



**KWANKO**

**TERMS & CONDITIONS  
ADVERTISERS**

June 2018

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# 1. Parts

KWANKO, with a capital at €78 456,46, registered in France in the Nanterre Trade and Companies Register under number 440 546 885, whose headquarters are located at 60, boulevard du Maréchal Joffre 92340 Bourg-la-Reine - France, represented by François Bieber, as Chairman of the Board of Directors.

HEREIN REFERRED TO AS: "KWANKO"

PARTY OF THE FIRST PART

AND:

The company, with the capital of \_\_\_\_\_ euros,  
registered in the Register of Commerce and Companies of \_\_\_\_\_,  
under number \_\_\_\_\_,  
with head office in \_\_\_\_\_,  
represented by \_\_\_\_\_,  
In his/her capacity as \_\_\_\_\_,

HEREIN REFERRED TO AS: "Advertiser"

PARTY OF THE SECOND PART

## 2. Preamble

**1** The advertiser edits a website and / or mobile application and / or database (hereinafter referred to as the channels) on which it markets products and / or services.

**2** The advertiser wishes to increase the number of visits to its channels and the number of commercial transactions carried out.

**3** To this end, it considers using an affiliate marketing program or advertising campaigns via internet or digital technologies.

**4** KWANKO has tools enabling the advertiser to implement an affiliate marketing program and advertising campaigns via internet or digital technologies.

**5** To this end, KWANKO has two internet platforms enabling the advertiser to organize their affiliate marketing and advertising campaigns via internet or digital technologies, accessible at the URL address <http://www.netaffiliation.com> and at the URL address <http://www.KWANKO.com> (hereinafter referred to as the "Platform").

**6** The advertiser hereby declares that it:

- has read the terms under which the Platform operates and the services offered by KWANKO;

- has all the necessary information to consider that the Platform thereby provided corresponds to its expectations, its objectives and desired performance;
- is adequately skilled to implement an affiliate marketing program;
- has enough marketing and technical skills to use the Platform under optimal conditions;
- has ensured compliance with the necessary technical prerequisites;
- is fully aware that KWANKO acts as a simple technical intermediary.

**7** After a negotiation phase, the parties have come together on the following bases.

### 3. Definitions

**8** The terms defined below shall have the following meanings between the parties:

- "**affiliate marketing** ": marketing practice by which an advertiser will have their commercial offers (products or services) distributed to a promotional force consisting of a network of websites, mobile applications, databases or any other digital means of digital distribution consisting of affiliates;
- "**Affiliate**": a natural or legal person who publishes services or content online via a website and / or a mobile application and / or a database or any other means of digital distribution registered on the Platform, in order to present links pointing to the advertisers' channels and receive remuneration to that end;
- "**Advertiser**": a natural or legal person who publishes services or content online on the Internet and / or a mobile application and / or a database registered on the Platform and proposes an affiliate marketing program or advertising campaigns via internet or digital technologies, including any authorized representative, natural or legal person, agency or agent acting in the name and on behalf of the said natural or legal person who publishes services or content online;
- "**Order**": means any commitment made by the advertiser with KWANKO from the Platform or by any other means whatsoever and in particular by email, fax or purchase order or advertisement order or purchase order;
- "**Post-click period**": the period during which an event is counted as a result of a user 's click on one of the elements of the affiliate marketing program or advertising campaigns via the advertiser' s internet or digital technologies;
- "**Post-view period**": describes the period of time during which an event is counted as a result of the display of an item in the affiliate marketing program or advertising campaigns via the advertiser's internet or digital technologies;
- "**Contract**": means all the contractual documents (including their annexes) binding the advertiser to KWANKO, as listed in Article 5;
- "**Channel**": refers to a website and / or a mobile application and / or a database or any other means of digital distribution published by the advertiser to sell their products and / or promote their marketing. ;
- "**Validation period**": refers to the period specified in Article 14 (§86);
- "**Data**": produced data used or processed to perform the contractual services via KWANKO; to know in particular by way of example and without being limited to it: email,

civility, first name, name, country, password, profile picture, addresses, telephone number (s), IP address, connection data and navigation data when the user accepts and if necessary: historical orders, transactions, complaints, incidents, information relating to delivery, correspondence, etc.... Some data are collected automatically due to the actions of the user performed on the advertiser's channel (s) via Cookies;

- **"Personal data"**: refers to any information relating to a natural person identified or who can be identified, directly or indirectly, in particular by reference to an identifier, such as a name or an identification number, or to one or more specific elements specific to its physical, physiological, genetic, psychic, economic, cultural or social identity; "Intellectual property right": any element protected by a provision in the Intellectual Property Code;
- **"Event"**: any element or action that may give rise to a right to remuneration for the benefit of KWANKO and / or its affiliates;
- **"Internet user"**: natural or legal person connected to the Internet network in order to carry out operations, interactive or otherwise, such as the consultation of channels, the exchange of information or the execution of legal acts such as the purchase of products or services;
- **"Platform"**: an online service of KWANKO accessible at the URLs <http://www.netaffiliation.com>, <http://www.KWANKO.com> allowing the definition, the recording and the distribution of affiliate marketing programs on behalf of the advertisers. This online service includes a software which records the number and nature of events held between the website and / or a mobile application and / or a database or any other means of digital distribution for the affiliates and the advertisers' channel (s);
- **"Tracking"**: all the technical elements that make it possible to determine the navigation history and the actions performed by a user on the website (s) and / or a mobile application and / or a database or any other means of digital distribution or channel (s);

## 4. Object

**9** The purpose of these general conditions is to define the conditions under which the advertiser may use the KWANKO Platform in order to implement an affiliate marketing program.

## 5. Contract documents

**10** The contractual documents binding the advertiser to KWANKO are, in descending order of priority:

- The general conditions;
- Any specific conditions and any special conditions or Addenda and Data Protection Addendum (PDA);
- Purchase orders;
- Statistics relating to the program of affiliate marketing advertiser present on behalf of the latter;
- The information present on the Platform;
- Exchanges of e-mails and information between KWANKO and the advertiser relating to the execution of these terms and conditions.

## 6. Enforceability

**11** The present general conditions are opposable to the advertiser as soon as it is accepted by the latter, regardless of the form (paper or digital).

**12** In all cases, on the date of the creation of the advertiser's account, these terms and conditions are deemed to have been read and accepted by the advertiser.

**13** KWANKO reserves the right to make any changes to these terms and conditions that it deems necessary and useful.

**14** KWANKO undertakes to provide to the advertiser the new terms and conditions. Unless terminated by the advertiser within 30 (thirty) days of the provision of a new version of the general conditions, the latter will be binding on the advertiser. Likewise, the new general terms and conditions will be fully enforceable against the advertiser once it has used the affiliate marketing Platform of KWANKO after the new terms and conditions have been made available.

**15** The general terms and conditions available online on the KWANKO Platform take precedence over any printed version of an earlier date.

## 7. Duration - Entry into force

**16** The present general conditions come into effect as from the signature by the parties.

**17** In case of signature on different dates, the last date is considered between the parties as the effective date of signature of the general conditions.

**18** These terms and conditions are entered into for an initial period of one (1) year from their effective date.

**19** Upon expiry of this initial term, the current general terms and conditions shall be tacitly renewed for annual periods, unless terminated by one or other of the parties giving three (3) months notice before each of their deadlines, notified by a registered letter with AR.

## 8. Advertiser account

### 8.1 Opening the advertiser account

**20** The use of the KWANKO Platform presupposes the opening of an account by the advertiser on said Platform.

**21** The advertiser account can be opened by the advertiser:

- Either online by the advertiser himself following the prescriptions and information included on the affiliate marketing Platform of KWANKO;
- Or by KWANKO.

