

# General Terms and Conditions of Business for Advertisers

*Last updated September 2014*

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## BACKGROUND

These Terms and Conditions for Advertisers (**Terms**) are between Affilinet Limited, registered in England and Wales under number 05409037, whose registered office is at 7<sup>th</sup> Floor, New Penderel House, 283-288 High Holborn, London WC1V 7HP (**affilinet**) and the Client as named in the Insertion Order (**Advertiser**, and together with affilinet, the **Parties**).

affilinet operates a digital marketing Platform that allows Advertisers, who wish to advertise their goods or services online, to be connected to Publishers, who register with affilinet to offer their Digital Media as a setting for Advertising Materials.

affilinet reserves the right to amend these Terms from time to time by notice to the Advertiser.

## 1. INTERPRETATION

1.1 In these Terms, the following definitions apply:

**Action:** A Call, Click, Lead, Sale, or View.

**Advertising Materials:** creative content including but not limited to Hyperlinks and banners promoting the Advertiser's services or products that is placed on the Publisher's Digital Media.

**Affiliate Programme:** the affiliate programme operated on behalf of the Advertiser through which the Advertising Materials are displayed on Publishers' Digital Media and through which Publishers are compensated either by Pay-per-Call, Pay-per-Click, Pay-per-Lead, Pay-per-Sale or Pay-per-View, or any combination of these as set out in the Insertion Order.

**affilinet Override:** the percentage, as set out in the Insertion Order, of the Publisher's Commission that is payable affilinet in addition to the Publisher's Commission.

**Bonus Programme:** a programme offered by affilinet under which Users may receive compensation for Calls, Leads or Sales.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Advertiser for the supply of the Affiliate Programme Services in accordance with clause 4.

**Code:** computer programming language.

**Commencement Date:** has the meaning set out in clause 2.1.

**Contract:** the contract between affilinet and the Advertiser for the supply of Services in accordance with these Terms.

**Digital Media:** media including, but not limited to websites, mobile sites, social media profiles and smartphone applications.

**Hyperlink:** a hyperlink to the Advertiser's Digital Media either set out in the Insertion Order or subsequently notified by the Advertiser via the Platform.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Insertion Order:** the order by the Advertiser for the supply of Services.

**Pay-per-Call:** compensation per unique telephone call by a User to the Advertiser (and **Call** shall be construed accordingly).

**Pay-per-Click:** compensation per unique click through from the Advertising Materials to the Advertiser's website (and **Click** shall be construed accordingly).

**Pay-per-Lead:** compensation for each time a unique User's details are captured via the Advertising Materials (and **Lead** shall be construed accordingly).

**Pay-per-Sale:** compensation for each time a sale is completed via the Advertising Materials (and **Sale** shall be construed accordingly).

**Pay-per-View:** compensation per unique view of the Advertising Materials (and **View** shall be construed accordingly).

**Performance Ads:** data-driven, intelligent banner advertisements placed across the Performance Ads Pool.

**Performance Links:** intelligent native advertising formats such as automated keyword linking and image tagging placed across the Performance Links Pool.

**Platform:** affilinet's online platform, accessed via [www.affili.net](http://www.affili.net), which has been developed by affilinet to provide the Services and to view real-time statistics including sales, commissions due, transactions awaiting validation and clicks.

**Pool:** a network of Publishers who have been selected and approved by affilinet to take part in Performance Ads and Performance Links.

**Programme Rules:** a document, which is attached to the Insertion Order or subsequently agreed in writing between the Advertiser, the Publishers and affilinet, that sets out the rules for participation by Publishers in the Advertiser's Affiliate Programme.

**Publisher:** the owner or operator of Digital Media who is a member of affilinet's network of affiliates for the purposes of allowing Advertisers' material to be published on its Digital Media.

**Publisher Commission:** sums payable by affilinet to Publishers.

**Services:** the delivery by affilinet, via the Platform, of Affiliate Programmes to Advertisers.

**Tracking Technology:** a piece of software and/or a technical device used for tracking Calls, Clicks, Leads, Sales and Views (and **Tracking** shall be construed accordingly).

