

Service Agreement

Terms and Conditions

These terms and conditions, along with any Insertion Order (whether physically attached hereto or incorporated by reference (together referred to as the "Agreement"), represent the complete and exclusive agreement between the ADVERTISER (referred to as the "Advertiser") and the AFFILIATE (referred to as the "Affiliate"). The term "Party" may refer to either the Advertiser or the Affiliate individually, while "Parties" collectively denotes both.

Formation of the Contract

- a) The Agreement outlines the terms and conditions under which the Affiliate will provide services to the Advertiser. The Advertiser designates the Affiliate to perform the services on behalf of both itself and the Advertiser.
- b) ANY ADDITIONAL TERMS, CONDITIONS, PERFORMANCE CRITERIA, GUARANTEES, OR PRIOR REPRESENTATIONS, WARRANTIES OF ANY KIND (WHETHER ORAL OR WRITTEN), REGARDLESS OF TIMING, SHALL HAVE NO EFFECT UNLESS SPECIFICALLY INCORPORATED HEREIN.
- c) Any modifications to the Agreement will not be valid unless expressly agreed upon in writing in the Insertion Order and signed by an authorized representative of both the Advertiser and Affiliate.
- d) The Agreement shall: (a) supersede and replace any other terms or conditions specified, included, referred to, or contained in any document (excluding the Insertion Order signed by both parties); and (b) take precedence over any other terms or conditions upon which a quotation has been provided to the Advertiser, rendering any similar provisions in the Terms and Conditions void.

Definitions

Advertiser: refers to the advertiser for which the Advertiser acts as an agent under a relevant Insertion Order (IO).

Product: pertains to the application or online service platform (e.g., website, etc.) owned entirely by the Advertiser, or the application or online service platform (e.g., website, etc.) licensed to the Advertiser.

Campaign (Service): denotes the activities conducted by the Affiliate for the Advertiser based on this Agreement. These activities primarily involve the placement and promotion of banners and landing pages of the Product provided by the Advertiser. Additionally, these activities may entail other promotional actions for the Product and any necessary web marketing consultancy services.

Materials: encompass, notably but not exclusively, logos, images, texts, videos, banners, landing pages, creative works, copies, active URLs, and campaign creatives.

IO (Insertion Order): signifies a document designed to clarify and describe the business specifics between the parties, issued by the Advertiser to the Affiliate periodically. This Agreement may encompass multiple Insertion Orders, each of which shall be an integral part of this Agreement.

Promotional Service Platform: represents the Affiliate's method of delivering mobile applications and services to Clients, including, but not limited to, websites, app stores, ad networks, in-app cross-sell services, etc.

CPA: Indicates Deliverables sold on a cost per acquisition/action basis.

CPB: Indicates Deliverables sold on a cost per billable acquisition/action basis. CPS: Indicates Deliverables sold on a cost per sale basis.

CPL: Indicates Deliverables sold on a cost per lead basis. CPI: Indicates Deliverables sold on a cost per install basis.

CPD: Indicates Deliverables sold on a cost per download basis. CPC: Indicates Deliverables sold on a cost per click basis.

CPM: Indicates Deliverables sold on a cost per 1000 impressions basis.

Intellectual Property Rights: Encompass all present, future, and contingent intellectual property rights, including but not limited to goodwill, reputation, rights in confidential information, copyrights, trademarks (registered or unregistered), logos, service marks, designs (registered or unregistered), blueprints, models, diagrams, information, drawings, computer programs, specifications, source and object code materials, data, processes, patents, know-how, trade secrets, inventions, database rights, and any rights protecting these rights and all renewals and extensions thereof in any part of the world, whether currently known or created in the future. Except as explicitly granted in this Agreement, the Advertiser retains all rights, title, and interest in the Advertiser's intellectual property rights and any derivatives thereof.

Site Service: Refers to the web-based application, reporting, data access, and advertising provided by the Advertiser. **Site or Advertiser Site:** Signifies the website through which such Site Services are accessed.

