

## **General Terms of Service for Advertisers (and Agencies representing Advertisers)**

### **1. Background**

1. Webgains has developed an online software platform (retrievable under [www.webgains.com](http://www.webgains.com)) functioning as a marketing network whereby advertisers (directly or represented by their agencies) ("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 (collectively the "Services", as better specified in the definitions list) 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 though 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. To use the Services offered by Webgains, You commit yourself to implement the Webgains Tracking Code, in all variations, on your Affiliate Program website not later than the Agreed Launch Date as shown in the Commission Schedule ( or failing such date, within 4 weeks of signing the Commission Schedule) and to keep it implemented for the entire duration of the Program.
2. Webgains reserves the right to amend, from time to time, the Tracking Code and/or the container tag containing the Tracking Code insofar such amendments are reasonably necessary for Webgains for (i) adapting to new technologies and/or legal requirements, (ii) improving performance or, (iii) developing the Webgains platform in the interest of the Advertiser (e.g. to implement new functionalities) .
3. At the Effective Launch Date of an Affiliate Program, You accept an initial number of Publishers agreed with You or failing that, provided by, Webgains.
4. You are not allowed to reduce the Commission Rate without Webgains' consent, which shall not be unreasonably denied. In any case, You may, from time to time., reduce the Commission Rate and the Cookie Period, (i) with a notice to Publishers via the Webgains platform of not less than 30 calendar days, and (ii) no more than 20% within a 30-day period.
5. You accept that the Webgains Tracking Code is the only accepted technology to measure the Transactions regarding your Affiliate Program. No other technologies (e.g. but not limited to, Google analytics, Adobe, etc.) are accepted. However, you may cancel/adjust Transactions during the Recall Period according to the terms set below, and it is your onus to verify and Validate the Transactions during the Recall Period or any other agreed delay period if any.

