

General terms and conditions for publishers joining the Webgains affiliation platform.

This contract (the Agreement) is made between Webgains BV, with office at Concertgebouwplein 15 H, 1071LL Amsterdam, KvK number 84540230, and you (hereinafter “you” or “Publisher”).

Webgains licenses and operates an online web accessible marketing platform (the “Webgains platform”) which allows publishers to participate in affiliate programs (the “Service”) known as affiliate marketing programs. You wish to become an affiliate member of the Service and promote the business of third-party websites (the “Advertisers”) by directing users’ traffic to their webshops, in exchange for the payment of a commission or bounty (the “Commission”). Upon application to the Service, you will be sent a confirmation email to enable you to access the appropriate parts of the Webgains platform. You must apply to join each Advertiser affiliate program via the Webgains platform and each Advertiser is responsible for agreeing your membership to their program. Commission will be paid for each valid transaction on the Advertisers website for which you are solely responsible, according to the terms and conditions contained in the Agreement. Please note that Webgains does not guarantee you any turnover or economic advantage by joining the Service or the Webgains platform.

Please read this Agreement carefully. If you wish to join the Webgains platform and participate in the Service, and agree to be bound by all the terms and conditions contained within this Agreement, please click the button “I Agree” next to the “I have read the Terms and Conditions” and “I wish to register as a Publisher in the Webgains platform”.

## 1. Meanings

Defined terms shall have the following meanings:

- 1.1. Advertisement means a commercial message, including in banner or text form and displayed on either a website or email, which enables the viewer to click on it to be taken directly via a hyperlink to a specific Internet destination;
- 1.2. Publisher Account Balance means the amount of money displayed in the Publisher account on the Webgains website;
- 1.3. Commission means the payment due to you offered by the Advertiser for the successful completion of a valid transaction;
- 1.4. A Delayed Commission is the commission on a transaction which has not been accepted yet as a valid transaction by the Advertiser;
- 1.5. Direct Loss means any loss characterised at law as direct loss and excludes all indirect, special or consequential loss;
- 1.6. A Cancelled Commission is the commission on a transaction which has been classified as an invalid transaction by the Advertiser;
- 1.7. Intellectual Property Rights means all trade marks (whether registered or unregistered), logos, trade names and copyright and other similar rights (whether now known or in the future created) both in the United Kingdom and all other countries of the world;
- 1.8. Advertiser means a company or other person seeking to market its goods and services through commercial message(s), in banner or text form and displayed on either a website or email, which enables the viewer to click on it (or) to be taken directly via a hyperlink to the specific Advertiser website;

1.9. Payment Date means the date on which a Publisher payment falls due. The Payment Date will depend on the terms outlined in Section 3, the settlement method of the Advertiser for each transaction, the threshold limit chosen by the Publisher, the payment frequency chosen by the Publisher, and the payment method chosen by the Publisher;

1.10. Payment Threshold Level means the level of the Publisher Account Balance in any given month at which Webgains will pay out by BACs, by cheque or by PayPal the Publisher Account Balance;

1.11. Recall Period means the period during which a Advertiser is able to Delay a Commission or Cancel a Commission;

1.12. The Service is an on-line marketing program operated by Webgains;

1.13. Valid Transaction means the activity (sale, form completion, enquiry submission, click-through, membership registration etc.) undertaken by a consumer upon the successful completion of which the Advertiser has agreed to pay a Commission.

## 2. Term and Termination

2.1. The Agreement shall commence on the date your account is activated by you following receipt by you of the acceptance email from Webgains. The Agreement shall continue until the Termination Date. The termination date shall be established by either party giving seven days notice in writing of the intention to terminate the Agreement.

2.2. Termination of the Agreement shall not limit the enforceability, not the amounts of any of the rights nor obligations of the parties that were in existence before the termination date.

2.3. The Publisher shall acquire no rights of any kind in any Intellectual Property belonging to Webgains or to any Advertiser introduced to the Publisher by way of the Webgains affiliate marketing program.

