commission factory
Part of Awin

Standard Terms for Affiliates

("**Standard Terms**")

1. Joining The Network

1.1 By submitting an Application Form, or by accessing the Platform, the Person named in the Application Form (the "**Affiliate**") is offering to participate in the Network, and market Advertisers and their Products, in accordance with the Application Form and these Standard Terms. By submitting an Application Form or by participating in the Network (including gaining access to and using the Platform and/or the Tracking Code), the Affiliate is also agreeing to the terms of Commission Factory's privacy policy, which can be found here: https://legal.commissionfactory.com/privacy-policy.

1.2 Submission of the Application Form requires payment of a small authorisation fee ("**Authorisation Fee**") by the Affiliate, as set out on the Application Form.

1.3 Acceptance of the Application Form is subject to the sole discretion of Commission Factory Pty Ltd ("**Commission Factory**") Suite 401, 32 Martin Place, Sydney New South Wales 2000, incorporated in Australia with company number 15149765631. Acceptance or rejection of the Application Form will be notified to the proposed Affiliate by email.

1.4 On acceptance of the Application Form by Commission Factory or upon the Affiliate participating in the Network (including gaining access to and using the Platform and/or the Tracking Code), the Application Form and these Standard Terms and any other applicable terms on Awin's Publisher Terms and Conditions page, which can be found here https://www.awin.com/au/publisher-terms, together constitute a legally binding "**Agreement**" entered into by Commission Factory and the Affiliate. On rejection of the Application Form, no agreement is formed.

1.5 The Affiliate is an individual or entity delivering content and/or technology to a discernible audience, both online and offline, including (but not limited to) operators

of websites, applications, or services (including email service) or is a Sub-network. By entering this Agreement with Commission Factory, the Affiliate will join the Network to market Advertisers or their Products.

1.6 This Agreement prevails over any terms supplied by the Affiliate, whether or not such terms are agreed to by Commission Factory or any Advertiser.

1.7 Any individual contracting on his or her own behalf warrants that he or she is aged 18 or over. Any individual completing the Application Form on behalf of a proposed Affiliate warrants that he or she has all necessary authority to bind that proposed Affiliate.

2. Definitions

2.1 The following definitions and rules of interpretation apply in this Agreement:

"ABN" has the meaning given to that term in the GST Act;

"Action" means a Sale, Lead, Click, Ad Impression, or other event, that has been specified as eligible for remuneration by the respective Advertiser under its Program Terms, on which Commission may be based under this Agreement;

"Ad Impression" means a display of an advertisement of an Advertiser by the Affiliate, as reported by the Tracking Code only;

"Advertiser" means a Person which has agreed with Commission Factory or a Commission Factory Group Company to join the Network to be marketed, and/or to have its Products marketed;

"Advertiser Materials" means any trademarks, advertising content, images, text, video, data or other material provided by or on behalf of an Advertiser to Commission Factory, the Affiliate or a Sub-affiliate;

"Advertiser Program" means an ongoing affiliate marketing program of an Advertiser on the Network, for the promotion of the Advertiser or its Products in accordance with this Agreement and the Program Terms;

"Advertiser URLs" means, from time to time, any websites, apps or services of an Advertiser offering Products and to which the Affiliate may link;

"Advertising Standards" means any applicable advertising laws, regulations or standards, data laws relating to advertising (including the Children's Online Privacy Protection Act), including without limitation any FTC Guidance, any generally accepted self-regulatory codes of practice, and any related guidance or best practice advice;

"Affiliate Account" means the respective account of the Affiliate on the Platform;

"Affiliate Service" means a website, application or service operated by the Affiliate capable of marketing Advertisers and their respective Products;

"Application Form" means the registration form at https://dashboard.commissionfactory.com/Register/, or as otherwise provided by Commission Factory from time to time, by which Affiliates apply to participate in the Network;

"Approved Lead" means a Lead approved by an Advertiser in accordance with clause 5;

"Approved Sale" means a Sale approved by an Advertiser in accordance with clause 5;

"Authorised User" means an individual permitted to view, or view and operate, the Affiliate Account on behalf of the Affiliate, by its individual Authorised User Account, as set out in clause 3;