**User:** a user of the Publisher's Digital Media, the Advertising Materials and/or the Advertiser's Digital Media.

1.2 In these Terms, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) A reference to a Party includes its personal representatives, successors or permitted assigns;
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) Headings are for ease of reference only and shall not affect the interpretation or construction of the clause to which they refer; and
- (f) A reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

2.1 Each Insertion Order, duly signed and dated by authorised representatives for affilinet and the Advertiser, together with these Terms shall constitute a Contract between the Parties. The Contract shall come into existence on the date (or the later of the dates) that each Insertion Order has been signed by both Parties (**Commencement Date**).

2.2 The Contract constitutes the entire agreement between the parties. The Advertiser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of affilinet which is not set out in the Contract.

2.3 These Terms apply to the Contract to the exclusion of any other terms that the Advertiser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 Any quotation given by affilinet shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

- 2.5 If the Advertiser is an advertising agency, a media buyer or other media or advertising intermediary acting on behalf of a client advertiser, then the Advertiser:
- (a) warrants that its client is aware and has consented to the terms of the Contract;
  - (b) enters into the Contract as principal and warrants that it shall comply with all the Advertiser's obligations under the Contract notwithstanding any default by its client advertiser; and
  - (c) agrees that affilinet provides the Services for the benefit of the Advertiser only.

- 2.6 Unless otherwise agreed in the Insertion Order, the Advertiser shall, for the Contract Term as set out in clause 7.1 below, work exclusively with affilinet and shall not engage or seek to engage the services of a competitor of affilinet.

### **3. SUPPLY OF SERVICES**

- 3.1 No term of the Contract shall be construed so as to oblige affilinet to provide the Services. The Advertiser shall compensate affilinet only to the extent that affilinet provides the Services.
- 3.2 affilinet shall use all reasonable endeavours to allow the Advertiser access to the Platform and to supply the Services in accordance with the Insertion Order in all material respects.
- 3.3 affilinet reserves the right at its own discretion to upgrade, update, maintain and further develop the Platform and wherever possible shall provide the Advertiser with advance notice of its intention to do so, however affilinet shall be under no obligation to provide such notice. The Advertiser acknowledges and agrees that it may not be able to access the Platform in the event of any upgrade, update, maintenance or further development.
- 3.4 In respect of its Affiliate Programme, the Advertiser shall have the option to use any combination of the following:
- (a) select Publishers and Digital Media from within the Platform;
  - (b) specify Publishers and Digital Media in the Insertion Order; and
  - (c) allow affilinet to select Publishers and Digital Media on its behalf, by
    - (i) recruiting Publishers specifically for the Advertiser's Affiliate Programme; and/or
    - (ii) Performance Ads and Performance Links,

and in the event that affilinet selects Publishers under the provisions of clause 3.4(c) it shall do so in good faith and use all reasonable endeavours to select the Publishers and Digital Media which it believes are best suited to achieving the Advertiser's goals.

- 3.5 Publishers shall have the right to refuse to take part in the Affiliate Programme and, except in the case where the Advertiser has opted to use Performance Ads, the Advertiser shall have the right to refuse to use any particular Publisher.
- 3.6 If the Advertiser has reasonable grounds for suspecting that any Publisher has acted fraudulently, or otherwise in breach of its obligations as set out in clause 10.1 or any Programme Rules it shall immediately notify affilinet of such grounds, and:
- (a) affilinet may suspend the relevant Publisher pending an investigation;
  - (b) the Parties shall cooperate with each other in any investigation; and
  - (c) if the Parties agree that the Publisher acted fraudulently, or otherwise in breach of its obligations as set out in clause 10.1 or any Programme Rules then affilinet shall remove that Publisher from the Advertiser's Affiliate Programme;
- but, in any other event, the Advertiser shall be able to rely on its rights under clause 3.7 below to remove a Publisher from its Affiliate Programme.
- 3.7 If the Advertiser, in its reasonable discretion, notifies affilinet of its decision to remove a Publisher or class of Publisher from its Affiliate Programme, affilinet shall remove that Publisher or class of Publisher from the Advertiser's Affiliate Programme within 5 Business Days after receipt of such notice provided that the Advertiser honours any Sales or other actions for the lifetime of any Cookies (as specified in the Insertion Order) placed by the Publisher at any time before the expiration of the 5 Business Days.
- 3.8 The Advertiser may request that any Advertising Materials placed on a Publisher's Digital Media be moved or repositioned if the Advertiser feels that the position of Advertising Materials, as placed, compromises the reputation of the goods, services, brand, operations or goodwill of the Advertiser.
- 3.9 The Advertiser shall have the option to impose additional terms and conditions on the Publisher in relation to its Affiliate Programme (**Additional Terms**) provided that these do not conflict with these Terms or affilinet's Terms and Conditions for Publishers. The Advertiser agrees that these Terms and affilinet's Terms and Conditions for Publishers shall prevail in the event of a conflict with the Additional Terms.
- 3.10 affilinet may use the Advertiser's Advertising Materials, its name and trademarks marketed via the Platform as necessary in order to provide the Services and in the course of affilinet's own marketing activities provided that it does so in accordance with best industry practice.