**22** The procedure for opening an advertiser account includes different steps.

**23** When subscription, the advertiser must provide the information required by KWANKO. This information must be accurate and substantiated at the first request of KWANKO. This information must be updated by the advertiser.

**24** The advertiser must indicate a valid email address that will allow, inter alia, the sending of an email confirmation for their subscription in which his password and the email address corresponding to his account advertiser will be indicated.

**25** It is the responsibility of the advertiser to ensure that only it has access to the email containing the password.

**26** The advertiser who has the possibility to change his password on the affiliate marketing Platform of KWANKO at any time, is requested to do so during his first login and to change it on a regular basis.

**27** The Advertiser is solely responsible for the preservation and confidentiality of his password and, therefore, the consequences of involuntary disclosure to anyone.

**28** Any use of the advertiser account with the password assigned to or modified by the advertiser is presumed to be exclusively that of the latter, which he shall expressly accept.

**29** No transaction can be performed without this password or the email address corresponding to its advertiser account.

**30** The password and e-mail address corresponding to its advertiser account are personal and confidential.

**31** The advertiser has the obligation to notify KWANKO without delay of any compromise of the confidentiality of its password or any use by a third party which it may become aware.

**32** Upon receipt of this notification, KWANKO will proceed within a reasonable time and no later than two (2) working days to remove the password allowing access to the advertiser account.

**33** A new password will then be provided to the advertiser by e-mail.

## 8.2 Access to the advertiser account

**34** Access to the advertiser account shall only be possible after authentication by means of access codes: an email address corresponding to the advertiser account and a password.

**35** The advertiser account is normally available 24 hours a day, 7 days a week.

**36** KWANKO reserves the right, without notice or compensation, to temporarily or permanently close the advertiser account to update, modify or change the operational methods, servers and hours of accessibility, without this list being limiting.

**37** KWANKO reserves the right to supplement or modify, at any time, its remote services and the advertiser account according to changes in technology.

It will be the responsibility of the advertiser to look into the possibilities of developing the IT and transmission resources at its disposal so that these means can be adapted to changes in the advertiser account and remote services offered by KWANKO.

**39** In case of interruption or inability to use the advertiser account, the advertiser may still contact KWANKO Customer Service for information.

## 8.3 Announcer Account Security



**40** The advertiser account is an automated data processing system. Any fraudulent access to the latter is prohibited and penalized.

**41** KWANKO implements all technical and operational measures, in accordance with the rules of the art, to secure the advertiser account in view of the complexity of the Internet. It can not provide absolute security.

**42** The advertiser declares that it accepts the characteristics and limitations of the Internet. It declares that it is aware that data circulating on the Internet is not necessarily protected, especially against possible hijackings.

**43** It acknowledges the nature of the Internet network, and in particular its technical performance and response times to consult, query or transfer data.

**44** The advertiser must inform KWANKO of any failure of the advertiser account.

## 9. Prerequisites

**45** The use of the KWANKO Platform and the implementation of an affiliate program induces different requirements.

### 9.1 Technical prerequisites

**46** The advertiser undertakes to make available to KWANKO the information and the elements (including the computer files containing the hypertext links, the images and associated codes) for the implementation of the affiliate marketing by the network affiliates of KWANKO.

**47** The advertiser undertakes to implement an "affiliate marketing" section on its channel in which he presents the program implemented on the Platform and a link to the presentation page of this program on the Platform, a page created by KWANKO.

**48** The advertiser will also implement on its channel all the elements necessary for the implementation of the affiliate marketing.

### 9.2 Prerequisite test

**49** In order to implement an affiliate marketing program for an advertiser, KWANKO must carry out technical tests.

**50** As part of these tests, KWANKO may make one or more purchases on the advertiser's channel. As soon as this test purchase is validated by KWANKO, the advertiser undertakes to cancel this purchase, provided that this cancellation is technically possible, and therefore, not to charge the price to KWANKO's account, nor to send parcels including the object of the purchase.

**51** In the event that the cancellation is not performed by the advertiser and / or that the price of this purchase is debited from KWANKO's account, the amount of this purchase price will be invoiced by KWANKO to the advertiser and the package returned to the advertiser at his expense.

## 10. Services & order

**52** The services offered by KWANKO in terms of affiliate marketing are presented to the advertiser on the KWANKO Platform.

**53** The advertiser selects the service or services most appropriate to its promotional objectives.

**54** The advertiser is bound by the commitments included in the service or services it has chosen and ordered.

**55** As this contract is in electronic form, the provisions of Article 1369-5 and 1° to 5° of Article 1369-4 of the Civil Code shall be expressly derogated.

## 11. Financial terms

**56** The terms and conditions of remuneration for the affiliates under the affiliate marketing program implemented by KWANKO shall be defined on the platform.

**57** KWANKO shall pay the amounts due to affiliates.

**58** The amounts due to affiliates under the affiliate marketing program implemented on the Platform are assessed based on the data recorded by KWANKO (hereinafter referred to as 'data' or 'statistics').

**59** The Platform records each event that occurs through the affiliate marketing. It is expressly agreed between the parties that the registrations made by the Platform serve as a reference for the calculation of events. Therefore, the recordings made by KWANKO serve as a reference for the establishment of the data taken into account for billing amounts due by the advertiser to the affiliates and to KWANKO.

**60** KWANKO is therefore solely responsible for the counting of the aforementioned events. The advertiser acknowledges and agrees that the statistics established by KWANKO are authentic and will serve as official and definitive data between the parties.

**61** The amount of the remuneration payable by the advertiser includes the remuneration of the affiliates under the affiliate marketing program registered on the Platform as well as the remuneration of KWANKO.

**62** In order to be able to benefit from KWANKO's services and, in particular, to allow it to pay affiliates, the advertiser must at all times supplement its advertiser account with the minimum amounts specified contractually and in advance with KWANKO.

**63** No contractual commitment can be made against KWANKO if the advertiser account is not supplemented with the minimum amounts specified contractually.

**64** KWANKO may nevertheless authorize a maximum outstanding amount on an advertiser account and readjust, accordingly, the amount of the standing advance previously fixed between the parties, with no obligation to inform them.

**65** As and when necessary, the advertiser acknowledges and agrees that KWANKO applies a post-viewing period of one (1) day and a post-click period of thirty (30) days.

**66** KWANKO shall, as a rule, send a single monthly invoice to the advertiser including amounts due from the advertiser to affiliates for events occurring on the advertiser's channel during the month preceding the billing month, whether such events have or have not been validated, in accordance with the provisions of Article 14 (§86) "Validation period" of these general conditions.

**67** KWANKO's invoices are payable within 30 days of the end of the month preceding the receiving of the KWANKO invoice (date of the email or postmark being proof thereof). Nevertheless, for any payment received within 48 hours after the receipt of the KWANKO invoice (date of the email or postmark being proof thereof) and provided that the 30-day

validation period as specified in Article 14 (§86) of these conditions is met; the advertiser will benefit from a discount at the rate of 0.25% on the net amount (exclusive of tax) of the KWANKO Invoice.

**68** The bank charges related to the payment of invoices issued by KWANKO to the advertiser are the responsibility of the advertiser and will be invoiced, where applicable or deducted from the payments transferred by the advertiser to its account.

**69** In the event that the advertiser does not pay all or part of an invoice issued by KWANKO within 30 (thirty) days after receiving the said invoice, KWANKO may at its discretion apply to the advertiser the following penalty for default interest, without prejudice to its right to claim compensation for its loss related to said late payment.

