



**GENERAL TERMS AND CONDITIONS OF USE  
KWANKO / PUBLISHER**

May 2018

## Preamble

KWANKO SA is a joint-stock company with a capital of 78,456.46 euro, with its registered office located at 60 Boulevard du Maréchal JOFFRE - 92340 BOURG-LA-REINE, registered in the Trade and Companies Register of NANTERRE under the number 440 546 885, and represented by Mr François BIEBER acting in his capacity as Chief Executive Officer.

KWANKO has several Internet **PLATFORMS**, which are accessible via the following URLs: [www.netaffiliation.com](http://www.netaffiliation.com) and [www.kwanko.com](http://www.kwanko.com), allowing **ADVERTISERS** that want to increase the amount of traffic to their websites in any form, and the number of commercial transactions that are performed there in any form whatsoever, to organise and implement affiliate marketing, mobile campaign, email or influence programmes.

KWANKO offers the publishers of websites, mobile applications, databases and dissemination media (hereinafter the "**PUBLISHERS**") that are members of its network access to and participation in the **PROGRAMMES** implemented by the **ADVERTISERS** on the **PLATFORM**, as well as to take charge of the recovery of commissions owed by the **ADVERTISERS** to the **PUBLISHERS** in exchange for the placement of links, digital files, tags or lines of codes, containing in particular but not exclusively hypertext links, icons, buttons, banners, email kit or other techniques that point towards the website(s) of **ADVERTISERS**.

## 1. Definitions

The terms defined below will have the following meanings between the Parties:

"**AFFILIATE MARKETING**": a marketing practice whereby an **ADVERTISER** will see its commercial offerings (products or services) disseminated through a promotional force consisting of a network of websites or mobile applications or databases or other dissemination media or service provider on the Internet, the **PUBLISHERS**;

"**ADVERTISER(S)**": natural or legal person that publishes services or content online and which is registered on the **PLATFORM** and offering a Programme;

"**ToU**": these general terms and conditions of use;

"**DATA**": data produced, used or processed in order to perform contractual services via KWANKO, including, as a non-limiting examples: email, title, surname, first name, country, password, profile picture, addresses, telephone number(s), IP address, login data and browsing data when the **INTERNET USER** authorises it, and, as applicable: order history, transactions, claims, incidents, delivery information, correspondence etc. Some **DATA** are collected automatically by way of the actions of an **INTERNET USER** on the website or application of the **PUBLISHER** via Cookies.

"**PERSONAL DATA**": any information relating to a natural person identified or that can be identified, directly or indirectly, by reference to an identification number or to one or more of its own elements.

"**INTELLECTUAL PROPERTY RIGHTS**": any intangible element protected by a provision of the French Intellectual Property Code;

**"EVENT"**: any element or action (presented in the form of statistics and counts) that may give rise to a right of remuneration (also called "gain") for the benefit of KWANKO and/or its PUBLISHERS;

**"INTERNET USER"**: a natural or legal person connected to the Internet network in order to carry out operations, whether interactive or not, such as the viewing of websites, the exchange of information or the performance of legally recognised actions such as the purchase of products or provision of services;

**"INSERTION ORDER (IO)"**: refers to the purchase order that the Parties sign, when the terms of performance of a PROGRAMME or the terms and conditions and methods of remuneration of the PUBLISHER in respect of a PROGRAMME implemented by KWANKO are not defined on the PLATFORM; When the said conditions are specified on the PLATFORM and an OI has been signed by the Parties, then the OI serves as special conditions that prevail over the conditions defined on the PLATFORM.

**"PARTY/PARTIES"** refers individually or collectively to KWANKO and the PUBLISHER;

**"PLATFORM"**: KWANKO's online service(s) which are available at the following URLs: [www.netaffiliation.com](http://www.netaffiliation.com), [www.kwanko.com](http://www.kwanko.com) and [www.kasitoko.com](http://www.kasitoko.com), enabling the definition, registration and dissemination of PROGRAMMES on behalf of ADVERTISERS. This online service includes software that records the number and nature of EVENTS performed between the website, the application or any other PUBLISHERS' dissemination medium and the website(s) or application(s) of the ADVERTISERS;

**"PROGRAMME(S)"**: the implementation of marketing practices whereby an ADVERTISER will see its commercial offerings (products or services) disseminated via a promotional force consisting of a network of websites or mobile applications or databases, or other dissemination media and online service providers, via several Internet PLATFORMS, allowing ADVERTISERS that want to increase traffic to their websites in any form whatsoever and the number of commercial transactions that are performed in any form whatsoever, to organise and implement AFFILIATE MARKETING, MOBILE CAMPAIGN, email or influence PROGRAMMES.

**"PUBLISHER"**: a natural or legal person that publishes services or content online and which is registered on the PLATFORM, in order to present links pointing towards the ADVERTISERS' websites or online services and to receive remuneration for this purpose;

**"MOBILE CAMPAIGN"**: a marketing practice for mobile dissemination media (devices) through which an ADVERTISER will see its commercial offerings (products or services) disseminated by a promotional force consisting of a network of PUBLISHERS of mobile websites or mobile applications or databases or other mobile Internet service providers and dissemination media;

**"GDPR"**: refers to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

**"USER"**: refers to a natural person targeted by a PROGRAMME.

## **2. Object:**

The object of these ToU is to define the conditions under which the PUBLISHER may participate, on a non-exclusive basis, in the PROGRAMMES defined by the ADVERTISERS and implemented on the PLATFORMS as well as the conditions under which KWANKO will take charge of the PUBLISHER'S remuneration.

## **3. Contract document**

The contractual documents binding the PUBLISHER to KWANKO are, in descending order of priority:

- these general terms and conditions (ToU), including their APPENDICES, and their updates, of which the PUBLISHER will be notified in due time via a message on the "PLATFORM" and/or by email;
- the information available on the PLATFORM;
- the statistics relating to the PROGRAMME chosen by the PUBLISHER;
- the email and information exchanges between KWANKO and the PUBLISHER in relation to the execution of the ToU.