"Authorised User Account" means the account of an individual on the Platform, permitted to view, or view and operate, the Affiliate Account on behalf of the Affiliate, as set out in clause 3;

"Awin" means Awin AG of Otto-Ostrowski-Straße 1A, 10249 Berlin, Germany, incorporated in Germany with company number HRB 75459, a Commission Factory Group Company, including its subsidiaries;

"Bonus" means an ad hoc payment to the Affiliate by an Advertiser in return for a specific promotion or other marketing activity;

"Business Day" means a day other than a Saturday, Sunday or national public holiday in Australia;

"Change of Control" means a change in the beneficial ownership of more than 50% of the issued share capital of a company or a change in the majority of the Persons with legal power to direct or cause the direction of the general management of a company;

"Click" means the intentional and voluntary following of a Link by a Visitor as part of marketing services as reported by the Tracking Code only;

"Code of Conduct" means Commission Factory's code of conduct for affiliates at: https://awin.com/docs.awin.com/marketing/Australia/Affiliate+Code+of+Conduct+CF.pdf including Supplier Code of Conduct, Sub-network Code of Conduct and any applicable codes of conduct and best practice documents incorporated therein by

reference as may be amended or updated by Commission Factory from time to time on notice to the Affiliate and which are an integral part of these Standard Terms;

"Commission" means the amount payable to the Affiliate in return for marketing an Advertiser and its Products, in accordance with that Advertiser's Program Terms, and subject to any agreement for the sharing of such amounts with third parties;

"Commission Factory" means Commission Factory Pty Ltd of Suite 401, 32 Martin Place, Sydney, Australia, incorporated in Australia with company number 15149765631, an Awin Group Company;

"Confidential Information" means any information disclosed by or relating to a party, including: information arising during the Term of this Agreement; information about a party's business affairs; information about a party's operations, products or trade secrets; information about a party's technology (including any know-how and source code) and any derivatives of any part thereof and which (i) is marked or identified as confidential; or (ii) would be regarded as confidential by a reasonable business person;

"Data Regulation" means any applicable data protection, privacy or similar laws that apply to data processed in connection with this Agreement, including the Privacy Act 1988, for EU and UK citizens the GDPR, the UK GDPR, the UK Data Protection Act 2018, ePrivacy and for US citizens, FTC Guidance, US state and federal legislation relating to data privacy and security and any amendments to these laws or replacements of these laws;

"Effective Date" means the date of acceptance of the Application Form by Commission Factory or the date the Affiliate begins to participate in the Network (including gaining access to and using the Platform and/or the Tracking Code), whichever is earlier;

"ePrivacy" means the Privacy and Electronic Communications Directive 2002/58 and the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 (including any replacing or superseding legislation);

"FTC Guidance" means the published cases and guidelines from the United States Federal Trade Commission, including without limitation the guidance on substantiation of claims, privacy, data security, native advertising and disclosure guidance for influencers and spokespeople;

"GDPR" means the EU General Data Protection Regulation 2016/679;

"Group Company" means any holding company or subsidiary of a party or any of its holding companies. A company is a "**subsidiary**" of another company, its "**holding**

company", if that other company (i) holds a majority of the voting rights in it, or (ii) is a member of it and has the right to appoint or remove a majority of its board of directors, (iii) or is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it;

"GST" has the meaning given to that term in the GST Act;

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Intellectual Property Rights" means all copyrights and related rights, patents rights to inventions, utility models trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including any database rights in the Network), topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Lead" means a 'sales lead' of an Advertiser generated in the Tracking Period, as reported by the Tracking Code only;

"Link" means a hyperlink from a Promotional Space to an Advertiser URL;

"Network" means the marketing network of affiliates, integration partners and advertisers operated by Commission Factory and Commission Factory Group Companies to facilitate, amongst other things, affiliate and performance marketing;

"Owner" means a single Authorised User with full access to, and control of, the Affiliate Account and which is at all times authorised to act on behalf of the Affiliate and bind the Affiliate;

"Platform" means the intranet and software platform provided by Commission Factory, and any functionality or data feeds accessed or made available through such platform;

"Product" means a product, service or equivalent offered by an Advertiser on any Advertiser URL;

