



ROI Avenue Advertising Services General Terms and Conditions

1. Parties

The **Company** and the **Agency** as specified in **Campaign Order**.

The above named shall hereinafter individually be referred to as a “**Party**” and collectively as the “**Parties**”.

2. Intention

- 2.1. The **Agency** manages advertising campaigns in online media in Spain and other countries of the EU, through a broad selection of available online publishers and other media, as well as offers sales and marketing consultancy services, aimed at maximizing the results of the campaigns for co-operating companies.
- 2.2. The **Company** wishes to advertise its products and services using the resources provided by the **Agency** to maximise acquired traffic, sales, new customer acquisition or other business target the **Company** defines.

3. Definitions

the following shall be understood to denote:

- 3.1. The **System** is a suite of technology and services, used by the **Agency**, including, but not limited to, technology and services used to target, display, and make available advertising, offers, and payments methods to the **Company** and **Media**, process related transactions, and provide accurate, comprehensive and true to the fact reporting to the **Company** and **Media** and shall include all data, information, content, software, technology, and services.
- 3.2. The **Company Account** is the online element of the **System**, accessible via Internet, through which the **Company**, or an appointed **Campaign Manager**, may review and edit all the **Campaign Conditions**, as well as run reports on **Campaign** results.
- 3.3. **Creative** (or **Creatives** in plural) is any piece of advertising material produced by the **Company** for use in the **Campaign** to promote **Company**'s products or services. It includes, but is not limited to text, text links, banners, email designs (jpg or html), voucher codes, video, rich media, data feeds, or any combination thereof.
- 3.4. **User** (or **Users** in plural) is any person using the Internet.
- 3.5. **Pixel** is a piece of code placed at appropriate website belonging to the **Company**. A **Pixel** is designed to send back to the **System** any information necessary for processing and reporting on the **Campaign** and is activated

automatically each time when an **Event** has taken place and/or in any other situation the **Parties** agree on.

- 3.6. **Campaign** is the advertising action executed (run, delivered) by presenting the **Creatives** to the **Users** through resources belonging or used by the **Media**, in order to generate **Events**. The specific set of conditions shaping how the campaign is run (**Campaign Conditions**) includes the definition of: **Event, Price, Media, Budget, Campaign Time** and **Payment Terms**. The **Parties** may define – **in writing** – additional elements of the **Campaign Conditions**.
- 3.7. **Campaign Order** is a separate document specifying all **Campaign Conditions** agreed and signed by both **Parties** before the beginning of the **Campaign**. **Campaign Order** is a complete set of **Campaign Conditions** and all **Campaign Conditions** are reflected in it. **Campaign Conditions** may however be later amended, **in writing**, without the need to amend, annex or sign a new **Campaign Order**.
- 3.8. **Event** is any kind of action taken by a **User**, which satisfies the business needs of the **Company**. The **Company** defines what constitutes an **Event**. It may be a visit to **Company** website, registering in a **Company** database, purchasing one of the **Company** products or other. The **Company** activates an appropriate **Pixel** each time an **Event** has taken place. While the goal of the **Campaign** is to maximise the number of **Events**, no guarantee is given on number of said **Events** generated in any period of time.
 - 3.8.1. **Event Validation** is a process by which the **Company** approves or rejects **Events**. The **Company** validates **Events** by marking them appropriately in the **System**, uploading a list of appropriately marked **Events** to the **System**, or delivering such list to the **Agency**.
 - 3.8.2. **Approved Event** is an **Event** positively validated by the **Company**. The **Company** is liable to pay the **Price** for each **Approved Event**.
 - 3.8.3. **Rejected Event** is an **Event** validated negatively by the **Company**. The **Company** may reject an **Event** solely when it can demonstrate that at least one of the following is true:
 - The **Event** was a duplicate to another **Event** from the **Campaign**;
 - The **Event** was completed with false or incorrect information;
 - The **Event** violated **Campaign Conditions** or this **Terms & Conditions**;
 - The **Event** was created through any fraudulent action that intentionally attempted to create it, using, without limitation, robots, frames, iframes, scripts, or manually “refreshing” of pages, for the sole purpose of creating **Events**;
 - 3.8.4. **Validation Date** is the day on which **Event Validation** has taken place.
 - 3.8.5. **Event Validation** is irreversible and the **Company** shall not be able to claim back any payments made pursuant to it.
- 3.9. **Price** is the mutually agreed amount of money to be paid by the **Company** to the **Agency** for each and every **Approved Event**. The **Parties** are free to set different **Price** for specific types or groups of **Events**, defined **in writing**. Based