These ToU are supplemented, where appropriate, by APPENDICES containing general and permanent provisions in relation to the matters listed below. These will be subject to the same consultations and to the same validation procedures as the present ToU:

- APPENDIX 1: Operating rules pertaining to the "KWANKO Mobile" MOBILE CAMPAIGN offering
- APPENDIX 2: Operating rules pertaining to the "KASITOKO" Influencer offering

This APPENDIX 2 is available on [www.kasitoko.com](http://www.kasitoko.com) and is intended to replace these ToU in order to take into account the specificities of the methods of operation that are specific to social networks and "influencer" PUBLISHERS that, as the case may be, will have to operate as a Kasitoko PUBLISHER in order to be able to apply for influencer programmes via the Kasitoko platform, which can be accessed at: [www.kasitoko.com](http://www.kasitoko.com)

#### **4. Declarations of the PUBLISHER**

The PUBLISHER declares:

- i. that it has read and noted the conditions under which the PLATFORM and the services offered by KWANKO operate, and therefore has sufficient general competence to implement:
  - an affiliate marketing programme via the PLATFORM [www.netaffiliation.com](http://www.netaffiliation.com);
  - a MOBILE CAMPAIGN programme via the platform [www.kwanko.com](http://www.kwanko.com);
  - and more generally a Programme on the dissemination medium/media offered by the PLATFORM;
- ii. that it accepts that these Terms have been written in French and may have been translated into another language. It is nevertheless specified that in case of interpretation difficulties, only the original French version will prevail;
- iii. that it accepts that these ToU apply to all its websites, all its mobile applications, all its databases and more generally all its dissemination media registered on a PROGRAMME;
- iv. that it has all the information necessary for deciding that the PLATFORM thus offered meets its expectations, objectives and the performances sought;
- v. that it has all the administrative, fiscal and social authorisations necessary with respect to the proper implementation of these general terms and conditions;
- vi. that it is in compliance with the laws and regulations that apply to it in accordance with the place of registration or declaration of its websites, mobile applications, databases and more generally its dissemination media, which are registered on a PROGRAMME;
- vii. that it has sufficient computer equipment and a connection to the Internet enabling the implementation of a PROGRAMME;
- viii. that it has noted that KWANKO has operated as a simple technical intermediary.

#### **5. Duration:**

These ToU are concluded for an indefinite period, unless they are terminated under the conditions provided for in these general terms and conditions.

## **6. Entry into force - Enforceability**

These ToU are enforceable and applicable to all websites, applications, databases and other dissemination media of the PUBLISHER whose application or registration on the PLATFORM is approved upon acceptance, regardless of the form (paper or digital).

In any case, on the date of the creation of the PUBLISHER account, these ToU will be deemed to have been read and accepted by the PUBLISHER.

KWANKO reserves the right to perform any modifications to these ToU that it deems necessary and relevant.

KWANKO undertakes to communicate the new ToU to the PUBLISHER. Unless terminated by the PUBLISHER within thirty (30) days of the provision of a new version of the general terms and conditions, they will be enforceable against the PUBLISHER. Likewise, the new general terms and conditions will be fully enforceable against the PUBLISHER once it has used the PLATFORM following the provision of the new contractual terms and conditions.

The ToU listed online on the PLATFORM will prevail over any printed version from a previous date.

These ToU are intended to apply worldwide and are therefore enforceable and applicable to any PUBLISHER, regardless of its nationality, registered office or the territory where it performs its commercial activities.

## **7. PUBLISHER account**

### **7.1. Opening a PUBLISHER account**

The use of the PLATFORM presupposes the opening of an account by the PUBLISHER. To open an account and thus to become a member of KWANKO's PUBLISHER network, the applicant for AFFILIATE MARKETING or the MOBILE CAMPAIGN must first read and accept these general terms and conditions and complete the form that is available online on the PLATFORM.

KWANKO reserves the right to accept or reject, by email, at its sole discretion, any application, especially if the content of the website would be likely to harm the image or reputation of KWANKO or its commercial policy, or is not in compliance with the laws and regulations in force or the rights of third parties.

The process for opening a PUBLISHER account includes various different steps.

When registering, the PUBLISHER must provide the information required by KWANKO. This information must be accurate and proven upon the first request from KWANKO. This information must be updated by the PUBLISHER.

The PUBLISHER must indicate a valid email address which will allow, in particular, for the sending of an email confirming its registration in which its password will be indicated as well as the email address corresponding to its PUBLISHER account.

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

The PUBLISHER, which has the option of modifying its password at any time on the PLATFORM, is invited to do so during its first login and to modify it on a regular basis.

The PUBLISHER is solely responsible for the safekeeping and confidentiality of its password and, therefore, for the consequences of its involuntary disclosure to anyone. Any use made of the account PUBLISHER using the password assigned to the PUBLISHER or modified by it is presumed to emanate exclusively from the latter, which it expressly accepts.

No operation can be performed without this password or the email address corresponding to its PUBLISHER account.

The password and the email address corresponding to its PUBLISHER account are personal and confidential.

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

As of the receipt of this notification, KWANKO will, within a reasonable time and at the latest within forty-eight (48) hours, proceed with the deletion of the password enabling access to the PUBLISHER account.

A new password will then be sent to the PUBLISHER via email.

## **7.2. Access to a PUBLISHER account**

Access to a PUBLISHER account is only possible after the PUBLISHER has been identified by means of a username and a password.

The PUBLISHER account is normally accessible 24 hours a day, 7 days a week.

KWANKO reserves the right, without notice or compensation, to temporarily or permanently close the PUBLISHER account in order to update, modify or change the operational methods, servers and accessibility hours, without this list being exhaustive.

KWANKO reserves the right to add to or modify, at any time, its remote services and the PUBLISHER account in accordance with technological developments.