2.4. Webgains reserves the right to terminate the Agreement at any time for any material breach of this Agreement or of the Advertiser affiliate agreement.

2.5. Upon termination of the Agreement, the Publisher shall immediately remove all advertising and links relating to all members of the Webgains program. The Publisher is not entitled to earn Commission after the termination date.

## 3. Payment

3.1. Webgains agrees to pay the Publisher Commissions, bounties and other earnings due from Valid Transactions tracked via the Webgains tracking technologies subject to Term 3.5 according to the following schedule:

3.1.1. For payments by electronic transfer, or by PayPal, where the Valid Transactions are with an Advertiser which has prepaid his account (a Prepay Advertiser), the payment shall be made weekly, (or at another payment frequency selected by the Publisher via the Webgains website interface) one week in arrears, as long as there are prepaid funds available.

3.1.2. For payments by electronic transfer, or by PayPal, where the Valid Transactions are with an Advertiser who settles his account in arrears (an Account Advertiser), the payment shall be made on

the next week after cleared funds are received by Webgains from the said Advertiser. Webgains shall not be obliged to make any payments before having received funds by the relevant Advertiser.

3.2. Webgains agrees to pay VAT due where applicable upon receipt of a valid written request, copy of VAT registration form, and VAT invoice where appropriate.

3.3. Webgains agrees to use all reasonable endeavours to display on the Webgains platform self-billing invoices detailing the Commissions.

3.4. Commission, bounty and other earnings amounts shall be as advertised on the Webgains platform at the time of the transaction.

3.5. Payments will only be made once the Publisher Account Balance has reached the minimum Payment Threshold Level for the specified payment method, as set from time to time by Webgains, or at a Payment Threshold Level selected by the Publisher in the Webgains platform Interface. Webgains reserves the right to vary the Payment Threshold Level at any time by giving 3 months' notice to the Publisher.

3.6. In the event that the Publisher Account Balance has not reached the payment threshold level, the Publisher Account Balance shall accrue until such time that it reaches the payment threshold level, when it shall be paid out. In the event that the Publisher Account Balance has not reached the level of €50 within a 12-month period, Webgains reserves the right to close the Publisher account and retain the funds, if any, to cover the cost sustained to maintain such account.

3.7. Although Webgains shall use all reasonable efforts to adhere to the above payment schedule, Time shall not be considered of the essence in the making of Publisher payments.

3.8. Commission levels are established by the Advertiser and may be varied from time to time. The Advertiser may raise Commission levels at any time without notice. The Advertiser may reduce Commission levels by giving email notice to the Publisher. Webgains will use its best efforts to ensure that 30 days notice is given for all Commission reductions. It is the Publisher's responsibility to monitor Commission levels and ensure that they are in accordance with expectations.

3.9. A Commission during the Recall Period may be a Delayed Commission or a Cancelled Commission.

3.10. A Cancelled Commission will be deducted from the Publisher Account Balance. The reason for a Cancelled Commission will be notified to the Publisher via email or via a communication on the Publisher section into the Webgains platform.

3.11. Webgains reserves the right not to pay the Publisher for any Commissions earned in any month in which a serious material breach of this Agreement occurs or, at Webgains reasonable judgment, such a breach is suspected having occurred.

3.12. Webgains reserves the right to deduct an amount from the Publisher Account Balance equal to any Commission paid out or credited for any transaction which proves to have been fraudulent or illegal.

3.13. If a Publisher account has a negative balance because of cancelled commissions, then the negative balance shall become due for payment to Webgains immediately.

3.14. Webgains reserves the right to write off Publisher Commission and/or any other amount due where a program is closed and the Commission and/or any other amount due has remained unpaid to the Publisher for a period of more than 12 months.

3.15. Webgains reserves the right to write off Publisher Commission and/or any other amount due where the Publisher has been inactive for a period of more than 12 months and those amounts remained unpaid to the Publisher for a period of more than 12 months. A Publisher is considered inactive where the Publisher has had no transactions for a period of more than 12 months and/or has not logged into the platform for a period of more than 12 months.

