



**PUBLISHER SUBSCRIPTION AGREEMENT  
TO THE KWANKO PLATFORM AND SERVICE**

THE PURPOSE OF THIS AGREEMENT (HEREINAFTER "AGREEMENT") IS TO DEFINE THE CONDITIONS UNDER WHICH YOU ARE ALLOWED TO USE THE KWANKO PLATFORM AND SERVICE.

THIS AGREEMENT IS EFFECTIVE UPON ACCEPTANCE WITHOUT THE REQUIREMENT OF A HANDWRITTEN SIGNATURE, YOUR CONSENT BEING EXPRESSED BY CHECKING THE BOX "I ACKNOWLEDGE THAT I HAVE READ THE AGREEMENT AND AGREE TO ITS TERMS".

YOUR CONSENT COMMITS YOU AND THE COMPANY FOR WHICH YOU ARE SIGNING THIS CONTRACT AND YOU ACKNOWLEDGE THAT YOU ARE ENTITLED TO ACCEPT THE TERMS OF THIS CONTRACT IN THE EXERCISE OF YOUR RESPONSIBILITIES.

THIS CONTRACT HAS BEEN TRANSLATED IN ENGLISH FOR INDICATIVE PURPOSES, THEREFORE ONLY THE FRENCH VERSION IS JURIDICALLY COMMITTING THE PARTIES WHO HAVE SIGNED THIS CONTRACT.



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## 1. PREAMBLE

KWANKO provides to publishers of websites, mobile application, database or broadcasting media (hereinafter referred to as "Publishers") who are members of its network, access to and participation in campaigns set up by Advertisers on its Platform, as well as to take charge of the recovery of the commissions due by these Advertisers to the Publishers in exchange for the implementation of links, computer files, tags or lines of codes, containing in particular but not exclusively the hypertext links, icons, buttons, advertising banners, email html or other techniques redirecting to the Advertisers' website(s).

The PUBLISHER has joined up with KWANKO in order to benefit from the Tools and the Service provided on the Platform, allowing in particular to:

- to apply to programs in order to meet the needs of the affiliation and advertising campaigns of the Advertisers
- to provide Advertising Spaces or activities meeting the needs of the Advertisers,

The PUBLISHER has taken knowledge of the:

- Characteristics of the Tools and the Service and has ensured that it has the necessary internal or external skills to fully use them and to respond to the Advertisers' Campaigns published via the KWANKO Platform.
- The technical requirements necessary for the use of the Tools and the Platform.

It is in this context that the Parties have agreed to sign this agreement (hereinafter referred to as "Agreement").

## 2. DEFINITIONS

In all the Contractual Documents, the terms defined below shall be understood in the sense of their definition:

**Payment Request:** a document sent by KWANKO to the Publisher from the Platform to inform the Publisher of the Earnings Available as a basis for the Publisher's invoicing to KWANKO.

**Advertiser(s) :** natural or legal person, client of KWANKO, who commercialises products and/or services in particular via its website and/or its mobile application and/or its database; and who wishes via Campaigns to implement digital actions to increase the number of visitors to its Channels and the number of business transactions realised therein.

**Campaign:** Advertising campaign or affiliation program created and managed by an Advertiser via the Platform and describing the types of Advertising Spaces and purchase methods desired by this Advertiser and being subject, in certain cases, to specific Insertion Orders.

**Channel:** Advertising channels of an Advertiser or PUBLISHER in connection with a Campaign via different communication verticals (e.g. website, mobile application, email marketing, social networks etc.).

**Deduplication:** Technique that allows the ADVERTISER to measure, arbitrate and/or attribute a conversion (form or lead or sale) to a single e-marketing channel and thus avoid duplication.

**Validation Period:** Period during which the Advertiser must have validated the Events; this delay may vary from one Advertiser to another.

**Contractual Documents:** All contractual documents governing the relationship between the Parties as listed in the article "Contractual Documents".

**Data:** Data processed within the scope of the Service including, where applicable, Personal Data within the meaning of the regulations in force applicable to the processing of personal data and, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable as from 25 May 2018 (hereinafter, the "GDPR").

**Entity:** means the legal structure, natural or legal person, of the PUBLISHER which is duly registered with the competent authorities and which is indicated on the Platform as being entitled to invoice Kwanko.

**Advertising Space:** Advertising space assigned to the ADVERTISER by a Publisher on different media (cf. website, mobile application, email marketing, social networks, etc.) to enable the generation of Events.

**Event:** Any action carried out by an Internet user on one of the Channels used by the ADVERTISER, leading to a sale, a lead (completed form), a click, a display, a download, etc., considered by KWANKO in calculating the remuneration of the Publishers concerned. Each Event is associated with a unit price unitary (CPA Cost Per Action, CPL Cost Per Lead, CPC Cost



Per Clic, CPM Cost per Thousand "Mille" View , CPD Cost per Download' , etc...) and a price list validated by the ADVERTISER.

**Earnings Available:** means the earnings calculated from the Statistics validated and paid by the Advertisers to KWANKO, which were generated during the broadcasting of the Campaigns on the Publisher's Channels and which are being taken into account by KWANKO in calculating the remuneration of the Publishers concerned.

**Tools:** Application tools created and edited by KWANKO to provide the Services, available on the Platform.

**Publisher Application:** Actions (documentation and/or email exchanges) recorded on the Platform, which consist of the PUBLISHER: (i) making its advertising inventory available under certain conditions described on the Platform and (ii) applying via the Platform to meet the needs of an Advertiser's Campaign and (iii) accepting the remuneration parameters proposed or agreed by mutual agreement with KWANKO for the duration of a Campaign.

**Platform:** Web platform published by KWANKO integrating the Tools and made accessible at the url address <http://www.kwanko.com> and at the url address <http://www.netaffiliation.com>.

**Service:** Service provided by KWANKO in the context of the use of the Platform and the Tools to connect the PUBLISHER with Advertisers and allow the PUBLISHER to participate in Advertisers' Campaigns.

**Statistics:** The total number of Events for which the PUBLISHER and KWANKO are eligible for remuneration, registered by KWANKO per Campaign on the Platform

### 3. OBJECT

The purpose of the Agreement is to define the conditions for enabling KWANKO to provide its Platform and its Tools and to provide the Service to the PUBLISHER.