It is the responsibility of the PUBLISHER to ensure that the technological and transmission means at its disposal are kept sufficiently up to date so that these means can adapt to developmental changes to the PUBLISHER account and the remote services offered by KWANKO.

In case of an interruption or inability to use the PUBLISHER account, the PUBLISHER can always contact KWANKO Technical Support for information.

### **7.3. PUBLISHER account security**

The PUBLISHER account is an automated DATA processing system. Any fraudulent access to the latter is prohibited and subject to legal sanctions.

KWANKO makes every reasonable effort, pursuant to best industry practices, to secure the PUBLISHER account, while taking into account the complexity of the Internet and digital technologies. It cannot provide absolute security.

The PUBLISHER declares that it accepts the characteristics and limitations of the Internet. It declares that it is aware that DATA circulating on the Internet are not necessarily protected, in particular against the possible misappropriation.

It acknowledges that it is aware of the nature of the Internet and digital technologies, and in particular its technical performance and response times for viewing, querying or transferring DATA.

The PUBLISHER must inform KWANKO of any PUBLISHER account fault.

## **8. Affiliate marketing program**

Upon acceptance of its application by KWANKO, the PUBLISHER then belongs to a network of KWANKO PUBLISHERS: it can then access the PLATFORM, view the various PROGRAMMES that are offered and their characteristics, and freely decide whether or not to participate.

KWANKO undertakes to provide the PUBLISHER with information and elements (digital files, tags or lines of code, including but not limited to hypertext links, icons, buttons, banner ads, email kits, etc.), enabling the PUBLISHER to implement the PROGRAMMES on its website.

KWANKO will have to option to classify the PUBLISHER website in one of the categories of its network.

KWANKO and the ADVERTISERS have a right to refuse a request to become a PUBLISHER for a PROGRAMME in the event that said PUBLISHER does not fulfil the criteria which are applicable to a specific PROGRAMME.

When the PUBLISHER applies to register for a PROGRAMME, the ADVERTISER may require that the ADVERTISER agree to comply with additional terms and conditions that are specific to this PROGRAMME (hereinafter the "ADVERTISER CONDITIONS"). All PROGRAMME and ADVERTISER CONDITIONS may be modified or terminated/cancelled at any time. The PUBLISHER must keep abreast of any changes to the PROGRAMMES and ADVERTISER CONDITIONS. In particular, it must remain informed in order to know if an ADVERTISER has terminated its PROGRAMME or changed its payment terms for PUBLISHERS. This information is available in the KWANKO PUBLISHER interface.

The definition, the posting online and the implementation of the PROGRAMMES, their modification or interruption, as well as the definition of their pricing terms and possible changes thereto will be under the sole and full responsibility of the ADVERTISER that is



the initiator of such, with KWANKO operating solely as a simple technical intermediary, which the PUBLISHER acknowledges and accepts.

The PUBLISHER will refrain from performing any act or request that does not correspond to the PROGRAMME chosen by the ADVERTISER.

The PUBLISHER will refrain from directly entering into contact with the ADVERTISER, an act which constitutes an act of commercial parasitism.

## **9. Mobile monetisation programmes**

KWANKO provides PUBLISHERS with a module to monetise their websites' traffic when accessed from a mobile phone. This module is comprised of an interstitial format consisting of an advertisement that is displayed as a full page before the website is opened for an average duration of 3 seconds and a single superimposed 320x53 banner that appears on the next page. In the event of it being unsold, no interstitial or banner is displayed.

This module is by default configured on the PUBLISHER website. It can be disabled or enabled at any time in the PUBLISHER account on the PLATFORM interface.

It triggers a right to remuneration in accordance with the commercial conditions obtained by KWANKO from its customers and in accordance with the terms of performance and remuneration defined in these terms and conditions or on an INSERTION ORDER signed by the PARTIES.

## **10. Financial terms**

The terms of performance of a PROGRAMME as well as the terms and conditions of remuneration of the PUBLISHERS in respect of a PROGRAMME implemented by KWANKO are defined on the PLATFORM or specified on an INSERTION ORDER signed by the Parties.

KWANKO will ensure the payment of amounts due to the PUBLISHERS, in accordance with the terms set out in this article.

This remuneration will be paid each month to the PUBLISHER only insofar as the amount to be invoiced exceeds a set baseline threshold.

If the PUBLISHER has an account in several different currencies, it will however have the opportunity to convert the amounts into a single currency in order to surpass the threshold.

In the event that the remuneration due to the PUBLISHER for a given month is below this baseline threshold, the payment will be carried forward to the first month that allows for the baseline threshold to be met.

The amounts due to the PUBLISHERS in respect of a PROGRAMME registered on the

PLATFORM, are calculated on the basis of the DATA recorded by KWANKO.

The PLATFORM records each EVENT that occurs through a PROGRAMME. It is agreed between the parties that the records made by the PLATFORM serve as a reference for the calculation of the EVENTS. Consequently, the records made by KWANKO serve as a reference for the invoicing of amounts due.

KWANKO is therefore solely responsible for counting the above EVENTS. The PUBLISHER acknowledges and agrees that the statistics and counts established by KWANKO are authentic and serve as official and definitive data between the parties.

The records referred to above will remain permanently available to the PUBLISHER on the PLATFORM.

KWANKO will issue the PUBLISHER with a request to invoice based on the KWANKO records.

The invoice issued by the PUBLISHER will be paid by KWANKO thirty (30) days from the end of month, subject to:

- the verification of the remuneration basis (statistics and counting of events) by the ADVERTISER;
- the full and complete collection by KWANKO of the amounts owed by the ADVERTISER.
- the PUBLISHER invoice being issued within a period of 12 months from the date of the first request to invoice. After this period, the PUBLISHER will be deemed to have abandoned its claim with respect to KWANKO.