on the selected definition of the **Event**, the **Price** may take form of CPC, CPL, CPA, CPO, CPS or any other agreed by the **Parties**.

- 3.10. **Media** is a person or a legal entity connected to the **System** and able to join the **Campaign** by means of presenting the **Creatives** through websites, databases or other assets belonging to or used by said person or entity. **Media Type** is the type of such assets (like websites, links, emails, display, SEM etc) that the **Media** uses. If no specific **Media** or **Media Types** are selected or restricted from the **Campaign**, all **Media** and **Media Types** are allowed. **Media** who agree to **Campaign Conditions** are free to join the **Campaign**.
- 3.11. **Budget** (monthly, quarterly, annual, campaign) is the maximum amount of money the **Company** is willing to spend in defined period of time. If no specific agreements are made, the **Budget** is understood as unlimited, whereby the **Company** will be liable to pay for all **Approved Events**.
- 3.12. **Campaign Time** is the period of time through which the **Company** allows the **Campaign** to be run. If no specific agreements are made, the **Campaign Time** is understood as unlimited, whereby the **Company** allows the **Campaign** to be run until further specific notice.
- 3.13. **Campaign Manager** is a person authorised by the **Company**, and a separate one by the **Agency**, to interact with the counterpart and take responsibility of the on-going management of the **Campaign**.
- 3.14. In any further communications, when this **Terms & Conditions** demands that such communication be done “**in writing**” or “**by written notice**”, it includes also emails, with the exception of amending the resolutions of this **Terms & Conditions** or terminating it, for which email form is not allowed.

4. Scope of Responsibilities

- 4.1. The **Company** commissions the **Agency** to run the **Campaign** via the **System**.
- 4.2. The **Company** will agree all **Campaign Conditions** with the **Agency in writing**, by signing a **Campaign Order**.
- 4.3. The **Company** may amend **Campaign Conditions** at any point of time, **in writing**, providing a minimum 14-day notice.
- 4.4. The **Agency** may advise on amending **Campaign Conditions** at any point of time. Should the **Parties** not reach an agreement regarding said **Campaign Conditions**, the **Agency** reserves the right to halt the **Campaign** in any selected part or in full.
- 4.5. The **Agency** is responsible for executing the **Campaign**, i.e.:
 - 4.5.1. setting up the tracking on the **System** side as well as instructing, guiding and assisting the **Company** in setting up all necessary elements on the **Company** side;
 - 4.5.2. recruiting and optimising **Media** who take part in the **Campaign**; the **Agency** strives to maximise the number of **Media** in the **Campaign**, but does not guarantee any pre-defined level of activity by **Media**;

- 4.5.3. making sure that the number of **Approved Events** generated in given period of time is not higher than the **Budget** for said period of time divided by the **Price**, and so that the **Budget** is not overstepped;
- 4.5.4. supervising the presentation of the **Creatives** to the **Users**;
- 4.5.5. reporting **Campaign** results;
- 4.5.6. managing the **Media** payouts;
- 4.5.7. advising the **Company** on optimizing and developing the **Campaign**.
- 4.6. The **Company** is further responsible for:
 - 4.6.1. Delivering the **Creatives** in agreed formats and time to the **Agency** or uploading them directly to the **System**; the **Company** shall be responsible for the **Creatives** as well as all legal aspects of the products and services offered through the **Campaign**;
 - 4.6.2. Placing a **Pixel** delivered by the **Agency** on agreed webpage or webpages and activating it upon every **Event**;
 - 4.6.3. Validating the **Events** in accordance to p. 3.8 and subpoints for each calendar month by the 10th day of following month;
 - 4.6.4. Demonstrating reasonable evidence for rejecting any **Event**;
 - 4.6.5. Timely payments of all invoices issued by the **Agency** for **Approved Events** and other services if and as separately agreed;
- 4.7. The **Company** guarantees that it has the requisite legal mandate to distribute its products and services, as well as define and commission the **Campaign**. Upon request, proof of such mandate shall be delivered to the **Agency** within seven (7) business days.
- 4.8. The **Parties** may separately agree – **in writing** – for any other services to be carried out by the **Agency** for the **Company**, on conditions defined therein.

