.2. **Conditions.** The Indemnifying Party’s indemnification obligations are conditioned on the Indemnified Party: **(i)** providing the Indemnifying Party with prompt written notice of any claim (provided that the Indemnifying Party’s obligation to indemnify shall only be excused to the extent that failure to promptly notify prejudices the Indemnifying Party in its defense of the claim), **(ii)** granting the Indemnifying Party the sole control of the defense or settlement of the claim (provided that the Indemnifying Party shall not agree to any settlement that would require the Indemnified Party to make any payments not covered by the Indemnifying Party or to make any admission of wrongdoing), and **(iii)** providing reasonable information and assistance to the Indemnifying Party in the defense or settlement of the claim at the Indemnifying Party’s expense. The Indemnified Party may participate in the defense and settlement of a claim with counsel of its choice, at its own expense.
- 4.3. **Consent for Settlement.** The Indemnified Party will not be liable for any settlement of a claim effected without its written consent, nor will the Indemnified Party settle any such claim without the written consent of the Indemnifying Party.
- 4.4. **Limitations.** Notwithstanding anything else to the contrary in this Agreement, a party’s obligation to defend, indemnify and hold the other party harmless hereunder is limited to the payment for the cost of defense of the

third party claim and **(i)** the payment of any settlements agreed to by the Indemnifying Party in a writing signed by an officer of the Indemnifying Party, or **(ii)** final judgments awarded to the third party claimant by a court of competent jurisdiction.

5. Limits of Liability. Neither party shall be liable to the other or to any third party for lost profits or revenue, lost business, or any indirect, incidental, special, consequential, or punitive damages whether such damages are alleged in tort, contract or any other legal or equitable theory (whether or not arising out of circumstances known or foreseeable). Each party's liability hereunder to the other party shall in no event exceed an amount equal to the lesser of **(a)** the actual monetary damages incurred by such party, or **(b)** the Commissions earned by Partner in compliance with this Agreement in the twelve (12) calendar months immediately preceding the date on which the claim or cause of action arose. The foregoing limitations of liability shall not apply to a party's: **(i)** indemnification obligations; **(ii)** breach of confidentiality; or **(iii)** gross negligence, intentional misconduct, or fraud, or any liability that by law cannot be disclaimed or limited.

6. Confidentiality.

6.1. Confidential Information. The term "Confidential Information" means all non-public business, technical, and financial information disclosed by one party to the other that is marked or otherwise identified as confidential, or would be deemed confidential by a reasonable person given the nature of the information and manner of disclosure. Confidential Information of BigCommerce includes all reporting and Commission information provided by BigCommerce to Partner, regardless of whether marked or identified as confidential.

6.2. Restrictions. During the term of this Agreement and following the expiration or termination thereof, each party will use its best efforts to protect Confidential Information of the other party from any unauthorized access, use, or disclosure, and will not disclose Confidential Information to any third party except as expressly authorized in writing by the other party. Neither party will use Confidential Information for any purpose other than in furtherance of the purpose of this Agreement. For the avoidance of doubt, neither party shall utilize the Confidential Information of the other in any manner or for any reason that is not in furtherance of the purpose of this Agreement.

6.3. Ownership and Return. As between the parties, the party providing the Confidential Information shall be the owner of such Confidential Information, and upon termination of this Agreement, each party will either return or destroy all Confidential Information received from the other party.

6.4. Exceptions. Confidential Information does not include any information that: **(i)** was rightfully in the receiving party's possession before receipt from the disclosing party; **(ii)** is or becomes a matter of public knowledge through no fault of the receiving party; **(iii)** is rightfully received from a third party without a duty of confidentiality; or **(iv)** is independently developed without reliance on, use of, or strategic guidance derived from the disclosing party's Confidential Information. A party may disclose Confidential Information of the other party pursuant to a valid court order provided that such party: **(a)** gives the other party prior written notice of the required disclosure (if not legally prohibited); and **(b)** limits disclosure to only that Confidential Information subject to the applicable order.

6.5. Injunctive Relief. Each party acknowledges that the injury that would be sustained by the other as a result of the violation of this provision cannot be compensated solely by money damages, and therefore each agrees that the other shall be entitled to seek injunctive relief in addition to any other rights available under this Agreement in the event of a violation of the provisions contained in this Section.