6. You will notify Webgains at least 7 working days before making any changes on your website/mobile app that may affect the Tracking Code.
7. Except as the above, you are not allowed to remove/alter the Tracking Code without Webgains' consent. You will indemnify Webgains for the damages incurred if the Webgains Tracking Code or the container tag containing the Tracking Code are removed or altered by You without Webgains' consent. Indemnification will be based on a like for like period on the Webgains' Fee and the Publisher Commission.
8. You accept that Publishers will automatically be approved within 14 days of application to an Affiliate Program unless rejected by You. It is understood that You shall accept Publisher types/groups which are permitted to promote You on other affiliate marketing networks, including in-house networks.
9. 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 Commission Schedule. This should include at least banners, data feed, email templates and txt links.
10. You will transfer Sales Data to Webgains for invoicing purposes and to detect any misuse or fraud.
11. 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, deduping, changing attribution methodology and keyword policy) after the Affiliate Program is live, without agreement with Webgains in writing 30 days before. In any case (i) the new Commission may not be less than the equivalent commission offered by You on other affiliate marketing networks, or in-house or personal affiliate marketing programs, (ii) massive Publisher dismissals or any actions having the effect to substantially putting on hold Your Affiliate Program(s), 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.
12. You agree to set a Recall Period visible to Publishers during which Transactions may be cancelled or adjusted by You. Failing any time set by You, the Recall Period is automatically 30 days from the date Transactions are tracked in the Webgains platform. Transactions are considered valid and thereby payable by You unless justifiably cancelled or adjusted by You within the Recall Period. After the Recall Period has expired, Transactions are final and validated and cannot be cancelled/adjusted by You any longer. The maximum recall period you can set is 45 days, unless otherwise agreed at launch.
13. 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 or cancelled/adjusted Transactions. Unless You reject the Transaction Enquiries within 30 days of the enquiry being made (unless a longer term is agreed with Webgains), the related Transactions shall be deemed as definitely Validated
14. Webgains invested considerable efforts through the time to collect a vast number of Publishers on the Webgains platform ready to join the various Affiliate Programs. You agree that during this and 6 months after its termination:
  - 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, including Your own in house solutions.
- If You breach the above provisions, You shall pay Webgains a penalty of the greater of (i) five times the Publisher Commissions You generated with those Publishers during the 6 months prior to Your breach or prior to termination, (ii) £10,000 for each Publisher for which You committed the breach, irrespective of any limitation of this Agreement. The latter amount shall be due immediately upon Webgains becoming aware of Your breach, pending further calculations under (i).
15. 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. Any de-duplication policy does not imply you are relieved from your onus to cancel/adjust transactions under the Recall Period. Deduplication may not be implemented on the assumptions that the user also visited the Advertiser URL: (i) by typing the Advertiser URL into a web browser, or (ii) by following links appearing in organic search results, paid-for results of searches on the Advertiser's brand names, organic social media, price comparison websites, or (iii) as a result of internal email marketing or newsletters, or (iv) as a result of the retargeting to that Visitor by email, by telephone by interstitial or pop-up, or while at the Advertiser URL, as a result that Visitor's behaviour.
  16. 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' Fees, Publisher Commission and the Monthly fee (if any).
  17. 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. It is your onus and duty to create/administer and delete log in details for every user of your organisation on a need-to-know basis and to safely store such access credentials. Webgains takes no responsibility for any misuse or for any breach of such access data.
  18. You agree that Webgains has the right to use the Materials in addition to Your brand name, logo, trademark to showcase Your Affiliate Program into the Webgains Affiliate platform.
  19. You agree to Webgains referencing Your name (company name, logo and Affiliate Program name) amongst its customer references during and after the end of the Term of Agreement.
  20. You agree that Webgains may subcontract its obligations under this Agreement provided that it remains primarily liable to the Advertiser for the performance of this Agreement.
  21. You are aware that the performance of the Affiliate Program depends on a range of multiple factors such as consumer behaviour, brand awareness, exposure, placements, Affiliate behaviour, which are beyond the reasonable control of Webgains. Therefore, Webgains does not guarantee any specific performance of the Affiliate Program and is not responsible for any expected results connected to it.
  22. Webgains reserves the right to suspend, at its sole discretion, the Services or your Affiliate Program should (i) You breach any of these terms or (ii) Webgains suspect, you are breaching or likely to breach, any of these terms.
  23. 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 the Commission Schedule) You agree not to work with competitors to Webgains during the term of this Agreement or to implement any inhouse technical solutions competing with Webgains. Competitors/competing are intended any affiliation networks/platforms/technologies or any other performance marketing businesses including any in house solutions.
2. If You breach the above provision, You shall pay Webgains a penalty of £10,000 for each case irrespective of any limitation of this Agreement. Webgains reserves any further remedy.

### **4. Term of Agreement**

1. You agree to launch, and cooperate with Webgains, to make sure the Affiliate Program goes live not later than Agreed 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 Agreed Launch Date or from such 4 weeks period, Webgains reserves the right either (i) to charge 100% of all fixed and monthly recurring or guaranteed fees, if any, until You launch, or (ii) failing a monthly recurring ore guaranteed fees, Webgains reserves the right to charge £300/€300/\$300 for each month of delay, until the Launch of the Affiliate Program.
2. The Initial Term of this Agreement is 6 (six) months (unless a different initial term is stated in the Commission Schedule), starting on the Effective Launch Date, unless otherwise agreed.
3. After the initial term expires, this Agreement is automatically renewed from time to time for additional 6-month periods unless a Party terminates this Agreement with a written notice of minimum 3 months to the end of the relevant period.

