

## **General terms and conditions for Publishers joining the Webgains affiliation Platform**

Webgains owns and operates an online web accessible marketing Platform and technology retrievable under webgains.com or webgains.io (the “Webgains Platform”) which allows publishers (the “Publisher” or “You”) to promote performance marketing affiliation programs (the “Programs”) of online shops and marketers (the “Advertisers”) in exchange of a fee (the “Commission”). The Commission is borne by the Advertisers and, once received, paid to Publishers by Webgains.

This contract (the Agreement) is made between Webgains Ltd (Webgains), a company incorporated and existing under the laws of the United Kingdom, company number 05353649 and You.

You are an online publisher and wish to become an affiliate member of the Webgains Platform.

Upon application to the Webgains Platform and acceptance upon Webgains discretionary judgement, Webgains will send You a confirmation email to enable You to access the appropriate sections of the Webgains Platform. You must apply to join each 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 this Agreement.

Please read this Agreement carefully. If you wish to join the Webgains Platform, 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” (verbiages may differ).

### **1. Meanings**

Defined terms shall have the following meanings:

- 1.1. Advertisement means a commercial message, including in banner or text form and displayed various online tools, which enables the viewer to click on it and to be taken directly via a hyperlink to a specific Internet destination of the Advertiser;
- 1.2. Publisher Account Balance means the section of Your specific account in the Webgains Platform where all moneys owed to You are displayed;
- 1.3. Commission means the payment offered by the Advertiser for the successful completion of a Valid Transaction;
- 1.4. Delayed/withhold Commission means the Commission on a Transaction which has not been accepted yet as a Valid Transaction by the Advertiser;
- 1.5. Loss means any loss characterised at law as direct loss and excludes all indirect, special or consequential loss;
- 1.6. Cancelled Commission means the commission on a transaction which has been classified as an invalid transaction by the Advertiser upon its decision;
- 1.7. Intellectual Property Rights means all trademarks (whether registered or unregistered), logos, trade names and copyright and other similar rights (whether now known or in the future created) in the EU, the United Kingdom and all other countries where the Program is displayed;
- 1.8. Advertiser means a company or other person which has agreed with Webgains or a Webgains affiliate company to join the Webgains Platform seeking to market its goods and/or services;

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 Payment Threshold Level, the payment frequency and currency 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 the Publisher Account Balance;

1.11. Recall Period means the period during which an Advertiser is able to confirm a Transaction as a Valid Transaction;

1.12. Transaction: means the activity (sale, form completion, enquiry submission, click-through, membership registration etc.) done by a consumer on Advertisers' website

1.13 Valid Transaction means the activity (sale, form completion, enquiry submission, click-through, membership registration etc.) done by a consumer upon the successful completion of which (i) the Advertiser has agreed, according to the terms of the respective Program, to pay a Commission and (ii) according to Webgains judgment, was completed without breaching the terms of this Agreement.

1.14. Materials means any content, in whatever form, provided by the Advertiser for being displayed in the Advertisement part of the Program.

## 2. Term and Termination

2.1. The Agreement shall commence on the date Your account is activated by You following receipt of the acceptance email from Webgains. The Agreement shall continue for indefinite time until termination.

2.2. Either party may terminate this Agreement at any time, for whatever reason or for no reason, with a seven days' notice to the other party. In addition, Webgains reserves the right to terminate this Agreement without notice to You and close Your account on the Webgains Platform should You not access Your account for a period exceeding 12 consecutive months, or if no commission have been generated for a period exceeding 12 months. In such cases, Webgains will retain up to £50/€50/\$50 from Your Publisher Account Balance as administrative cost of maintenance and closure.

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

2.4. 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 Platform.

2.5. Webgains reserves the right to terminate the Agreement at any time with immediate effect and without notice should Webgains reasonably deem You breached, are breaching, or likely to breach, the terms of this Agreement or any specific agreement with the Advertisers, Webgains' or Advertiser's policies, any accepted market practices, any laws or regulations, or if You are doing any act or omission which, at Webgains discretionary judgement, could be detrimental for the business or the commercial reputation of Webgains or the Advertisers.

2.6. Upon termination, You accept You will not be entitled to receive any commission accrued afterwards, and You shall immediately remove from any media all advertising and links relating to all Programs. Termination does not entitle You to any indemnity, damage, or other compensation whatsoever.

## 3. Payment

3.1. Webgains agrees to pay the Publisher Commissions, and other earnings due from Valid Transactions tracked via the Webgains tracking technologies solely by BACs, bank transfer or by PayPal, and it is Your onus to setup valid accounts to receive funds and to register account details in Your account details in the Webgains Platform. Webgains is not obliged to verify the accuracy of such information, provided by You.