7. General.

7.1. Warranties; Disclaimer. Each party represents and warrants to the other party that: **(i)** it has the right to enter into this Agreement and to perform its obligations hereunder; **(ii)** the execution, delivery and performance of this Agreement does not conflict in any material respect with or constitute a material breach or default of any organizational document, agreement or other writing to which it is a party; **(iii)** it has all licenses, permissions and agreements necessary or appropriate to perform its obligations under this Agreement; and **(iv)** it will comply will all laws, rules, and regulations applicable to its performance under this Agreement. Partner further represents and warrants to BigCommerce that **(a)** it has properly obtained the consent of each Referred Merchant to share their contact information with BigCommerce, and **(b)** it will comply with the BigCommerce Compliance Supplement located at <https://www.bigcommerce.com/compliance-supplement/> (the "**Compliance Supplement**"), which is incorporated by reference herein. Except the foregoing express warranties, each party

disclaims all warranties, including, without limitation, any express or implied warranties of merchantability or fitness for a particular purpose.

- 7.2. **Severability.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.
- 7.3. **Amendments.** Notwithstanding anything else in this Agreement, this Agreement shall only be modified or amended by an instrument in writing signed by each party hereto.
- 7.4. **Assignment.** Partner will not have any right or ability to assign, transfer, or sublicense (whether by merger, operation of law or otherwise) any obligations or benefit under this Agreement without the prior written consent of BigCommerce, and any non-conforming attempt will be null void. All terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted successors and assigns.
- 7.5. **Waiver.** Except as otherwise specifically provided for in this Agreement, the failure of any party to promptly enforce its rights herein shall not be construed to be a waiver of such rights unless expressly agreed to in writing. If either party expressly waives in writing an unsatisfied condition, representation, warranty, undertaking or agreement (or portion thereof) set forth herein, the waiving party shall thereafter be barred from recovering, and thereafter shall not seek to recover, any damages, claims, losses, liabilities or expenses, including, without limitation, legal and other expenses, from the other party with respect to the matter or matters expressly so waived in writing; such waiver shall not constitute a waiver of any future obligation to comply with such expressly waived condition, representation, warranty or undertaking.
- 7.6. **Notices.** All notices, requests, demands and other communications to be delivered hereunder shall be in writing and shall be delivered by hand or mailed, by registered or certified mail, postage prepaid, at or to the addresses in the Program Document or to such other address or to such other person as either party shall have last designated by written notice to the other party. Notices, etc., so delivered shall be deemed given upon receipt.
- 7.7. **No Third-Party Beneficiary; No Agency.** This Agreement is for the benefit of, and may be enforced only by, Partner and BigCommerce and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party. This Agreement does not make, and shall not be deemed to create, any agency relationship between BigCommerce and Partner but rather the relationship of BigCommerce and Partner shall be that of independent contractors.
- 7.8. **Force Majeure.** Neither party shall be deemed to be in default under this Agreement nor liable for any loss or delay in the performance, failure to perform, directly or indirectly, from errors in data provided by others, labor disputes, fire or other casualty, governmental orders or regulations, or any other cause, whether similar or dissimilar to the foregoing, beyond the nonperforming party's reasonable control. Upon such an occurrence, the nonperforming party will use reasonable efforts to remove the cause for the delay, and performance by such party shall be excused until the cause for the delay has been removed and the party has had a reasonable time to again perform hereunder.
- 7.9. **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas without regard to its conflict of law provisions. Venue for any related legal action will be the federal or state courts located in or nearest Austin, Texas. BIGCOMMERCE AND PARTNER HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED HEREBY.
- 7.10. **Modifications.** From time to time, BigCommerce may modify this Agreement, including any referenced guides, policies, and other documents. If a modification would meaningfully reduce Partner's rights, then BigCommerce will notify Partner through a post to the Partner Portal (a "**Modification Notice**"). If an officer of Partner certifies in writing within 30 days of the posting of the Modification Notice that the modification is material and adverse to Partner, then BigCommerce may elect in writing to: (x) waive the modification for Partner; or (y) provide Partner with 30 days for Partner to elect in writing whether to: (i) terminate this Agreement, or (ii) accept the modification despite the adversity. Partner will check the Partner Portal regularly for Modification Notices and will be bound by the changes identified in such Modification Notice as of the 31st day after posting. Changes identified in a Modification Notice shall apply prospectively.

7.11. **Entire Agreement.** This Agreement (including the applicable Program Document) supersedes all proposals, oral or written, any letters of intent, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom. Other than as set forth in the 'Modifications' Section, (i) no changes, modifications, or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties, and (ii) only an officer of BigCommerce is authorized to modify this Agreement or to make any warranty, representation or promise on behalf of BigCommerce.

[END]