**70** Concerning the billed amounts which have not been paid by the due date: They shall bear interest from the first day, at a rate equal to one and a half the legal interest rate (in application of the law No. 2001 -420 of May 15, 2001), the legal recovery costs being borne by the debtor.

Furthermore, in case of non-compliance with payment conditions and, if, after notification by extra-judicial act of a formal notice to pay within 48H, no response has been received:

- The advertiser shall undertake to pay, as compensation for the damage suffered, an indemnity equal to three percent (3%) of the principal amount outstanding.
- In the event of enforced collection of invoices, the amount of these invoices will be increased by twelve per cent (12%), as a penalty clause, pursuant to Articles 1226 et seq. of the Civil Code, in addition to legal interests and legal costs.
- KWANKO reserves the right to refuse to sell, to terminate without notice or compensation, any order or order form in progress of the advertiser, the latter being then liable for the full price of campaigns already produced or services already performed.
- All of KWANKO's claims, even if not yet due, become due immediately.
- KWANKO will cancel, except in case of force majeure duly noted, the " Advertiser Volume " discount.

In the event of default by an agent holding a warrant certificate and even if the agent is a "paying agent", KWANKO will directly pursue the collection of receivables due from the principal.

**71** This penalty runs from the first day after the payment due date until the day of payment and KWANKO may invoice it without prior formalities.

**72** Unless otherwise agreed, sales abroad must be made in cash in Euro upon receipt of the invoice or insertion order (OI) or order form.

The payment conditions granted are subject to revision without notice in the event of the occurrence of a new element that modifies our assessment of the risk of the advertiser defaulting on payment. Particularly in case of change in the situation of the advertiser (death, incapacity, dissolution or modification of company, mortgage of its buildings, pledge of its business, lease management, etc..), refusal of acceptance of any milking or payment incident or for any excess of amounts as authorized and estimated by KWANKO; KWANKO reserves the right to ask for guarantees, to refuse to sell, to suspend or cancel orders in progress, even when accepted or to execute them only in cash payment by invoice or client order

## 12. Modification of the advertiser's channel

**73** Any modification relating to the name of the advertiser's channel as well as any modification relative to its hosting site, its size, its object, its frequency of update has no effect on the present general conditions which apply ex officio and automatically to the modified channel.

**74** These general terms and conditions apply to all present or future advertiser's channel hosting sites and to all channels which may be held by the advertiser.

**75** In the event that the advertiser divides their channel into several channels, creates or acquires a new channel, these terms and conditions will automatically apply to all of these new channels.

**76** The advertiser is responsible to inform KWANKO without delay in the event of a significant change affecting the nature and content of its channel.

**77** The advertiser undertakes to inform KWANKO as soon as possible of any modification of the channel that could lead to an alteration and/or loss of the tracking data recorded by the Platform allowing KWANKO to calculate the remuneration due to it.

## 13. Tracking

**78** KWANKO provides all the means to ensure tracking. KWANKO provides the advertiser with the technical elements it will need to install the channels and the elements of its affiliate marketing program, if any. The advertiser refrains from infringing in any way whatsoever.

**79** In the event of a malfunctioning of the tracking attributable to the advertiser, the advertiser is obliged to remedy it as soon as possible.

**80** If the advertiser does not restore tracking within seventy-two (72) hours of the malfunction, KWANKO reserves the right to privatize the affiliate marketing program.

**81** In this case, the advertiser will pay KWANKO the highest of the two following values:

- The equivalent per click corresponding to the amount of the affiliates' earnings over the one-month period preceding the alteration and / or the loss of the said data divided by the number of clicks performed over the period concerned;
- The market price usually charged for categories of website and/or mobile application and/or database or any other equivalent means of digital distribution.

**82** KWANKO reserves the right to suspend the affiliate marketing program if the advertiser does not reinstate the tracking within seven (7) working days from the occurrence of the malfunction.

## 14. Validation period

**83** When the affiliate marketing program of the advertiser provides a remuneration "per lead" or "per sale", the advertiser will have to include the information, in the setting of its affiliate marketing program under section "validation period".

**84** The validation period shall correspond to the period during which the advertiser has the possibility to consider as invalid an event initiated by a user on its channel via the affiliate marketing program.

**85** The advertiser shall undertake to pre-qualify the reasons for which he may consider an event invalid and provide them to KWANKO.

**86** The validation period shall be 30 days maximum and shall run from the date of the event.

**87** During the validation period, the advertiser will have to inform KWANKO by any means, on the Platform or via a procedure defined otherwise between the parties, the number, the nature and the amount of the events to be cancelled and the reasons for this cancellation. The amount of the cancellations being in any case limited, for each of the affiliate marketing or the advertising campaigns produced via internet or digital technologies, to the monthly percentage of the following events: 10% of the amount of the commissions invoiced for the sales generated, and 15% of the fees charged for the forms generated.

**88** If the advertiser fails to inform KWANKO of the cancellation of an event and its valid reason, this event will be definitively considered valid and the right to remuneration of KWANKO will be definitively acquired.

**89** In any event, in the absence of any indication by the advertiser of a validation period at the time of filling in the online entry form of the affiliate marketing program, the advertiser will lose the benefit of the foregoing provisions.

## 15. Network of affiliates

**90** The establishment by KWANKO of its affiliate's network is the result of a substantial investment on its part.

**91** Consequently, the advertiser agrees not to relate to affiliate marketing directly or via another third party with affiliates of KWANKO for the duration of these terms and for a period of 12 months from the termination of the contract whatever the reason for it.

**92** In the event that the advertiser decides to enter into direct contact with affiliate marketing, or via another third party, with one of the members of the affiliate network of KWANKO during the execution of these general conditions without the authorization KWANKO it will pay an amount equivalent to twelve (12) times the number of the highest monthly turnover generated by these terms and conditions for the benefit of KWANKO, all programs affiliate marketing together, this amount cannot be less than 15,000 (fifteen thousand) euros, excluding taxes.

**93** In the event that the advertiser decides, in agreement with KWANKO, to enter into a direct relationship with affiliate marketing, or via another third party, with one of the members of the affiliate network of KWANKO during the execution of these general conditions in agreement with KWANKO, it will pay him an amount equivalent to 6 (six) times the highest monthly turnover generated by these terms and conditions for the benefit of KWANKO, all affiliate marketing programs combined. This sum may not be less than 7,500 (seven thousand five hundred) euros, excluding taxes.

## 16. Exclusivity

**94** Unless otherwise agreed by the parties, the advertiser agrees not to implement an affiliate marketing program on a platform of affiliate marketing concurrent with that of KWANKO for the duration of these terms.

## 17. Collaboration

**95** The parties agree to work closely together in their relationship.

**96** The advertiser undertakes to maintain an active and regular collaboration by transmitting to KWANKO all the elements necessary for the execution of these General Conditions.

**97** The advertiser agrees to communicate all the difficulties he could measure as and when the present, to allow them to be taken into account as quickly as possible by KWANKO.

## 18. Guarantee

**98** The advertiser guarantees to KWANKO that the content of its affiliate program complies in all respects with the laws and regulations in force.

**99** The advertiser guarantees to KWANKO to carry out its activity in accordance with all laws and regulations in force; and in particular for the cases where it will market products that fall within the framework of the regulation set up by the law n° 2016-1691 of December 9th, 2016 on transparency, the fight against corruption and the modernization of the economic life (known as "Loi Sapin 2") in order to regulate the promotional communication carried out on certain risky financial contracts and on certain risky financial investments designated as non-standard investments.

**100** KWANKO reserves the right to refuse all or part of the advertiser's affiliate marketing program if it considers that this campaign may adversely affect its brand image or that of one of its partners.