Subject to clause 3.5 Webgains will pay according to the following manner(s):

3.1.1. 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 You via the Webgains Platform) in arrears.

3.1.2. 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. Before receiving such funds from the Advertiser, no payment shall be due to You by Webgains.

3.1.3. Subject to availability, You may opt to receive payments in a currency other than the default currency of the Webgains platform you are registered with (for example, if you are contracting with the UK Platform, You will be paid by default in British Pounds; if you are contracting with the German, Italian, French or Spanish platform You will be paid by default in Euros).

In such cases, Webgains will apply the official conversion rate at the date of the payment retrievable with the ECB for conversion rate, and a transaction fee up to 1,5%. No additional conversion fees will be charged by Webgains.

3.1.4 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.

3.2. 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. Webgains reserves to withhold payment up to receipt from You of accurate and complete tax information.

3.3. You are not allowed to issue invoices to Webgains. Based on the terms of this Agreement, You authorize Webgains to issue self-billing invoices on Your behalf, which are displayed on your section of the Webgains Platform and are downloadable by You for your records. Webgains will not accept any invoices issued from You and will not make any payment based on such invoices. This is a material condition to this Agreement.

3.4. Commission, and other earnings amounts will be automatically calculated by the Webgains Platform on Valid Transactions.

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 You in the Webgains Platform. Webgains reserves the right to reasonably 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/\$50/€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 for maintaining and closing such account.

3.7. 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 notice to the Publisher via the Webgains Platform or via email. Webgains will use its best efforts to ensure that 30 days' notice is given for all Commission reductions but takes no responsibility therefor. It is the Publisher's responsibility to monitor Commission levels and ensure that they are in accordance with expectations.

3.8. During the Recall Period the Advertiser may cancel/adjust or delay one or more commissions related to Valid Transactions upon discretionary decision. Such commissions will become a Delayed Commission or a Cancelled Commission, as the case may be.

3.9. A Cancelled Commission will be deducted from the Publisher Account Balance. A delayed Commission remains on hold up to clearance with Advertiser (e.g. following an agreement). The reason for a Cancelled or Delayed Commission will be notified to You via email or via a communication on Your Publisher section into the Webgains Platform.

3.10. Webgains reserves to suspend or withhold any payment of Commission should Webgains reasonably deem You breached, are breaching, or likely to breach, the terms of this Agreement or any specific agreement with the Advertisers, Webgains' or Advertiser's policies, Program's terms, and any accepted market practices, any laws or regulations, or if You are doing any act or omission which, at Webgains discretionary judgement, could be detrimental for the business or the commercial reputation of Webgains or the Advertisers. Such suspension will last as long as Webgains' investigation processes are in progress up to final clearance.

3.11. 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 or in breach of this Agreement, of Program's specific terms, or of any applicable good market practice, policy, law or regulation, up to final clearance.

3.12. If Your Publisher account has a negative balance because of commissions cancelled subsequently, then the negative balance shall become due for payment by You to Webgains immediately.

3.13. Webgains reserves the right to write off 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 exceeding 12 months.

3.14. 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 or more than 12 months and/or has not logged into the Platform 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 suspended or from the Program or from the Webgains Platform, or has been inactive and the Commission (or any other amount due) has remained unpaid for a period of more than 12 months.

3.16. In the event Webgains has to hire credit collection agencies, or legal counsel to retrieve overdue payments from Advertisers, all occurred costs and Webgains' fees due by Advertisers will be deducted from the overall recovered amount and the balance will be distributed proportionally to Publishers.

#### 4. Webgains obligations

4.1. Webgains will 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. Webgains disclaims any other warranty whether implied or explicit.

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 to adapt or to modify) the content of the Advertiser's Programs on the Publisher's online means. Webgains disclaims any liability or warranty whether implied or explicit, that the Advertisement does not breach any applicable laws or regulation or third party's IP rights, or any kind of minimum Commission you would be earning by joining one or more Programs.

#### 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 (i) to keep confidential Your account password and access to Your Publisher account into the Webgains Platform secure at all times and (ii) to provide a valid email address for any communications/notices from Webgains and to watch diligently the relevant mailbox. Even though Webgains will do its best endeavours to warn You of any suspicious activity on Your account via a notice to Your email address, it shall not be responsible for Your failure to do so. Webgains warns You that a breach in Your account may result in significant financial losses on Your side and shall not be liable for any losses or damages suffered by You due to the disclosure or breach of any account user passwords.

