

## **PUBLISHER AGREEMENT**

These terms and conditions (the "PUBLISHER AGREEMENT"), governs your participation as a member (the "Publisher") of the advertising programme (the "Programme"). The Publisher covenants and agrees to be bound by this Agreement, and the schedules attached, as amended by FLEX MULTIMEDIA MONETIZATION Société Anonyme (the "Representative") from time to time.

### **PREAMBLE**

The purpose of this agreement is to set up and manage an advertising programme (the "Programme") to monetize traffic from independent websites.

The programme consists of integrating advertisements on websites or in emails routed via Opt-in email databases, owned by independent third parties wishing to monetize the audience which is constituted by the internet users visiting their website(s) or their emails (hereafter referred to as the "Publishers"). The said advertisements (hereafter referred to as the "Advertisements") shall redirect the internet users to independent third party websites wishing to promote their product(s) and/or service(s) (hereafter referred to as the "Advertisers") on the internet.

The added value of the Programme relies notably in the selection of the participating Advertisers in the programme, the creation of the Advertisements within the Programme and the optimization of the choice of the Advertisements offered to users visiting the Publisher's website.

The Publisher contacted the Representative in order to benefit from the Programmes offered by the latter.

Both parties thus came to an agreement with the purpose of collaborating as per the conditions set out below.

As a result of which it has been agreed and decided as follows:

### **PRELIMINARY - DEFINITIONS ARTICLE**

**Direct Purchase:** Purchase from an Advertiser by an internet user directed to the Advertiser's websites via an Advertisement placed by the Publisher.

**Indirect Purchase:** Purchase made by an internet user initially directed by the Advertisements placed by the Publisher on the Advertiser's websites, following a reminder sent to the internet user by the Advertising Agency.

**AdFlex:** Official trademark and methodology for performance optimization and exchanges between Programme participants.

**Advertising Agency:** Legal entity responsible for the good management of the Programme, the selection of Advertisers and for making Campaigns available to the Publisher via a Publisher Account.

**Advertisement:** Banner, text or other marketing operation with the intention of promoting the advertising Campaigns.

**Advertiser:** Individual or legal entity, who publishes services, content, or markets products, having signed an agreement with the Advertising Agency in order to offer an advertising campaign in the form of Advertisements.

Campaign: Advertising programme whose earnings are calculated based on a CPA (cost per acquisition), CPL (cost per lead), CPI (cost per install), CPC (cost per click) or CPM (cost per thousand views) depending on the Advertiser's choice.

Publisher Account: Online interface on the Advertising Agency's Platform benefiting from the services of AdFlex and maintained by the Advertising Agency which enables the Publisher by means of a username and a password to access all statistical data related to their affiliation to the Programme and to benefit from the Advertisements.

Cookie: A text file placed on the hard drive of the internet user's device whilst visiting a website. It collects data concerning the internet user's browsing pattern in order to customize user experience.

Publisher: Publisher of services or content, an individual or legal entity, having subscribed to the Programme in order to publish a Campaign.

Link or Hyperlink: Embedded code tags around the text, video, image or audio on a website enabling the internet user who clicks on this text, sound, image or video to be redirected to a predefined internet address.

Representative: Legal entity authorized by the Publisher to represent them with the Advertising Agency and manage the administrative, legal and financial relations on their behalf.

Domain name: Address entered by an internet user to access a website (e.g. google.com). The address consists of the name of the site (google) and an extension (com) separated by a full stop. The extension may indicate the nationality (sg, hk, cn, etc.) or the type of activity (com, gov, etc.).

Spam: Illegal process consisting of sending unsolicited advertising, usually by email. To be legal, advertising material sent to an internet user must have originated in a request by the user through a process known as "opt-in" whereby the internet user explicitly states that they wish to receive specific information.

Tag: Technical or JavaScript code enabling Advertisements to be displayed on a web page.

Tracking: A process consisting of monitoring the pattern and behaviour of an internet user, which can notably be carried out through the use of Cookies.

## **ARTICLE 1- PURPOSE OF THE AGREEMENT**

The purpose of this agreement is to define the terms of the contractual relationship between the Representative and the Publisher whereby:

1.1 The Publisher agrees to join the Programme and thereby promote the Advertisers' Campaigns offered (hereinafter the "Products") by displaying the Advertisements as per the conditions described below. For the purposes of this agreement, the internet users directed to the Advertisers by the Publisher, and exclusively these, will be referred to hereafter as the "Internet Users".