### 4. CONTRACTUAL DOCUMENTS

The following Contractual Documents regulate the relationship between the parties in descending hierarchical order of legal value:

- This Contract
- Appendix 1: Invoicing Terms and Conditions
- Appendix 2: « Direct Marketing » Chart
- Appendix 3: « Kwanko Mobile » Operating Rules
- Publisher Applications

In the event of a contradiction between one and / or more of the terms of any of these Contract Documents, the higher ranking Contract Document shall prevail.

### 5. ACCEPTATION - ENTRY INTO FORCE - DURATION

THIS AGREEMENT IS EFFECTIVE UPON ACCEPTANCE WITHOUT THE REQUIREMENT OF A HANDWRITTEN SIGNATURE, THE CONSENT OF THE SIGNATORY ON BEHALF OF THE PUBLISHER BEING EXPRESSED BY CHECKING THE BOX "I ACKNOWLEDGE THAT I HAVE READ THE AGREEMENT AND ACCEPT ITS TERMS".

THIS CONSENT IS BINDING ON THE PUBLISHER WHO DECLARES THAT HE HAS AUTHORISED THE SIGNATORY FOR THIS PURPOSE.

Unless the Agreement is terminated by either party by registered letter within a period of notice of 90 days, the Agreement shall remain in force as long as the PUBLISHER uses the Platform, the Tools and the Service of KWANKO.

### 6. DECLARATIONS AND WARNINGS OF THE PUBLISHER

The PUBLISHER, after having read the features of the Platform, the Tools and the Service of KWANKO, declares and acknowledges that:

- He/she has the skills and the human and organisational resources necessary to implement Campaigns,
- The terms of the Contract are applicable to all Publisher Applications to the Campaigns,
- He/she fulfils all the administrative, fiscal and social obligations required in the context of the performance of the Contract,



- Its broadcasting media comply with the applicable regulations and in particular respect the mandatory mentions relating to its capacity as publisher of the Channels concerned,- the contents of its Channels and broadcasting media are compatible with the image of the Advertisers' campaigns and are not likely to damage the image or reputation of the Advertisers or KWANKO,
- KWANKO acts only as an intermediary in the execution of this Agreement,
- He/she acts on its own behalf or on behalf of other publishers in execution of a written mandate,
- KWANKO has the possibility to classify the PUBLISHER's Channels into one of the categories of its network of publishers registered on the Platform,
- Due to its activities on the Platform, the PUBLISHER may be qualified as a professional by the competent governmental authorities and may therefore be subject to the regulations regarding digital advertising,
- The PUBLISHER shall comply with all obligations incumbent upon him/her under the Contract, including the relevant declarations to the relevant authorities in order to comply with the applicable regulatory provisions (including tax law and labour law etc.), KWANKO not assuming any liability in this respect,
- KWANKO reserves the right to ask the PUBLISHER to provide any documentation confirming his identity and address (such as: K-bis extract or identity card, SIRET/SIREN number, bank account number in France, tax identification number etc.), and to keep the information relating to his identity and contact details for the entire duration of the opening of his Account and for five (5) years after its closure; this in order to be able to meet the legal and regulatory obligations incumbent on KWANKO in the event of an inspection by the authorities
- Any modification relating to the name of a Channel of the PUBLISHER as well as any modification relating to its place of hosting, its size, its object, its frequency of update has no effect on the provisions of the Contract which apply automatically to the PUBLISHER independently of the said modifications,
- In the event that the PUBLISHER divides a Channel into several different Channels or creates a new Channel, or substitutes one of its subsidiaries, or assigns its claim, the provisions of the Contract shall continue to apply by operation of law; subject to the following conditions in the case of substitution or assignment: the PUBLISHER shall have previously transmitted to KWANKO a substitution or assignment contract duly signed with the substituted or the assignee and with all the information allowing to fill in all the identification fields required on the Platform,
- He/she shall promptly inform KWANKO of any changes that may result in alteration and/or loss of data stored by the Platform,
- He/she shall inform KWANKO in writing as soon as possible in case of any significant change in the nature, content or purpose of his/her Channel.
- He/she shall not be granted any form of exclusivity in the performance of the Contract,
- KWANKO reserves the right to set up campaigns with competitors of the PUBLISHER.

KWANKO strongly recommends the PUBLISHER, as soon as he/she achieves a turnover of more than 20,800 Euros over a period of three (3) consecutive months via the Platform, to declare himself/herself as a professional user on the Platform and to make all the necessary declarations to the relevant authorities in order to comply with the applicable regulations.

It is specified that this amount is provided by KWANKO as an indication, but that it is up to the PUBLISHER to inquire directly with the competent tax authorities or social security collection services or other taxes and duties in order to determine from which amount and/or under which conditions he/she can be considered as a professional user by the competent authorities and administrations..

## **7. FINANCIAL TERMS**

### **7.1. KWANKO REMUNERATION**

In exchange for providing the Publisher with access to the Platform and the Tools and for providing the Service, KWANKO collects, throughout the duration of the Contract, a remuneration agreed with its Advertisers on the basis of each Event generated by the Publisher.

### **7.2. PUBLISHER REMUNERATION**

The terms and conditions of the PUBLISHER's remuneration are defined per Campaign on the Platform, in accordance with the Publisher Applications accepted by the Advertiser or its representative.



The Application for a Campaign implies the Publisher's express acceptance of the mode of remuneration of the Events associated to it ("CPA" Cost Per Sale, "CPL" Cost Per Lead, "CPC" Cost Per Click, "CPM" Cost Per Thousand Display, "CPD" Cost Per Download, etc.).

### **7.3. GENERAL INVOICING TERMS**

KWANKO shall ensure the payment of the amounts due to the PUBLISHER on the basis of the Events recorded by KWANKO, according to the terms and conditions defined in this article and in the "Financial Conditions" appendix.

If Earnings are available, KWANKO shall send monthly to the PUBLISHER, after having collected them from the concerned Advertisers, a Payment Request, in which are listed all the Earnings of the Events associated with each Channel containing Advertising Spaces of the PUBLISHER and this in accordance with the remuneration models accepted through the Campaigns Applications.