**101** The advertiser warrants that they have the necessary rights, including intellectual property rights, for the use by KWANKO and the affiliates of all the information and materials that they provide to KWANKO for the performance of these General Terms.

**102** The advertiser guarantees KWANKO of all the harmful consequences that may result from the advertiser's breach of one of the commitments listed in these general terms and conditions, and in particular any amicable or contentious action taken by third parties relating to the execution of the present terms and conditions.

## 19. Notification by a third party

**103** In the event of notification by a third party to these general conditions of a breach of an advertiser's affiliate marketing program to any laws or regulations in force, KWANKO may terminate the said program without the authorization of the advertiser and by retaining and / or billing all amounts owed by the advertiser.

## 20. Damage

**104** KWANKO's liability under these terms and conditions is strictly limited to the direct damage actually suffered and proven by the advertiser, to the exclusion of all counts of indirect loss, such as loss of profits, loss of turnover or other and, in any event, shall not exceed the amount of the values received from the advertiser by KWANKO under these terms and conditions during the six months preceding the event giving rise to the contractual damage, less the amounts paid by KWANKO to the affiliates.

## 21. Agreement on evidence

**105** Computerized records stored in computer systems shall be kept by KWANKO under reasonable security conditions and considered as evidence of communications between the

parties.

**106** The archiving of contractual documents shall be done on a reliable and durable support that can be produced as evidence.

## 22. Intellectual property, data and know-how

**107** These terms and conditions shall not imply any transfer of any kind of intellectual property rights or data on the items incorporated via KWANKO and owned by KWANKO for the benefit of the advertiser.

**108** The advertiser acknowledges and accepts that the content of the website and/or mobile application and/or database or any other means of digital distribution and in particular, but not exclusively texts, data, photographs, videos, software and programs, sounds, music, layout, graphic design, logos, design or any other information or support presented by KWANKO, are protected by their copyrights, trademarks, patents and other intellectual or industrial property rights which are recognized to them according to the laws in force.

**109** Any total or partial reproduction and / or representation of one of these rights or data, without the express authorization of KWANKO shall be prohibited and would constitute an infringement sanctioned under articles L. 335-2 et seq. of the Intellectual Property Code.

**110** Consequently, the advertiser shall refrain from any action or act that may directly or indirectly infringe intellectual property rights or KWANKO's data without its authorization.

**111** The advertiser acknowledges that the information, the data and the databases available on the websites and / or mobile application and / or database or any other means of digital distribution or KWANKO Platforms are the property of KWANKO.

**112** Such information and data may not, in particular, be used for commercial purposes by the advertiser, nor may it be reproduced on a channel by the advertiser or compiled by the advertiser by means of a search software, a meta search engine or any other an internet site vacuum cleaner and/or mobile application and/or database or any other means of digital distribution or data.

**113** KWANKO will retain ownership of the methods and know-how or tools specific to it and data produced, used or processed used to perform the contractual services.

## 23. Commercial references

**114** KWANKO may cite the names and logo of the advertiser as a commercial reference in accordance with commercial practice, and the latter may, where appropriate, grant an authorization in respect of any private right, including industrial property, which it would enjoy over said name and logo.

**115** In the event of termination of these terms and conditions, KWANKO will retain the right to use the names and logo of the advertiser as a customer reference, unless explicitly requested otherwise by the advertiser.

## 24. Personal data

### 24.1 General

**116** Each party shall be responsible for complying with its obligations under the applicable regulations applicable to the processing of personal data and, in particular, Regulation (EU) No 2016 of the European Parliament and of the Council of 27 April 2016 applicable from 25 May 2018 (hereinafter the "GDPR").

**117** In particular, each Party undertakes to take all necessary and appropriate precautions to preserve and ensure the protection of personal data transmitted to or by the other Party, and to ensure the security of the processing of personal data carried out on behalf of the latter in the performance of this Agreement, in particular to prevent the personal data from being distorted, damaged, destroyed or unauthorized third parties from having access to them.

To this end, each Party undertakes to take reasonable steps to ensure the reliability of its employees, agents, subsidiaries, subcontractors, or agents (hereinafter referred to as the "Personnel") participating in the Personal Data Processing Operations.

In particular, the advertiser confirms that all KWANKO Personal Data to which it has access will only be accessible to the Personnel who: (i) need access to it; (ii) have been trained in the adequate management of Personal Data; and (iii) are subject to contractual obligations regarding privacy, security and confidentiality of such Personal Data.

## 24.2 Subcontracting of data processing operations by KWANKO

**118** The purpose of these clauses is to define the conditions under which KWANKO, as a subcontractor, undertakes to perform, on behalf of the advertiser, controller, the processing operations of personal data, which purpose, duration, nature and purpose are described and stored electronically in an appropriate processing register (including the items described in APPENDIX 1) that KWANKO may make available when requested.

**119 Obligations of KWANKO towards the advertiser.** As a subcontractor, KWANKO is committed to:

1. Process data solely for the single purpose (s) that were/are being subcontracted and in accordance with the documented instructions of the advertiser, as described in the "Data Processing Register" document;

In this respect, it is stipulated that if KWANKO considers that an instruction constitutes a violation of the GDPR, or any other provision of Union law or the law of the Member States relating to the protection of data, it shall immediately inform the advertiser. In addition, if KWANKO is required to transfer data to a third country or to an international organization, under EU law or the law of the Member State to which it is subject, KWANKO must inform the advertiser of this legal obligation before the processing, unless the right in question prohibits such information for important reasons of public interest.

2. Guarantee the confidentiality of personal data processed under this Agreement and ensure that persons authorized to process personal data under this Agreement also undertake to respect such confidentiality or are subject to a legal obligation confidentiality, and receive the necessary training in the protection of personal data.
3. Take into account, in terms of tools, products, applications or services, the principles of data protection from the design stage and the protection of data by default.

**120 Obligations of the advertiser vis-à-vis KWANKO.** In its capacity as controller, the advertiser agrees to:

- Document in writing any instructions regarding KWANKO's data processing. As such, the advertiser will ensure to provide to KWANKO, in writing all information necessary for



the completion of the intended data processing, including inter alia: the purpose, duration, nature and purpose (s) of the personal data processing intended. This transmission can be done electronically, through an appropriate processing register (with the items described in APPENDIX-1).

- Ensure, in advance and throughout the duration of the processing operation, that KWANKO complies with GDPR obligations. For this purpose, and if so desired, the advertiser may, at its expense, carry out audits and inspections with KWANKO, after having notified the latter in writing with a minimum notice of 30 days.
- Secure the processing and guarantee to KWANKO effective compliance with the obligations incumbent upon it under the GDPR. In particular, the advertiser will ensure at all times the lawfulness of outsourced data processing to KWANKO, as well as the fulfilment of the requirements of the GDPR with regard to the exercise of rights of the data subject.
- Take all the necessary precautions in collecting this Personal Data from its Users to comply with the regulations in force as controller and in particular the provisions of the GDPR.
- Collect, where necessary, Users' consent to the communication of their Personal Data in a clear, transparent and unambiguous manner, including the transfer of data to KWANKO.
- For example, KWANKO recommends that the advertiser insert a check box in the User's Personal Data Collection Form, whereby the User agrees to its data being provided to KWANKO and to retain proof of each acceptance.
- In the absence of acceptance or in case of request for deletion of Personal Data, Users will no longer be able to access Services.
- Make good any material or moral damage resulting from a violation of the GDPR, it being specified that KWANKO, as a subcontractor, shall be liable for the damage caused by the processing operation only where it has not complied with the obligations under the GDPR that are specifically incumbent upon the subcontractors or where it has acted outside or contrary to lawful instructions of the controller.
- The advertiser is responsible for ensuring that any personal data transmitted to KWANKO is founded on a legal basis which complies with the GDPR.