1.2 The Representative undertakes to pay the Publisher according to the quantity or the performance of Advertisements published, under the conditions described below.

## **ARTICLE 2 - PROCEDURE FOR THE CONCLUSION OF THIS AGREEMENT**

Prior to the conclusion of this agreement, the Publisher states:

- that they have full legal capacity to conclude and execute this agreement. In particular, the Publisher individual entity declares being of legal age and capable; the representative of the

Publisher legal entity declares being of legal age, capable and duly authorised for the purpose of entering into this agreement;

- that they are not in contravention of the statutory provisions relating to the exercise of a commercial occupation.

2.1 It is the responsibility of the Publisher to download this agreement, to complete it honestly and, if applicable, to accept the content by a double-click. This initial acceptance will enable this agreement to come into effect.

However, no payment superior to a cumulative amount of commissions equal to ten thousand (10,000) euros may be made prior to receipt by the Representative, by postal mail, of two copies of this agreement duly dated, initialled and signed, accompanied by proof of identity of the signatory and, if appropriate, proof of their capacity to act as the representative of the Publisher legal entity (extract from the appropriate commercial register or copy of the mandate). Should the Publisher fail to do so, the commissions exceeding the above stated threshold will be blocked on the Publisher Account until receipt of this agreement as per the conditions given above.

### **ARTICLE 3 - OPENING AND UPDATING OF THE PUBLISHER ACCOUNT**

3.1 As from the effective date of this agreement, the Advertising Agency shall open on the Programme management platform, a Publisher Account in the name of the Publisher and shall provide, via email, the appropriate username and password.

3.2 The Publisher Accounts are unique and individual. Accordingly, each Publisher may only own one Publisher Account.

In the event of any fraudulent action pertaining to this Article 3.2, all income obtained by successive affiliations to the Programme and credited to the Publisher Account or Accounts opened following these successive affiliations shall be permanently forfeit to the Publisher.

3.3 The username and password are strictly personal and confidential.

If lost or stolen, it is the responsibility of the Publisher to inform the Advertising Agency as quickly as possible. Failing such prior declaration of loss or theft, any use made of these usernames and passwords will be considered as being made by the Publisher.

3.4 The Publisher agrees to update all the information required on the Publisher Account.

In particular, the Publisher undertakes to provide and update the information concerning their telephone numbers, address or registered office, email and the domain name of the web site or sites which are concerned by the Programme.

If necessary, the Publisher undertakes to provide and update the information concerning their instant messaging addresses (Icq, Skype, etc.).

3.5 The Publisher undertakes to upload to their Publisher Account, a digital copy of their passport, their bank account details and, if applicable, a copy of the entry in the Commercial Register or any other document proving their registration with the appropriate companies registration office, or to any other similar registry.

Copies of these documents shall be updated on the Publisher Account on expiry or on the modification of all or part of the information so contained.

### **ARTICLE 4 - PROGRAMME OPERATING PROCEDURE**

4.1 As decided by the Publisher, the Advertisements placed to ensure the promotion of the Advertisers may either be placed directly on one or more websites published and developed by the Publisher, or placed on one or more websites published and developed by a third party as part of an agreement between the third party and the Publisher (traffic purchase, advertising purchase, affiliation, etc.).

For the purposes of this agreement, all websites on which the Publisher will ensure the promotion of the Advertisers shall be referred to as the "Sites".

4.2 It is the responsibility of the Publisher to identify the space on the Sites that they intend to dedicate to the Advertisements and to inform the Agency Advertising of the dimensions and constraints concerning this space as per the conditions set out in Article 8 below.

4.3 The Advertisements must contain the unique identifier provided by the Advertising Agency. This identifier will enable the Advertising Agency to track Internet User behaviour and consequently to update the statistics available on the Publisher Account. Should the link not contain this identifier, no commission may be claimed by the Publisher.

By derogation, in the event that the Internet User may have disabled "JavaScript" in their browser configuration and in the event that the Advertisement requires the transmission of a "JavaScript" code for the proper registration of the sale, the actions of the Internet Users via the Advertisements operating with the "JavaScript" code may under no circumstances give rise to the payment of any commission.