The PUBLISHER shall issue an invoice on the basis of this Payment Request under the conditions mentioned in the appendix "Financial Conditions".

Validated Payment Requests or PUBLISHER's invoices shall be payable by KWANKO within thirty (30) days from the date of receipt by KWANKO of the invoice or the electronic validation of the Payment Request from the PUBLISHER.

Any delay in payment shall result in the application of a penalty at the rate of three (3) times the legal interest rate, as well as a fixed indemnity for collection costs of forty (40) euros, as of the day following the due date of the invoice concerned, without the need for a prior formal notice.

### **7.4. MODALITIES OF RECORDING EVENTS**

KWANKO ensures, via its Platform and its Tools, the recording of the Events associated with each Campaign according to the terms and conditions defined in the "Financial Conditions" appendix.

## **8. CONDITIONS FOR THE USE AND AVAILABILITY OF THE PLATFORM**

### **8.1. RIGHT OF USE**

The Platform and the Tools are made available to the PUBLISHER under a right of use.

As such, KWANKO grants the PUBLISHER a personal, non-exclusive and non-transferable right of use of the Platform and the Tools.

This right is granted only in the context of the use of the Service and for the duration of the Contract.

This right does not entail the transfer of any intellectual property right to the EDITOR, KWANKO keeping the full and entire property on the Platform and the Tools.

### **8.2. PUBLISHER ACCOUNT**

The use of the Platform requires the creation and activation of a PUBLISHER's account by KWANKO and the compliance with the declarations mentioned in the article "Declarations and warnings of the PUBLISHER".

During the registration process, the PUBLISHER shall provide all required information in a truthful, accurate and substantiated manner at the first request of KWANKO.

This information shall be updated by the PUBLISHER without delay throughout the term of the Agreement in the event of any changes to the information provided at the time of creation.

The PUBLISHER must indicate a valid e-mail address and a password which will allow, in particular, the sending of an e-mail confirming his registration.

It is the PUBLISHER's responsibility to ensure that he is the sole person having access to the e-mail to confirm his registration.

The PUBLISHER who has the possibility to modify his password on the Platform at any time is invited to do so regularly on the login page of the KWANKO Platform, or if necessary by clicking on "Forgot your password?"



The password and the e-mail address corresponding to the PUBLISHER's account are personal and confidential.

The PUBLISHER is solely responsible for the preservation and confidentiality of his password and, consequently, for the consequences of an involuntary disclosure to anyone.

Any use of the PUBLISHER's identifiers (e-mail address and password) is presumed to emanate exclusively from the latter, which he expressly accepts.

No operation can be carried out on the Platform without this password or the e-mail address corresponding to his PUBLISHER account.

The PUBLISHER is obliged to notify KWANKO without delay of any compromise of the confidentiality of his password or any use by a third party of which he is aware.

Upon receipt of such notification, KWANKO shall proceed as soon as possible and at the latest within two (2) working days to delete the password allowing access to the PUBLISHER account.

A new password will then be sent to the PUBLISHER by e-mail.

KWANKO reserves the right, without prior notice or compensation, to temporarily or permanently close the PUBLISHER account if it is not used in accordance with the contractual provisions or if it has not been active for more than twelve months.

Likewise, KWANKO reserves the right to temporarily close the PUBLISHER account in order to carry out an update, modifications or changes to the operational methods, servers and accessibility hours, without this list being limitative, with a notice period of twenty-four (24) hours.

KWANKO reserves the right to complete or modify, at any time, the elements composing the Platform and the Tools as well as the PUBLISHER's account, according to the evolution of technologies.

### **8.3. REQUIREMENTS FOR THE USE OF THE PLATFORM**

The use of the Platform and the setting up of Campaigns imply the provision of information and the respect of various requirements by the PUBLISHER.

## **9. CONDITIONS FOR THE PROVISION OF THE SERVICE**

### **9.1. TOOLS DESCRIPTION**

The Tools provided by KWANKO for affiliate programs and advertising campaigns, as well as their detailed description, are presented to the PUBLISHER on the Platform.

He is required to comply with the commitments and conditions associated with each Tool used to apply for Advertisers' Campaigns.

### **9.2. APPLICATION MODALITIES**

For each Campaign, an Advertiser determines the types of Events and the associated unit prices which are made available to the PUBLISHER.

The PUBLISHER may apply through the Platform to provide Advertising Spaces or activities that match the needs of the concerned Advertiser.

KWANKO and each concerned Advertiser have the right to refuse the PUBLISHER's Application, in particular if it does not meet the required criteria for a Campaign.

If an Application of the PUBLISHER is accepted by an Advertiser, it shall be integrated into the concerned Campaign.

The PUBLISHER then formalises his commitment to KWANKO by accepting, via the Application, the pricing conditions applicable for each Event on the basis of which KWANKO will establish the Statistics and the monthly invoicing.

In the context of an Application, KWANKO and/or the Advertiser may require the PUBLISHER to comply with additional conditions specific to a Campaign in addition to the prohibition for the PUBLISHER to send an electronic message (email,





SMS, messaging...) without the written authorisation of KWANKO and/or the Advertiser regarding the day of the send out and the content of the emailing (as referred to in the "Marketing Direct" Charter); these additional conditions shall be described on the Platform during the Application.

### **9.3. CONDITIONS FOR PARTICIPATING IN A CAMPAIGN**

KWANKO undertakes to provide the PUBLISHER with the information and elements (computer files, tags or lines of code, tracers including but not limited to hyperlinks, icons, buttons, advertising banners, email kits, etc.) enabling him to set up the Campaigns on his delivery channel(s) concerned.

The PUBLISHER is prohibited from modifying the elements made available by KWANKO for the implementation of a Campaign and the conditions of delivery, on penalty of being excluded from this Campaign and of having his earnings cancelled in the event of non-compliance with the conditions of delivery.

Any ongoing Campaign and any Advertiser Conditions may be modified or terminated/cancelled at any time with a reasonable notice of at least 24 hours, unless KWANKO or the Advertiser requests otherwise for a reason.

The PUBLISHER shall be informed by e-mail and/or by notification when logging on to the Platform of any change in the remuneration of the current Campaigns and the Advertiser Terms and Conditions.

In particular, the PUBLISHER will be informed in case of termination of a Campaign by an Advertiser or in case of changes in the payment conditions.