#### 4. CALCULATION OF CHARGES

- 4.1 Unless otherwise stated in the Insertion Order, Affilinet may charge the Advertiser an initial one-time set up. This set up fee will be payable on entry into the Contract and shall be subject to the payment terms set out at clause 5.2 below. affilinet shall deliver the Services only once it has received full payment , if applicable, of the set up fee in cleared funds.
- 4.2 Unless otherwise stated in the Insertion Order, the Charges payable by the Advertiser for the Services shall be comprised of:
- (a) The Publisher Commission; and
  - (b) the affilinet Override.
- 4.3 The Advertiser can increase the Publisher Commission at any time. However the Publisher Commission cannot be reduced without the prior written approval of affilinet. Where the Insertion Order or Programme Rules specify a minimum Publisher Commission, the Advertiser may not reduce the Publisher Commission below that minimum rate. The Advertiser shall notify affilinet and the Publisher in writing of any change in Publisher Commission at least 5 Business Days before the change takes effect.
- 4.4 Unless otherwise agreed in the Insertion Order, affilinet's Tracking Technology, accessed via the Platform, shall be the system used to track Actions and calculate compensation.
- 4.5 Any Actions listed as pending on the Platform are subject to review and verification by the Advertiser.
- 4.6 affilinet reserves the right to verify any Actions according to the provisions of the Contract.
- 4.7 Unless otherwise agreed in the Insertion Order, the Advertiser shall have a validation period of 30 days starting from the date a Call, Lead or Sale is first logged on the Platform (**Validation Period**) within which to verify and validate (as appropriate) that pending Call, Lead or Sale.
- 4.8 Unless otherwise agreed in the Insertion Order, if the Advertiser does not raise any reasonable objections to a pending Lead or Sale within the Verification Period, that pending Call, Lead or Sale shall be deemed validated by the Advertiser.
- 4.9 The Advertiser has the right to prove that Leads or Sales logged on the Platform are not valid.

4.10 At affilinet's request, the Advertiser shall promptly provide information (including but not limited to business records, customer records and log files), as well as any objections it may have, on the Calls, Leads and Sales it has or has not validated in order to allow affilinet to review the completeness and accuracy of the Advertiser's verifications. affilinet reserves the right to have, at its own expense, the Advertiser's information audited during normal business hours.

4.11 Any Action shall be deemed invalid if:

- (a) it is not generated through the Advertising Materials;
- (b) it is generated automatically by a technical device or computer software (eg click generator);
- (c) it is generated by coercion or deception;
- (d) the same User repeatedly Clicks and Views within a short period of time (including repeated Clicks on different Hyperlinks);
- (e) except as agreed in the Insertion Order or Programme Rules, the User receives remuneration from the Publisher or any third party for any Clicks and Views ; and/or
- (f) the Click is associated with a required action, for example, sending a text message, participating in a gambling competition, or using the Click within a paid email system (except as agreed in the Insertion Order, Programme Rules or elsewhere in writing by the Advertiser within the framework of an affilinet Bonus Programme);

and affilinet shall have no right of remuneration for any Actions that are deemed to be invalid.

4.12 Unless otherwise agreed in the Insertion Order, any commission payable by the Advertiser under its Pay-per-Sale Programme shall be calculated according to the net sale value of the specified goods or services (excluding the cost of ancillary services and VAT).

4.13 The Advertiser warrants that the Publisher Commission for any valid Actions shall be no less favourable than the most favourable provisions the Advertiser has agreed to from time to time with any other digital marketing agency offering a service comparable to affilinet's Services. If, during the term of this Contract, the Advertiser enters into an agreement with another digital marketing agency containing more favourable provisions for that agency, the Advertiser agrees that these more favourable provisions shall immediately apply to this Contract.