Provision of Service

- a) From the Commencement Date, the Affiliate shall promptly provide the Services with the utmost professional care and skill, in a diligent manner consistent with the current best industry practices, and always in compliance with the terms of the Agreement (including the relevant specifications and deadlines outlined in the Insertion Order).
- b) Access to the Site Service and the use of the Advertiser Site are governed by the terms and conditions of this Agreement. Advertiser retains the right to withhold or cease Affiliate's participation at any time at its sole discretion, irrespective of initial approval.
- c) Criteria. The Affiliate acknowledges and agrees that, if it represents or acts on behalf of third-party Affiliates or websites ("Third- Party Publishers"), it assumes full liability for such entities and commits to ensuring their compliance with this Agreement and all applicable laws. Alongside other provisions of this Agreement, the Affiliate undertakes to indemnify, defend, and absolve the Advertiser of any damages resulting from a Third-Party Publisher's violation of their obligations or warranties under this agreement. Furthermore, the Affiliate warrants the ability to immediately terminate a Third-Party Publisher's Service.
- d) License. Subject to the terms herein, Advertiser grants the Affiliate a revocable, non-transferable, and limited license to utilize the Site Service, the Advertiser Site, and any data, reports, information, or analyses resulting from such use (collectively, the "Site Data") solely for the purposes outlined in this Agreement.
- e) Acceptance of a Campaign. The Affiliate warrants that, upon accepting and executing a Campaign, they will adhere to all terms and conditions of the Agreement. Failure to comply may result in, among other remedies, immediate termination of the Agreement by Advertiser and withholding of payment to the Affiliate without penalty.
- f) The Affiliate acknowledges that Advertiser provides a non-exclusive, non-transferable, and revocable right to use the creatives, materials, and links solely as per the Agreement's terms, for advertising campaigns specified in the Insertion Order. Except as expressly stated, this Agreement does not confer any rights to the Affiliate over the creatives, materials, Advertiser's Intellectual Property, or trade secrets.

- g) The Affiliate is permitted to use only the creatives and materials provided by Advertiser. Altering, modifying, manipulating, or creating derivative works of the Links or any Advertiser materials is prohibited unless approved by Advertiser. Any custom creatives, texts, pre-landers, or self-made materials intended for product promotion require prior approval from Advertiser.
- h) Advertiser reserves the right to revoke the Affiliate's license or rights by providing written notice at any time.
- i) The Affiliate must promptly implement any changes notified by Advertiser regarding the advertising campaign. Advertiser reserves the right to withhold payment if the Affiliate fails to comply with the communicated changes promptly.

Payment and Payment Liability

- a) The Affiliate shall issue monthly invoices after providing the service. The credit term for payment shall be 7 working days from the date of receipt of the invoice.
- b) The Advertiser will settle the invoices via bank transfer following the information provided regarding the Affiliate's bank account. Any bank fees related to the transfer shall be borne by the Affiliate upon receipt.
- c) The Affiliate acknowledges and accepts full responsibility for any taxes incurred. Payments will only be processed on a weekly net 7 basis if they meet the threshold amount of \$1000 via wire transfer. Affiliate understands that this payment policy may be revised at any time, and agrees to adhere to the updated policy.
- d) Upon the Affiliate's request, the Advertiser may, at its discretion, provide the Affiliate with an advance payment. In such instances, the Affiliate must either render services equivalent to the advanced amount within 30 days or return the excess of the advance payment within the same period.

