

AFFILIATE TERMS AND CONDITIONS

These are the affiliate terms and conditions (the “**Terms and Conditions**”) of Ultra Media (as defined below) for the provision of services by the Affiliate (as defined below).

Clause 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms and Conditions, both the singular and plural forms of, the following definitions shall have the following meaning:

Ads	means email content, banner ads, buttons, pop-ups, pop-unders, co-registrations, lead generations, hypertext or other links, widgets, works of authorship, jumbo promos, content scripts, add tags, silver bullets, site skins, promotional and other advertising material and any kind of commercially sponsored or related content, related to Ultra Media and/or a specific Campaign;
Affiliate	means any legal person or natural person acting in the course of trade (and including its agents, representatives, employees or any other person acting on its behalf) that signed up, registered and/or enrolled with Ultra Media to provide the Services;
Affiliate Account	means the online account provided by Ultra Media to the Affiliate;
Agreement	means the documents establishing the legal relationship between the Affiliate and Ultra Media as further detailed in Clause 2.2;
Artificial Traffic	means a collective term, also known as fraudulent traffic, for invalid Conversions, which may originate (for example without limitation) from automatic openings, spiders, robots, requests in email or chat rooms, script generators, placing links on websites other than those informed and clicks which are not generated by a browser or clicks which are not preceded by an active act of a true visitor who wants to reach a specific website;
Campaign	means an advertisement campaign operated by Ultra Media and accessible via a specific Landing Page;
Code of Conduct	means the general compliance rules for Affiliate in connection with the performance of the Services, accessible via Ultra Media’s website (Code of Conduct);

Commission	means the commission fee per Conversion minus Artificial Traffic to be paid by Ultra Media to Affiliate, as further detailed in Clause 4.1;
Confidential Information	means all non-public information disclosed (whether in writing, orally, electronically or otherwise) by Ultra Media to Affiliate before and during the Agreement and that is marked or otherwise designated as 'confidential' or 'secret', or by its nature should be considered confidential at the time of disclosure, thereby including, without limitation: processes, methods, formulae, technical information, information in tangible or intangible form relating to and including released or unreleased software, marketing or promotional activities, business policies or practices, business relations and pricing/financial information;
Conversion	means an action upon which the commercial deal is based, for example, if the commercial deal is: CPM (Cost Per Mille), CPA (Cost Per Action), CPC (Cost Per Click), CPL (Cost Per Lead), CPD (Cost Per Download), CPPU (Cost Per Paying User), CPAU (Cost Per Active User), CPI (Cost Per Install), then conversion is considered respectively: mille, action, click, lead, download, paying user, active user and install;
Effective Date	means the date of acceptance by Ultra Media of any (legal or natural) person as an Affiliate of Ultra Media;
Insertion Order	means the document provided by Ultra Media to sign up and register as an Affiliate with Ultra Media;
Intellectual Property Rights	means all intangible, intellectual, proprietary and industrial property rights, worldwide, whether registered or unregistered, including, but not limited to: (a) all trademarks, service marks, trade names and logos; (b) all copyrights, moral rights, and other rights in works of authorship, including images and content, and including copyrights in software (source code); (c) all database rights, (d) all patents or utility models; (e) all designs and drawings; and (e) all other rights in or connected to (technical) know how or trade secrets;
Landing Page	means the URL related to a Campaign and which embeds a tracking code provided by Ultra Media to measure the Conversion;

Media	means any (digital) platform, website, channel, e-mail, message, newsletter, (mobile) application or another traffic source used by the Affiliate;
Services	means the targeting services provided by the Affiliate in order to generate and/or improve Conversion and collect data to optimize a Campaign by means of (without limitation) distributing Ads within its Media;
Terms and Conditions	means these affiliate terms and conditions;
Ultra Media	means Ultra Media C.V., a limited partnership (in Dutch: ' <i>commanditaire vennootschap</i> ') established under the laws of the Netherlands, and trading under the name 'Ultra Media', registered at the trade register (in Dutch: ' <i>Handelsregister</i> ') of the Dutch Chamber of Commerce (in Dutch: ' <i>Kamer van Koophandel</i> ') under number 84713240;
Ultra Media Statistics	means the interpretation of collected data related to the Conversion, at the sole discretion of Ultra Media, on the basis of affiliate tracking software tools.

Clause 2. APPLICABILITY

2.1.The Terms and Conditions shall apply to any of the Services to be provided by an Affiliate to Ultra Media.

2.2.By signing up, registering or otherwise enrolling as an '*Affiliate*' with Ultra Media the Affiliate declares to agree with and accept the applicability of these Terms and Conditions. The Insertion Order (or other registration form) executed by the Affiliate and Ultra Media, together with these Terms and Conditions and the Code of Conduct, collectively form the agreement between the Affiliate and Ultra Media (the "**Agreement**").