**121 Subcontracting.** The Parties acknowledge that KWANKO may use one or more subcontractors (hereinafter referred to as 'Subsequent Subcontractor(s)') to conduct specific processing operations. In that case, KWANKO shall inform the advertiser, in advance and in writing, of any changes concerning the addition or replacement of such subcontractors. This information shall include the subcontractors' contact details. If necessary, KWANKO shall provide the advertiser with a list of such subcontractor(s) and with a form (a model of which is attached as Appendix 2) detailing the outsourced data processing activities, the identity and contact details of the subcontractor(s), and the dates of the outsourcing contract. The advertiser will then have a period of 10 calendar days from the date of receipt to present his/her objections. The outsourcing process shall only be carried out if the advertiser has not raised any objections within the aforementioned period.

The subsequent subcontractor shall be required to comply with this Agreement on behalf and in accordance with the instructions of the Advertiser. KWANKO shall ensure that the subsequent subcontractor adopts appropriate technical and organizational measures to ensure that data processing operations meet GDPR requirements. If the subsequent subcontractor does not fulfil its data protection duties, KWANKO shall be fully liable to the

advertiser for the fulfilment of the subcontractor's obligations.

**122 Data subjects' right to information.** When collecting data, KWANKO shall provide data subjects with information on the data processing activities it carries out on behalf of the advertiser.

**123 Exercise of the rights of data subjects.** Whenever possible, KWANKO shall assist the advertiser in fulfilling the obligation to meet requests pertaining to the exercise of data subject's rights: right of access, rectification, deletion and opposition, right of limitation, data portability rights, and the right not to be subject to automated individual decisions (including profiling). As such, KWANKO must respond, on behalf of the advertiser and within the deadlines established by the GDPR, to all requests for the exercise of data subject's rights pertaining to the sub processing activities described in this Agreement. Furthermore, if necessary, KWANKO undertakes to demonstrate compliance of these data processing operations with the GDPR, including the effectiveness of the adopted measures. Such measures shall take into account the nature, scope, context and purpose of data processing operations, as well as the risk they pose to the rights and freedoms of individuals.

**124 Notification of personal data breaches.** KWANKO shall promptly notify the advertiser, in writing, of any personal data breach it becomes aware of. The notification shall include relevant documentation so as to enable the advertiser, if necessary, to notify the relevant supervisory authority of this breach.

**125 KWANKO's assistance to the advertiser** in complying with legal obligations. KWANKO shall assist the advertiser in conducting data protection impact assessments, as well as in preparing the supervisory authority's prior consultation.

**126 Security measures.** KWANKO undertakes to implement technical and organizational measures to ensure the security and protection of all personal data processed on behalf of the advertiser. These measures include:

- Taking all appropriate security measures for any data or Personal Data exchange, not only between KWANKO and the Advertiser but also with authorized third parties; and, in particular, using secure communication channels and complying with the Security Measures recommended by state-of-the-art research and applicable regulations.
- Retaining and archiving data or computer files containing Personal Data only for the period of time necessary for the provision of the Services described herein and in accordance with the advertiser's instructions.
- Destroying, rectifying, limiting or, at the advertiser's request, returning all the data, computer files and copies of Personal Data, no later than the expiration of these Terms and Conditions, and providing, where applicable, and if the Advertiser so requests, the corresponding destruction and/or deletion certificates.
- Granting access to information and Personal Data only to duly authorized personnel in the exercise of their duties, to the exclusion of any other person, and providing them with appropriate data protection training.
- Deleting or returning all personal data to the advertiser at the end of the aforementioned retention period, and, in any event, upon termination of these Terms and Conditions.
- Promptly informing the Advertiser of any event, incident or security breach, whether intentional or accidental, pertaining to the confidentiality, integrity and security of Personal Data, and, in particular, of any damage, loss, theft, unauthorized access, disclosure, destruction or modification involving Personal Data, as well as attending to

any collaboration request from the advertiser.

- Preventing the transfer of Personal Data to a country that does not provide adequate personal data protection as per Guideline 95/46/EC without applying the necessary contractual mechanisms and legally binding processes to lawfully transfer such data beyond the borders of the European Union.
- It should be noted that notifying the advertiser of any data security or management incidents is one of the Services entrusted to KWANKO under the Agreement and these Terms and Conditions, and, as such, will not be charged separately.

**127 Data elimination.** Upon completion of the services pertaining to the processing of such data, KWANKO undertakes to destroy all personal data collected or processed on behalf of the advertiser.

**128 Data Protection Officer (DPO).** KWANKO shall inform the advertiser of the name and contact details of its designated Data Protection Officer, as set out by Article 37 of the GDPR. The DPO can be reached at [gdpr@kwanko.com](mailto:gdpr@kwanko.com).

**129 Register of data processing categories.** Pursuant to the GDPR, KWANKO undertakes to maintain a written register of all categories of processing operations to be carried out on behalf of the advertiser.

**130 Documentation.** KWANKO shall provide the advertiser with the necessary documentation to demonstrate compliance with all its obligations and to implement auditing processes, including inspections, to be conducted by the advertiser or by an auditor on its behalf; in this regard, KWANKO also undertakes to collaborate with such audits.

### 24.3 Subcontracting of data processing operations by the advertiser

The purpose of the following clauses is to establish the conditions under which the advertiser, in its capacity as a Subcontractor, undertakes to carry out, on behalf of KWANKO or its publishers (as data controllers), personal data processing operations - the content, duration, nature and purpose of which are described and electronically stored in an appropriate data processing register (containing, for information purposes, the headings described in APPENDIX 1).

**131 Advertiser's obligations towards KWANKO.** As a Subcontractor, the advertiser undertakes to:

1. Process KWANKO's Personal Data in strict compliance with its contractual obligations and in accordance with KWANKO's written instructions.

In this respect, it should be noted that if the advertiser believes that said instructions constitute a violation of the GDPR or of any other data protection law of the EU or its Member States, the advertiser shall immediately notify KWANKO thereof. Furthermore, if the advertiser is required to transfer data to a non-EU country or to an international organization, it must, under EU regulations or the law of the Member State to which it is subject, inform the advertiser of this legal obligation prior to any processing operation, unless said law prohibits such information for important reasons of public interest;

2. Ensure the confidentiality of all personal data processed under this Agreement and make sure that all parties authorized to process personal data also undertake to comply with these confidentiality duties or are subject to an appropriate confidentiality agreement and receive the necessary personal data protection training;
3. Take into account, with regard to its tools, products, applications or services, data protection principles from the design stage.

**132 KWANKO's duties towards the advertiser.** As a data controller or original subcontractor carrying out data processing operations on behalf of its publishers, KWANKO commits to:

1. Document in writing all instructions regarding the processing of the data entrusted to the advertiser. In this regard, KWANKO undertakes to provide the advertiser with a description of all the necessary information to carry out the intended data processing operation, including but not limited to: the content, duration, nature and purpose of the intended personal data processing activity. Such information may be provided in dematerialized media, by means of an appropriate data processing register (including the headings described in APPENDIX-1),
2. Supervise data processing operations and ensure the advertiser's compliance with GDPR duties. In particular, KWANKO shall ensure at all times the lawfulness of data processing operations outsourced to the advertiser, as well as the latter's compliance with GDPR requirements setting out the legal basis for data processing (consent, legitimate interest)...and the exercise of data subjects' rights.
3. Bear compensation for any material or moral damage resulting from the violation of GDPR provisions, with the specification that the advertiser, as a subcontractor, can only be held liable for the damage caused by processing activities if said advertiser has not complied with the GDPR duties that are specifically incumbent on subcontractors or has acted outside the scope of the lawful instructions provided by the data controller (or the original processor).