## **ARTICLE 5 - PROMOTION OF ADVERTISERS AND USE OF INTERNET USERS' DATA**

5.1 The Publisher ensures the promotion of the Advertisers by any legal means they may deem useful.

In particular, the Publisher is encouraged to publish advertising banners, to integrate advertising measures and to highlight the Products.

5.2 The Publisher agrees not to use the data relative to the Internet Users and notably Internet Users' email addresses collected during the promotion of the Advertisers.

In particular, in accordance with the law and with Article 13 of this agreement the Publisher undertakes not to use the Internet Users' contact information to send spam, whether such spam is sent for the promotion of the Advertising Agency, the Advertisers or for other third parties.

5.3 The Advertising Agency recognizes the right of the Publisher to terminate the promotion of the Advertisers without prior justification.

## **ARTICLE 6 - ADVERTISING MATERIAL**

6.1 The Advertising Agency shall supply to the Publisher the advertising material designed to optimize the promotion of Advertisers and encourages them to use this material. This advertising material is hosted by the Advertising Agency. The tags necessary for the use and display of the advertising material are to be downloaded from the Publisher Account.

The Advertising Agency agrees that the Publisher has the right not to use this advertising material.

6.2 Under no circumstances may the Publisher use the promotional material provided by the Advertising Agency, even after modification by them, for purposes other than for the promotion of the Advertisers via the Programme.

## **ARTICLE 7 - PROGRAMME PROMOTION**

7.1 The Publisher grants to the Advertising Agency a free non-exclusive licence for the use of any distinctive element of which they are the owner and/or which belongs to the Sites (brand, domain name, company name, logo, etc.) in any document for the promotion and/or presentation of the Programme, the Advertising Agency, or any product, service and/or software developed by the Advertising Agency or in which the Advertising Agency may have an interest, and notably in any presentation, marketing medium, financial report and client listing that the Advertising Agency may produce.

7.2 The said license is granted without any geographical restriction for the duration of this agreement and for five (5) years following the termination of contractual relations between the parties.

## **ARTICLE 8 - CHOICE OF ADVERTISEMENTS**

8.1 It is the responsibility of the Publisher to exclude, via its Publisher Account any category of Advertisements and/or Advertisers they do not wish to promote, according to the opportunities offered by the Advertising Agency.

8.2 The Publisher undertakes to exclude any category of Advertisements whose content would be contrary to the applicable laws and regulations of their country of residence and/or countries whose official language is the language used on the Site.

Similarly, the Publisher undertakes to exclude any category of Advertisers whose products and/or services would be contrary to the applicable laws and regulations in their country of residence and/or countries whose official language is the language used on the Site.

8.3 Except under the circumstances envisaged in Articles 8.1 and 8.2, it is the responsibility of the Advertising Agency and not the Publisher to determine the advertisements which shall be displayed on the Sites and the Advertiser's page to which the Internet User shall be directed.

This redirection of the Internet User shall be performed automatically by the Advertising Agency.

## **ARTICLE 9 - COMMISSION CALCULATION METHODS**

9.1 The Advertising Agency does not guarantee any minimum amount of commission to the Publisher.

9.2 Subject to the validation of that purchase by the Advertiser concerned, each Direct or Indirect Purchase of a Product from an Advertiser by the Internet User shall give rise to a commission in favour of the Publisher.

The amount of the commissions payable to the Publisher is determined monthly at the Advertising Agency's discretion, depending on the quantity and type of Direct and Indirect Product purchases made by the Internet Users or according to the quantity of Advertisements displayed.

9.3 The Advertising Agency reserves the right to modify, delete or add any commercial offer at their own discretion. In particular, the Advertising Agency reserves the right to exclude and/or replace any Advertiser or any Campaign.

9.4 The Publisher acknowledges that they have been informed of the risk of payment default on the part of the Internet Users (opposition, etc.).

In the event that it proves impossible for the Advertiser to recover the money owed by the Internet User following the purchase of one or more Products, the commissions that have been paid concerning such unpaid Products will be deducted from current and future commissions due to the Publisher.

This condition will also apply should it prove impossible for the Advertising Agency to recover the amounts owed by the Advertisers in respect of the purchase by the Internet User of one or more Products.

In the event of any remainder, the Publisher shall be recognised as owing to the Representative the outstanding sum to be deducted.