2.3.Any changes or additions to these Terms and Conditions shall only be valid once agreed upon with Ultra Media and confirmed in writing. The applicability of any other terms and conditions, including any terms or conditions which are implied by trade, custom, practice or course of dealing or which the Affiliate may purport to apply or which are endorsed upon any correspondence or documents issued by the Affiliate irrespective of their date of communication to Ultra Media, are explicitly excluded.

Clause 3. SERVICES OF THE AFFILIATE

3.1.Upon the completion and execution of the Insertion Order (or other registration form) by the Affiliate and the confirmation thereof by Ultra Media, the Affiliate shall start performing the Services to Ultra Media.

3.2. Ultimately within 2 (two) business days after the Effective Date, the Affiliate will also gain access to its Affiliate Account and receive login details from Ultra Media. The Affiliate shall be independently responsible and liable for any actions (for example of employees of Affiliate) under the Affiliate Account.

3.3. Ultra Media may (temporarily) withhold or deny acceptance of the Affiliate for any reason and at any time without being or becoming liable towards the Affiliate in respect thereof. This may for example be the case in the event that the registration or sign up form are not (yet) completed properly or appear to be incorrect. In such event, additional information may be requested from the Affiliate by Ultra Media.

3.4. With respect to providing the Services and during the Agreement the Affiliate represents and warrants:

3.4.1. to perform the Services on a best effort's basis, thereby taking into account professional skill and care;

3.4.2. to adhere to specific instructions from Ultra Media (e.g. following 'notice and takedown' and/or compliant requests);

3.4.3. that any information provided to Ultra Media regarding itself and/or its business shall be true, accurate and complete;

3.4.4. that none of its Media contain false, untrue or misleading information;

3.4.5. to adhere to and comply with the obligations set forth in the Code of Conduct;

3.4.6. to procure that each Campaign shall be localized properly (i.e. translated correctly and in conformity with applicable local laws and regulations);

3.4.7. to act in compliance with any and all applicable laws, regulations (amongst others in relation to privacy) and/or industry codes of the countries where the Campaign and Ads will be advertised; and

3.4.8. to provide Ads with applicable age rating, where applicable or legally required.

3.5. The Affiliate shall indemnify and hold Ultra Media and its affiliated parties (including, but not limited to its general and limited partners, holding companies, subsidiaries and/or other group companies) harmless from and against any costs, damages or expenses resulting from any third party claims that arise from or are in any way relating to or resulting from the Affiliate's non-compliance with one or more of the representations and warranties mentioned under Clause 3.4.

3.6. The Affiliate acknowledges that Ultra Media may receive its instructions for Campaigns and requests for the Services, from third parties. The Agreement does not comprise any obligation for Ultra Media to retain the Affiliate for (specific) Campaigns respectively Services.

Clause 4. COMPENSATION AND PAYMENT

4.1. For providing the Services during the Agreement, the Affiliate is entitled to receive a Commission from Ultra Media. In this respect, the Affiliate acknowledges and accepts that Ultra Media will invoice the Commission for the provided Services to itself on behalf of the Affiliate.

4.2. The Affiliate acknowledges and accepts that the Ultra Media Statistics will comprise evidence for the calculation of the Commission, regardless of the Affiliate's right to provide evidence of the contrary. In this respect the Affiliate also acknowledges and accepts that Ultra Media shall implement

and use tracking code software tools to monitor and register traffic and Conversion(s) and potential Artificial Traffic generated on or via the Landing Page(s) used by Affiliate.

4.3. Ultra Media may install multi-level fraud detection to optimize the prevention of Artificial Traffic. When Artificial Traffic is detected by Ultra Media, the Affiliate will be informed thereof. In the event that the Affiliate detects Artificial Traffic, it must inform Ultra Media without delay by written notice (including email).

4.4. The invoicing and payment terms will be determined by Ultra Media, whereby the applicable payment term for Ultra Media will not extend the term of 1 (one) month. Within the Affiliate Account, the Affiliate has, inter alia, insight in (amongst others) the running Campaigns, paid and outstanding Commission.

4.5. In the event that the Affiliate wishes to dispute the accuracy of an invoice and/or the Ultra Media Statistics, the Affiliate must notify the dispute to Ultra Media without delay but in no event later than within seven (7) days of the invoice date. If no disputes are made by the Affiliate regarding an invoice from Ultra Media within seven (7) days of the invoice date, the invoice will be deemed accepted by the Affiliate.

Clause 5. TERM, TERMINATION AND SUSPENSION

5.1. The Agreement shall come into force on the Effective Date and shall remain in effect for a term of one (1) year after which it will be renewed and extended automatically by consecutive periods of one (1) year each, unless terminated earlier as per this Clause 5.