5. Use of Company Account

- 5.1. Upon signing the **Campaign Order** the **Company** is given right to access, view and use the **System** through the **Company Account**, which also allows changing **Campaign Conditions** directly by the **Company** or its **Campaign Manager**.
- 5.2. The above does not allow:
 - 5.2.1. any reproduction, duplication, copying, sale, trading, resale, modification or any other commercial use of any portion of the **System** or any information contained therein;
 - 5.2.2. downloading (other than the page caching) of any portion of the **System** or any information contained therein, except as expressly permitted in the **System**;
 - 5.2.3. decompiling or reverse engineering any part of the **System**;
 - 5.2.4. using any meta-tags or any other "hidden text" utilizing the **Agency** trademarks without prior written permission;

- 5.2.5. any use of the **System** or any information contained therein other than for their intended purpose.
- 5.3. Any unauthorized use of the **System** is strictly prohibited and may result in an immediate termination of the **Campaign Order**.
- 5.4. The **Company** acknowledges and agrees that the form, nature, and content of the **System** and any information contained therein may be improved from time to time without prior notice.
- 5.5. The **Company** will not, in connection with its use of the **System**, violate any applicable law, ordinance, rule, regulation or treaty.

6. Invoicing and payments

- 6.1. The **Company** shall pay the **Agency** the **Price** for each **Approved Event**, upon an invoice issued by the **Agency**. The data and records of the **System** shall be determinative for purposes of calculating the fees due hereunder.
- 6.2. The **Agency** shall invoice the **Company** on a monthly basis for **Approved Events** delivered.
- 6.3. Invoices shall be sent by e-mail and shall be paid in accordance to the Payment Terms as specified on the **Campaign Order**. If nothing else is specified therein, the Payment Terms are 15 days after the invoice issue date.
- 6.4. Payments shall be made without any deduction or compensation to a bank account designated by the **Agency** and without any ability by the **Company** to block payment obligations by an attachment within itself or in any other way.
- 6.5. The **Agency** shall be responsible for processing the **Medias** payouts based on **Approved Events** subject to the receipt of the corresponding invoice payment.
- 6.6. The **Company Account** may be deactivated and the **Company** may be denied access to the **System**, and the **Campaign** may be halted or terminated in case of invoice non-payment by the **Company**. If the **Company** fails to make any scheduled payment for accrued fees, such overdue months are subject to interest charges in the amount of one and a half percent (1.5%) per month, compounded monthly, or if different, the maximum amount permitted by law.
- 6.7. **Parties** may appoint their Financial Officers – representatives responsible for handling all issues pertaining to invoicing and payments. This should be done either in the **Campaign Order** or later **in writing**.

7. Term and Termination

- 7.1. These **Terms & Conditions** shall be binding from the date of signing of the **Campaign Order** and remain valid until said **Campaign Order** is terminated in accordance with these **Terms & Conditions**.
- 7.2. Either **Party** may terminate the **Campaign Order** with a 3-month termination period, by a written notice sent to the other **Party**.
- 7.3. Either **Party** may terminate the **Campaign Order** with immediate effect **by written notice** to the other **Party** if:

- 7.3.1. the other **Party** commits a material breach of these **Terms & Conditions** and fails to remedy the breach (if remediable) within fourteen (14) days of receiving written notice to that effect specifying the breach and requiring it to be remedied; for avoidance of doubt the non-payment of overdue invoices is considered a material breach under these **Terms & Conditions**.
- 7.3.2. the other **Party** ceases to conduct its business operations, or enters into a composition with its creditors or goes into liquidation, or is dissolved, or adjudged insolvent or is otherwise rendered incapable of performing its obligations under these **Terms & Conditions** without the consent of a third party.
- 7.4. Upon termination of the **Campaign Order**, the following terms apply:
 - 7.4.1. The **Agency** shall lock all **Company** access to the **System**, terminate all **Campaigns** and halt all other related services;
 - 7.4.2. The **Parties** will immediately return or destroy any and all confidential or proprietary information of the other **Party** that they may have in their possession or control. If requested, each **Party** will certify **in writing** that all such confidential and/or proprietary information has been returned or destroyed;
 - 7.4.3. The **Company** is responsible for settling any outstanding balances in accordance with p. 6. and subpoints.
 - 7.4.4. The **Company** shall not receive any refund or prorated refund for amounts previously paid or amounts owed to the **Agency** up to the effective date of termination;
 - 7.4.5. The **Company** remains liable for any and all unpaid fees invoiced by the **Agency**. Failure to use the **System** does not constitute a basis for refusing to pay any of the associated fees indicated herein.
 - 7.4.6. The **Company** will pay all fees accrued on or before the effective date of termination, even if such fees do not become due and payable until after the effective date of termination. The **Agency** reserves the right to send **Company** account to debt collection for non-payment and to use **Company** information for debt collection purposes, should such need arise.

8. Representations and Warranties

Each **Party** represents and warrants that:

- 8.1. it will make no false or misleading representations, warranties or guarantees with respect to the other **Party** and all material aspects of the other **Party's** business including, but not limited to, its products and services;
- 8.2. it has the authority and capacity to enter into the **Campaign Order** and it is not subject to any restrictive covenant or other legal obligation;

- 8.3. it shall perform its obligations under the **Campaign Order** and these **Terms & Conditions** in a timely, competent and professional manner and with all reasonable care and skill;
- 8.4. it will comply with all applicable laws and regulations and will maintain any permits, licenses and approvals required to perform its obligations hereunder.

9. Confidentiality

- 9.1. "Confidential Information" means information which by its nature is confidential, is designated by the disclosing **Party** as confidential, which the receiving **Party** knows or ought to know is confidential and which is disclosed by or on behalf of the disclosing **Party** to the receiving **Party**, or otherwise is in the possession of the receiving **Party**, in connection with the **Campaign** and whether disclosed before, on or after the date of signing including information which is disclosed orally, **in writing**, or by any other means including but not limited to printed, other graphic or documentary form, contained in software, on computer disks or tapes (whether machine or user readable), visually by way of model or demonstration and, in each case, any copy thereof.
- 9.2. Notwithstanding 9.1 above, Confidential Information shall not include information which:
 - 9.2.1. entered or subsequently enters the public domain without breach of these **Terms & Conditions** or any other obligation of confidentiality by the receiving **Party**;
 - 9.2.2. was already in its possession or it was known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing **Party** and was not previously acquired from or on behalf of the disclosing **Party** under any obligation of confidentiality;
 - 9.2.3. was disclosed by a third party without breach by the receiving **Party** of any obligation of confidentiality owed to the disclosing **Party**;
 - 9.2.4. was independently developed or discovered by or for it, not as a result of any activities relating to the **Campaign**;
 - 9.2.5. is hereafter disclosed by the disclosing **Party** to a third party without restriction on disclosure or use, including, without limitation, by way of the registration of a patent specification;
 - 9.2.6. is disclosed by the receiving **Party** with the prior written permission of the disclosing **Party**.
- 9.3. Each **Party** shall not use the other **Party**'s Confidential Information, except as necessary for the execution of the **Campaign**, and will not disclose such Confidential Information to any third **Party**, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of the **Campaign**. The foregoing obligations will not restrict either **Party** from disclosing the other **Party**'s Confidential Information, if pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the **Party** required to make such a disclosure

gives reasonable written notice to the other **Party** to enable it to contest such order or requirement.