Fraud

- a) The Affiliate is explicitly forbidden from engaging in fraudulent activities, violating laws, or falsifying information related to referrals through the Links or exceeding authorized access to the Advertiser Site. Examples of such prohibited actions include, but are not limited to, using automated methods to boost click numbers through the Links, submitting false information, employing spyware or stealware, engaging in cookie-stuffing, dishonest activities, click fraud, or any other deceptive behavior that harms the Advertiser (collectively referred to as "Fraud").
- b) Advertiser retains the right, at its sole discretion, to terminate this Agreement without any liability if it determines that the Affiliate has committed Fraud.
- c) If Advertiser confirms that the Affiliate has committed Fraud, the Affiliate will forfeit all payment for the Campaigns. In case the Affiliate is warned about engaging in Fraud but fails to rectify the issue promptly, the Affiliate will be held accountable for all costs and legal fees resulting from the fraudulent activities, besides any other remedies available to the Advertiser.
- d) Upon being informed by Advertiser that a Third-Party Publisher is involved in, or has been engaged in, activities prohibited by the Agreement, such as generating fraudulent traffic, the Affiliate must promptly cease its association with the said Third-Party Publisher concerning their participation in the Advertiser's cooperation. Failure to disassociate from the Third-Party Publisher within 3 days of notification may lead to the immediate termination of this Agreement by the Advertiser. Furthermore, if Advertiser concludes, at its sole discretion, that a Third-Party Publisher is involved in prohibited activities, Advertiser will adjust and withhold the Affiliate's payment accordingly. Advertiser reserves the right to withhold or adjust amounts related to prohibited activities of Third-Party Publishers, regardless of the Affiliate's involvement or knowledge of such activities.

Qualified Action

- a) Advertiser will compensate Affiliate for each Qualified Action, defined as actions generated by the Affiliate that do not involve: (a) artificially boosting volumes using scripts, programs, devices, or any other means, (b) excessive page reloading, (c) offering unauthorized incentives to clients by Affiliate or any Third-Party Publisher, (d) auto-spawning of browsers, (e) automatic user redirection, (f) misleading links or any method leading to artificially high impressions or clicks, (g) unlawful deposits, revenues, or traffic generation, (h) employing deceptive methods in creating promotional data not based on authentic user behavior.
- b) Quality of conversions outweighs quantity. Fraudulent, bad, or unapproved traffic (including restricted traffic specified in the Insertion Order) is prohibited. Advertiser reserves the right to refuse payment for such traffic and may charge back any prior payments that fail to meet the criteria for a Qualified Action or are deemed fraudulent, bad, or unapproved.

Representations and Warranties

- a) The Affiliate assures compliance with all obligations, requirements, and restrictions outlined in the Agreement, in addition to adherence to laws, rules, policies, and regulations.
- b) The Affiliate confirms having the necessary rights and authority to enter into this Agreement.
- c) The Affiliate guarantees that all materials provided do not violate any laws, infringe upon intellectual property or personal rights of third parties, and do not contain or link to harmful, defamatory, obscene, sexually explicit, threatening, discriminatory, illegal, profane, or objectionable content, as specified by the Advertiser.
- d) Advertiser ensures that the Affiliate's use of the campaign is permitted. Advertiser possesses the required rights to authorize the Affiliate's use of the campaign as per the Agreement. It also affirms that the campaign's use, reproduction, distribution, display, along with any linked data or products, will not breach criminal laws, third-party rights, or contain objectionable content that may incite illegal activities or liability under the law.

Limitation of Liability

Under no circumstances shall the Advertiser be liable for any consequential, special, indirect, incidental, exemplary, or other damages, such as lost profits, loss of business opportunities, regardless of foreseeability, whether arising from the Agreement, tort, or any other legal basis. Even if the Advertiser is informed of the potential for such damages, and irrespective of any failure in the essential purpose of any limited remedies, the Advertiser's total liability for any claim under this Agreement is limited to the amount received by the Advertiser from the Affiliate for the specific Insertion Order giving rise to the claim.