This information is available in the PUBLISHER's Account.

The definition, the setting on line and the running of the Campaigns, their modification or their interruption, as well as the definition of their pricing conditions and their possible evolution are under the entire and unique responsibility of the Advertiser who is the initiator, KWANKO acting only as a technical intermediary, which the PUBLISHER acknowledges and accepts.

The PUBLISHER refrains from carrying out any act or request that would not correspond or would not be legitimate in relation to the objectives of a Campaign.

### **9.4. GENERAL QUALITY OF SERVICE**

Due to the complexity of the Internet, the unequal capacities of the various networks, the influx of traffic at certain times, and the various congestion factors over which KWANKO has no control, KWANKO's liability is limited to the functioning of the Platform.

KWANKO shall not be held liable in any way for:

- access speeds from the Channels and/or the information systems of the PUBLISHER,
- external slowdowns,
- poor transmissions due to a failure or malfunction of these networks.
- the quality and the content of the Data processed within the framework of the Service,
- the occurrence of a case of force majeure,
- misuse of the Platform, the Tools and the Service by the PUBLISHER..

### **9.5. TECHNICAL ASSISTANCE**

The PUBLISHER may request technical support from KWANKO.

The cost of this technical assistance shall be determined by KWANKO upon submission of a quotation.

### **9.6. WARRANTY ON TOOLS AND PLATFORM**

KWANKO guarantees the compliance of the Platform, Tools and Service with the technical and functional features described in the Contractual Documents and on the Platform.

### **9.7. CASE OF INTERRUPTION OF THE CONTRACT**

The Parties agree that KWANKO may suspend access to the Platform and the Service in case of:



- maintenance, subject to prior notification to the PUBLISHER,
- intrusion on the Platform that may affect the functioning of the Service,
- misuse of the Tools and the Service that may affect the operation of the Platform or access to the Service by other KWANKO customers,
- upon request of an administrative or judicial authority, in particular regarding the Personal Data hosted within the Service..

KWANKO shall be entitled to suspend any Campaign automatically and without prior notice in the event of non-compliance by the PUBLISHER and/or the Advertiser concerned with their obligations under the Contract and in particular:

- in the event of a technical difficulty rendering a Campaign inoperative ;
- in case of use of a Campaign for fraudulent purposes by the PUBLISHER and/or the Advertiser concerned;
- in case of violation of a regulation in force by the PUBLISHER and/or the Advertiser concerned,
- in the event of a complaint by a brand for counterfeiting or violation of a distribution agreement etc,
- in the event of insufficient performance of a Campaign revealing that the minimum billing levels agreed with the Advertiser have not been reached for at least three (3) consecutive months.
- in the event of non-compliance with the procedures for using the Platform.

#### **9.8. EVOLUTION OF THE TOOLS AND THE PLATFORM**

KWANKO may freely take any organisational measure or technical or functional development that may improve the Tools and/or the provision of the Service in compliance with its contractual commitments..

#### **9.9. PUBLISHER COOPERATION**

The PUBLISHER undertakes to cooperate closely with KWANKO in the performance of the Contract.

In particular, the PUBLISHER undertakes to:

- communicate any difficulties to KWANKO in order to enable them to be taken into account as quickly as possible, thus contributing to the quality of the Service,
- to communicate the information necessary for the performance of KWANKO's obligations,
- to use the means at the disposal of the PUBLISHER to cooperate with KWANKO in the performance of its obligations,
- to ensure the availability, co-operation and competence of its staff,
- to request permission from KWANKO before any use of the Tools and the Platform by a third party.

The PUBLISHER declares that it undertakes to inform, whenever necessary, its users of the implementation of the processing of Personal Data necessary for the functioning of the Service.

The PUBLISHER undertakes to inform KWANKO as soon as possible of any change of Channels likely to have an impact on the Campaigns and the functioning of the Service.

The PUBLISHER undertakes to inform KWANKO in writing as soon as possible of any change that could lead to an alteration and/or loss of data during the measurement of results recorded by the Platform allowing KWANKO to count the events.

#### **10. PUBLISHER WARRANTY**

The PUBLISHER warrants to KWANKO that he/she is in compliance with all applicable laws and regulations and that he/she has carried out all administrative and/or tax procedures that may be necessary for the conclusion and performance of the Contract.



The PUBLISHER guarantees in particular to KWANKO that he has the right to create hyperlinks, icons, buttons, advertising banners, email kits or other techniques with a merchant website, in particular with regard to his host.

The PUBLISHER guarantees to KWANKO that he has all the rights, in particular intellectual property rights, necessary to put the content of his Channels (his website, his mobile applications or other delivery media) online, in such a way that KWANKO's responsibility will not be sought in any way whatsoever.

The PUBLISHER, if he works himself with a network of sub-publishers, guarantees KWANKO to enforce the provisions of the Contract against them and shall be responsible for the compliance of his sub-publishers with the provisions of the Contract, the PUBLISHER remaining solely responsible for the behaviour of the latter.

The PUBLISHER warrants to KWANKO that it complies with the applicable data protection regulations and in particular that it has lawfully obtained the consent of the persons whose e-mail addresses it uses in the context of e-mail campaigns. In this respect, the PUBLISHER undertakes to respect the terms of the charter relating to direct marketing campaigns (email, SMS, messaging...) appearing in appendix of the Contract.

In general, the PUBLISHER shall indemnify KWANKO against all harmful consequences that may result from the PUBLISHER's failure to comply with any of the undertakings listed in the Agreement and in particular against any amicable or contentious action brought by third parties in connection with the performance of the Agreement.

## **11. WARNINGS - PROTECTION OF KWANKO'S INVESTMENTS**

KWANKO's development of its network of Advertisers on its Platform is the result of substantial human and financial investments.

Consequently, the PUBLISHER is prohibited, unless expressly authorised by KWANKO, to enter into a direct or third party relationship with the Advertisers listed on KWANKO's Platform, during the entire duration of the Contract as well as for a period of twelve (12) months after the end of the Contract, unless the PUBLISHER can demonstrate that it had already been in contact with the Advertiser(s) concerned in the twelve (12) months prior to the entry into force of the Contract; In this respect, the PUBLISHER shall declare, on the day of its registration/creation of its account, the list of Advertisers concerned.