9.5 This information and these statistics are calculated by the Advertising Agency and the Publisher Account is updated daily.

As stated in Article 22, the Publisher undertakes to maintain the confidentiality of all information communicated via the Publisher Account with, however, the exception of the exact and total amount of monthly commissions.

9.6 The figures indicated on the Publisher Account are calculated automatically and may not be contested.

Any dispute relating to the amount of commissions due must be communicated in writing to the Representative within a maximum of thirty (30) days following the display of the amount of the disputed commission on the Publisher Account. The expiry of this thirty (30) day period shall be deemed to constitute acceptance without reserve by the Publisher of the amount of the commissions displayed on the Publisher Account.

## **ARTICLE 10 -TERMS OF PAYMENT**

10.1 It is the responsibility of the Publisher to submit to the Representative a request for the payment of the commissions due to him. This request for payment shall be made using the tools available on the Publisher Account.

Under no circumstances may a payment request be registered, and still less be honoured, for commissions totalling less than one hundred (100) euros.

10.2 Upon registration of the application for payment, an invoice for the amount of commissions due on the date of application will automatically be generated by the Representative and made available to the Publisher on the Publisher Account.

10.3 The payment corresponding to the amount of commissions due as indicated on the invoice will be made within thirty (30) days following the request for payment. If the day of payment provided for under this agreement is a non-working day, payment will be postponed until the first working day after the specified day.

In the event of default or late payment on the part of the Advertising Agency or the Advertiser, the Representative shall be entitled to delay payment to the Publisher until the Representative has actually been paid by the Advertising Agency.

10.4 The Publisher may opt for the commissions to be paid by bank transfer, electronic purse or any other means of payment available in the country of residence of the Publisher and proposed on the payment page of the Publisher Account of the Advertising Agency.

The various costs relating to payments, including currency exchange commissions, intervention charges or international transfer fees will be at the expense of the Publisher.

At the very latest the Publisher must inform the Representative of their choice of method of payment when submitting the request for payment.

10.5 It is the responsibility of the Publisher to update the information concerning payment terms on the Publisher Account..

10.6 Under no circumstances shall the Representative be held liable for any failure by the Publisher to carry out this update.

Accordingly, the amounts transferred by the Representative to a bank or other account belonging to a third party due to an erroneous indication or the failure to update their bank or other contact information by the Publisher will be definitively lost to the Publisher.

Furthermore, any costs incurred by the Representative in connection with an unsuccessful payment resulting from any error and/or omission by the Publisher in their personal and banking information will be deducted from the commissions due to the said Publisher.

Any dispute relating to a due payment must be communicated in writing to the Representative within a maximum of thirty (30) days from the date of the disputed payment. The expiry of such a thirty (30) day period is deemed to mean acceptance by the Publisher of the payment made by the Representative.

10.7 In any event, any commission not claimed within a period of eighteen (18) months will be definitively lost to the Publisher.

## **ARTICLE 11: SECURITY DEPOSIT**

11.1 Should the Advertising Agency note one or several anomalies concerning the payment by Internet Users and/or Advertisers of the Products purchased by the Internet Users, particularly in the event that the percentage of non-payment to an Advertiser be abnormally high, the Agent shall be entitled to retain a security deposit of an amount to be determined at its own discretion and according to the identified risks.

Similarly, the Representative is entitled to retain a security deposit in the event that they may note one or more anomalies in the behaviour of the Publisher, particularly in the event that the required information on the Publisher Account may be considered incomplete and/or incorrect.

The character of the anomaly shall be interpreted at the discretion of the Representative. However, the Representative may not have recourse to the security deposit before warning the Publisher by email.

11.2 The said deposit shall be used primarily to guarantee the deduction of commissions paid or recorded for Products which finally remain unpaid by the Internet Users and/or the Advertisers as outlined in Article 9 of this agreement.

The deposit will be retained by the Representative for a period of fifteen (15) months.

After expiry of this period, the amount of the deposit, less any commissions previously credited for unpaid Product purchases, will be credited back to the Publisher Account.

11.3 In exceptional circumstances and in the event of a fault committed by the Publisher (failure to comply with their contractual or legal obligations, etc.), all outstanding deposits may be permanently retained by the Representative as compensation.

In any event, the retention of this deposit does not prevent the Representative from initiating an action against the Publisher for contractual liability.