5.2. Both Ultra Media and the Affiliate are entitled to wholly or partly terminate the Services (for example regarding a specific Campaign), or to terminate the Agreement as a whole, with or without cause by providing written notice to the other party, thereby taking into account a notice period of at least seventy-two (72) hours, without incurring any liability towards the other party in respect hereof.

5.3. Both Ultra Media and the Affiliate are furthermore entitled to terminate the Agreement (in whole or in part) in writing, with immediate effect and without incurring any liability towards the other party, in the event the other party: (i) has been declared bankrupt, files for bankruptcy or requests a suspension of payments, or (ii) ceases its business or is in the process of liquidation.

5.4. Ultra Media will also be entitled to immediately terminate the Agreement or to request the immediate (temporarily) suspension of the Services (in whole or in part, for example regarding a specific Campaign), without incurring any liability towards the Affiliate, in the event of (i) the Affiliate's non-compliance with one or more of the warranties or representations under Clause 3.4 or (ii) the Affiliate being in default of one or more of its obligations under the Agreement which default cannot be remedied or has not been remedied within eight (8) days after notification of default by or on behalf of Ultra Media.

5.5. In the event that Ultra Media elects to (temporarily) hold, pause or amend a Campaign or Ad, the Affiliate will procure that the requested hold, pause or amendment will take effect within forty-eight (48) hours as from the notification (including by email) from Ultra Media, unless Ultra Media specifically instructs the Affiliate otherwise at that time.

5.6. Upon termination or suspension of the Agreement in whole, or for the relevant part thereof (for example, a specific Campaign), the Affiliate shall immediately cease the Services (or a specific Campaign as the case may be), delete all links in Landing Pages that relate to the relevant Campaign(s) and delete any Confidential Information of and/or provided by Ultra Media, including all copies thereof. The Affiliate shall furthermore immediately cease and delete any references to Ultra Media (thereby including the use of any trademark, tradename and/or logo of Ultra Media). For the avoidance of doubt, the Affiliate shall not be entitled to receive any Commission on any Conversions made after the termination date, but it will not discharge the Affiliate from its obligations under the surviving provisions of the Agreement, in particular this Clause 5.6, Clause 6 (Intellectual Property Rights), Clause 7 (Confidentiality), Clause 8 (Code of Conduct), Clause 11 (Miscellaneous) and Clause 12 (Applicable law and forum).

Clause 6. INTELLECTUAL PROPERTY RIGHTS

6.1. Ultra Media or its licensors own all rights, titles and interests in the Intellectual Property Rights in and connected to Ultra Media, its services and any (content of) the Campaign and the Ads.

6.2. During the term of the Agreement, or applicable Campaign (as the case may be), Ultra Media hereby grants the Affiliate with a non-exclusive, non-transferable and non-sub licensable right to copy, disclose, transfer or otherwise use (the content of) the Campaign and Ads and related Intellectual Property Rights for the sole purpose of providing the Services.

6.3. Nothing in these Terms and Conditions or the Agreement is intended to include the transfer of any Intellectual Property Rights owned by Ultra Media or its licensors, to the Affiliate.

Clause 7. CONFIDENTIALITY

7.1. The Affiliate shall keep confidential all Confidential Information disclosed by or received from, Ultra Media, and the content of any communication with Ultra Media in connection with the Services.

7.2. With respect to the Confidential Information, the Affiliate: (i) shall not use or disclose such Confidential Information for any purpose except as necessary to fulfil the Services, or other obligations under the Agreement, or as required by law; (ii) shall limit access to the Confidential Information solely to employees, agents or any other person who need to obtain such access to fulfil the Services or any other obligation under the Agreement, and (iii) shall require its employees, agents and other persons who have access to the Confidential Information to abide by confidentiality obligations.

7.3. The Affiliate shall be liable for any breach of the confidentiality obligations under this Clause by any of its employees, agents or any other person who obtained access to the Confidential Information.

7.4. Confidential Information shall not include information that is or has become publicly available through no fault of the Affiliate or that was or has been rightfully and independently developed or obtained by the Affiliate free from any duty of confidentiality.

Clause 8. CODE OF CONDUCT

8.1. At all times, the Affiliate shall comply with the Code of Conduct.

8.2. In the event Ultra Media receives a 'notice and takedown' and/or complaint request (for alleged unlawful or inappropriate content) from a third party regarding a Campaign and/or Ads placed by the Affiliate, Ultra Media will inform the Affiliate thereof and the Affiliate shall immediately take the appropriate action as requested by Ultra Media.