3.16. Webgains reserves the right to write off Publisher Commission and/or any other amount due where the Publisher has been suspended or from the program or from the Webgains network or has been inactive and the Commission (or any other amount due) has remained unpaid for a period of more than 12 months.

#### 4. Webgains obligations and Warranties

4.1. Webgains shall use its reasonable endeavours and all reasonable skill and care and in a professional manner to provide the Service. Moreover, Webgains will do its reasonable endeavours to maintain the availability of the Webgains platform in accordance with best industry standards. Webgains warrants that it has obtained and will maintain all necessary registrations, consents and licences to enable it to perform its obligations under this Agreement. However, Webgains does not guarantee that the Webgains platform is error free or fit for any specific Purpose. Webgains does not guarantee you any amount of income by you joining the Webgains platform.

4.2. Webgains hereby grants (to the extent that it is sub-licensed by an Advertiser to do so) to the Publisher, a worldwide, nonexclusive, royalty free, non-transferable license to display (but not adapt) Advertisements on the Publisher Website or on its Data Protection compliant email, as the case may be.

#### 5. Publisher Obligations and Warranties

5.1. You warrant that you are over 18 and legally able to enter into, and to be bound by, this contract

5.2. You agree to keep your account password and access to your Webgains affiliate account secure at all times and to hold harmless and indemnify Webgains from any breach thereof.

5.3. Trust is of essence in your relationship with Webgains and Advertisers. You agree to provide at all times accurate and non-misleading information to Webgains, and to the Advertisers you have been introduced to via the Webgains affiliate program. If the information is believed to be inaccurate, misleading, or incomplete then Webgains retains the right to remove you from the affiliate program or the Webgains affiliate network at their discretion depending on the seriousness of your behaviour.

5.4. You warrant that the context where You display advertising does not display or transfer any material which is obscene, racist, offensive, defamatory, threatening, blasphemous or in breach of any third party Intellectual Property Right(s), provided that websites and campaigns that include pornographic or adult content which is not obscene are permitted but only where Advertiser's products and/or services are also categorised as pornographic or adult content, and only such Publishers are permitted to join such programs with such Advertisers.

5.5. You agree that you are solely responsible for verifying the suitability of all advertising and Advertiser sites and materials. Moreover, you agree that Webgains has no responsibility for the content of either Advertisements or Advertiser websites.

5.6. You warrant that you will comply with all duties under Data protection legislation, in particular the EU General Data Protection Regulation 2016/679 [GDPR] and other applicable data protection laws as well as data protection policies issued by Webgains or Advertisers. In order to promote consistent practices amongst its suppliers, Webgains may disclose guidelines and recommendations on how to implement GDPR provisions into practice. You are expected to comply with such guidelines and recommendations as good business practice standard.

5.7. Personal data processing is regulated by the Agreement on Data Protection which is hereby incorporated by reference - retrievable under <http://www.webgains.com/en/public/GDPR-documents>.

5.8. You acknowledge that Webgains is permitted to act on all instructions and information that Webgains reasonably believes comes from you and WEBGAINS shall not be liable for any losses, monetary or otherwise if Webgains does so act.

5.9. You shall not use any Advertisement or Advertiser link for display in any unsolicited email (commonly known as spam).

5.10. You agree not to place Advertisements in newsgroups, chatrooms or any other unsolicited publishing format.

5.11. You agree not to place Advertisements in unsolicited software applications (commonly known as spyware), and You agree not to use iframes or similar technologies.

5.12. You agree not to artificially inflate the number of clicks, impressions or other activity, nor to permit others to do so, or to use any manners to artificially attribute to Yourself any transactions which are registered by the Webgains platform.

5.13. You agree not to change or amend any linking or advertising material supplied by Webgains as part of the Service. You agree also not to breach any Advertiser's intellectual property rights.

5.14. You shall honour and adhere to the specific terms of each Advertiser affiliate agreement upon joining such Advertiser affiliate program.