"Program Terms" means any terms and conditions, or other requirements applied by an Advertiser to the participation in its Advertiser Program;

"Promotional Space" means any advertising inventory appearing on the Affiliate Service, or means of delivering Advertiser Materials enabled by the Affiliate Service;

"Sale" means the agreed purchase of a Product by a Visitor in the Tracking Period, as reported by the Tracking Code only;

"Self-billing invoices" means tax invoices issued by Commission Factory on behalf of the Affiliate in accordance with clause 7.4;

"Sub-affiliate" means an individual or entity delivering content and/or technology to a discernible audience, both online and offline, including (but not limited to) operators of websites, applications, or services (including email service), which/who has agreed with the Sub-network to market Advertisers or their products;

"Sub-network" means the operator of a marketing network of further affiliates to facilitate, amongst other things, affiliate and performance marketing, which has entered into this Agreement to join the Network to market Advertisers or their products as an Affiliate;

"Sub-network Code of Conduct" means Commission Factory's sub-network code of conduct at https://s3.us-east-1.amazonaws.com/docs.awin.com/marketing/Australia/Commission+Factory+Subnetwork+Code+of+Conduct.pdf incorporated by reference into the Code of Conduct as may be amended or updated by Commission Factory from time to time on notice to the Affiliate;

"Supplier Code of Conduct" means Commission Factory's supplier code of conduct at https://s3.us-east-1.amazonaws.com/docs.awin.com/marketing/Australia/Supplier+Code+of+Conduct+CF.pdf incorporated by reference into the Code of Conduct as may be amended or updated by Commission Factory from time to time on notice to the Affiliate;

"Suspension" means the suspension by Commission Factory or any Awin Group Company of the Affiliate's participation in the Network or in the Advertiser Program for a period of time, including any or all of the following: (i) preventing the Affiliate from accessing the Platform; (ii) withholding payments otherwise due to the Affiliate; (iii) ceasing to track Actions; (iv) removing any Advertiser Materials from the Affiliate Service and "**Suspend**" shall be interpreted accordingly;

"Term" means the term of this Agreement from the Effective Date until its termination or expiry in accordance with clause 14 or 17.5;

"Tracking Code" means the Commission Factory software code (from time to time) for the recording of, amongst other things, web traffic and Actions;

"Tracking Fee" means the fee payable to Commission Factory or an Commission Factory Group Company, calculated either (i) as an override fee of an amount equal

to a specified percentage of any total (a) Commissions and Bonuses or (b) amount of all Approved Sales, or (ii) on such other basis as may be agreed by Commission Factory and an Advertiser;

"Tracking Period" means the period of time in which the Actions of a Visitor are attributed to the Affiliate and, subject to the Program Terms, generate Commissions for the Affiliate;

"UK GDPR" means the retained UK law version of the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419);

"Validation Period" means the period of time during which Advertisers may approve or decline Sales and Leads; and

"Visitor" means any Person who follows a Link.

2.2 In this Agreement:

2.2.1 any meanings given to terms in the Application Form shall apply to these Standard Terms;

2.2.2 the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", "**Process**" and "**Processing**" have the meanings given to them in any applicable regulations implementing the Directive;

2.2.3 "**include**" or "**including**" is without limitation;

2.2.4 the singular will include reference to the plural and vice versa;

2.2.5 a "**Person**" includes an individual, company, partnership or unincorporated association;

2.2.6 a statute, order, regulation or other similar instrument will include any amendments to it or replacements of it; and

2.2.7 "**writing**" and "**written**" includes emails but not faxes.

2.3 If there is a conflict between the Application Form and the Standard Terms, the Application Form shall prevail.

3. Participation in The Network And Use of The Platform

3.1 Subject to the Affiliate's compliance with this Agreement, Commission Factory will:

3.1.1 permit the Affiliate's participation in the Network for its assignment of the Promotional Space; and

3.1.2 grant the Affiliate access to the Platform.

3.2 Commission Factory may change, update or take any other measures with respect to any aspect of the Platform, Network, and/or Tracking Code at its sole discretion.

3.3 On the Effective Date, the Affiliate shall:

3.3.1 register an Affiliate Account; and

3.3.2 nominate an Authorised User as Owner of that Affiliate Account.