Any Advertiser not appearing in this list will be considered as an Advertiser having had no relationship with the PUBLISHER in the twelve (12) months preceding the entry into force of the Contract.

In the event that the PUBLISHER enters into a direct or indirect relationship with an Advertiser without the prior written consent of KWANKO, the PUBLISHER shall pay compensation to the Advertiser equivalent to 12 (twelve) times the highest monthly turnover paid by KWANKO to the PUBLISHER, all Campaigns included, but not less than 15,000 (fifteen thousand) Euros exclusive of tax.

If the PUBLISHER decides, in agreement with KWANKO, to enter into a direct or indirect relationship with an Advertiser during the performance of the Contract, the PUBLISHER shall pay the Advertiser a compensation equivalent to 3 (six) times the highest monthly turnover paid by KWANKO to the PUBLISHER, all Campaigns included, this compensation not being less than 7,500 (seven thousand five hundred) euros excluding taxes.

## **12. KWANKO PROPERTY**

KWANKO is the owner of:

- intellectual and industrial property rights to all elements composing the Tools and the Platform,
- of the brands, patents, names, acronyms, logos, colours, graphics or other signs that may be used or implemented by KWANKO for the purposes of executing the Contract.

The PUBLISHER shall refrain from:

- any action and any act that may directly or indirectly infringe the intellectual property rights of KWANKO,
- to reproduce all or part of the content of the Tools and the Platform,
- to use or exploit the Tools and the Platform on behalf of third parties, including within its group, without the prior written consent of KWANKO.



The PUBLISHER is prohibited from registering any patent on its own behalf or on behalf of a third party in connection with the know-how of KWANKO, the Tools and the Platform.

The PUBLISHER acknowledges that the Data, information and databases accessible on the Platform are the property of KWANKO.

In particular, the Data, information and databases may not be used for commercial purposes by the PUBLISHER, nor may they be reproduced on a website, applications or other delivery media by the PUBLISHER, nor may they be compiled by the PUBLISHER by means of or with the help of a search software, a meta-engine or a website or data Hoover.

### **13. ADVERTISERS' INTELLECTUAL PROPERTY**

Each Advertiser is the sole owner of all intellectual and industrial property rights and, in particular, but without limitation, of the trademarks, advertising slogans, banners and/or designs to which the PUBLISHER has access and for which KWANKO has the required rights to authorise the PUBLISHER to use them for the sole purpose of the performance of the Contract.

Any reproduction and/or representation, in whole or in part, of any of these rights or of the Data without the express authorization of KWANKO is prohibited and constitutes an infringement sanctioned by articles L. 335-2 and following of the Intellectual Property Code.

Consequently, the PUBLISHER shall refrain from any action and any act likely to infringe directly or indirectly on the intellectual property rights of KWANKO or the Advertisers.

### **14. COMMUNICATION ON LEGAL, JUDICIAL AND/OR REGULATORY REQUEST OR INJUNCTION**

In the event of a request for the provision of information and documents of any kind by an administrative or judicial authority, upon request or injunction, concerning the PUBLISHER, KWANKO undertakes to provide the information and documents requested in the terms of the request or injunction.

All costs incurred by KWANKO in connection with the handling of such a request or injunction shall be borne by the PUBLISHER.

### **15. TERMINATION**

In case of breach by either Party under the Contract, not remedied within fifteen (15) days from the date of the registered letter with acknowledgement of receipt notifying the breach in question, the other Party will be entitled to terminate the Contract, subject to any damages to which it may be entitled under the present terms.

In case of termination of the contractual relationship for any reason whatsoever, the PUBLISHER undertakes to take all necessary measures to deactivate the Campaigns.

All operations carried out by the PUBLISHER after the termination of the contractual relations will not give right to remuneration.

### **16. RESPONSIBILITY**

Each party is responsible for its own actions, acts, commitments, products or services and for the obligations it has under the Contract.

KWANKO shall not be required to accept any liability for:

- the malfunctioning of the PUBLISHER's Channel(s),
- the actions of the PUBLISHER participating in a Campaign,
- the performance of the Advertisers' Campaigns.

The PUBLISHER acknowledges that KWANKO acts as a technical intermediary and that consequently, KWANKO is not responsible for the PUBLISHER's and the Advertiser's Channels as well as for their content and the content of the Campaigns.



KWANKO shall not be required to accept any liability whatsoever for any errors or delays caused by the PUBLISHER or by a third party that is not a subcontractor of KWANKO.

KWANKO shall only be required to compensate the certain and direct damage suffered by the PUBLISHER, to the exclusion of any indirect damage, as defined by the civil code and the jurisprudence of the French courts.

In any case, KWANKO's liability shall not exceed the amount of the sums paid by KWANKO under the Contract during the six (6) months preceding the event giving rise to its liability.

The parties acknowledge that the remuneration of KWANKO reflects an economic balance and that the Contractual Documents would not have been concluded on the terms set out therein without the above limitations of liability.

The parties agree that the limitations of liability shall continue to apply even if the Contract is terminated for any reason whatsoever.

## **17. FRAUD**

Any action aiming at artificially increasing the generated traffic and more generally any action aiming at obtaining gains in an undue or artificial way are strictly forbidden.

Any action constituting fraud shall result in the immediate invalidation of all earnings received by the PUBLISHER and may result in the immediate termination of the Contract as well as the closing of his Publisher account notwithstanding the provisions of the article "termination" above and without prejudice to the recourse that KWANKO may take on a civil or criminal level to have the PUBLISHER condemned and/or obtain compensation for his prejudice.

## **18. FORCE MAJEURE**

Neither Party may be held liable if the performance of its obligations is delayed or prevented due to force majeure within the meaning of Article 1218 of the French Civil Code.

The Parties agree to expressly exclude any epidemic/pandemic from cases of force majeure..

## **19. INSURANCE**

Each Party undertakes to insure itself and to maintain in force its insurance policy with a solvent insurance company established in its country, for all the pecuniary consequences of its civil, professional, tortious and/or contractual liability as a result of bodily injury, material and immaterial damage caused to the other Party and to any third party in the performance of its obligations.

## **20. CONFIDENTIALITY**

Each of the Parties undertakes to keep strictly confidential any information or document, regardless of the medium, which may be brought to its knowledge during the negotiation or performance of the Contract.