## **ARTICLE 12 - REPRESENTATIVE'S OBLIGATIONS**

In all circumstances, in the execution of this Agreement the Representative is held to an obligation of means.

### Representative's obligations concerning Advertisements

12.1 The Representative undertakes to define the details of their relationship with the various Advertising Agencies in one or several contractual document(s).

12.2 The Representative undertakes to include a clause in their contractual relationship with the Advertising Agencies, stating that the latter shall display the terms and conditions applicable to the different Products available before any commitment is made by the Internet User.

12.3 The Representative shall not be held responsible for any failure by one or more of the servers on which the Advertisements are hosted.

### Representative's obligations concerning its relationship with the Publisher

12.4 The Representative undertakes to ensure that the Advertising Agency shall provide to the Publisher the advertising materials necessary for the promotion of Advertisers as described in Article 6 of this agreement, as soon as possible after the effective date of this agreement.

If applicable, the Advertising Agency undertakes to provide, together with the advertising material, the applicable legal notices and/or logos, relating to intellectual property rights.

12.5 The Representative undertakes to ensure that the Advertising Agency shall make available to the Publisher a Publisher Account as described in Article 3 of this agreement.

The Representative shall not be held responsible should the Publisher Account fail or be temporarily unavailable. In the event that such failure or unavailability should last longer than twenty-four (24) hours, the Advertising Agency undertakes to notify the Publisher by email and implement all necessary means to restore the normal operation of the Publisher Account.

12.6 The Representative undertakes to pay the Publisher under the conditions and limits set out in Articles 9 and 10 of this agreement.

## **ARTICLE 13 - PUBLISHER'S OBLIGATIONS**

### Publisher's obligations concerning the Sites

13.1 The Publisher undertakes to implement all legal and authorized means under the present agreement to promote the Advertisers.

The Publisher undertakes not to promote Advertisers on Sites which display illegal content and notably the Publisher undertakes not to promote Advertisers on Sites with content which is defamatory, offensive, racist, homophobic, anti-Semitic, xenophobic, paedophile, zoophile, which may encourage the public to commit a crime, an offence or a contravention, which is likely to adversely affect the honour, reputation, dignity, personal image rights or the privacy of others, which is contrary to public order, contrary to the laws on intellectual property, advertising, and consumer rights.

Similarly, the Publisher undertakes not to publish any advertising material supplied by the Advertising Agency, as supplied or after modification, on Sites displaying any illegal content as defined above.

13.2 The Publisher undertakes to install so-called RTA tags, or any other means for the recognition of site content by parental control software, on the Site(s) or to do everything in their power to ensure that such tags are installed.

### Publisher's obligation concerning the promotion of Advertisers

13.3 the Publisher undertakes not to provide false information to Internet Users regarding the Products and the applicable terms of sale nor any misleading or defamatory remarks relative to the Products, the Advertisers, the Advertising Agency, the Representative or the operation of the Programme.

In particular, the Publisher undertakes not to associate the Advertisers, the Advertising Agency or the Agent with any illegal content as defined in section 13.1 of this agreement.

13.4 Similarly, the Publisher undertakes not to adopt any behaviour likely to create in the mind of the public and the Internet Users, a doubt as to the legality of the content of the Advertisements or the Products and the applicable terms of sale.

The Publisher undertakes not resort to spam.

13.5 The Publisher undertakes to cause no harm to the execution of the present agreement notably by directing to the Advertisers Internet Users that he knows to be unreliable.

The Publisher undertakes not to interfere with the execution of the present agreement by fraudulently using counterfeit or stolen bank cards to take out subscriptions or by allowing any third party to take out to subscriptions using bank cards that they know to be counterfeit or stolen.

13.6 The Publisher undertakes that unless authorised by the Advertising Agency in advance in writing, the following operations will not be included in the calculation of Commissions:

- any action (purchase, lead, click or display) not carried out by an individual who has freely and spontaneously consented to the action. In particular, any action carried out using a robot, programme or any other partially automated process is prohibited;
- any action (purchase, lead, click or display) carried out by an Internet User in exchange for a consideration, whether this is monetary or not. This includes in particular, but is not limited to, in exchange for access to content, participation in a competition, delivery of a text or message, gain in the form of money or voucher;
- any action (purchase, lead, click or display) carried out using a modified Link or a Link placed on a site not declared by the Publisher;
- and, in general, any action intended to generate commissions unfairly vis-a-vis the Advertisers.