3.4 Each Affiliate Account may have only one Owner and must have an Owner at all times. Each Affiliate Account may have a reasonable number of Authorised Users.

3.5 The Owner may assign the Owner role to another Authorised User via the Platform at any time. Assignment of the Owner role does not assign the Affiliate's rights and obligations under this Agreement.

3.6 To the extent enabled by the Platform, Authorised Users shall be allocated permissions to view, or view and operate, the Affiliate Account by the Owner, acting on behalf of the Affiliate. Authorised Users may, on behalf of the Affiliate, also allocate permissions to view, or view and operate, the Affiliate Account, provided that no Authorised User may grant greater permissions than they themselves hold. The Owner may, at any time, withdraw the permission of any Authorised User to view and/or operate the Affiliate Account.

3.7 The Affiliate undertakes that:

3.7.1 the Owner, shall remain authorised to act on behalf of the Affiliate and bind the Affiliate;

3.7.2 all Authorised Users are permitted to view, or view and operate, the Affiliate Account in accordance with any permissions granted on the Platform, which shall be kept up to date by the Affiliate;

3.7.3 it shall implement and allow Commission Factory to implement any security measures, methods and/or standards of authentication as Commission Factory sees fit and shall ensure that the Owner and all Authorised Users shall do the same;

3.7.4 it shall use best endeavours to ensure that the Owner and all Authorised Users shall:

(a) access the Platform in their own name under their own Authorised User Account; and

(b) keep any passwords and 2SV (two-step verification) recovery codes confidential.

3.8 The Affiliate shall:

3.8.1 ensure the proper functioning and maintenance of all Links;

3.8.2 provide Advertisers and Commission Factory with full and clear instructions as to the Advertiser Material it may reasonably require for the purposes of the promotion of an Advertiser or its Products in accordance with this Agreement and the Program Terms;

3.8.3 provide Advertisers reasonable access to information the Advertiser may require to operate the Advertiser Program;

3.8.4 remain primarily liable for the acts and omissions of all Sub-affiliates; and

3.8.5 not participate in an Advertiser Program via a Sub-network (as such Sub-network's Sub-affiliate) if the Affiliate has been removed from such Advertiser Program. Additionally, the Affiliate shall not work with other sub-networks (meaning operators of a marketing network of further affiliates to facilitate, amongst other things, affiliate and performance marketing which also participate in the Network) as Sub-affiliates if the Affiliate is a Sub-network. Sub-networks can only join the Network and participate in Advertiser Programs directly, not indirectly through any other Sub-network.

3.9 Commission Factory shall not be liable for any losses or damages suffered by the Affiliate due to the disclosure of any Authorised User Account passwords or 2SV recovery codes.

3.10 The Affiliate shall remain solely responsible and liable for all activities occurring under any of the Authorised User Accounts, including any acts or omissions carried out under any Authorised User Account, and for ensuring the security of the Authorised User Accounts. Commission Factory shall not be responsible for any activity occurring under any of the Authorised User Accounts.

3.11 If the Affiliate suspects that a third party has gained unauthorised access to access data, the Affiliate shall inform Commission Factory immediately by sending an e-mail to support@commissionfactory.com or such other email as may be notified to the Affiliate from time to time.

3.12 Commission Factory may Suspend or withdraw any Authorised User Accounts at its discretion, or on request by the Affiliate.

3.13 Under this Agreement, Commission Factory or any other Awin Group Company may, on behalf of Commission Factory:

3.13.1 provide any aspect of the Network or the Platform (including the granting of sublicences and licences under clause 10);

3.13.2 enjoy any benefit, or exercise any right;

3.13.3 satisfy any of Commission Factory's obligations.

4 Marketing

4.1 The Affiliate may request to market Advertisers or their Products at their discretion by applying to participate in an Advertiser Program. Advertisers may approve or refuse such requests, and remove Affiliates from Advertiser Programs, at any time at their discretion. The Affiliate may only market an Advertiser or its Products under this Agreement with the Advertiser's continued approval.