4.14 Unless otherwise agreed by affilinet in writing, any compensation that affilinet requires the Advertiser to pay for breaching clause 6.1(g) shall be calculated as follows:



Average daily Calls, Clicks, Leads, Sales and/or Views during period starting 90 calendar days prior to date of Advertiser's breach multiplied by the number of days that the Advertiser was in breach.

And any part days that the Advertiser was in breach shall be counted as one full day.

## **5. INVOICING**

5.1 affilinet shall invoice the Advertiser monthly in arrears and reserves the right to submit invoices to the Advertiser electronically.

5.2 The Advertiser shall pay each invoice submitted by affilinet:

- (a) within 30 days of the date of the invoice unless otherwise agreed in the Insertion Order; and
- (b) in full and in cleared funds to a bank account nominated in writing by affilinet, and

time for payment shall be of the essence of the Contract.

5.3 All Charges payable by the Advertiser under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by affilinet to the Advertiser, the Advertiser shall, on receipt of a valid VAT invoice from affilinet, pay to affilinet such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.4 If the Advertiser fails to make any payment due to affilinet under the Contract by the due date for payment then interest shall accrue on the overdue amount on a daily basis from the due date at the rate of 8% per annum above the base rate of Commerzbank AG from time to time. Such interest shall accrue until actual payment of the overdue amount, whether before or after judgment. The Advertiser shall pay the interest together with the overdue amount.

5.5 The Advertiser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). affilinet may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Advertiser against any amount payable by affilinet to the Advertiser.

## **6. OBLIGATIONS AND WARRANTIES OF THE ADVERTISER**

6.1 The Advertiser shall:

- (a) ensure that all information provided to affilinet at registration and requested by affilinet from the Advertiser thereafter is complete and accurate;
- (b) immediately update affilinet if any information provided under clause 6.1(a) changes;
- (c) provide affilinet with the Advertising Materials and URL of the Advertiser's website as necessary for participation in the Affiliate Programme;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the design of its Digital Media and Advertising Materials before the date on which the Services are to start;
- (e) use all reasonable endeavours to ensure that the design of its Advertising Materials and its Digital Media allows Users at all times to generate valid Calls, Clicks, Leads, Sales and Views and that these can be tracked and logged in full;
- (f) ensure that its Digital Media and any Advertising Materials are suitable for use in the Affiliate Programme, do not compromise the reputation, brand, operations or goodwill of the Advertiser and do not contain:
  - (i) displays of violence;
  - (ii) sexually explicit or pornographic content; or
  - (iii) statements that are discriminatory with regards to race, religion, gender, nationality, disability, sexual orientation or age,and the Advertiser agrees to cooperate fully with the authorities in the event that it is necessary to disclose any information to the authorities;
- (g) ensure that affilinet's Tracking and logging capabilities within the Advertiser's Digital Media is kept fully maintained and functional at all times. In the event that, in breach of this clause 6.1(g), the Advertiser causes a Tracking failure and no Calls, Clicks, Leads, Sales or Views can be logged on the Platform, affilinet may require the Advertiser to pay compensation in accordance with clause 4.14;
- (h) disclose to affilinet, in writing, and no later than 5 Business Days prior to entry into the Contract, its own Tracking Technology, if any;
- (i) ensure that any Tracking Technology it implements shall not interfere with affilinet's Tracking System;
- (j) deal with affilinet and the Publishers in accordance with the Exclusivity arrangements as set out in the Insertion Order;
- (k) notify affilinet, in writing, of any changes it makes to a current Affiliate Programme, operating plans and marketing and sales initiatives and the Advertiser agrees that affilinet may publish any changes on the Platform; and
- (l) ensure that it complies with all applicable laws including but not limited to data protection and privacy laws. The Advertiser shall not use any personal or confidential information, including that information belonging to Users,

Publishers or affilinet except as necessary to carry out its contractual obligations with these parties.