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 Platform. If the information is believed to be inaccurate, misleading, or incomplete then Webgains retains the right to withhold any payments, terminate this Agreement and/or remove You from the Program or the Webgains Platform at their discretion depending on the seriousness of Your behaviour.

5.4. You warrant that the Publisher website or any online place where You display the Advertisement does not display or transfer any content which is obscene, racist, offensive, defamatory, threatening, blasphemous, in breach of any law or in breach of any third party Intellectual Property Right(s), provided that websites that include pornographic or adult content which is not obscene are permitted but only where (i) Advertiser's products and/or services are also categorised as pornographic or adult content or (ii) Advertiser(s) specifically consented to display their Advertisements in such environments.

5.5. You agree that You are solely responsible for verifying the suitability of all Advertisements and Advertiser sites. 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 personal data protection/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 <https://www.webgains.com/public/en/network-contracts>.

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 damages 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).

5.12. You agree not to

(i) artificially inflate the number of clicks, impressions, transactions or other activity, nor to permit others to do so,

(ii) bid key words or search terms not permitted by the Advertiser,

(iii) use any technique or technology aiming to increase transactions like traffic sources, sales driven, cookie hijacking, cookie stuffing, or any other activity which may be deemed to be illegitimate or potentially fraudulent.

5.13. You agree not to change or amend any linking or advertising material supplied by Webgains as part of the Service.

5.14. You shall honour and adhere to the specific terms of each Program upon joining such Program.

5.15. You shall not get into direct or indirect commercial relationship with Advertisers after joining their Program and for 6 months after leaving such Program. Should You breach this provision You shall pay to Webgains liquidated damages equal to twice the commissions you accrued through Webgains in the 12 months preceding Your breach.

5.16. You agree to receive commercial communications from Webgains.

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

5.18. Webgains is not party of any side agreements You stipulate with Advertisers (or their Agencies) therefore Webgains is not responsible for any consequences of those agreements, including their breach or performance.

5.19. Webgains is entitled to investigate at any time Your compliance with this Agreement and with the above clauses, and You agree to cooperate with any such investigation by answering within 24 hours, failing that Webgains may discretionally suspend Your account and suspend/withhold all payments to You up to full clearance.

## 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 to be used only for fulfilling this agreement and no warranties or representations are made by Webgains about veracity, suitability or fitness for purpose.

6.3. Except for the explicit provisions of this Agreement and to the maximum extent permitted by applicable law Webgains disclaims and excludes all warranties, terms and other conditions, including but not limited to the Webgains Platform 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 statute, common law, custom, collaterally or otherwise. In particular, Webgains does not warrant in any manner to the Publisher any revenue, profit or turnover from the use of the Webgains Platform or joining one or more Programs; You are aware that significant fluctuations may occur based on many unpredictable factors like for instance: consumer attitude, competition, Advertiser's policies and website conversion rate, brand awareness, search engine policies, software evolution and setup of the Webgains Platform.

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 delay or failure of payment due by the Advertiser(s),

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

In any case, Webgains' aggregate Liability under this Agreement shall be limited to a maximum amount of £ 10,000 (Ten Thousand Pounds Sterling).

## 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 Advertisements and the Materials;

7.1.2. any breach by the You of the provisions of Clause 5;

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

7.1.4. any direct agreement the Publisher entered into with the Advertiser or the agency representing the Advertiser.

## 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 explicitly 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 amend any terms of this Agreement at any time upon a 7 days' notice. In any case, after lapsing of this notice, once you use the Webgains network, you automatically accept the terms of this Agreement as from time to time in force.

10.2. You acknowledge that there is no obligation for Webgains to monitor the content on the Webgains Platform or on the Advertiser's websites, and that You rely on the content on the Webgains Platform or on the Advertiser's websites at Your own risk.

10.3. The Agreement is subject to the domestic laws where the contracting Webgains entity is located, without making reference to its conflict of laws rules.

10.4. 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.

10.5. You confirm that the following information may be posted on the Webgains Website: the Your identity as one of the entities that have joined the Webgains Platform; the Publishers' activity on the internet, and any information (other than confidential information) that is submitted by You to Webgains or existing on the Publishers' website.

10.6. The Law of Contracts (Rights of Third Parties) Act 1999 is excluded.

10.7. The Courts of London shall have exclusive jurisdiction.

10.8. Webgains reserves the right to assign this agreement to any other affiliate company of the Webgains network or the ad pepper media Group, upon written notice to You (email or communication on your section in the Webgains Platform shall suffice). In such case, this agreement will continue with the assignee and will be subject to the law and jurisdiction where the registered office of the Assignee is located.