1. Background

1. Webgains has developed an online software platform (retrievable under www.webgains.com) functioning as a marketing network whereby advertisers ("Advertiser(s)") can advertise for their marketing campaigns (Affiliate Programs) to be implemented on the websites or advertising spaces of other online publishers ("Publishers"), through a series of online tools contained in the platform and through the activity of Webgains’ staff who, according to the various Service Level Agreements, strive to enhance the results of the Affiliate Program (e.g. by setting up the Affiliate Program in the platform, providing tracking codes, selecting affiliate publishers, checking performance, etc.).

2. You ("You") are joining this marketing network by signing the Commission Schedule as Advertiser (or as Agency acting on behalf of an Advertiser, as the case may be).

3. For receiving the Services You shall pay to Webgains the consideration specified in the Commission Schedule, partly through fixed fees or recurring fees, partly based on successful Transactions (as specified below and in the Commission Schedule).

4. Please make reference to the Definitions list on the last paragraph.

5. These General Terms of Service replace and entirely supersede the general terms of service previously agreed between You and Webgains.

2. Advertiser’s obligations

1. At the Launch Date of an Affiliate Program, the Advertiser accepts a Starter Pack of Publishers provided by Webgains.

2. You are not allowed to change the Commission Rate or Cookie Period without Webgains’ consent, which shall not unreasonably denied, in any case, subject to such consent, You may, from time to time., reduce the Commission Rate and the Cookie Period, but no more than 20% within a 30 day period.

3. At the Launch date Webgains will provide You with the Webgains Tracking Code or the Webgains Container Tag containing the Tracking Code; You agree to keep them implemented at all times for the duration of the Agreement. Webgains reserves the right to amend, from time to time, the Tracking Code and/or the Container Tag insofar such amendments are reasonably necessary for Webgains to better perform its obligations under this agreement.

4. You accept that the Webgains Tracking Code is the only measure of the validity of a Transaction.

5. You will notify Webgains at least 7 days before making any changes that may affect the Webgains Tracking Code.

6. You will indemnify Webgains for the damages incurred if the tracking code or the container tag are removed or altered by You. Indemnification will be based on a like for like period on the Webgains’ Fee and the Publisher Commission.
7. You accept that Publishers will automatically be approved within 14 days of application to an Affiliate Program unless rejected by You.

8. You will provide Webgains with the promotional tools and Materials that are reasonably required to run an Affiliate Program within 10 working days of signing the Agreement. This should include at least banners, data feed, email templates and txt links.

9. You may not make any changes which may reduce the Commission Rate to Publishers and Webgains’ Fees (e.g. removing Publishers or Publisher type from the Affiliate Program, reducing the Cookie Period for tracking Transactions, changing attribution methodology and keyword policy) after the Affiliate Program is live, without agreement with Webgains in writing 30 days before. In any case massive Publisher dismissals or any actions to substantially putting on hold Your Affiliate Programs, will make You liable to pay to Webgains an indemnity equal to six times the average monthly Webgains’ fees of the previous 6 months, unless otherwise agreed. If the Affiliate Program started for less than six months, then the average shall be calculated only on the effective months of duration.

10. You agree to set a Recall Period in which Transactions shall be validated. Transactions are considered valid and thereby payable unless justifiably cancelled or adjusted by You within the Recall Period.

11. Publishers and Webgains may from time to time raise Transaction Enquiries in relation to “untracked Transactions” that have not been reported via the Webgains interface. You agree to either approve or reject these within 30 days of the enquiry being made. If You remain inactive within such term, the enquiry will automatically be considered Validated and thereby payable.

12. You agree that during the Agreement:
   a) You will not promote, enter or attempt to enter into any other agreement or arrangement of any services (directly or indirectly) with the Publishers delivering Your Affiliate Programme(s) other than through Webgains, or
   b) You shall not transfer, attempt to transfer, recommend, Publishers from the Webgains network to other networks.
   If You breach the above provisions, You shall pay Webgains the greater of (i) five times the Publisher Commissions You generated with those Publishers during the 6 months prior to Your breach, (ii) £1,000 for each Publisher for which You committed the breach. The latter amount shall be due immediately upon Webgains becoming aware of Your breach, pending further calculations under (i).

13. You agree to disclose Your De-duplication Policy before launching the Affiliate Program. If You want to modify the De-duplication Policy during the Agreement You need to give Webgains and Publishers 30 days’ notice.

14. You accept that during any Suspension Period, the tracking of Transactions will continue wherefore payment shall still be due by You for any Transactions including Webgains’ Fee, Publisher Commission and the Monthly fee.

15. You will make sure Your personnel will not share their log in details (username and password) with a third party or give them access to Webgains platform.
16. You agree that Webgains has the right to use the Materials including Your brand name, logo, trademark to showcase Your Affiliate Program into the Webgains Affiliate Network.