6.2 If the performance of affilinet of any of its obligations under the Contract is prevented or delayed by any act or omission by the Advertiser or failure by the Advertiser to perform any relevant obligation (**Advertiser Default**):

- (a) affilinet shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Advertiser remedies the Advertiser Default, and to rely on the Advertiser Default to relieve it from the performance of any of its obligations to the extent the Advertiser Default prevents or delays the performance of affilinet of any of its obligations;
- (b) affilinet shall not be liable for any costs or losses sustained or incurred by the Advertiser arising directly or indirectly from the failure or delay of affilinet to perform any of its obligations as set out in this clause 6.2; and
- (c) the Advertiser shall reimburse affilinet on written demand for any costs or losses sustained or incurred by affilinet arising directly or indirectly from the Advertiser Default.

6.3 The Advertiser warrants to affilinet that:

- (a) it has and will continue to have for the duration of the Contract full authority to enter into and perform the Contract;
- (b) it will comply with all applicable laws, including any applicable provisions for consumer protection;
- (c) no Advertising Materials shall infringe the Intellectual Property rights of third parties, and nor will the Advertiser do anything that causes affilinet or Publishers to infringe such rights;
- (d) where the Advertiser's business is regulated, it shall have any necessary authorisation to advertise and promote such products or services that are also regulated; and
- (e) it shall keep its Platform login details secure and shall immediately notify affilinet if it believes there has been any unauthorised use of its login details.

## 7. CONTRACT TERM

7.1 The Contract Term shall be as set out in the Insertion Order. At the end of the Contract Term, the Contract shall automatically renew for a term of the same duration as the Contract Term (**Subsequent Contract Term**) unless terminated in accordance with clause 8.

## 8. TERMINATION AND DEACTIVATION

- 8.1 If the Advertiser has not operated an Affiliate Programme for a period of three consecutive months, affilinet reserves the right, by giving written notice, to deactivate the Advertiser's account on the Platform.
- 8.2 Without limiting its other rights or remedies, either Party may terminate the Contract by giving the other Party not less than 90 calendar days' written notice prior to the end of the Contract Term. In respect of any Subsequent Contract Term, either party may terminate the Contract by giving the other Party not less than 90 calendar days' written notice.
- 8.3 If notice is given under clause 8.2 the Parties may enter into a contract review as agreed in the Insertion Order to negotiate in good faith any amendments to the Contract (Contract Review). If no agreement can be reached then the Contract shall terminate at the end of that Contract Term.
- 8.4 Without limiting its other rights or remedies, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
  - (b) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (c) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;
  - (e) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;
  - (g) the holder of a qualifying floating charge over the assets of the other Party has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

- (i) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.4(b) to clause 8.4(h) (inclusive);
- (j) the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (k) the other Party's financial position deteriorates to such an extent that in the opinion of affilinet the capability of the Advertiser to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.5 Without limiting its other rights or remedies, affilinet may, in its sole discretion, suspend terminate the Contract with immediate effect by giving written notice to the Advertiser if:

- (a) the Advertiser fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so; or
- (b) the Advertiser commits a material breach of the Contract which it has not remedied within 14 days after being notified in writing to do so.

## **9. CONSEQUENCES OF TERMINATION**

9.1 On termination of the Contract for any reason:

- (a) the Advertiser shall immediately pay to affilinet all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, affilinet shall submit an invoice, which shall be payable as set out at clause 5.2 above;
- (b) affilinet shall immediately cease use of the Advertiser's Intellectual Property Rights and use its reasonable endeavours to ensure that any third party to which it has sub-licensed such rights shall also immediately cease use of the Advertiser's Intellectual Property Rights;
- (c) the Advertiser's account on the Platform shall be deactivated; and
- (d) clauses 4, 5, 6, 9.1(a), 10, 11, 13 and 14 shall continue in full force and effect.

## **10. PUBLISHERS**

10.1 affilinet warrants to the Advertiser that each Publisher allowed to participate in the Affiliate Programme has, or shall first have, entered into an agreement with affilinet to:

- (a) comply with any Programme Rules;
- (b) refrain from changing any Code or Advertising Materials provided by the Advertiser and only to use the Advertising Materials in the Digital Media of the Publisher;