13.7 The Publisher undertakes not to adopt any behaviour likely to cause confusion between the Representative, the Advertising Agency and the Publisher in the minds of the public and the Internet Users.

13.8 The Publisher undertakes to declare to the competent authorities and within the prescribed period, all the income they receive in the execution of the present agreement.

13.9 More generally, the Publisher undertakes to respect all relevant laws and regulations.

## **ARTICLE 14 - LIABILITY - WARRANTIES**

### Liability and warranties concerning the Advertising Agency

14.1 The Advertising Agency warrants to the Publisher that they have all the necessary authorisations and rights for the publication of the advertising material which they shall make available to the Publisher.

Consequently, the Advertising Agency declares accepting full responsibility for the advertising material that they make available to the Publisher and declares giving a warranty to the Publisher against any action by any third party relating to any breach of intellectual property rights or concerning any violation of the laws and regulations in force, including defamation, protection of minors, information of a violent, xenophobic or racist nature that may relate to advertising material which they make available to the Publisher.

14.2 In the event that the liability of the Publisher may be sought for one of the cases referred to in clause 14.1 of this article, and provided that the Publisher shall inform the Agency Advertising by sending within a maximum period of forty eight (48) hours an email and a registered letter with acknowledgement of receipt, the Advertising Agency undertakes to intervene voluntarily in the judicial process, to assume the Publisher's defence costs and warrants the Publisher against any conviction.

14.3 Under no circumstances shall the Advertising Agency warrant the content offered on the internet sites of the Advertisers.

14.4 Under no circumstances shall the Advertising Agency warrant the payment solutions used by the Advertisers.

#### Responsibility and warranties concerning the Publisher

14.5 The Publisher warrants to the Advertising Agency that he has all authorisations and all rights necessary for the content offered on the Sites. In the event of promotion of the Advertisers by Sites owned by a third party under an agreement between the third party and the Publisher, the Publisher shall stand guarantor and declares himself liable for the content on the said Sites.

The Publisher accepts full liability for the content available on all of the Sites and warrants the Advertising Agency concerning any action by a third party concerning any violation of intellectual property rights or concerning any violation of the laws and regulations in force, notably including defamation, protection of minors, violent, xenophobic or racist information that may relate to the content offered on one or several of the Sites and/or the advertising material created or modified by the Publisher.

14.6 In the event that the liability of the Agency Advertising is sought for one of the cases mentioned in Articles 14.5, and on condition that the Advertising Agency shall inform the Publisher by sending, within a maximum period of forty-eight (48) hours, an email or letter with acknowledgement of receipt, the Publisher agrees to intervene voluntarily in the judicial process, to assume the Agency Advertising's defence costs and to warrant the Advertising Agency of any conviction.

#### **ARTICLE 15 - INTUITU PERSONAE**

15.1 From the point of view of the Publisher, this agreement is concluded intuitu personae.

Consequently, this agreement may only be assigned by the Publisher to a third party with the express written agreement of the Representative.

15.2 Conversely, the Publisher accepts in advance the transfer of this agreement by the Representative.

#### **ARTICLE 16 - DURATION OF THE AGREEMENT**

This agreement is concluded for an unlimited period.

#### **ARTICLE 17: TERMINATION**

17.1 This agreement may be terminated at any time and without cause by any of the parties by sending an email to the other party.

The termination will take effect within a period of fifteen (15) days following the sending of the email requesting termination and shall end all obligations of the parties.

17.2 In the event of termination for non-performance by one of the parties of the obligations incumbent on them under the terms of the present agreement, the termination shall take effect immediately following the sending of the termination email which shall indicate the obligation(s) which have not been performed.

17.3 If necessary, the Publisher has a period of thirty (30) days from the effective termination of this agreement to demand the payment of the balance of their Publisher Account by the Representative under the conditions described in Article 10 of this agreement.

Where appropriate, the credit balance of the Publisher Account shall be paid by the Representative to the Publisher within a period of thirty (30 days) following the effective termination of this agreement.

Before any payment is made, a fixed sum of twenty-five (25) euros will be deducted by the Representative from the Publisher Account to cover the charges incurred in the closure of the account.