5.15. You shall not get into direct commercial relationship with Advertisers after joining their Advertiser affiliate program and for 6 months after leaving such program.

5.16. You agree to receive commercial communications from Webgains.

5.17. You agree that Webgains issues automated self-billing invoices on your behalf, to be displayed on the Webgains platform. You shall not bill Webgains on yourself, all such invoices will be rejected.

5.18. You agree not to use or copy any content or information on the Webgains platform without the prior written permission of Webgains.

## 6. Limitation of Liability

6.1. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm,

explosions, war, governmental action, labour conditions, earthquakes or any other cause which is beyond the reasonable control of such party.

6.2. All data and content on the Webgains platform are for personal use only and no warranties or representations are made by Webgains about veracity or suitability.

6.3. Except for the express provisions of this Agreement and to the maximum extent permitted by applicable law each Party disclaims and excludes all warranties, terms and other conditions, including but not limited to the Services or an Advertiser Website being uninterrupted or error-free, any warranty, term or other condition of merchantability, satisfactory quality, fitness for a particular purpose or non-infringement, or as to price in every case whether implied by law, statute, common law, custom, collaterally or otherwise.

6.4. Webgains shall have no Liability:

6.4.1. for any loss or damage other than direct loss;

6.4.2. for any loss of profit, opportunity, revenue or potential saving (in every case whether direct or indirect);

6.4.3. for any breach of this Agreement to the extent caused or contributed to by the Publisher's breach of this Agreement or negligence.

6.4.4. Webgains' aggregate Liability under this Agreement shall be limited to a maximum amount of €10,000 (Ten Thousand Euros) in aggregate.

## 7. Indemnity

7.1. The Publisher shall indemnify and hold harmless Webgains against any and all losses arising from or connected with:

7.1.1. any infringement of any intellectual property rights of any third party anywhere in the world caused by or resulting from the modification, use and possession of the Advertiser Corporate Identity and/or Materials in accordance with this Agreement;

7.1.2. any breach by the Publisher of Clause 5;

7.1.3. the Publisher's negligence, default or breach of this Agreement.

## 8. Entire Agreement

8.1. This Agreement sets out the entire agreement and understanding between the Parties and supersedes any previous agreement between the Parties relating to its subject matter.

8.2. Unless expressly provided to the contrary in this Agreement:

8.2.1. nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or agency between the Parties; and

8.2.2. neither Party shall have any authority or power to bind, contract in the name of or create a liability for or against the other.

## 9. Severance

9.1. If any provision of this Agreement is determined to be illegal or unenforceable by any Court of competent jurisdiction it shall be deemed to have been deleted without affecting the remaining provisions.

## 10. General

10.1. Webgains reserves the right to deem any Publisher site offering the Service inappropriate and remove the Link (and therefore the Service) without incurring into any liability to the Publisher. In such circumstances Webgains has the right to withhold any money earned (or not banked) by the Publisher from use of the Service prior to termination.

10.2. You are joining the Webgains platform on a free basis, without being bound to pay any consideration to Webgains. Webgains reserves the right, at its sole discretion, to alter or to terminate this Agreement, to change the Webgains software and platform, or to remove all advertising Links to Your website(s), at any time with or without notice, without You being entitled to receive any indemnity, severance, or damage recovery.

10.3. The parties acknowledge that there is no obligation for Webgains to monitor the content on the Webgains platform and on the advertising materials, and that if you rely on the content on the Webgains platform and/or on the advertising materials therein displayed, you do so at your own risk.

10.4. The Agreement is subject to the laws of The Netherlands without making reference to its conflict of laws rules.

10.5. Nothing in the Agreement or the relationship between the parties is intended to have the effect of guaranteeing the Publisher any continuity of supply or profits.

10.6. The Publisher confirms that the following information may be posted on the Webgains Website: the Publisher's identity as one of the entities that has subscribed to the Service; the Publishers' activity on the internet, and any information (other than confidential information) that is submitted by the Publisher to Webgains or existing on the Publishers' website.

10.8 The Courts of Amsterdam shall have exclusive jurisdiction.