This obligation of confidentiality shall apply throughout the duration of the Contract, and for a period of 3 years from the communication of the protected information or the expiry of the Contract.

The Parties undertake to:

- not to disclose such confidential information,
- to prevent any disclosure of such confidential information outside their company, except for the need to disclose it to subcontractors, consultants or others in connection with the performance of the Contract
- not to reproduce, or cause to be reproduced, any document or part thereof which may constitute or contain Confidential Information,
- to return to the other Party or destroy, on expiry or termination of the Contract, all confidential documents of any nature whatsoever which may have been given to it by the other Party
- not to use the information for any purpose other than for the performance of the Contract.

The Parties agree that the provisions of this article shall not apply to information that:



- is or becomes known to the other Party by publication or by any other means than a breach of its obligations by the Party that received it or,
- arises out of developments independently undertaken by, or on behalf of, the receiving Party by persons who do not have access to confidential information of the other Party, or
- is the subject of general disclosure by the disclosing Party without any particular restriction; or
- are subject to disclosure as a result of a court order.

The Contract Documents shall be considered as confidential information within the meaning of this clause.

## **21. CONVENTION ON PROOF AND ACCESS TO DATA**

The Data recorded on the Platform shall be kept by KWANKO under reasonable security conditions and shall be considered as evidence of the exchanges between the Parties and on the Platform, within the limits of Article 1356 of the French Civil Code.

KWANKO undertakes not to alter the Data recorded on the Platform, such as Events, Statistics and all Data related to the tracking of Events.

During the entire term of the Agreement, the PUBLISHER shall have access to all information on the Platform and in particular to the Events and Statistics concerning him/her (these Data being downloadable).

At the end of the Contract, for any reason whatsoever, the PUBLISHER shall download all the Data relating to the execution of the Contract within a maximum period of 4 working days.

### **21.1. PERSONAL DATA PROTECTION**

Each Party undertakes to comply with its obligations under current regulations applicable to the processing of personal data and, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 applicable since 25 May 2018.

### **21.2. KWANKO'S OBLIGATION AS DATA CONTROLLER**

The PUBLISHER is hereby informed that, for the purposes of the performance of the Contract:

- KWANKO does not process any Personal Data on behalf of the PUBLISHER,
- KWANKO acts as a data controller for the processing of the Publisher's User Data for the purposes of providing the Service and performing the Contract,
- KWANKO generates cookies to be deposited on the Channels concerned by the Campaigns for the sole purpose of tracking the Events for the sole purpose of calculating the remuneration of the PUBLISHER and KWANKO,
- KWANKO's cookies are not intended to collect Personal Data.

Within the framework of the performance of the Agreement, KWANKO shall therefore only act as a data controller when collecting Personal Data for the sole purpose of managing its relationship with the PUBLISHER, the recording of the Events and the calculation of the PUBLISHER's and KWANKO's remuneration.

### **21.3. PUBLISHER'S OBLIGATION AS DATA CONTROLLER**

The implementation of the Campaigns implies that the PUBLISHER must comply with the regulations in force for data protection.

In this context, he must notably:

- have a tool for collecting the consent of the users of its website or its application for all other Personal Data that it collects on its behalf,
- inform, via its privacy policy, the users visiting its websites and applications of the presence of Kwanko cookies and of the fact that these cookies do not collect Personal Data related to their visit on the website or application concerned.



The PUBLISHER is responsible for the processing of the IDs it generates for the purposes of allocating the earnings generated to its network of affiliates and partners (argsite or sub-id).

In any case, the PUBLISHER undertakes not to transmit to KWANKO any directly identifying personal data.

## **22. NON-SOLICITATION OF EMPLOYEES**

Each of the Parties waives, without the prior written agreement of the other Party, the right to directly or indirectly make offers of employment to an employee of the other Party, or to take him into its service, under any status whatsoever, even if the initial solicitation is made by the employee.

This waiver shall remain valid for the entire duration of the Agreement as well as for a period of twenty-four (24) months from the termination or cancellation of the Agreement for any reason whatsoever.

In the event that one of the Parties does not respect this commitment, it undertakes to compensate the other Party by paying it compensation equal to the gross salaries (wages plus social security charges) received by the employee who has been dismissed during the twenty-four (24) months prior to his/her departure.

## **23. SUBCONTRACTING**

Certain obligations of KWANKO under the Agreement may be subcontracted, in whole or in part, to any person of its choice, which the PUBLISHER accepts.

## **24. COMMERCIAL REFERENCES**

The PUBLISHER authorises KWANKO to quote its name or to mention it as a reference, by any means, within the framework of the commercial relations between KWANKO and its prospects or customers.

In case of termination of the business relationship, KWANKO shall retain the right to use the name and logo of the PUBLISHER as a reference, unless explicitly requested in writing by the PUBLISHER.

## **25. TRANSFER**

The Contractual Documents may not be assigned, in whole or in part, by a Party without prior notice to the other Party.

## **26. MISCELLANEOUS PROVISIONS**

Each Party shall refrain from making any commitment in the name of and/or on behalf of the other.

Each Party remains solely responsible for its acts, allegations, commitments, services, products and personnel.

The headings are inserted for convenience only, and in the event of any difficulty of interpretation between any of the headings appearing at the head of the clauses and the content of any of the clauses, the headings shall be declared non-existent.

The Contractual Documents express the entirety of the obligations of the Parties with respect to its subject matter. No other terms and conditions contained in any documents sent, exchanged or delivered by the Parties shall be incorporated into the Contractual Documents.

Unless expressly provided otherwise, any amendment to the Contractual Documents may only be made by means of a written amendment duly signed by the authorised representatives of each of the Parties.

If any provision of the Contractual Documents is found to be invalid by virtue of any applicable rule of law or any final judicial decision, such provision shall be deemed to be unwritten, but this shall not invalidate the Contractual Document concerned or affect the validity of the other provisions thereof.

The fact that one or other of the Parties does not claim the application of any clause of a Contractual Document or acquiesces in its non-performance, whether permanently or temporarily, shall not be interpreted as a waiver by that Party of its rights arising from the said clause.

The Parties elect domicile at their registered office indicated at the top of this document.



