

General Terms and Conditions of Business for Publishers

Last updated December 2014

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BACKGROUND

These Terms and Conditions for Publishers (**Terms**) are between Affilinet Limited, registered in England and Wales under number 05409037, whose registered office is at 7th Floor, New Penderel House, 283-288 High Holborn, London WC1V 7HP (**affilinet**) and the publisher in possession of these Terms who has registered an Account on the Platform (**Publisher**, and together with affilinet, the **Parties**).

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

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

1. INTERPRETATION

1.1 In these Terms, the following definitions apply:

Account: the account through which the Publisher accesses the Platform.

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.

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.

Code: computer programming language.

Commencement Date: has the meaning set out in clause 2.3.

Contract: the contract for the supply of Services to the Advertiser in accordance with these Terms.

Cookies: cookies placed on a User's device to track that User's Actions after visiting the Publisher's Digital Media.

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.

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.

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, 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: rules for participation by Publishers in an 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 for valid Actions.

Services: the provision of Digital Media by the Publisher via the Platform to Advertisers.

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 Once the Publisher has:

- (a) registered its details on the Platform;
- (b) accepted these Terms; and
- (c) once affilinet has activated the Publisher's Account,

the Publisher shall be entitled, but not obliged, to participate in Affiliate Programmes by any method set out in clause 2.2.

2.2 The Publisher may join an Affiliate Programme by any combination of the following:

- (a) applying to participate in specific Affiliate Programmes from within the Platform;
- (b) being invited to participate in specific Affiliate Programmes by an Advertiser or by affilinet; and/or

applying to participate in Performance Ads and Performance Links.

2.3 Each Affiliate Programme in which the Publisher participates shall constitute a distinct Contract between affilinet and the Publisher. The Contract shall be subject to these Terms and shall come into existence on the date that the Publisher's application to participate in an Affiliate Programme is accepted (**Commencement Date**).

2.4 The Contract constitutes the entire agreement between the parties. The Publisher 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.

- 2.5 These Terms apply to the Contract to the exclusion of any other terms that the Publisher seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Publisher may be required by an Advertiser to accept and comply with additional Programme Rules in order to participate in a relevant Affiliate Programme.
- 2.7 The provisions of these Terms shall prevail in the event of a conflict with any provision of the Programme Rules.
- 2.8 If the Publisher operates a network of sub-publishers, then the Publisher warrants that each sub-publisher who participates in an Affiliate Programme:
- (a) is aware and has consented to the terms of the Contract as if it were a principal;
 - (b) shall comply with all the Publisher's obligations under the Contract notwithstanding any default by the Publisher; and
 - (c) shall comply with any applicable Programme Rules,

and the Publisher shall indemnify affilinet against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by affilinet arising out of or in connection with any breach of this agreement by a sub-publisher.

3. SUPPLY OF SERVICES

- 3.1 If the Publisher is accepted on to the Affiliate Programme it shall not be obliged to provide the Services. The Publisher shall be compensated only to the extent that it provides the Services.
- 3.2 affilinet shall use all reasonable endeavours to allow the Publisher access to the Platform.
- 3.3 affilinet reserves the right at its own discretion to upgrade, update, maintain and further develop the Platform without notice. The Publisher 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 The Advertiser shall have the right to refuse to use any particular Publisher.