**133 Sensitive Personal Data.** The advertiser undertakes not to provide KWANKO with any Personal Data falling under the Sensitive/Special Data category, as defined in Articles 9 and 10 of the GDPR, unless otherwise expressly agreed in writing.

**134 Consent.** If the advertiser is a KWANKO data provider (on its own behalf and/or on behalf of its Publishers), it undertakes to keep evidence of the necessary consents (if applicable) obtained from any Data Subject whose Personal Data is shared with KWANKO, and ensures that said Data Subjects have been provided with a clear and unambiguous link to a simple mechanism allowing them to oppose the processing of such data, including, if applicable, the right to oppose Targeted Advertising.

If the advertiser operates digital media (including but not limited to, web channels, landing pages, email kits, tracking tags, reach media, applications, etc.)...through which KWANKO collects or processes Personal Data on its behalf and/or on behalf of its Publishers, the advertiser must be able to implement, and provide evidence of, technical mechanisms allowing KWANKO to obtain the necessary consents for such Personal Data collection, in accordance with the means and purposes set out in its Agreement with KWANKO; and must also provide a clear and unambiguous link to a simple mechanism allowing Data Subjects to oppose the processing of their Personal Data, including, if applicable, the right to oppose Targeted Advertising.

The advertiser warrants that if it provides KWANKO (on its behalf and/or on behalf of its Publishers) with Personal Data obtained from digital media operated by third parties, it must subject such third parties to legally binding agreements obliging them to obtain the necessary consents and enabling said advertiser to provide KWANKO with evidence thereof; and said consents must cover the means and purposes of Kwanko's Personal Data operations, as described in the Agreement. In this context, the advertiser shall be responsible for providing said third parties with relevant information contained in the Agreement and/or provided by KWANKO in writing.

**135 Subsequent subcontracting.** KWANKO authorizes the advertiser to employ subsequent subcontractors under the conditions laid down in this section and in Article 28 of the GDPR. The advertiser may continue to employ Subsequent Subcontractors with whom it has a valid agreement on the date of these T&Cs, provided, in each case, that they adjust, as soon as

possible, to the obligations set out in this section and in Article 28 of the GDPR.

The advertiser shall notify KWANKO in writing before employing any new Subsequent Subcontractor, and said notification shall include full details regarding the processing operations to be carried out by the Subsequent Subcontractor.

With regard to each Subsequent Subcontractor, the advertiser must:

1. Carry out, before the Subsequent Subcontractor processes KWANKO's Personal Data for the first time, any necessary checks to ensure that said Subsequent Subcontractor is able to provide adequate data protection as required by the Applicable Laws and the Agreement;
2. Ensure that the Subsequent Subcontractor signs a written agreement containing provisions which offer at least the same level of data protection laid down in these T&Cs, and that this agreement complies with Applicable Laws;
3. Upon reasonable request, provide KWANKO with copies of the advertiser's agreements with Subsequent Subcontractors (any provisions containing confidential or irrelevant information with regard to compliance with these T&Cs can be concealed), which KWANKO may occasionally request in a reasonable manner; and
4. Assume liability for the acts and omissions of Subsequent Subcontractors to the same extent as if the advertiser had been directly responsible for the services to be carried out by the latter, under the conditions laid down in these T&Cs.

**136 Data subject's right to information.** When collecting data, the advertiser shall ensure that data subjects have received adequate information regarding the data processing operations to be carried out by the advertiser on behalf of KWANKO or its publishers.

**137 Exercise of the rights of data subjects.** To the extent possible, the advertiser shall assist KWANKO in fulfilling the obligation to meet requests pertaining to the exercise of data subject's rights: right of access, rectification, deletion and opposition, right of limitation, data portability rights, and the right not to be subject to automated individual decisions (including profiling).

As such, the advertiser must respond, on behalf of KWANKO and within the deadlines established by the GDPR, to any requests for the exercise of data subject's rights pertaining to the sub processing activities described in this Agreement.

Furthermore, if necessary, the advertiser undertakes to demonstrate compliance of these data processing operations with the GDPR, including the effectiveness of the adopted measures. Such measures shall take into account the nature, scope, context and purpose of data processing operations, as well as the risk they pose to the rights and freedoms of individuals.

**138 Notification of personal data breaches.** The advertiser shall promptly notify KWANKO, in writing, of any personal data breach it becomes aware of. The notification shall include relevant documentation so as to enable KWANKO, if necessary, to notify the data controller or the appropriate supervisory authority of this breach.

In particular, the advertiser shall:

- promptly take appropriate corrective action to remedy the causes of any Personal Data breach, and make all reasonable efforts to ensure that such Personal Data breaches do not occur again;
- adopt all measures established by Applicable Laws and/or reasonably requested by KWANKO.

**139 Advertiser's assistance to KWANKO in complying with legal obligations.** The advertiser shall assist KWANKO in conducting data protection impact assessments, as well as in preparing the supervisory authority's prior consultation.

**140 Security measures.** The advertiser undertakes to adopt all appropriate security measures, especially technical, material and organizational measures, to ensure the confidentiality, preservation and integrity of the Personal Data to be processed during the term of this Agreement, until such Personal Data is deleted or returned to KWANKO, viz.:

- Taking all appropriate security measures for any data or Personal Data exchange, not only between KWANKO and the Advertiser but also with authorized third parties, and, in particular, using secure communication channels and complying with Security Measures recommended by state-of-the-art research and applicable regulations.
- Retaining and archiving data or computer files containing Personal Data only for the period of time necessary for the realization of the Services described herein and in accordance with KWANKO's instructions.
- Destroying, rectifying, limiting or, upon KWANKO's request, returning all the data, computer files and copies of Personal Data, no later than the expiration of these Terms and Conditions, and providing, where applicable, and if KWANKO so requests, the corresponding destruction and/or deletion certificates.
- Granting access to KWANKO's information and personal data only to duly authorized personnel in the exercise of their duties, to the exclusion of any other person, and providing them with appropriate data protection training.
- Deleting or returning all personal data to KWANKO at the end of the aforementioned retention period, and, in any event, upon termination of these Terms and Conditions.
- Promptly informing KWANKO of any event, incident or security breach, whether intentional or accidental, pertaining to the confidentiality, integrity and security of KWANKO's personal data, and, in particular, of any damage, loss, theft, unauthorized access, disclosure, destruction or modification involving KWANKO's personal data, as well as attending to any collaboration request from KWANKO.
- Preventing the transfer of KWANKO's Personal Data to a country that does not provide adequate personal data protection as per Guideline 95/46/EC without informing KWANKO and setting up the necessary contractual mechanisms and legally binding processes (based on the European Commission's Clauses template) to lawfully transfer such data beyond the borders of the European Union.

**141 Data elimination.** Upon completion of the services pertaining to the processing of such data, the advertiser undertakes, at KWANKO's discretion, as expressed in writing within eight (8) days, to destroy all Personal Data or return it to KWANKO and destroy all remaining copies.

**142 Data Protection Officer (DPO).** The advertiser shall provide KWANKO with the name and contact details of its Data Protection Officer, or of the person in charge of Personal Data Protection issues.

**143 Register of data processing categories.** Pursuant to the GDPR, the advertiser undertakes to maintain a written register of all categories of processing operations to be carried out on behalf of KWANKO or its publishers.