### **5. Payment and fees**

1. You agree to pay all invoices within the term agreed in the Commission Schedule, failing that within 14 days from the date of each respective invoice. All amounts are subject to VAT if applicable.
2. You acknowledge that Webgains pays the Publisher Commission to the Publishers only upon full receipt of funds by You.
3. If You fail to make any payments when due, Webgains reserves the right to:
  - Suspend Your Affiliate Program, all Services (if any), 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, and/or
  - Terminate this Agreement and any Commission Schedule/Affiliate Program, and/or
  - Charge all costs connected to credit recovery, including reasonable attorney's fees, and/or
  - deploy all further remedies allowed by the law or by this agreement.
4. Upon signing the Commission Schedule, You agree that You shall pay all the Webgains Fees starting the Agreed Launch Date.
5. You agree that all Publisher Commission and Webgains Fees are due by You for the entire duration of Your Affiliate Program.
6. For the sake of clarity, the joining fee, if any, shall be due on signature of the Commission Schedule. Webgains will not begin any work on Your Affiliate Program until this has been paid in full.
7. Webgains accepts the following payment methods via the agreed currency: direct bank transfer,

SEPA payment, direct debit, credit card. For payments via credit cards Webgains will charge an additional 2% handling fee on the entire invoiced amount.

8. 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.
9. You agree that Webgains can charge for reasonable costs and expenses incurred in relation to the provision of the Services. Any test orders incurring costs and expenses for Webgains that are not cancelled by You shall be promptly refunded by You, failing that they will be charged to You.
10. You accept that payment made for tenancy and ad hoc placements will be invoiced as Publisher Commission and will therefore be subject to the applicable Webgains' Fees

## **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' Fees and Publisher Commission and all credit recovery costs therewith connected, including reasonable attorney's fees.
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, without limitation, from any Publisher and third-party 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. Although Webgains conducts reviews on Affiliate websites, Webgains has no direct or continuous control over the Publisher websites and behaviour disclaiming any responsibility therefore. . If it is found that a Publisher website is libellous, defamatory, obscene, terrorist, racist, sexually harassing, pornographic or violate civil or criminal law I, Webgains will take reasonable action to exclude that Publisher from the Affiliate Program or the Webgains network.

## **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, or is properly licensed to use, all present and future intellectual property rights in the Webgains Platform, website, trade name and domain name.
3. 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.
4. 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 Affiliate Program(s). You shall indemnify and hold harmless Webgains and the Publishers from any loss, and any third party claim, for Materials or any content of the Affiliation Program infringing any third party right or any applicable law, irrespective of any limitation of this Agreement.

## **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. Paragraph 1 above shall not apply to any Confidential Information if:
    - disclosure is required to, or by, any Court, Tribunal proceedings or governmental authority;
    - 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 working 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 breaches continuously or more than twice any provision of 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 entered 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 <https://www.webgains.com/public/en/network-contracts/>.
3. Data Processing between Publisher and Advertiser on the one hand, and data processing between Webgains and Advertiser on the other hand, will take place when using the Webgains online software platform. Such process is regulated in our separate Agreement on Data Protection which forms integral part of these terms and is retrievable at <https://www.webgains.com/public/en/network-contracts/>. The acceptance of such Agreement is a precondition of any activity of Webgains with and for You.

4. You shall make sure You collect the consent of data subjects for storing of information, or gaining access to information already stored in the terminal equipment of data subjects, in line with the requirements of GDPR and of the e-Privacy Directive (Directive 2009/136/EC) as from time to time specified by the of data protection authorities. This requirement includes storing of cookies and deploying a respective cookie-consent mechanism. The implementation of this (cookie-) consent-mechanism is necessary for tracking successful transactions and collect the relevant data for invoicing purposes.
5. Where a data subject is referred from a Publishers' site to Your website, and You in turn transfer any personal data on that data subject back to Webgains for billing purposes, You must inform the data subject of this process and ensure that further GDPR-requirements are met.
6. Further information on data processing by Webgains is available at <https://www.webgains.com/public/en/network-contracts/>.