Clause 9. DATA PROCESSING

9.1. The Affiliate shall comply with all applicable law and regulations at all times, including applicable law relating to the collection, processing and transfer of personal data such as the European General Data Protection Regulation ("GDPR"). The Affiliate shall indemnify and hold Ultra Media harmless from and against any and all third party claims, damages, losses, costs or expenses or any damages or costs awards sustained or incurred by Ultra Media in connection with any complaint made against Ultra Media under the GDPR and similar legislation anywhere outside the European Economic Area (EEA) as a result of Affiliate's failure to comply with applicable data protection laws.

9.2. Ultra Media is entitled to perform quarterly audit samples amongst the affiliates, thereby including Affiliate, in order to confirm the Affiliate's compliance with the Agreement.

Clause 10. LIABILITY AND INDEMNIFICATION

10.1. In no event will Ultra Media and/or any of its general and limited partners, subsidiaries and/or other group companies, affiliates, partners, licensors or suppliers be liable for any direct, indirect, consequential, punitive, special or incidental damages resulting from, arising out of or in connection with the access, use of, or inability to access or use the Services, even if Ultra Media has been advised of the possibility of such damages, except to the extent that such damages arise directly and solely from wilful misconduct or gross negligence on the part of Ultra Media itself.

10.2. In no event will Ultra Media be liable for defects in the Services or Media, URL(s) or Ultra Media Statistics, or for any damage caused by viruses or components of software and/or Media. Additionally, Ultra Media has no control over, and shall therefore not be liable for, the content and lawfulness of Campaigns and Ads, or the acts or omissions of any other third parties.

10.3. If and to the extent any exclusion or limitation of liability or disclaimer of warranty set out in this Clause 10 shall not be allowed under applicable law, such exclusion, limitation or disclaimer will not apply to the Affiliate, but only to the extent it shall not be allowed. In such case, such exclusion, limitation or disclaimer shall be limited to the extent required by applicable law.

10.4. Except to the extent that liability cannot be limited under applicable law, any and all liability of Ultra Media is limited to the amount paid out, if any, under its liability insurance coverage in the matter concerned. In the event and to the extent that no monies are paid out under its liability insurance for whatever reason, any and all liability of Ultra Media shall be limited to a maximum amount of € 5,000 (five thousand Euros).

10.5. In any event, a claim on Ultra Media shall lapse in case Ultra Media did not receive written notice of such a claim no later than within twelve (12) months after the earlier of (i) termination date of the Agreement, (ii) the discovery by the Affiliate of an event or circumstance that gives or may give rise to that claim or (iii) the moment that the Affiliate could have reasonably discovered an event or circumstance that gives or may give rise to that claim.

10.6. The Affiliate indemnifies and holds Ultra Media, its subsidiaries, and each of their respective officers, directors, partners, members, managers, employees, agents and attorneys harmless from and against all third party claims that arise from or are in any way connected to the Services from the Affiliate, the Affiliate's non-compliance with one or more of the warranties or representations under Clause 3.4, or one of the disclaimers stipulated under Clause 10.2, unless such claims directly result from wilful misconduct or gross negligence by Ultra Media itself. This indemnification includes any legal costs.

Clause 11. MISCELLANEOUS

11.1. Ultra Media reserves the right to unilaterally amend these Terms and Conditions, including the Code of Conduct from time to time. Any such amendments shall be effective fourteen (14) days after notification to the Affiliate. If the Affiliate rejects the amendments, the Affiliate is required to notify Ultra Media hereof within seven (7) days after the notification date. Such rejection will imply that the Affiliate shall terminate the performance of the Services upon the effective date of the amended Terms and Conditions. By continuing to provide the Services after receipt of the notification, the Affiliate will be deemed to have accepted the amended Terms and Conditions.

11.2. If any provision of these Terms and Conditions should to any extent be or become invalid, void or unenforceable, the other provisions shall continue to be applicable and enforceable. With respect to the invalid or void provision, Ultra Media shall provide an amended text for such provision which is valid and legitimate thereby respecting the initial objective of the original provision.

11.3. The Affiliate may not assign or pledge its rights and/or obligations under the Agreement in whole or in part to any third party without the prior written consent of Ultra Media.

11.4. Ultra Media's failure to exercise, or delay in exercising any rights under the Agreement or these Terms and Conditions does not constitute a waiver of such rights.

11.5. Nothing in these Terms and Conditions or in the Agreement shall create or be deemed to create a partnership or relationship of employer and employee between Ultra Media and the Affiliate.

Clause 12. APPLICABLE LAW AND FORUM

12.1. The legal relationship between Ultra Media and the Affiliate, these Terms and Conditions and/or the Agreement shall be exclusively governed by the laws of the Netherlands.

12.2. In the event of any dispute relating to or arising from these Terms and Conditions or the Agreement that cannot be resolved amicably between Ultra Media and the Affiliate, the dispute shall in first instance be exclusively decided by the competent court in Amsterdam, the Netherlands.