10. Limitation of Liability

- 10.1. Nothing in these **Terms & Conditions** excludes or limits either **Party's** liability for:
 - 10.1.1. fraud or fraudulent misrepresentation;
 - 10.1.2. voluntary or gross negligent acts or omissions;
 - 10.1.3. loss of life or personal injury;
 - 10.1.4. anything which cannot be excluded or limited by law.
- 10.2. Neither party shall have any liability (whether in contract, tort or otherwise) under or in connection with the **Campaign** nor **these Terms & Conditions** for any special or indirect damages, including, without limitation, consequential damages, loss of profits, loss of savings and damages resulting from interruption of business regardless whether foreseeable, known or otherwise.
- 10.3. The **System** may be incorporated into, and may incorporate, technology, software and services owned and controlled by third parties. Use of such third party software or services is subject to the terms and conditions of the applicable third party agreements (including, without limitation, terms of use and privacy policies), and you agree to look solely to the applicable third party and not to the **Agency** to enforce any of your rights in relation thereto.
- 10.4. The **Agency** will take all reasonable actions to ensure the **Campaign** is realised by **Media** in accordance to **Campaign Conditions** and all applicable laws. the **Agency** does not take responsibility for any misconduct or breach of law or **Campaign Conditions** by **Media** or any other third party. The **Agency** is not liable for damages which arise in connection with third parties, third party software and/or hardware faults or for the insufficient availability or fault-free operation of the Internet.
- 10.5. Under no circumstances can a **Party** or an employee, representative or shareholder of a **Party** be held liable for any direct or indirect losses or damages which are a direct or indirect consequence of, or can be related to, the use by the **Company** of the **System** or the **Company Account**. For avoidance of doubt, **Parties'** liability for indirect damages, including consequential damages, loss of profits, loss of savings and damages resulting from interruption of business, is excluded.
- 10.6. Each **Party's** aggregate liability (whether in contract, tort or otherwise) under or in connection with the **Campaign Order** shall not exceed the net amount payable by the **Company** to the **Agency** in any rolling 3-month (calendar) period ending the date on which such liability arises.

11. Indemnification

- 11.1. The indemnifying **Party**, at its own expense, shall defend, indemnify and hold harmless the indemnified **Party** against any losses, damages, liabilities, penalties, costs and expenses, including without limitation reasonable

attorneys' fees, and pay any settlement amounts or awarded damages arising out of any third party claim, suit or action to the extent that such claim, suit or action is based upon an allegation that:

- 11.1.1. the indemnifying **Party's** performance of any of its obligations contemplated under the **Campaign Order** infringes on any rights of any third party (including, without limitation, any intellectual property rights, privacy rights or publicity rights);
 - 11.1.2. the indemnifying **Party** have breached any of its obligations, representations or warranties hereunder. The foregoing obligations are conditioned on the indemnified **Party** promptly notifying the indemnifying **Party in writing** of such claim.
- 11.2. The indemnified **Party** will promptly notify the indemnifying **Party** of all claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying **Party's** obligations except to the extent such **Party** is prejudiced by such failure or delay) and will:
- 11.2.1. provide reasonable cooperation to the indemnifying **Party** at the indemnifying **Party's** expense in connection with the defence or settlement of all claims,
 - 11.2.2. be entitled to participate at its own expense in the defence of all claims. The indemnified **Party** agrees that the indemnifying **Party** will have sole and exclusive control over the defence and settlement of all claims provided. The indemnifying **Party** will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on the indemnified **Party**, without the indemnified **Party's** prior written consent.

12. Jurisdiction

The **Parties** irrevocably agree that all disputes, controversies or differences (including non-contractual disputes or claims), which may arise between the **Parties**, out of or in relation to or in connection with the **Campaign Order** shall be finally settled by the local court of the other **Party**, then the one which initiates the court process.