17. You agree to Webgains referencing Your name amongst its customer references after the end of the Term of Agreement.

18. Webgains may subcontract its obligations under this agreement provided that it remains primarily liable to the Advertiser for performance of this Agreement.

19. You are aware that the performance of the Affiliate Program also depends on a range of multiple factors such as consumer behaviour, exposure, and placements, which are beyond the reasonable control of Webgains. Therefore, Webgains does not guarantee any specific performance of the Affiliate Program.

20. Webgains reserves the right to suspend the Services should You breach this Agreement.

21. Should You be an Agency representing an Advertiser, You represent and warrant You have full authority to act on behalf of the Advertiser and You shall make sure the Advertiser complies with all provisions of these terms, including but not limited to: comply with the provisions of the Commission Schedule and the Agreement on Data Protection with its annexes, pay the Commissions and Webgains fees, whereof You are taking joint liability with the Advertiser.

3. Exclusivity

1. If You have agreed on an Exclusive Agreement (see Front page of the Commission Schedule) You agree not to work with Competitors to Webgains during the term of this Agreement.

4. Term of Agreement

1. You agree to launch, and cooperate with Webgains, to make sure the Affiliate Program goes live on Target Launch Date or, failing that, within 4 weeks after signing the Commission Schedule. If You do not launch the Program within one additional month from the Target Launch date or from such 4 weeks period, Webgains reserves the right either (i) to charge 100% of all fixed and monthly recurring ore guaranteed fees, if any, until You launch, or (ii) failing a monthly fee, Webgains reserves the right to charge £200/€200 for each month of delay, until the launch of the Program.

2. The Initial Term of Agreement is 6 (six) months (unless a different initial term is stated in the Commission Schedule), starting on the Launch Date, unless otherwise agreed.

3. After the initial term expires, this Agreement is automatically renewed for indefinite time and either Party is entitled to terminate this Agreement with a 6 months’ notice to the end of the month.

5. Payment and fees

1. In consideration of joining Webgains’ platform, You shall pay the Webgains’ Fee and the Publisher Commission as provided in the Commission Schedule.

2. You agree to pay all invoices within 14 days from the date of each respective invoice.

3. By signing this Agreement, You authorize Webgains to pay the Publisher Commission to
the Publishers as well as retaining Webgains’ Fees. All fees are subject to VAT.

4. Webgains reserves the right to increase fees at any time giving 60 days’ notice to You. If You do not accept the new fee You are free to terminate the Agreement within 30 days of receipt of such notice.

5. If You fail to make any payments when due, Webgains reserves the right to:
   - Suspend Your Program, agreed Services, and restrict Your access to the Webgains platform until full payment is received, and/or
   - Charge interest according of 8% above the Bank of England base rate (or to the maximum amount permissible by law) on the overdue amount,
   - Use all further remedies allowed by the law or by this agreement.

6. Upon signing the Agreement, You agree that the minimum payable under the Agreement are the fees set in the commission schedule like the joining fee, the minimum monthly fees starting the target launch date.

7. You agree that all Commission and Fees are due until the date of expiry of all cookies delivered legitimately during and after the period Your Affiliate Program was live on the Webgains platform.

8. If specified in the Commission Schedule, You shall be paying the joining fee within 14 days of signing the Agreement. Webgains will not begin any work on Your Affiliate Program until this has been paid.

9. Webgains reserves the right to recover all moneys owed to it before paying the Publishers.

10. Webgains accept the following payment methods via the agreed currency: direct bank transfer, SEPA, direct debit, credit card, PayPal and debit card. For payments via credit cards and paypal Webgains will charge an additional 2% handling fee.

11. If You fail to make payments according to the Agreement on due date, Webgains reserves the right to debit a nominated credit/debit card for the due amount without giving prior notice.

12. You agree that Webgains can charge for reasonable costs and expenses incurred in relation to the provision of the Services, such as, but not limited to, travel expenses. Any test orders incurring costs and expenses for Webgains that come through and are delivered will also be charged.

13. You accept that payment made for tenancy and ad hoc placements form part of Publisher Commission and will therefore be subject to Webgains’ Fee.

6. Liability and Indemnity

1. Both You and Webgains are only liable for direct damages and each Party’s liability under this Agreement is limited to £50,000 per calendar year, save as for fraud, gross negligence and wilful misconduct. For the sake of clarity, this limitation does not apply to your duty to pay Webgains’ Fee and Publisher Commission.

2. Webgains holds no responsibility and is not liable to You if a third party infringes any of Your intellectual property rights.

3. You shall indemnify and hold harmless Webgains from any Publisher claims connected to Your breach of any provisions of this Agreement.