- (c) use the Advertising Materials only in connection with its participation in an Affiliate Programme and to refrain from passing any information or Advertising Materials to any third parties;
- (d) use trademarks and logos of third parties, including the Advertiser, only if affilinet or the Publisher has obtained the consent of the rights holder for such use;
- (e) design and present its Digital Media, including all entries in search engines, directories or link lists of third parties, such that only valid Calls, Clicks, Leads, Sales and Views are generated;
- (f) design its Digital Media such that Intellectual Property Rights of third parties are not violated and applicable laws, including any applicable provisions for consumer protection, are not breached;
- (g) send emails containing advertising for affilinet or the Affiliate Programme only in accordance with applicable laws and Programme Rules;
- (h) refrain from depicting displays of violence, sexually explicit or pornographic content or making discriminatory statements or representations with regard to race, gender, religion, nationality, disability, sexual orientation or age in its Digital Media and/or in connection with its participation in Affiliate Programmes; and
- (i) not compromise the reputation of the goods, services, brand, operations or goodwill of affilinet or the Advertiser.

10.2 affilinet shall use all reasonable endeavours to ensure that Publishers comply with their obligations under affilinet's Terms and Conditions for Publishers, the obligations as set out in clause 10.1 and any Programme Rules. The Advertiser shall have the right and is encouraged to assert all claims against a Publisher which result from that Publisher's breach of its obligations.

10.3 Publishers shall have sole responsibility for providing the Advertiser with help and support in relation to the Advertising Materials and/or Digital Media.

## **11. LIMITATION OF LIABILITY**

11.1 Nothing in these Terms shall limit or exclude the liability of affilinet for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.2 Subject to clause 11.1:

- (a) affilinet shall under no circumstances whatever be liable to the Advertiser (or, if the Advertiser is an intermediary, its client advertiser), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of data or the restoration of data, loss of reputation or goodwill, managers' or any third party providers time in monitoring affilinet's Services, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the total liability of affilinet to the Advertiser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £0.
- 11.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 affilinet gives no warranty, guarantee or representation in respect of
  - (a) the number of valid transactions that will be generated by use of the Services;
  - (b) the benefit to be derived from using the Services; or
  - (c) the number of Publishers that may subscribe to and use the Platform.
- 11.5 If the Advertiser opts to allow affilinet to select Publishers on its behalf under the provisions of clause 3 affilinet shall not be liable for any loss or damage suffered by the Advertiser resulting from its selection of Publisher and/or Digital Media provided that it has acted in good faith.
- 11.6 The Advertiser acknowledges that affilinet's Charges have been calculated with reference to the limitations of liability as set out in this clause 11.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Advertiser shall retain all Intellectual Property Rights in or arising out of its Advertising Materials and Digital Media.
- 12.2 The Advertiser grants to affilinet and the Publishers, for the purposes of providing the Services and the operation of the Affiliate Programme only, a limited, non-exclusive, royalty-free license to display and otherwise use the Advertiser's Intellectual Property.
- 12.3 affilinet shall retain all its Intellectual Property Rights in or arising out of provision of the Services.

- 12.4 Each Party agrees that it shall not acquire or claim any title to any of the other party's Intellectual Property Rights by virtue of the rights granted to it under the Contract or through its use of the other Party's Intellectual Property Rights.

### 13. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents, subcontractors and clients who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents, subcontractors and clients comply with the obligations set out in this clause 13 as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

### 14. GENERAL

- 14.1 Assignment: affilinet may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. The Advertiser shall not, without the prior written consent of affilinet, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

#### 14.2 Notices:

- (a) Notices given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at the address or email address as set out in the Insertion Order, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission provided that no notice of delivery failure has been received for that transmission in the meantime.



- (c) The provisions of clauses 14.2(a) and 14.2(b) shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance:

- (a) If any term of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a term under this clause 14.3 shall not affect the validity and enforceability of the rest of the Contract.
- (b) In the event of the illegality, invalidity or unenforceability of any term of the Contract, for any reason, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 Force Majeure: Neither Party shall be liable for any delay in performing any of its obligation under this Contract (except for failure to pay Charges) if such delay is caused by an event beyond the reasonable control of that Party including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.5 Waiver: A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.6 Non-partnership: Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between affilinet, the Advertiser or the Publisher, nor constitute either Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way. The Advertiser agrees that any obligations of the Publisher under the Affiliate Programme shall in no way be construed as obligations of affilinet.

14.7 Rights of third parties: No person who is not a party to the Contract shall have any rights to enforce its terms.

- 14.8 Variation: Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by affilinet.
- 14.9 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with the law of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).