## **27. CONCILIATION**

In the event of a dispute and prior to any legal action, the Parties shall endeavour to find an amicable solution to their dispute as soon as possible.

To this end, as soon as a Party identifies a dispute with the other Party, it may request that a meeting be convened to discuss the settlement of the matter in dispute.

This meeting shall be convened by any means. This meeting shall be held within a maximum of 15 days from the receipt of the request.

If no solution is found within this 15-day period, ratified by a written agreement signed by the representatives of the Parties, or if the meeting has not taken place, the amicable procedure shall be considered terminated;

## **28. ASSIGNMENT OF COMPETENCE**

The Agreement is subject to French law.

IN THE EVENT OF DISPUTE AND FAILURE OF THE CONCILIATION PROCEDURE UNDER THE ABOVE CONDITIONS, JURISDICTION IS EXPRESSLY ATTRIBUTED TO THE COURTS OF NANTERRE, NOTWITHSTANDING PLURALITY OF DEFENDANTS OR APPEAL FOR GUARANTEE, EVEN FOR EMERGENCY PROCEDURES OR CONSERVATORY PROCEDURES, IN APPEAL OR ON REQUEST.

## **29. SPECIFIC CASE BRAZIL**

Any PUBLISHER with traffic in Brazil is subject to Brazilian law, including the LGDP, and accepts the Kwanko Brazil T&Cs, which can be viewed at [www.kwanko.com](http://www.kwanko.com)





## APPENDIX 1 – INVOICING TERMS AND CONDITIONS

### 1. PRINCIPLES

The terms and conditions of the PUBLISHER's remuneration for a Campaign are defined during the Applications on the Platform or specified on an Insertion Order.

KWANKO shall generate a Payment Request on the Platform, provided that the total amount of Available Earnings on the Publisher's account is higher than 50 euros (excl. VAT).

The Publisher shall then validate the Payment Request for each currency through the Platform or if he wishes upload his own invoice to the Platform, which shall at least include the following list of compliance elements:

- the name of the publisher's Entity as indicated on the Platform,
- the Publisher's entity number on the Platform - as indicated in each Payment Request,
- all the indications given on the Payment Requests.
- An amount equal to the one appearing in the Payment Request in the currency concerned.

Any invoice that does not include these compliance elements shall not be accepted or paid by KWANKO.

The Payment Request or the invoice issued by the PUBLISHER shall be paid by KWANKO in the currency of each Payment Request concerned, within thirty (30) days from the end of the month as from the date of receipt of the said invoice or the electronic validation of the Payment Request, subject to:

- validation of the basis of assessment (statistics and counting of events) for payment by the ADVERTISER
- KWANKO collecting the sums due from each Advertiser concerned,
- that the Payment Request has been validated and, if applicable, that the invoice has been issued within 12 months from the date of the first Payment Request from KWANKO (after this period, the PUBLISHER shall be deemed to have waived its claim against KWANKO).

If KWANKO fails to pay all or part of an invoice issued by the PUBLISHER within the aforementioned payment period, KWANKO shall be liable for late payment interest at a rate of three (3) (pursuant to Article L.441-10 of the French Commercial Code) and legal collection costs in the amount of forty (40) euros.

In principle, payments shall be made by bank transfer.

Depending on the country of Publisher's headquarters, other means of payment may be agreed between the Parties.

The costs associated with the payments (in particular exchange fees and/or commissions, international transfers, specific means of payment, etc.) shall be borne by the PUBLISHER and deducted from the payments made to him by KWANKO.

If the amount of the sums owed by KWANKO is disputed by the PUBLISHER, the parties agree that the basis of the sums to be paid by KWANKO shall be the sums actually paid by the Advertisers to KWANKO from which shall be subtracted all costs and/or commissions incurred by KWANKO.

In the event of any dispute of any kind, the thirty (30) day period for payment of invoices shall not apply and the payment of the sums to be paid shall only take place from the day on which all difficulties have been resolved.

Any action for payment of invoices shall be prescribed at the end of a period of one (1) year from the date of availability of the concerned Payment Request on the Platform.

It is reminded that the PUBLISHER is strictly forbidden to enter into direct contact with an Advertiser, including with regard to disputes relating to invoicing, which are under the exclusive responsibility of KWANKO.

In the event of a subsequent dispute by the Advertiser regarding the Statistics and the Available Earnings that would have been paid by KWANKO to the PUBLISHER, the PUBLISHER undertakes to return the unduly collected amounts at the first request of KWANKO (on the basis of evidentiary information provided by the Advertiser).

If the PUBLISHER owes amounts to KWANKO, KWANKO is expressly authorized to offset these amounts against the amounts owed to the PUBLISHER by KWANKO, in particular in the above-mentioned case.



The PUBLISHER shall be responsible for the payment of all taxes, fees, social security contributions and similar charges based on the payments of KWANKO.

Therefore, KWANKO shall deduct and pass on to the PUBLISHER all taxes, withholding taxes or other charges applied by virtue of the law or regulations of any country in connection with the payments of Payment Requests.

The PUBLISHER is responsible for making all necessary declarations to the relevant authorities in order to comply with the applicable regulatory provisions (in particular, any obligation to register with the authorities).

## **2. MODALITIES FOR RECORDING THE EVENTS**

### **2.1. PRINCIPLES**

KWANKO ensures, via its Platform and Tools, the recording of Events associated with each Campaign.

KWANKO provides Publishers with the tracking tools that the latter must install on their Channels and the elements of each Campaign where applicable.

In the event of a malfunction attributable to a Publisher, the latter is required to remedy it as soon as possible.

If a Publisher does not restore the Tracking Tools within seventy-two (72) hours from the occurrence of the malfunction, KWANKO reserves the right to exclude it from the Campaign concerned or to cancel its Statistics.

### **2.2. MODALITIES**

The Platform records each Event linked to a Campaign.

Only the recordings of Events made by KWANKO on the Platform shall serve as a reference for the calculation of Events and the establishment of Statistics serving as a basis for the calculation of the remuneration due to the PUBLISHER.

For the calculation of Events, KWANKO applies a post-view period and a post-click period which are defined in the Applications for each Campaign.

«Post view time» means the time during which an Event is counted following the display of an element of a Campaign via an Advertiser's Channels.