4. You are responsible for any sub-contractors, Agency partners or any others You have given access to Webgains platform to the same extent as You are responsible for Your own actions towards Webgains.

5. Webgains has no direct control over the Publishers web sites but will endeavour to ensure that the content of those web sites shall not be libellous, defamatory, obscene,
terrorist, racist, sexually harassing, pornographic or violate civil or criminal law. If notified that a Publisher web site is thought to contain such material, Webgains shall take reasonable action to exclude that Publisher from the network.

6. Each of the parties shall indemnify the other Party against all loss in connection with any infringement of any intellectual property rights of any third party anywhere in the world caused by or resulting from performance of this Agreement.

7. **Intellectual property**

1. You represent and warrant that You own all present and future intellectual property rights in Your link, website, trademark, trade name and domain name and the Materials.
2. Webgains represents and warrants it owns all present and future intellectual property rights in the Webgains website, trade name and domain name.
3. The Publishers own all present and future intellectual property rights in the Publisher website(s), trade mark, trade name and domain name.
4. Webgains will be providing the Services and access to the Webgains Platform to You only a non-exclusive basis for the duration of this Agreement. This license is not assignable, transferrable or sub-licensable.
5. You grant Webgains a non-exclusive license to use Your website, trademark, trade name, domain name, and the Materials to post them on the Webgains website and affiliation platform, and to pass them to the Publishers joining Your Program and You shall indemnify and hold harmless Webgains and the Publishers from any third party claim, arguing that the Materials are infringing any third party right or any applicable law.

8. **Confidentiality**

1. Both You and Webgains shall keep any Confidential Information received from or belonging to the other Party secret and not disclose such Confidential Information to anyone (except on a need to know basis for internal use only where necessary to perform its obligations under this Agreement) or use such Confidential Information other than to perform its obligations under this Agreement without the prior written consent of the relevant Disclosing Party.
2. Sub-Clause 1 above shall not apply to any Confidential Information if:
   - disclosure is required to or by any Court, Tribunal or governmental authority with competent jurisdiction;
   - it is or becomes generally and freely publicly available through no fault of the recipient or its servants or agents; or
   - It can be shown to have been independently originated by the relevant recipient or communicated to it in circumstances otherwise than where its disclosure to that recipient breached a duty of confidence.
3. The obligations above shall remain in force for twelve (12) months after the termination of this Agreement.

9. **Termination**

1. Webgains has the right to terminate the Agreement with immediate effect in writing, if You are unable to pay Your debts, go into liquidation or are subject to bankruptcy or to any other procedure granting protection from creditors.
2. Either party has the right to terminate this Agreement (i) if the other Party breaches any provision of this Agreement and does not remedy such breach within 7 days of
receipt of a written notice from the non-defaulting Party, or (ii) with immediate effect if the other Party breaches any material provision of this Agreement incapable of being cured, or (iii) with immediate effect if the other Party continuously breaches this Agreement notwithstanding any notice or reminder from the non-defaulting party.

3. In addition, either Party has the right to terminate this Agreement if the Agreement on data Protection concluded between You and Webgains is terminated or ended for whatever reason.

10. Force Majeure

1. If either Party is delayed or fails to carry out its obligations under this Agreement due to circumstances that could not reasonably be expected and which are outside the reasonable control of the affected party (for instance wars, pandemics, embargoes, riots, etc.), such party is not liable to the other if it gave prompt notice to the other party as soon as it became aware of the circumstance.

2. If the extraordinary circumstance mentioned above is not solved within 60 days, either party is entitled to terminate the Agreement with immediate effect.

11. Data Protection

1. Both Parties are obliged to observe the applicable Data Protection Legislation on its own and to instruct employees accordingly.

2. Webgains will inform about its data processing activities in separate documents. This information is presented when personal data are collected and is available at www.webgains.com/en/privacy.

3. Regarding Your customers and website users, as long as they are individuals, details are regulated in our separate Agreement on Data Protection which forms integral part of these terms and retrievable under http://www.webgains.com/en/public/GDPR-documents. The acceptance of such Agreement is a precondition of any activity of Webgains with You.

4. The Advertiser is obliged to include a cookie-consent Clause in Your procedure to collect consent from data subjects (as defined by GDPR) for accepting cookies from Your website. The implementation of this cookie-consent-clause is necessary for tracking successful transactions to collect the relevant data for tracking Transactions and for invoicing purposes.

5. Where a data subject is referred from a Publisher’s site to Your website, or a retargeting Publisher refers the data subject to You, and You transfer any personal data on that data subject back to the referring Publisher for billing purposes, You must inform the data subject of this process.