Indemnification

- a) The Affiliate agrees to indemnify, defend, and protect the Advertiser, its subsidiaries, publishers, partners, licensors, directors, officers, employees, owners, and agents from any claims, actions, liabilities, losses, costs, and expenses, including legal fees, arising from any breach of the Agreement, representation, warranty, or obligation made by the Affiliate, or any claims related to the Affiliate's Promotional Service Platform, content included therein, or its activities.
- b) The Advertiser agrees to indemnify, defend, and hold harmless the Affiliate, its subsidiaries, publishers, partners, and respective directors, officers, employees, owners, and agents from

claims, liabilities, losses, costs, and expenses, including legal fees, stemming from any breach of the Agreement, representation, warranty, or obligation made by the Advertiser herein.

c) In addition to the remedies available, the Advertiser may withhold unpaid Commissions, freeze payments, or charge back paid Commissions if: (i) the Affiliate violates the Agreement, (ii) complaints suggest non-compliance with the Agreement, or (iii) a Qualified Action is found not to meet the Agreement's requirements post-payment. These actions can be taken regardless of whether the Commissions were earned legitimately. In cases of a significant breach, the Advertiser may disclose Affiliate information to law enforcement, regulators, or affected third parties.

Disclaimer of Warranty

The products and services provided to the Affiliate are offered "as is." Except as explicitly stated in the Agreement, the Advertiser disclaims all warranties, whether express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, non-infringement, or arising from course of dealing, usage, or trade. Advertiser does not guarantee that the products or links will meet the specific requirements of the Affiliate and expressly disclaims any liability for acts or omissions related to their products or services.

Confidential Information

"Confidential Information" encompasses campaigns, Insertion Orders, Advertiser statistics, and any information marked as "confidential" or "proprietary." During the Agreement and for two years post-termination, neither party may disclose or use the other party's Confidential Information. Exceptions include information independently developed, publicly known, received from an authorized third party, approved for release in writing, or required by competent legal or governmental entities.

Term and Termination

- a) Term: The Agreement starts upon signature of the Insertion Order and will automatically renew for successive 1-year terms unless terminated by either party with a 3-day written notice.
- b) Advertiser can end any Insertion Order by providing a 3-day written notice to the Affiliate, who must cease services immediately upon receipt to avoid further fees.
- c) Advertiser may instantly terminate the Agreement without notice if the Affiliate breaches terms of the Agreement or Insertion Order and fails to rectify the breach within 15 days of receiving written notice.
- d) Upon termination, all licenses and rights granted to the Affiliate cease immediately. The Affiliate must stop using and delete all Links and intellectual property provided by the Advertiser, remove Advertiser's campaigns and materials from their sites, and discontinue using the Site Service and Site Data. Sections 3, 4, 5, 6-12 shall survive termination of the Agreement.

Force Majeure

In cases of Force Majeure events beyond the parties' control, preventing full or partial performance of the Agreement, neither party shall be held liable. The affected party must promptly notify the other party in writing. If the Force Majeure event persists for over 45 days, both parties will negotiate performance or termination of the Agreement. Failure to reach an agreement within 3 months allows either party to terminate the Agreement. Each party covers its costs upon termination, excluding further claims for compensation. Force Majeure includes unforeseen, unavoidable, or insurmountable events

like earthquakes, floods, wars, or circumstances accepted as Force Majeure in international commercial practice.

Headings

Headings serve convenience purposes and do not define, limit, or describe the Agreement's scope.

Jurisdiction and Venue

The Agreement follows laws without conflicts of interest rules. Disputes will be negotiated in good faith between the parties within 45 days after written notice.

Notice

Notices must be in writing via fax, email, or express airmail, considered received when transmitted by fax, on the day of transmission, or when sent by mail or email and received at the addresses specified in the Insertion Order (IO).

Miscellaneous

- a) Waiving a breach does not waive subsequent breaches and does not alter the waiving party's rights.
- b) Invalid provisions will be replaced to reflect the original intentions, and the remaining terms remain valid.
- c) The Agreement does not establish a partnership or agency relationship between the parties.
- d) The Affiliate will not engage in performance-based advertising with any advertiser from the Advertiser site for a year unless a prior business relationship is proven.
- e) The Affiliate cannot assign rights or obligations without the Advertiser's written consent during the Agreement.

Updated on October 15, 2024