«Post-click delay» means the period of time during which an Event is counted following a click of a user on one of the elements of a Campaign via an Advertiser's Channels.

KWANKO is therefore solely responsible for the registration of Events.

The Events are validated by each Advertiser during the Validation Period, within the process of deduplication.

At the end of the Validation Period, KWANKO establishes the final statistics of the Events.

The PUBLISHER acknowledges and accepts that only the Statistics established by KWANKO from the validated Events are authentic and shall serve as official and definitive data between the parties.

The amount of the remuneration due to the PUBLISHER corresponds to the remuneration paid by each Advertiser for a Campaign registered on the Platform minus the remuneration of KWANKO.

### **2.3. EVENT TRACKING MECHANISMS**

KWANKO uses tracking tools and a cookie whose sole purpose is to collect technical (and therefore non-personal) data to track interactions and Events in connection with each Campaign.



## APPENDIX 2 –« DIRECT MARKETING » CHART (EMAILING, SMS, MESSENGING...)

1. This charter applies to all Direct Marketing actions (by email, SMS, messaging...)
2. The Publisher undertakes to deliver the advertising creative (emailing html) provided by the Kwanko platform (hereinafter referred to as "Advertising Creative") solely and exclusively through the databases owned by the Publisher. The Publisher warrants to KWANKO that it complies with the applicable data protection regulations and in particular that it has lawfully obtained the consent of the persons whose email addresses it uses in the context of emailing campaigns. In this respect, the PUBLISHER undertakes to respect the terms of this charter relating to emailing campaigns.
3. The Publisher undertakes to specify, upon request, how the Databases it manages were collected, and to provide proof of the consent given by indicating the date, time and IP address relating to the issue of the consent given. The Publisher undertakes to respect, for each campaign delivered through Kwanko, the following policy regarding content and delivery:
  - (i) The email must always indicate the emailer's business name and preferably a contact address for the emailer. Under no circumstances should the email be in the name of the Advertiser.
  - (ii) E-mails must always include an option to reply, so a "noreply@" e-mail address or similar is not permitted.
  - (iii) A user must always be able to unsubscribe from the emailing without charge.
  - (iv) The layout and design of the email must not mislead either about the commercial message or about the identity of the advertiser promoting the message.
  - (v) The email must contain all the information required by the applicable regulations on the protection of personal data.
  - (vi) A proof of delivery must be systematically sent to Kwanko for validation with the date of sending and the volume of email addresses provided.
4. For e-mail marketing campaigns, the Publisher, in the person of its legal representative, hereby declares that all e-mail addresses used to send the Advertising Creative of all campaigns conducted by Kwanko, have been collected in compliance with the GDPR and in particular with the specific consent of the persons concerned so that the Advertising Creative (banners, e-mail html) is understood that the Advertising Creative provided by Kwanko will be sent directly by the Publisher as Kwanko does not have knowledge of the names and e-mail addresses of the persons to whom the campaign will be sent, the Publisher acting under its sole responsibility.
5. Within the framework of the deduplication of the Advertiser's repousseirose bases: the Publisher processes lists of emails (deduplication of emails, repousseirose database, Blacklist) with the aim of respecting opt-out, and not opt-in or simply the will of an Advertiser not to send emails to a certain list of email addresses. The Publisher prohibits any cross-referencing of the databases for other purposes, including segmentation and targeting for third parties. The Databases are encrypted throughout the deduplication process - KWANKO does not have access to unencrypted data.
6. In the event of a breach of the obligations set forth in this Agreement, and in accordance with the previous paragraph, the legal representative undertakes to hold Kwanko harmless and to indemnify it for any damages and expenses that Kwanko may be ordered to pay in relation to claims and/or complaints from third parties or persons affected, arising from the Publisher's failure to comply with the Agreement and any regulations, recommendations or notices issued by the regulatory authorities applicable to e-mail marketing campaigns



## APPENDIX 3 – « KWANKO MOBILE » OPERATING RULES

« KWANKO Mobile »: is the designation of the mobile channel or delivery model which is available on [www.kwanko.com](http://www.kwanko.com); It is a marketing practice dedicated to mobile delivery media (device) by which an Advertiser will have its commercial offers (products or services) delivered by a promotion force consisting of a network of mobile website publishers or mobile applications or databases or other delivery media and service providers on the mobile internet..

### 1. MOBILE PROGRAMS

KWANKO provides the PUBLISHER with the possibility to monetize the traffic of its site consulted from a mobile phone.

This module consists of an interstitial format which consists of an advertisement which is displayed in full page before the opening of the site during an average duration of 3 seconds and of a single banner of 320x53 in overprint which is displayed on the following page. In case of unsold products, no interstitial or banner is displayed.

This module is set by default on the Publisher's site. It can be deactivated or reactivated at any time in the Publisher's account on the Platform's interface.

The monetization of mobile traffic is now integrated in the Kwanko Advertisers' Campaigns, as it is a delivery channel of the Publisher.

It gives right to remuneration according to the conditions of remuneration of the Advertisers' Campaigns

### 2. TECHNICAL INTEGRATION MODE

KWANKO Mobile allows PUBLISHERS to monetize their mobile advertising spaces (by mobile we mean any advertising displayed on a mobile delivery device (e.g. smartphone or tablet)).

**Several cases of technical integration can be chosen by the PUBLISHER:**

**Case 1 :** via an advertising media available on the Advertiser's Campaign

**Case 2 :** direct integration via implementation of advertising SDK (mobile web / iOS / Android)

**Case 3 :** integration via API

In Case-2 as in Case-3, the PUBLISHER entrusts its advertising inventory to KWANKO in charge of monetizing the inventories according to the monetization rules defined upstream between KWANKO and the PUBLISHER. KWANKO is free to deliver all advertising campaigns or mobile PROGRAMS ordered by its Advertisers on the Publishers' advertising inventories provided that the Publishers comply with the delivery rules agreed upon between the Parties (management of blacklists (exclusion list), delivery formats, delivery remuneration, etc.).

**Case 4 :** This is a "server to server" (S2S) communication mode through which the PUBLISHER connects to the PLATFORM in order to be able to relay the mobile Campaigns ordered by the Advertisers on the Publishers' advertising inventories.