In the event that the PUBLISHER has outstanding amounts due to be paid to KWANKO, the sums paid by KWANKO will be reduced accordingly.

The payments will be made by bank transfer. Depending on the country, other means of payment may be offered.

The costs associated with the payments (including foreign exchange, international transfers, specific methods of payment) will be charged to the PUBLISHER and deducted from the settlements that will be paid by KWANKO.

If the total amount of the sums due is contested through a pre-litigation or litigation procedure, the basis of the sums to be paid retained by KWANKO will be that of the sums actually paid by the ADVERTISER from which all expenses incurred by KWANKO will be subtracted.

In the event of dispute of any nature whatsoever, the thirty (30) day period relating to the payment of the invoices will not apply and the payment of the sums to be paid will only occur counting from the day when all the difficulties will have been resolved.

The parties are hereby reminded that it is strictly forbidden for the PUBLISHER to enter into direct contact with the ADVERTISER, including with regard to invoicing disputes, which fall within the exclusive competence of KWANKO.

In the event of a dispute following the payment of the sums by KWANKO, the PUBLISHER undertakes to return the sums paid upon the first request from KWANKO, which will eventually be returned to it as soon as all the control operations have been performed by KWANKO.

The PUBLISHER is responsible for the payment of all taxes, fees, social contributions and similar charges that are based on KWANKO payments. However, if required by law or regulation, KWANKO may deduct certain taxes, withholding taxes or certain fees related to payments.

The PUBLISHERS will be responsible for all relevant declarations to the public administrations in question in order to comply with applicable regulatory provisions (including its possible registration obligation).

KWANKO draws the PUBLISHERS' attention to the fact that PUBLISHERS that regularly trade on the PLATFORM may be considered to be professionals by tax authorities or other public authorities, and may therefore be subject to the obligations applicable to Professional PUBLISHERS under the applicable regulations and these ToU. It is expressly stated that it is the responsibility of the PUBLISHERS to comply with all obligations incumbent upon them, including the relevant declarations with the administrations in question in order to comply with applicable regulatory provisions, with KWANKO assuming no liability in this respect.

KWANKO strongly recommends that PUBLISHERS which achieve a turnover of more than 20,800 euro on the PLATFORM over a period of three (3) consecutive months should declare themselves as Professional USERS of the PLATFORM and should thus make all the relevant declarations with the administrations in question in order to comply with applicable regulatory provisions. It is hereby specified that this amount is provided for informational purposes by KWANKO, however, it is up to the PUBLISHERS to inquire directly with the relevant tax services to determine from what amount and/or under what conditions they will be considered to be Professional USERS of the PLATFORM by the authorities.

KWANKO reserves the right to ask the PROFESSIONAL PUBLISHERS to provide it with any documentation confirming their identity and address (for example, in the case of French PUBLISHERS: a K-bis extract or an identity card, a SIRET/SIREN number, a bank account number in France, etc.), and to retain the information relating to the identity of the Professional PUBLISHERS and their contact details as well as identity documents for the duration of time that the account is open and for five (5) years after the closing of the account; this in order to meet the regulatory obligations incumbent upon it in case of an inspection by the authorities.

## **11. Modification of the PUBLISHER website**

Any modification in relation to the name of the PUBLISHER website as well as any modification in relation to its hosting site, size, object, or the frequency of its updates will have no effect on these general terms and conditions, which apply ipso jure and automatically to the modified website.

These ToU apply to all hosting sites of the PUBLISHER website, present or future.

In the event that the PUBLISHER divides its website into several different websites or creates a new website, these general terms and conditions will apply automatically to all of these new websites.

The PUBLISHER undertakes to expeditiously inform KWANKO of any modification that could lead to an alteration to and/or loss of the DATA recorded by the PLATFORM and which enables KWANKO to calculate the remuneration due to it.

The PUBLISHER undertakes to expeditiously inform KWANKO in the event of any significant change affecting the nature, content or purpose of its website.

## **12. Exclusivity**

The PUBLISHER has no exclusivity under these ToU.

KWANKO reserves the right to implement PROGRAMMES as provided for herein with competitors of the PUBLISHER.

## **13. Protection of KWANKO's investment**

The development of the PUBLISHER network and of AFFILIATE MARKETING campaigns or advertising through PERFORMANCE PROGRAMMES through a wide and diversified ADVERTISER portfolio constitutes a major investment on behalf of KWANKO.

Consequently, the PUBLISHER is prohibited from entering into an AFFILIATE MARKETING relationship with KWANKO ADVERTISERS either directly or via another third party for the duration of these ToU and for a period of twelve (12) months from their termination, whatever the reason for it.

In the event that the PUBLISHER decides to enter into an AFFILIATE MARKETING relationship or to execute PROGRAMMES, either directly or via another third party, with an ADVERTISER previously identified by KWANKO during the execution of these general terms and conditions without the authorisation of KWANKO, it will pay it an amount equal to twelve (12) times the highest monthly turnover generated under these general terms and conditions to the benefit of KWANKO, for all PROGRAMMES combined, with this sum not being less than fifteen-thousand (15,000) euro excluding taxes.

In the event that the PUBLISHER decides, in agreement with KWANKO, to enter into an AFFILIATE MARKETING relationship or to execute PROGRAMMES, either directly or via another third party, with an ADVERTISER previously identified by KWANKO during the execution of these general terms and conditions without the authorisation of KWANKO, it will pay it an amount equal to three (3) times the highest monthly turnover generated under these general terms and conditions to the benefit of KWANKO, for all AFFILIATE MARKETING PROGRAMMES combined, with this sum not being less than seven thousand five hundred (7,500) euro excluding taxes.

#### **14. Technical assistance**

The PUBLISHER may request technical assistance from KWANKO.

The cost of this technical assistance is determined by KWANKO upon presentation of an estimate to the PUBLISHER.

#### **15. Collaboration**

The PARTIES agree to collaborate closely within the context of relationship.