## **ARTICLE 18: FORCE MAJEURE**

18.1 By express agreement between the parties, the failure or malfunction of the servers hosting the Advertisements or the Advertisers' Sites, the unavailability or malfunction of the Publisher Account, the carrying out of modifications required by any administrative or judicial authority shall be added to those cases usually recognized by the law and jurisprudence as being cases of force majeure.

18.2 In the event of force majeure, it is the responsibility of the defaulting party to notify the other party by email as soon as possible of their failure, the force majeure invoked and the estimated duration of their inability to carry out their obligations.

In the event that such failure exceeds a period of twenty-four (24) hours, the defaulting party will sincerely answer any questions of the other party, which will aim to determine the extent of the impact of the failure and a possible solution which may be adopted.

It is also the responsibility of the defaulting party to notify the other party of the end of the force majeure event and of a return to a normal execution of the agreement.

## **ARTICLE 19 - TOLERANCE**

Under no circumstances shall any tolerance on the part of one party of the failure of the other party to perform its contractual obligations, irrespective of the duration and/or frequency of said tolerance, have the effect of altering the contents of this agreement notably by reducing the respective obligations of each party.

## **ARTICLE 20 - INDEPENDENCE OF THE PARTIES**

20.1 The parties hereto declare that they are each acting for their own account, in their own name, on their own responsibility and are totally independent of one another.

As a result, neither of the parties shall have any power over the other.

20.2 However in the interests of this agreement, each party may seek advice from or make recommendations to the other party concerning the organization of their business. Under no circumstances shall such advice or recommendations be considered mandatory.

20.3 Similarly, the parties to the agreement each declare being completely independent vis-a-vis the Advertisers. Consequently, neither warranty nor any solidarity may be sought between any one of the parties to this agreement and any one or more of the Advertisers.

## **ARTICLE 21 - CORRESPONDENCE BETWEEN THE PARTIES**

21.1 Other than for the request of an official document or as otherwise expressly provided for in this agreement, communications and correspondence between the Representative or the Advertising Agency and the Publisher may legitimately be made by email or by registered letter with acknowledgement of receipt.

21.2 The emails sent to the Publisher will be sent to the address which they have indicated on the Publisher Account. Therefore, neither the Representative nor the Advertising Agency may be held responsible for any failure to inform the Publisher once the email has been sent to the address indicated on the Publisher Account.

## **ARTICLE 22 - CONFIDENTIALITY**

22.1. The Publisher agrees to keep confidential all information, be it of an economic or technical nature etc., any document relating to this agreement and including the terms of this agreement.

In particular, the Publisher undertakes to keep confidential any information submitted *via* their Publisher Account except the exact and global monthly commissions as well as any information of which they had knowledge concerning the expertise of the Representative, the Advertising Agency and the programme's operating procedures.

The Publisher may only disclose any of these elements with the written and express authorization of the Representative or at the written and express request of an administrative or judicial authority.

22.2 This obligation of confidentiality shall apply for the duration of the agreement and for a period of three (3) years following the annulment, cancellation or termination of this agreement.

In the event of non-compliance with this Article, the Publisher shall automatically be required to pay a fixed amount of damages equal to five thousand (5,000) euros for the benefit of the Representative. In any event, the payment of such fixed damages shall not prevent the Representative from initiating an action for contractual liability against the Publisher.

22.3 The Publisher authorizes the Representative and the Advertising Agency to use any statistical information concerning them in any promotion and/or presentation of the Programme, of the Company, or of any product, service and/or programme developed by the Representative, the Advertising Agency, or in which the Representative or the Advertising Agency may have an interest, and in particular in any document, presentation, marketing medium, financial report and client list.

## **ARTICLE 23 – APPLICABLE LAW**

This agreement is governed by the law of Switzerland as far as both substance and form are concerned.

## **ARTICLE 24 – JURISDICTION**

24.1 In the event of a dispute, the parties undertake to seek an amicable solution.

24.2 In the absence of an amicable solution, any dispute relating to the formation, execution or termination of this agreement will be expressly submitted to the jurisdiction the Geneva commercial court in Switzerland, notwithstanding multiple defendants or guarantee proceedings.

The Geneva commercial court in Switzerland will also have express and exclusive jurisdiction in the case of urgent proceedings, interim proceedings or *ex parte* proceedings.