**144 Documentation.** The advertiser shall provide KWANKO with the necessary documentation to demonstrate compliance with all its obligations and to implement auditing processes, including inspections, to be conducted by KWANKO or another auditor on its behalf; in this

regard, the advertiser also undertakes to collaborate with such audits.

**145 Privacy policy.** If the advertiser operates digital media to collect and provide KWANKO with Personal Data, the advertiser undertakes to have a privacy policy in accordance with the Applicable Laws. Whenever possible, the advertiser shall mention that KWANKO is a recipient of the Personal Data collected through the former's digital media, and/or that KWANKO directly collects such Personal Data.

If the advertiser provides KWANKO with Personal Data obtained from digital media operated by third parties, the advertiser shall require its co-contractors to ensure that every such digital asset has a privacy policy compliant with Applicable Laws. Whenever possible, the advertiser shall ensure that such third parties mention that KWANKO is a recipient of the Personal Data collected through the third parties' digital media, and/or that KWANKO directly collects such Personal Data.

If the advertiser is a data provider for KWANKO, it shall ensure that all parties collecting or receiving the Personal Data that the advertiser conveys to KWANKO (the "Advertiser's Data") have a privacy policy that clearly and unambiguously describes the terms and conditions for the collection, provision and use of the Advertiser's Data, including, in particular, the description of data collection operations for the purpose of Targeted Advertising campaigns conducted by KWANKO in accordance with Applicable Laws, and a simple mechanism for Data Subjects to oppose such data processing operations (including, where applicable, the possibility to oppose Targeted Advertising) through the services provided by the advertiser or its own data sources.

If the advertiser processes KWANKO's Personal Data, it undertakes to have an accessible and up-to-date privacy policy explaining the technologies and methods used in data processing operations.

## 25. Confidentiality

**146** In the context of these Terms and Conditions, all information is confidential, including any information or data shared by the parties in written or oral form.

**147** The parties undertake to:

- Process confidential information with the same protection measures they accord to their own confidential information of equal importance;
- Keep the information confidential and ensure it is not disclosed or likely to be disclosed, either directly or indirectly, to any third party;
- Not to infringe, in any way, property rights pertaining to confidential information;
- Prevent confidential information from being copied, reproduced or duplicated, in whole or in part, if such copies, reproductions or duplications are not directly connected to the execution of this document.

## 26. Legal and regulatory orders

**148** In the event of a request for the delivery of data or documents of any kind by an administrative or judicial authority, based on a legal, judicial or regulatory order concerning the advertiser, KWANKO undertakes to comply with the terms of such order.

**149** All fees and expenses shall be billed to the advertiser.

## 27. Suspension

**150** If the advertiser fails to comply with the obligations established herein, KWANKO reserves the right to suspend the latter's affiliate marketing program immediately and without notice. The suspension shall remain in force for an indefinite period of time and end when the advertiser notifies KWANKO, by registered letter with acknowledgment of receipt, of its compliance with the obligations established herein.

**151** The right of suspension may be applied by KWANKO if (but not limited to):

- The advertiser fails to pay outstanding invoices;
- The advertiser's standing advance to KWANKO is exhausted;
- Technical difficulties render the affiliate marketing program ineffective;
- The advertiser uses the affiliate marketing program for fraudulent purposes;
- The affiliate marketing program chosen by the advertiser infringes applicable laws;
- The affiliate marketing program fails to meet performance criteria by not reaching the minimum billing target for three (3) consecutive months;
- Other circumstances provided for in these Terms and Conditions.

## 28. Termination-cancellation

### 28.1 Termination due to lack of traffic

152 If the affiliate marketing program set up by the advertiser does not generate any traffic for a period of six (6) months following its implementation, these Terms and Conditions shall be automatically terminated without any formality, on the basis of the data kept by KWANKO.

### 28.2 Termination-cancellation due to breach

153 Should either party breach the obligations laid down in these Terms and Conditions and fail to correct the violation within 8 (eight) days of its notification by registered letter with acknowledgment of receipt, the other party may cancel or terminate these Terms and Conditions without prejudice to any damage and compensation it may claim by virtue hereof.

### 28.3 Termination-cancellation by the advertiser

**154** The advertiser may cancel or terminate these Terms and Conditions, without prejudice to any damage and compensation said advertiser may claim by virtue hereof, in the event of:

- Exhaustion of the affiliate marketing program's estimated budget, as previously agreed upon by the parties;
- Interruption of the service for more than two consecutive working days.

### 28.4 Termination-cancellation by KWANKO

**155** KWANKO may cancel or terminate these Terms and Conditions, without prejudice to any damage and compensation it may claim by virtue hereof, if:

- The advertiser fails to pay outstanding invoices;



- The advertiser's standing advance to KWANKO is exhausted;
- Technical difficulties render the affiliate marketing program ineffective;
- The advertiser uses the affiliate marketing program for fraudulent purposes;
- The affiliate marketing program chosen by the advertiser infringes applicable laws;
- The affiliate marketing program fails to meet performance criteria by not reaching the minimum billing target for three (3) consecutive months.

## 29. Consequences of terminating the affiliate marketing program's Terms and Conditions

If these Terms and Conditions are canceled or terminated: By either party in the absence of breach, the advertiser's affiliate marketing programs shall be terminated within 30 days of the notification made, by any means, by the most diligent party. As a result of one or more breaches by the advertiser, the advertiser's affiliate marketing programs shall be terminated no later than the day the party responsible for the breach receives the corresponding notification (by registered letter with acknowledgment of receipt) or at the latest within two days. In both cases, outstanding sums payable by the advertiser to KWANKO under these programs shall be determined when such programs are terminated.

**156** In the event of termination or cancellation of these Terms and Conditions for any reason whatsoever, the names of the affiliates shall be automatically hidden on the Platform upon receipt of the termination letter or email.

**157** On the actual date of termination of these Terms and Conditions, with an extended validation period if applicable, the rendering of accounts shall be made:

- If it appears that the advertiser's account is in debit, the latter shall promptly correct the situation and pay the amounts due to KWANKO;
- If it appears that the advertiser's account is in credit, KWANKO shall reimburse such amounts to the advertiser within 30 (thirty) days from the date of termination of these Terms and Conditions, deducting the sums due by the advertiser to KWANKO.

## 30. Liability

**158** Both parties are liable for their actions, undertakings, products or services, as well as for their respective obligations under these Terms and Conditions.

### 30.1 KWANKO's liability

**159** KWANKO is solely liable for the quality of the services it provides in connection with the affiliate marketing programs.

**160** KWANKO is solely liable for the advertiser's access to the data made available on the affiliate marketing Platform.

**161** KWANKO shall not be held liable for the actions of affiliates involved in the advertiser's affiliate marketing program, nor for the contents of the latter's channel.

**162** KWANKO shall not be held liable for the returns of the advertiser's affiliate marketing program.

## 30.2 Advertiser's liability

**163** The advertiser acknowledges that KWANKO acts only as a technical intermediary and that the former is solely liable for its channel, the content of its channel, and the content of its affiliate marketing program.

**164** The advertiser is solely responsible for the contractual and commercial relations to be established with customers who place an order with said advertiser for its products and/or services.

## 31. Insurance

**165** KWANKO undertakes to obtain and maintain an insurance policy from a reputable company established in France, in order to cover all financial consequences arising from its civil, professional, criminal and/or contractual liabilities in connection with any bodily, material or immaterial damage caused to the advertiser or any third party in the context of the execution of these Terms and Conditions.

**166** As such, KWANKO undertakes to remit professional liability premiums covering all activities relating to these Terms and Conditions.

**167** The advertiser may consult insurance certificates indicating the nature of the covered risks and the corresponding amounts, as well as all premium payment receipts.