The PUBLISHER undertakes to maintain an active and regular collaboration by transmitting to KWANKO all the elements necessary for the execution of these ToU.

The PUBLISHER undertakes to communicate all the difficulties that it may encounter over the course of the execution of these ToU, in order to allow for them to be taken into account as quickly as possible by KWANKO.

#### **16. Guarantee**

The PUBLISHER warrants KWANKO that it will perform its activities in accordance with all the laws and regulations in force and that it will have performed all the administrative and/or fiscal procedures which may be necessary for the conclusion and execution of these general terms and conditions.

The PUBLISHER warrants in particular to KWANKO that it has, especially with regard to its host, the right to create hypertext links, icons, buttons, advertising banners, email kits or other techniques with a merchant website.

The PUBLISHER warrants to KWANKO that it has all rights, including intellectual property rights, over all the content of its website, mobile applications or other dissemination media, which are necessary for their posting online, such that KWANKO's liability will in no way be sought in any capacity whatsoever.

The PUBLISHER which itself works with a network of sub-disseminators warrants to KWANKO that it will communicate these ToU to them and confirm their acceptance of such. The PUBLISHER will be held liable for the behaviour of these sub-broadcasters.

In general, the PUBLISHER warrants KWANKO against all harmful consequences that may result from the breach by the PUBLISHER of any one of the commitments listed in these general terms and conditions, and in particular any amicable or contentious actions by third parties in relation to the execution of these ToU.

## **17. Damages**

KWANKO's liability for the purposes hereof is strictly limited to direct damages actually suffered and proven by the PUBLISHER, to the exclusion of all counts of indirect damages such as loss of profits, loss of turnover or any other. As such, KWANKO will cover the said damages under its professional liability insurance policy underwritten by Generali. A copy of the table of guarantees and the certificate of professional liability insurance can be provided to the PUBLISHER upon request from it.

## **18. Agreement on proof**

The computerised records saved in the IT systems will be retained by KWANKO under reasonable security conditions and considered as proof of communications between the parties.

The archiving of the contractual documents is performed on reliable and durable media that can be produced as proof.

## **19. Intellectual property, data and know-how**

Each ADVERTISER is the sole owner of all intellectual and industrial property rights, including but not limited to trademarks, advertising slogans, banners and/or designs and models (hereinafter collectively referred to as "KWANKO IP RIGHTS"), which KWANKO makes available to the PUBLISHER for the purpose of performing the services that are the object of these general terms and conditions.

Consequently, each ADVERTISER remains the owner of the DATA or intellectual and industrial property rights over the brands, of which it grants the rights of use listed in this article to the company KWANKO. The latter authorises the PUBLISHER to use them for the sole purpose of performing the services that are the object of these general terms and conditions.

These general terms and conditions do not imply any assignment of any kind of DATA or INTELLECTUAL PROPERTY RIGHTS over the elements belonging to KWANKO for the benefit of the PUBLISHER.

The PUBLISHER recognises and accepts that the content of the website, applications, other dissemination media and in particular but not exclusively texts, photographs, videos, software and programs, sounds, music, layout, graphic charter, logos, design or any other DATA or information or media presented by KWANKO, are protected by their copyrights, trademarks, patents and other INTELLECTUAL PROPERTY RIGHTS that are or will be recognised by the laws in force.

Any reproduction and/or representation, whether total or partial, of one of these rights, or of one of these DATA without the express authorisation of KWANKO is prohibited and may constitute an infringement sanctioned by the Articles L. 335-2 et seq. of the French

Intellectual Property Code.

Consequently, the PUBLISHER will refrain from any action and any act likely to infringe, whether directly or not, on the intellectual property rights or the DATA of KWANKO or the ADVERTISER.

The PUBLISHER acknowledges that the DATA, information and databases accessible on the KWANKO website are the property of KWANKO. These DATA and information may not be used for commercial purposes by the PUBLISHER, nor be reproduced on a website, applications or other dissemination media by the latter, nor be compiled by the latter through or using search software, a search engine, a metasearch engine, or a website or data retriever.

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

The PUBLISHER is prohibited from filing in any capacity whatsoever any name that is identical or similar to the trademarks, names, domain names and/or logos belonging to the ADVERTISERS, and used within the framework of these general terms and conditions.

## **20. Commercial references**

KWANKO may use the name of the PUBLISHER as a commercial reference in accordance with commercial practices.

In case of breach of these ToU, KWANKO will retain the right to use the name of the PUBLISHER as a commercial reference, except when the PUBLISHER has given its express refusal.

## **21. Personal data**

The PARTIES undertake to treat all PERSONAL DATA, that is to say any information relating to an identified or identifiable natural person, directly or indirectly, in particular by reference to an identifier, such as a name, an identification number or one or more specific elements of its own of which they become aware of under these ToU, in accordance with the regulations in relation to the processing of PERSONAL DATA and the protection of privacy in force in the territory, in particular the Act of 06 January 1978 on data protection ("loi informatique, fichiers et Libertés") as well as the European regulation 2016/679 known as "GDPR".

The PARTIES undertake to perform under their own responsibility all the necessary steps, formalities or declarations, and/or to obtain the authorisations for the PERSONAL DATA that they process or that they could have access to within the framework of their exchanges.

In particular, the PARTIES undertake to take all the necessary and appropriate precautions to preserve and ensure the protection and the security of the processing of the PERSONAL DATA transmitted by the other PARTY within the framework of the execution of these ToU,

and in particular to prevent the PERSONAL DATA from being distorted, damaged, destroyed or accessed by unauthorised third parties.

For the purposes hereof and for the proper performance of the services offered on the PLATFORM, KWANKO collects, processes and transmits the PERSONAL DATA of PUBLISHER USERS in the name and on behalf of the PUBLISHER.

The purpose of these clauses is to define the conditions under which KWANKO, as a subcontractor, undertakes to perform on behalf of the PUBLISHER, as data controller, these PERSONAL DATA PROCESSING operations.