6. Further information on data processing by Webgains is available at Webgains.com/en/privacy.

12. Other

1. You accept that Webgains owns all Publisher data collected by Webgains in accordance with this Agreement.
2. You accept that Webgains may change these Terms of use or other contract terms with 30 days’ notice by posting such new terms on its Website or the Webgains’ platform. If You do not accept new terms, You may terminate this Agreement with 14 days’ notice. In the absence of such notice, You shall be deemed to have accepted the new terms.
3. Any notice given by You or Webgains shall be in writing, sent by registered post to the other party.
4. You acknowledge that this Agreement (together with the relevant Commission Schedule) sets out the entire agreement and understanding between us and supersedes any previous agreement between us relating to its subject matter.
5. The Law of Contracts (Rights of Third Parties) Act 1999 is excluded.
6. This Agreement shall be governed and construed in accordance with the laws of England. You shall irrevocably submit to the exclusive jurisdiction of the Courts of London in respect of any matter, claim or dispute arising under, out of or in connection with this Agreement (including as to its validity) or the legal relationships established by this Agreement.

13. Definitions

1. Advertiser: You, as the entity entering into this Agreement with Webgains.
2. Agency: the entity entering into this Agreement with Webgains, representing an Advertiser.
3. Publisher: a publisher joining the Affiliate Program
4. Affiliate Program: the marketing and sales program in Your own name or, as the case may be, in the name of other Advertisers.
5. Basket Value: the monetary amount of the Transaction.
6. Commission Rate: the amount of Commission You award for each Transaction, as shown in the Commission Schedule.
7. Commission Schedule: the form You signed with Webgains outlining the heads of terms of Your agreement.
8. Competitor: a company or other entity offering competitor affiliate networks, in-house tech solutions, publishers, white-label platforms and any other affiliate marketing solutions and technology.
9. Confidential Information – non-public information about a Party or any company in its group, whether in verbal, visual or physical form, including, but not limited to, trade secrets, specifications, illustrations, marketing data, marketing campaigns, product concepts, databases, customer lists, sales data, sales prices, software, algorithms and other related business information. For the sake of clarity, confidential information is not the content of Your advertising program put on the Webgains platform, as it will become accessible to all Publishers.
10. Implemented: when the Tracking Code is implemented in all variations on Your website such as desktop, mobile, native applications, tablet and other payment gateways You use.
11. Cookie Period: the period from when a cookie is dropped until a set end date when You no longer are obliged to remunerate any resulting Transaction.
12. Data Protection Legislation: any applicable law relating to data protection, the processing to personal data and privacy, including but not limited to:
   a. the General Data Protection Regulation (EU) 2016/679 (GDPR),
   b. Directive 2002/58/EC (ePrivacy Directive) as implemented into applicable laws (in the Uk by the Privacy and Electronic Communications (EC Directive)
Regulations 2003), and as may be amended by the proposed Regulation on Privacy and Electronic Communications,
c. the Data Protection Act 2018 and any other legislation that, in respect of the UK, replaces or converts into domestic law the GDPR, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy including any such legislation that is enacted as a consequence of the UK leaving the EU; and
d. any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority of the European Data Protection Board.

13. De-duplication Policy: the policy You have on de-duplicating sales which e.g. may involve having an internal De-duplication technology.

14. Launch: is when the Affiliate Programs goes live.

15. Launch Date: is the date when the Affiliate Program goes live.

16. Materials: is all materials provided by the Advertiser under this Agreement including any and all marketing and promotion materials.

17. Program Settings: settings in the Affiliate Program made by You such as Cookie Period, Recall Period etc.

18. Publisher: a Publisher who Webgains has approved on the Webgains Affiliate Network after screening them.

19. Publisher Commission: the charges payable for successful Transactions.

20. Recall Period: a period during which You may justifiably cancel or adjust any tracked Transactions.

21. Services: the services provided by Webgains under this agreement and under the Service Level Agreement attached to the Commission Schedule.

22. Starter Pack: a number of Publishers allocated to the Affiliate Program at Launch as set out in the Commission Schedule.

23. Suspend: pausing the Affiliate is paused, and no Services are provided by Webgains to You and Your access to the Webgains platform may be restricted.

24. Suspension Period: a period when the Affiliate Program is suspended.

25. Transaction: a sale or a lead generated in the Affiliate Program.

26. Transaction Enquiry: an enquiry e.g., from a loyalty Publisher about a Transaction.

27. Validate: when the Advertiser proves Transactions should be cancelled or adjusted by giving a valid reason such as that the Transaction is fraudulent or invalid.

28. Webgains: Webgains Ltd, with office at 1st Floor South, The Quorum, Bristol, BS1 3AE

29. Webgains’ Fee: the additional fees payable to Webgains set out in the Commission Schedule.

30. Webgains’ Tracking Code: is Webgains’ proprietary tracking software used for the Affiliate Program.

31. You: the Advertiser/Agency signing the commission Schedule.