## 32. Force majeure

**168** Initially, force majeure events shall suspend the execution of these Terms and Conditions.

**169** If force majeure events persist for more than two months, these Terms and Conditions shall be automatically terminated, unless otherwise agreed by the parties.

**170** 'Force majeure' events shall mean those situations usually considered as such by French case law, as well as the following events: war, riots, fires, internal or external strikes, lock-outs, occupation of KWANKO's premises, inclement weather, earthquakes, floods, water damage, legal or governmental restrictions, legal or regulatory changes to marketing forms, accidents of all kinds, epidemics, pandemics, illness affecting more than 10% of KWANKO's staff for two consecutive months, lack of energy supply, partial or total shutdown of the Internet and, more generally, of private or public telecommunication networks, road blockages, events preventing the provision of supplies, and any other event beyond the reasonable control of the parties which prevents them from complying with these Terms and Conditions.

## 33. Good faith

**171** The parties agree to perform their obligations with the utmost good faith.

## 34. Legal authorizations

**172** The parties undertake to have all the necessary legal and administrative authorizations for the execution of these Terms and Conditions.

**173** The parties undertake to collaborate to obtain new legal or administrative authorizations and to modify existing authorizations.

## 35. Legal changes

**174** These Terms and Conditions may be modified by a written amendment, signed by authorized persons representing KWANKO and the advertiser, so as to take into account any legal developments affecting the content of these Terms and Conditions.

## 36. Tolerance

**175** The parties agree that the fact that one of the parties tolerates a situation does not grant the other party any rights related thereto.

**176** Furthermore, such tolerance cannot be construed as a waiver of the rights in question.

## 37. Sincerity

**177** The parties declare these commitments to be sincere.

**178** In that regard, the parties declare not to be aware of any element that would affect the other party's consent if disclosed.

## 38. Independence

**179** The parties acknowledge that they act on their own behalf as independent merchants and shall not be considered as each other's agents.

**180** These Terms and Conditions do not constitute a partnership, franchise or mandate granted by either party to the other.

**181** Furthermore, each party shall be solely liable for its actions, claims, undertakings, services, products, and personnel.

## 39. Transfer of Terms and Conditions

**182** Neither party may transfer the rights and obligations under these Terms and Conditions, in whole or in part, against payment or otherwise, without the prior written agreement of the other party.

## 40. Amendments

**183** These Terms and Conditions may only be modified by a written amendment signed by duly authorized persons representing KWANKO and the advertiser.

**184** Once signed by the representatives of KWANKO and the advertiser, such amendments shall prevail over the provisions of these Terms and Conditions.

## 41. Headings

**185** Should there be any interpretation issues arising from a contradiction between the clauses and the respective clause headings, said headings shall be deemed nonexistent.

## 42. Nullity

**186** If one or more provisions of these Terms and Conditions are held to be null and void or declared as such under any law, regulation or final decision from a competent court, the other

provisions shall remain in full force and effect.

## 43. Entirety

**187** These Terms and Conditions constitute the entirety of the obligations incumbent on the parties.

## 44. Limitation period

**188** All legal actions between the parties shall expire, except in the event of public order provisions determining otherwise or a shorter time frame than that provided herein, if they have not been filed within a period of two years from the first complaint notification by registered letter with acknowledgment of receipt.

## 45. Surviving Clauses

**189** All clauses declared as surviving clauses after the termination of these Terms and Conditions, whether termination is due to contractual breach or expiry, continue to apply until the end of their specific purpose. This applies in particular to ownership and confidentiality clauses.

## 46. Legal address

**190** For the execution of this agreement, and unless otherwise specified, the parties agree to address all correspondence to their respective head offices.

## 47. Applicable Law

**191** These Terms and Conditions are governed by French law.

**192** This applies to substantive and procedural clauses, notwithstanding the location where fundamental or subsidiary obligations are performed.

## 48. Jurisdiction

**193** The Nanterre Commercial Court shall have exclusive jurisdiction in the event of a dispute and subsequent failure to find an amicable solution, notwithstanding the existence of multiple defendants or third-party appeals, and even in the case of emergency procedures or preventive measures, either by summary or ex-parte proceedings.

# 49. Signature

Made in:

On \_\_\_ original copies

**For KWANKO**

**For the Advertiser**

Name

Name

Position

Position

Date

Date

Signature

Signature

# Appendix 1: Data Processing Register Sample

Template form to be included in the data processing register	
Data processing No. 1	
Name and address of the Data Controller:	
Description of data processing operation:	
Purpose of data processing operation:	
Personal data being processed:	
Categories of recipients:	
Categories of recipients:	
Data retention period:	
Service responsible for implementation:	
Title of the person or service with which the right of access is exercised:	

# Appendix 2: Template form listing subcontractors and the processing operations carried out

Template form to be included in the subcontracting partners register	
Subcontractor no. 1	
Subcontractor's name, registered office address, and legal representative:	
Description of the processing operation:	
Purpose of the processing operation:	
Personal data being processed:	
Legal basis for processing operation:	

## Appendix 3: Specific terms and conditions between KWANKO and the advertiser

Description	Rates excl. taxes	Quantity	KWANKO discount or takeover	Final rates
KWANKO Commission	25% of overall billing			
Set up fees	1 000,00 €			
Management fees (from the 2nd month of the program's activity)	400 €/month			
Network access fees	150 €/month			
Minimum billing (from the 2nd month of the program's activity)	500 €/month			
Tracking fees: 250 € HT / month				
Starter Pack	1 000,00 €			
Booster Pack	1 000,00 €			
Package creation rates : kit mail + 6 gif banners	800 € HT			
On demand creative (Hourly rate)	75€ /h			



# SEPA Direct Debit Mandate



Mandate reference – to be completed by the creditor

By signing this mandate form, you authorise (A) KWANKO SA to send instructions to your bank to debit your account and (B) your bank to debit your account in accordance with the instructions from KWANKO SA. As part of your rights, you are entitled to a refund from your bank under the terms and conditions of your agreement with your bank. A refund must be claimed within 8 weeks starting from the date on which your account was debited.

**Please complete all the fields marked \* and attached bank details (Relevé d'Identité Bancaire).**

Your name \*

*Name of the debtor(s)*

Your address \*

*Street name and number*

\*

*Postal code*

*City*

\*

*Country*

Your account number \*

*Account number - IBAN*

\*

*SWIFT BIC*

Creditor's name

*Creditor name*

*Creditor identifier*

*Street name and number*

*Postal code*

*City*

*Country*

Type of payment Recurrent payment  or One-off payment

City or town in which you are signing  Date (DDMMYY) \*

*Location*

*Date*

**Signature(s)**

Please sign here

Note: Your rights regarding the above mandate are explained in a statement that you can obtain from your bank.

Details regarding the underlying relationship between the Creditor and the Debtor - for information purposes only.

Debtor identification code

*Write any code number here which you wish to have quoted by your bank.*

Person on whose behalf payment is made

*Name of the Debtor Reference Party: If you are making a payment in respect of an arrangement between (NAME OF CREDITOR) and another person (e.g. where you are paying the other person's bill) please write the other person's name here.*

*If you are paying on your own behalf, leave blank.*

*Identification code of the Debtor Reference Party*

*Name of the Creditor Reference Party: Creditor must complete this section if collecting payment on behalf of another party.*

In respect of the contract

*Identification code of the Creditor Reference Party*

*Identification number of the underlying contract*

*Description of the contract*

**Please return to**  
 KWANKO SA  
 To Nathalie Virlon  
 60, boulevard du Maréchal Joffre  
 92340 BOURG LA REINE - FRANCE

**Creditor's use**