The categories of PERSONAL DATA affected by these processing operations are as follows:

- A "lead" typically, the surname, first name, postal address etc.
- The email address
- IP address
- The argsite (login ID) of USERS of the PUBLISHER.

These PERSONAL DATA are collected solely to enable the PUBLISHER to offer its USERS access to targeted advertising content.

These PERSONAL DATA are retained by KWANKO for the duration of the contractual relationship, subject in particular to requests for rectification, opposition, limitation and/or deletion submitted by USERS of the PUBLISHER.

In any case, the PERSONAL DATA communicated to KWANKO will be returned to the PUBLISHER if it issues a written request within eight (8) days from the termination of the contractual relationship, or permanently deleted.

## **21.1. PUBLISHER obligations**

The PUBLISHER supervises the processing and warrants to KWANKO that its obligations under the GDPR are being properly complied with. In particular, the affiliate will ensure the lawfulness of its outsourced data processing at all times to KWANKO, as well as its proper compliance with the requirements of the GDPR with regard to the exercising of the rights of the person in question.

In this respect, the PUBLISHER will take all necessary precautions in its collection of these PERSONAL DATA from its USERS in order to comply with the regulations in force in its capacity as data controller, and in particular with the provisions of the Act of 06 January 1978 as amended in relation to data protection ("l'informatique, aux fichiers et aux libertés") and the GDPR.

The PUBLISHER undertakes, in particular, to collect the consent of USERS as to the communication of their PERSONAL DATA, in a clear, transparent and unambiguous manner, and in particular to the transfer of the data to KWANKO.



For example, KWANKO recommends that the PUBLISHER insert a check box in the USERS' PERSONAL DATA collection form, whereby the USER agrees to its data being transmitted to KWANKO, and to retain proof of each acceptance.

In the absence of acceptance or in the case of a request for deletion of PERSONAL DATA, USERS will no longer be able to access the Services.

The PUBLISHER further undertakes to document in writing any new or special instructions regarding the processing of data by KWANKO.

Finally, in its capacity as data controller, the PUBLISHER undertakes to assume the reparation for any material or moral damages resulting from a breach of the GDPR, it being specified that KWANKO, as a subcontractor, can only be held liable for the damages caused by the processing if it has not complied with the obligations of the GDPR that are specifically incumbent upon subcontractors or has acted outside the lawful instructions of the data controller or contrary to these.

## **21.2. KWANKO obligations:**

For the purposes hereof, KWANKO undertakes to comply with the following obligations and to have its personnel comply with them, in particular to:

- Process PERSONAL DATA in the strict and necessary context of the purposes for which the subcontracting is performed (i.e. the performance of its contractual obligations to enable the PUBLISHER to offer its USERS a service for the display of targeted advertising content) and, in any case, to act only on the written and prior instructions of the PUBLISHER;
- Ensure that persons authorised to process PERSONAL DATA undertake to respect their confidentiality;
- In case of recourse to a sub-processor – which the PUBLISHER expressly authorises – to contractually ensure that the said sub-processor complies with the same obligations regarding compliance with the applicable regulations and the security of PERSONAL DATA as those incumbent upon KWANKO hereunder;
- Taking into account the nature of the processing, to help the PUBLISHER, through appropriate technical and organisational measures, insofar as possible, to fulfil its obligation to follow up the requests that USERS submit to it in order to exercise their rights. As such, the PUBLISHER may, at any time, submit on behalf of a USER, a request for access, rectification, limitation or deletion of PERSONAL DATA transmitted to KWANKO;
- In accordance with the choice of the PUBLISHER, as expressed in writing within a period of eight (8) days, to delete all PERSONAL DATA or return them to the PUBLISHER at the end of the contractual relationship, and to destroy existing copies;

- Provide the PUBLISHER with the necessary documentation to demonstrate compliance with the requirements of this Article;
- Keep a record of the processing performed on behalf of the PUBLISHER;
- Take all appropriate security measures, including technical, material and organisational for appropriate protection, in order to ensure the confidentiality, the preservation and the integrity of the PERSONAL DATA processed throughout the duration of these ToU, with this performed until their complete deletion, and more specifically:
  - Take all appropriate security measures for all exchanges of data or files relating to PERSONAL DATA undertaken not only between KWANKO and the PUBLISHER but also with authorised third parties and, in particular, to use secure communication channels;
  - Store and archive the DATA or the digital files relating to the PERSONAL DATA during the period necessary exclusively for the performance of the services that are the object of these ToU, with this done in accordance with the instructions communicated by the PUBLISHER;
  - Proceed with any destruction, rectification, limitation or, upon the request of the PUBLISHER, complete return of the DATA, digital files and any copies relating to the PERSONAL DATA at the latest upon the expiration of these ToU, and to provide the PUBLISHER with a corresponding certificate of destruction and/or permanent deletion;
  - Restrict access to the entrusted information and PERSONAL DATA solely to personnel authorised to work with this data given their roles, to the exclusion of any other person, and to provide them with appropriate training in the protection of PERSONAL DATA;
  - Delete the PERSONAL DATA at the end of the retention period indicated herein, and in any event, upon the termination of these ToU;
  - Inform the PUBLISHER without delay of any event, incident or security breach, whether intentional or accidental, relating to the confidentiality, integrity and security of the PERSONAL DATA, and in particular, any infringement, loss, theft, unauthorised access, disclosure, destruction, alteration of the PERSONAL DATA and to provide assistance with any request for collaboration from the PUBLISHER;
  - Not to transfer any PERSONAL DATA to a third-party country that does not provide an adequate guarantee of protection of PERSONAL DATA within the meaning of the European regulations. KWANKO also undertakes to notify the supervisory authority and the PUBLISHERS of security breaches under the conditions and timelines required by the forthcoming regulations, namely within seventy-two (72) hours following the incident, and to provide the PUBLISHER with the name and contact information of their Data Protection Officer if they have a designated one.