4. PUBLISHER COMMISSION

- 4.1 affilinet shall allow the Publisher to apply to participate in any Pay-per-Call, Pay-per-Click, Pay-per-Lead, Pay-per-Sale or Pay-per-View Affiliate Programmes or any combination of these.
- 4.2 The Publisher shall only be able to claim Publisher Commission in respect of Actions originating from Advertising Materials placed on its Digital Media, which have been confirmed as valid by the Advertiser or deemed valid by affilinet. Compliance by Publishers with these Terms and any Programme Rules shall be a pre-requisite to receiving Publisher Commission.
- 4.3 Any Actions listed as pending on the Platform are subject to review and verification by the Advertiser.
- 4.4 affilinet reserves the right to verify the validity of any Actions according to the provisions of the Contract.
- 4.5 affilinet reserves the right to deem any Action as invalid if it suspects that it was generated fraudulently or in any way improperly and, in particular, 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) it is generated by the Publisher through Advertising Materials on the Publisher's Digital Media;
 - (e) the same User repeatedly Clicks and Views within a short period of time (including repeated Clicks on different Hyperlinks);
 - (f) except as agreed in the Programme Rules, the User receives remuneration from the Publisher or any third party for any Clicks and Views ; and/or
 - (g) 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 Programme Rules or elsewhere in writing by the Advertiser within the framework of an affilinet Bonus Programme).
- 4.6 Subject to the provisions of any applicable Programme Rules, any Publisher Commission payable under Pay-per-Sale Affiliate Programmes shall be calculated according to the net sale value of the specified goods or services (excluding the cost of ancillary services and VAT).

5. PAYMENT

- 5.1 On the 15th day of each month, subject to clause 5.5 and to prior approval by affilinet's network quality team, affilinet shall pay the Publisher any Publisher Commission earned during the previous calendar month.
- 5.2 If the 15th day of the month falls on a Friday, Saturday, Sunday or a bank holiday, affilinet shall process the payment on the preceding Thursday.
- 5.3 On the day payment is processed affilinet shall also send to the Publisher a report detailing the Publisher Commission earned during the previous calendar month in respect of each Affiliate Programme that the Publisher has joined.
- 5.4 Publisher Commission shall be paid by affilinet in accordance with the terms of any applicable Programme Rules.
- 5.5 affilinet shall only pay Publisher Commission if, cumulatively, it amounts to £25.00 or more. If the Publisher Commission for any month amounts to less than £25.00, affilinet shall not pay the Publisher Commission until it amounts to at least £25.00.
- 5.6 If, during the period ending 6 months after the Publisher Commission has been paid, it becomes known that any Action was generated:
- (a) invalidly pursuant to the provisions of clause 4.5 above;
 - (b) otherwise in contravention of these Terms or any applicable Programme Rules;
or
 - (c) by manipulation or deceit,

or it is not possible to determine, after a review, that a valid Action was generated, then affilinet reserves the right to claim back that Publisher Commission paid in respect of that Action from the Publisher by way of a charge on the Publisher's Account.

6. OBLIGATIONS AND WARRANTIES OF THE PUBLISHER

- 6.1 The Publisher shall:
- (a) comply with any Programme Rules;
 - (b) comply with all local laws including, but not limited to, the Data Protection Act 1998 or equivalent data protection law, as amended from time to time.
 - (c) design and present its Digital Media, including all entries in search engines, directories or link lists of third parties, such that only valid Actions are generated;
 - (d) refrain from changing any Code or Advertising Materials provided by the Advertiser, except as provided for in the instructions available on the Platform;
 - (e) use the Advertising Materials only in the Publisher's Digital Media;

- (f) 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;
- (g) 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;
- (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;
- (i) refrain from compromising the reputation of the goods, services, brand, operations or goodwill of affilinet or the Advertiser;
- (j) 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;
- (k) refrain from generating any Calls, Click or Views through Advertising Materials on its own Digital Media;
- (l) ensure that its contact details on the Platform are at all times complete and up to date;
- (m) send emails containing advertising for affilinet or the Affiliate Programme only in accordance with applicable laws and Programme Rules; and
- (n) comply with any request that any Advertising Materials placed on its Digital Media be moved or repositioned if the Advertiser feels that the position of the Advertising Materials, as placed, compromises the reputation of the goods, services, brand, operations or goodwill of the Advertiser,

and the Publisher shall ensure that provisions of clause 6.1(a) to clause 6.1(i) apply equally to any third party Digital Media to which the Publisher's Digital Media provides any links.

6.2 The Publisher's obligations as set out at clause 6.1 shall be deemed to create rights in favour of both affilinet and the relevant Advertiser.