## 12. Other

1. You accept that Webgains may change these Terms of use or other contract terms, or increase Webgains' Fees at any time with 30 days' notice to You. If You do not accept any new terms or Fee increase, You may terminate this Agreement within the following 30 days with a written notice to Webgains. In such case the contract, and any Commission Schedule, is terminated the last day of the month following your notice. In the absence of Your termination notice, You shall be deemed to have accepted the new terms / Fee.
2. Any notice given by You or Webgains shall be in writing, sent by registered letter to the other party. Alternatively, Webgains may send any notice to You via email to Your admin account registered in the Webgains platform or to the email address of the manager responsible for Your Affiliate Program, or via an online process on Your dashboard/section on the Webgains platform. You may also send any notice to Webgains via email to the email address of the Webgains account manager responsible for your Program. .
3. You agree that on any change of these Terms of use or other contract terms, including Webgains' Fees may be agreed upon via an online acceptance process on the Webgains platform.
4. You acknowledge that these Terms (together with the relevant Commission Schedule(s) referring to them) sets out the entire agreement and understanding between us and supersedes any previous agreement between Webgains and you 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. Agreement: The Commission Schedule (and its annex) and These general Terms of Service
4. Publisher: a publisher joining the Affiliate Program
5. Affiliate Program: the marketing and sales program in Your own name or, should you be an agency, in the name of other Advertisers.
6. Basket Value: the monetary amount of the Transaction.
7. Commission Rate: the amount of Commission You commit to pay to affiliates for each Transaction, as shown in the Commission Schedule.

8. Commission Schedule: the form You signed with Webgains outlining the heads of terms of Your agreement.
9. 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.
10. 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 Affiliate Program put on the Webgains platform, as it will become accessible to all Publishers.
11. Cookie Period: the period from when a cookie is dropped on the user's device 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. Effective Launch Date: is the date when the Affiliate Program goes live.
16. Agreed Launch Date is the date when you agreed with Webgains to launch the Program.
17. Materials: means all advertising materials provided by You under this Agreement including, but not limited to: any and all marketing and promotion materials, editorials, trademarks, images, etc..
18. Program Settings: settings in the Affiliate Program made by You such as Cookie Period, Recall Period etc.
19. Publisher: a Publisher registered on the Webgains Affiliate Network.
20. Publisher Commission: the charges payable to Webgains for successful Transactions, which once received and fully paid by You, Webgains will in turn credit to Publishers.
21. Recall Period: a maximum time period during which You may justifiably cancel or adjust or Validate any tracked Transactions. The Recall Period is published into the conditions of the Affiliate Program and starts from the moment the Transactions are recorded in the Webgains Platform. After expiry of the Recall Period all Transactions which were not cancelled/adjusted by You are deemed as finally Validated.
22. Sales Data: Data processed regarding sales brokered via the platform by Publishers as defined in Appendix 1, Joint Controller Agreement (Part B of the Agreement on Data Protection).
23. Services: the services provided by Webgains under this agreement amongst which providing access to the Webgains affiliate platform, tracking of transactions, invoicing, affiliate payment management, and those specified under the Service Level Agreement attached to the Commission Schedule.



24. Suspend: pausing the Affiliate Program, whereby Webgains reserves at its sole discretion to take, inter alia, the following measures: notify all Affiliates thereof, restrict Your access to the Affiliate Program, stop providing Services and affiliate traffic. .
25. Suspension Period: a period when the Affiliate Program is suspended.
26. Transaction: a sale or a lead generated in the Affiliate Program.
27. Transaction Enquiry: an enquiry e.g., from a loyalty Publisher about a Transaction.
28. Tracking Code: Webgains' technology to be implemented in your website or mobile app, enabling Webgains to measure Transactions.
29. Validate: when the Advertiser approves the Transactions unless it reasonably proves the Transactions should be cancelled or adjusted by giving a reason such as that the Transaction is fraudulent or invalid.
30. Webgains: Webgains Limited, a company incorporated and existing under the laws of the United Kingdom, company number 05353649.
31. Webgains' Fees: the fees (e.g. override, monthly fee, joining fee, etc.) payable to Webgains set out in the Commission Schedule.
32. Webgains' Tracking Code: is Webgains' proprietary tracking software used for the Affiliate Program.
33. You: The Advertiser/Agency signing the commission Schedule.