KWANKO undertakes that is willing to demonstrate the compliance of its processing activities with the applicable EU regulation, including the effectiveness of its measures. These measures take into account the nature, scope, context and purpose of the processing as well as the risk that it poses to the rights and freedoms of natural persons.

## **22. Confidentiality:**

For the purposes hereof, all information is confidential, with this covering any information or data communicated by the parties in writing or orally.

The PARTIES undertake to:

- treat confidential information with the same degree of protection as it accords to its own confidential information of equal importance;
- keep the information confidential and ensure that it is not disclosed or likely to be disclosed directly or indirectly to any third party;
- not infringe, in any way, the proprietary rights over the confidential information;
- prevent the confidential information from being copied, reproduced or duplicated, in whole or in part, when such copies, reproductions or duplications are not directly related to the execution of these ToU.

## **23. Legal and regulatory requisition**

In the event of a demand for the transmission of DATA and documents of any kind issued by an administrative or judicial authority, as a legal, judicial or regulatory requisition in relation to the PUBLISHER, KWANKO agrees to operate the implementation of the operations under the terms of the requisition.

All expenses and fees resulting from this will then be invoiced to the PUBLISHER.

## **24. Termination**

### **24.1. Termination in the absence of a breach**

These ToU may be terminated by either party subject to compliance with a notice period of three (3) months notified by registered letter with acknowledgement of receipt.

Termination under the aforementioned conditions cannot give rise to damages to any of the parties.

### **24.2. Termination for breach**

In case of a breach by one of the PARTIES of the obligations hereunder that has not been repaired within a period of eight (8) days from its notification by registered letter with acknowledgement of receipt, the other party may declare the annulment ipso jure or the termination of the ToU without prejudice to any damages and interests to which it could

claim under these ToU.

### **24.3. Consequences of a breach of the ToU on the AFFILIATE MARKETING PROGRAMMES.**

In the event of the termination of the contractual relationship for any reason whatsoever, the PUBLISHER undertakes to take all necessary measures to disable the PROGRAMMES.

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

## **25. Liability**

Each PARTY is liable for its actions, acts, commitments, products and services, as well as the obligations for which it is responsible under these ToU.

### **25.1. Liability of KWANKO**

KWANKO is solely responsible for the quality of the services it provides under the PROGRAMMES.

KWANKO is solely responsible for the PUBLISHER'S access to the DATA available on the AFFILIATE MARKETING PLATFORM.

KWANKO cannot be held liable for the actions of a PUBLISHER participating in a PROGRAMME nor for the contents available on the website of the latter.

KWANKO cannot be held liable for the performance of the AFFILIATE MARKETING PROGRAMME chosen by the PUBLISHER.

KWANKO cannot be held liable for a PUBLISHER'S lack of knowledge of the applicable regulations and in particular with regard to advertising, sales prospecting and the protection of personal data.

### **25.2. Liability of PUBLISHER**

Since KWANKO acts as a simple technical intermediary, the PUBLISHER acknowledges that it is solely liable for its website and its content.

The PUBLISHER undertakes to comply with all applicable regulations and in particular with regard to advertising, sales prospecting and the protection of personal data.

## **26. Fraud**

Any action aiming to artificially increase the traffic generated by KWANKO's PUBLISHER network and, more generally, any action aimed at obtaining gains in an undue or artificial manner is strictly prohibited.

Any action constituting a fraud will result in the immediate invalidation of all gains earned by the PUBLISHER and may lead to the termination or the annulment of these general

terms and conditions, without prejudice to the remedies that may be sought by KWANKO at a civil or criminal level (fraud, breach of trust or violation of the automated data processing system).

## **27. Insurance**

The PUBLISHER certifies that it has taken out an insurance policy with a reputable insurance company for all the pecuniary consequences of its contractual, tortious and/or professional liability, for bodily, material and immaterial damages caused to KWANKO and any third party in the execution of these general terms and conditions.

As such, the PUBLISHER agrees to pay the premiums and contributions relating to the said insurance policy and, generally, to comply with all obligations in order to cover all activities related to these general terms and conditions.

The PUBLISHER waives and undertakes to have its insurers waive any and all claims against KWANKO, except in the case of gross and wilful misconduct.

## **28. Force majeure**

Expressly, are considered as force majeure or fortuitous events, those usually retained by the jurisprudence of the French courts and tribunals, as well as the following events: war, riots, fire, strikes whether internal or external, lock-outs, occupation of KWANKO's premises, bad weather, earthquakes, floods, water damage, legal or governmental restrictions, legal or regulatory changes to forms of marketing, accidents of all kinds, epidemics, pandemics, disease affecting more than 5 % of KWANKO staff over a period of two (2) consecutive months, lack of energy supply, partial or total shutdown of the Internet and, more generally, private or public telecommunications networks, road blockages and the impossibility of the provision of supplies, and any other case beyond the express control of the PARTIES and preventing the normal execution of these general terms and conditions.

At first, any case of force majeure will suspend the execution of the ToU.

If the case of force majeure has a period of existence greater than two (2) months, these ToU will be automatically terminated unless otherwise agreed by the PARTIES.

## **29. Good faith**

The PARTIES agree to perform their obligations with the utmost good faith.

## **30. Legal authorisations**

The PARTIES undertake to ensure they possess all the legal and administrative authorisations necessary for the execution of these ToU and in particular with regard to

their fiscal, social and accounting obligations.

The PARTIES undertake to collaborate to secure new legal and administrative authorisations and for any modifications of authorisations already secured.

### **31. Tolerance**

The PARTIES mutually agree that the fact that one of the PARTIES does not tolerate a situation does not have the effect of granting the other party acquired rights. Moreover, such a tolerance cannot be interpreted as a waiver of the rights in question.