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

6.4 The Publisher 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; and

- (c) 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.

6.5 If affilinet suspects that any Publisher has acted fraudulently, in breach of its obligations or warranties as set out in this clause 6 or in breach of any Programme Rules, then affilinet reserves the right without notice to:

- (a) suspend the Publisher's account;
- (b) remove the publisher from any Affiliate Programme in which it is participating;
- (c) withhold any pending Publisher Commission; and/or
- (d) terminate this agreement,

and affilinet shall not be liable to honour any pending or future Actions for the lifetime of any Cookies placed by the Publisher.

7. INDEMNITY

7.1 The Publisher shall indemnify and hold harmless affilinet against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by affilinet arising out of or in connection with:

- (a) any breach of the obligations and warranties contained in clause 6;
- (b) the Publisher's breach or negligent performance or non-performance of this agreement;
- (c) the enforcement of this agreement;
- (d) any claim made against affilinet for actual or alleged infringement of an Advertiser's Intellectual Property Rights arising out of or in connection with the licensing of such Intellectual Property Rights to affilinet and the Publisher; and
- (e) any claim made against affilinet by an Advertiser arising out of or in connection with provision of affilinet's services to the Advertiser, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Publisher.

7.2 This indemnity shall not cover affilinet to the extent that a claim under it results from affilinet's negligence or wilful misconduct.

8. CONTRACT TERM

8.1 The Publisher's account shall be opened for an indefinite period of time unless otherwise suspended or closed in accordance with clause 9.

9. TERMINATION AND DEACTIVATION

- 9.1 If the Publisher has not participated in an Affiliate Programme or generated any Actions for a period of 12 consecutive months, affilinet reserves the right to deactivate the Publisher's account on the Platform. Wherever practicable, affilinet shall provide notice of its intention to deactivate the Publisher's account under the provisions of this clause 9.1.
- 9.2 Either party can terminate the Contract, for any reason, by giving five Business Days' written notice.
- 9.3 affilinet reserves the right to terminate the Contract in accordance with the provisions of clause 6.5 above.

10. CONSEQUENCES OF TERMINATION

- 10.1 On termination of the Contract for any reason:
- (a) the Publisher's Account and access to the Platform will be deactivated;
 - (b) affilinet shall issue to the Publisher a statement of any credit on the Publisher's Account and, subject to clause 5.5, pay any Publisher Commission due to the Publisher;
 - (c) the Publisher shall refrain from re-registering for the Affiliate Programme in respect of which the Contract has been terminated. Any breach of this clause 10.1(c) may result in the Publisher forfeiting receipt of any pending Publisher Commission.
 - (d) the Publisher shall immediately remove the Advertising Materials from all its Digital Media and cease participation in the relevant Affiliate Programme. The Publisher acknowledges and accepts that no Publisher Commission shall be payable for any Actions generated after termination of the Contract; and
 - (e) clauses 4.2, 4.5, 5.6, 6, 7, 9, 10, 11, 12, 13 and 14 shall continue in full force and effect.

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, affilinet shall under no circumstances whatever be liable to the Publisher, 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.

- 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 the amount of Publisher Commission that the Publisher will earn by participating in any Affiliate Programme.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in or arising out of its Advertising Materials and Digital Media shall remain the property of the Advertiser.
- 12.2 The Publisher shall be granted a limited, non-exclusive, royalty-free license to display and otherwise use the Advertiser's Intellectual Property for the purposes of providing the Services and the operation of the Affiliate Programme only.
- 12.3 affilinet shall retain all its Intellectual Property Rights in or arising out of provision of the Services.
- 12.4 The Publisher agrees that it shall not acquire or claim any title to any Intellectual Property Rights of affilinet or the Advertiser by virtue of the rights granted to it under the Contract or through its use of the Intellectual Property Rights of affilinet or the Advertiser.

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 Publisher 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 Publisher's Account, 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 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 Publisher or the Advertiser, 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 Publisher agrees that any obligations of the Advertiser 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).