### **32. Sincerity**

The PARTIES declare these commitments sincere. As such, they declare that they have no information to their knowledge that, if it had been disclosed, would have altered the consent of the other PARTY.

### **33. Assignment of general terms and conditions**

These ToU cannot be the object of a total or partial assignment by the PUBLISHER, against consideration or otherwise, without the prior written agreement of KWANKO.

### **34. Updates to the ToU**

These ToU may be modified and updated in accordance with Article 6 of these ToU. This update will prevail over the provisions of the previous general terms and conditions.

### **35. Final provisions**

#### **35.1. Headings**

In case of difficulties of interpretation resulting from a contradiction between any of the headings appearing above the clauses and any of the clauses to which it refers, the heading will be declared null and void

#### **35.2. Invalidity**

Should one or more provisions of these general terms and conditions be held to be invalid or declared as such pursuant to a law or regulation, or following a final decision of a competent court, the other provisions will remain in full force and effect.

#### **35.3. Integality**

These ToU express all of the obligations of the PARTIES.

#### **35.4. Prescription**

All legal actions between the parties are extinguished, except contrary public policy provisions, if they were not introduced within two (2) years from the first claim notified by registered letter with acknowledgement of receipt.

#### **35.5. Survival**

Clauses declared as survivors after the end of the ToU, regardless of the terms of termination, such as the arrival of the expiry date or contractual breach, will continue to apply until the end of their particular purpose. This is the case, in particular, for the clauses of ownership, confidentiality and non-solicitation of the ADVERTISERS directly.

#### **35.6. Domicile**

For the execution of this agreement and unless otherwise specified, the PARTIES agree to address all correspondence to their respective registered office.

#### **35.7. Versions of the ToU**

These ToU are initially written in French and may be subject to one or more translations into another language.

In the event of a dispute with regards to their interpretation, the French version will prevail over any other version.

#### **35.8. Applicable law**

These ToU are governed by French law. This also applies to the merits and formal elements of these ToU, notwithstanding the place in which the fundamental or subsidiary obligations are performed.

#### **35.9. Litigation and competent jurisdiction**

In the event of a dispute arising out of the validity, interpretation, performance or non-performance, interruption or termination of these ToU, this will be settled amicably by the PARTIES.

In the absence of an amicable agreement being reached within two (2) months from the date the disputing PARTY issued the other PARTY a letter setting out its grievances, the PARTIES will recover their full freedom of action.

In this respect, and unless expressly stipulated otherwise, express jurisdiction is attributed to the Nanterre Commercial Court, notwithstanding the plurality of defendants or an application for the joinder of a guarantor as party, for urgent or preventive measures, by application for summary proceedings or by petition.

## APPENDIX 1 - Operating rules pertaining to the "KWANKO Mobile" MOBILE CAMPAIGN offering

This APPENDIX supplements the ToU and the general and permanent provisions in the matters listed below. It is an integral part of the ToU and is subject to the same consultation and the same validation procedures as the ToU.

"KWANKO Mobile": is the name for the MOBILE CAMPAIGN mode that is available on [www.KWANKO.com](http://www.KWANKO.com); this consists of a marketing practice for mobile dissemination media (devices) through which an ADVERTISER will see its commercial offerings (products or services) disseminated by a promotional force consisting of a network of PUBLISHERS of mobile websites or mobile applications or databases, or other mobile Internet service providers and dissemination media;

### A. Technical integration methods

KWANKO mobile enables PUBLISHERS to monetise their mobile advertising slots (by mobile is meant any advertising displayed on a dissemination medium that is a mobile "device", for example, a smartphone or tablet).

There are several technical integration methods that can be chosen by the Publisher:

Method 1: direct integration via implementation of advertising SDK (mobile web / iOS / Android)

Method 2: integration via API

In Method 1 as in Method 2, the PUBLISHER entrusts its advertising inventory to KWANKO which is in charge of the monetisation of inventories in accordance with the monetisation rules defined upstream between KWANKO and the Publisher. KWANKO has the liberty to disseminate all the advertising campaigns or mobile PROGRAMMES ordered by its ADVERTISERS on the PUBLISHERS' advertising inventories on condition that they respect the dissemination rules agreed between the Parties (management of the blacklists, the dissemination formats, dissemination remuneration, amongst others).

Method 3: This is a "server to server" (S2S) communication method through which the PUBLISHER connects to the KWANKO PLATFORM in order to be able to relay the advertising campaigns or mobile PROGRAMMES ordered by the KWANKO ADVERTISERS onto the advertising inventories of KWANKO PUBLISHERS.

**B. Rules for the dissemination and verification of statistics and event counts** that may give rise to a right of remuneration (also called "gain") for the benefit of KWANKO and/or its PUBLISHERS;

Depending on the method of integration and the agreement concluded with the PUBLISHER, KWANKO reserves the right to apply the following rules:

- The final statistics and event counts and the PUBLISHERS' gains will be subject to the verification of the "ADVERTISER customer", with the figures of the KWANKO platform being valid for invoicing, and will be invoiced in accordance with § 51 to 73 "Financial terms" of the ToU.



- KWANKO undertakes to ensure that the verification of the statistics and event counts on the "ANNOUNCER customers" side will be done as soon as possible, so that the KWANKO PUBLISHERS can find their validated gains for one month (M) at the latest the following month (M+1).
- Cancellations of statistics and event counts that may give rise to a right to remuneration (also called "gain"): the "customer" and/or KWANKO reserves the right to cancel the statistics and counts of conversion events carried out without the dissemination criteria having been complied with (for example: the non-respect of geographical areas of dissemination, the non-respect of the dissemination period, and in general the non-respect of the cappings and/or the non-compliance with campaign budgets specified on the INSERTION ORDER). To do this, KWANKO undertakes to systematically transmit to the PUBLISHER detailed and complete information on all the desired dissemination criteria in the form of an INSERTION ORDER that must be accepted by the PUBLISHER and KWANKO.