4.2 Advertisers may apply Program Terms and make changes to any Program Terms at their discretion, which shall become effective on notice to the Affiliate, including by publication on the Platform. Advertisers may change their Program Terms at any time. The Affiliate is solely responsible for ensuring it is aware of any changes to the Program Terms.

4.3 Subject to the Affiliate's compliance with this Agreement and the Program Terms, and the continued approval of the respective Advertiser, the Advertiser Materials will be made available to the Affiliate on the Platform.

4.4 Commission Factory, however, is not obliged to review any Advertiser Material or check their legality or accuracy. An Affiliate admitted to the Advertiser Program may publish the Advertiser Materials through its Affiliate Service at its discretion and use them solely to the extent permitted under this Agreement and the Program Terms.

4.5 Commission Factory may deactivate or request the Affiliate to deactivate any Links on request of the respective Advertiser, or at its sole discretion. In the event that Commission Factory requests the Affiliate to deactivate the Links per this clause, the Affiliate shall immediately comply with this request.

4.6 The Affiliate shall remove any Advertiser Materials from the Affiliate Service immediately on request of either the Advertiser or Commission Factory.

4.7 Commission Factory will use reasonable endeavours to procure that Advertisers comply with any terms and conditions, or other requirements, applied by the Affiliate to its promotion of Advertisers or their Products.

5 Tracking And Validation

5.1 The Tracking Code and Program Terms will be the sole bases for recording and determining Actions and Commissions and for tracking. No other means of recording or determining Actions or Commissions shall be used under this Agreement, notwithstanding any agreement or arrangement between the Affiliate and any Advertiser to the contrary.

5.2 Sales and Leads will only be attributed to the Affiliate where the Tracking Code records that the Affiliate was responsible for the most recent referral of the Visitor to the Advertiser URL prior to that Sale or Lead, unless expressly agreed otherwise between the parties or specified otherwise by the Advertiser in the respective Program Terms, and in each case subject to any communicated “cookie hierarchy” or “commission hierarchy”. The latter means that Commission Factory is free to unilaterally change the applicable “cookie hierarchy” or “commission hierarchy” (for example, enforcing soft cookie or another cookie as stated in the respective “cookie hierarchy” or “commission hierarchy”) by giving prior notice to the Affiliate.

5.3 Advertisers may approve or decline Sales and Leads at their discretion, subject to the applicable Program Terms.

6 Actions, Commissions And Bonuses

6.1 The amount of any Commissions is as may be displayed on the Platform.

6.2 Advertisers may change the amount of Commission offered on notice to Affiliates. Commission Factory will endeavour to procure that an Advertiser's reduction of the Commission shall take effect at least seven (7) days after notification.

6.3 Bonuses may be agreed by the Advertiser at its discretion and must be processed via the Platform.

6.4 Without prejudice to any other rights or remedies of Commission Factory, if Commission Factory reasonably suspects that any Commissions and/or Bonuses paid under this Agreement have been generated in breach of this Agreement, Commission Factory may set off or deduct the amount of such Commissions and/or Bonuses from any future payments due to the Affiliate or from any funds held to the Affiliate's account from time to time (whether under this Agreement or any other agreement between Commission Factory and the Affiliate). Such deduction shall

constitute a genuine pre-estimation of the loss suffered by Commission Factory as a result of the payment of such Commission and/or Bonus in breach of this Agreement.

7 Invoicing And Payments

7.1 The Authorisation Fee will be refunded to the Affiliate upon acceptance or rejection of the Application Form by Commission Factory.

7.2 Commission Factory will pay the Affiliate:

7.2.1 Commissions in respect of each Approved Sale, Approved Lead, Clicks or one thousand Ad Impressions; and

7.2.2 Bonuses generated pursuant to this Agreement.

7.3 Commissions and Bonuses shall only be due for invoicing and payment:

7.3.1 once Commission Factory has received the corresponding payment from the Advertiser as invoiced by Commission Factory to the Advertiser; and

7.3.2 in respect of Actions procured in accordance with this Agreement and any applicable Program Terms.

7.4 Self-billing invoices for Commissions and Bonuses can be accessed by the Affiliate via the Platform. Self-billing is implemented as follows:

7.4.1 The Affiliate authorises Commission Factory to prepare and issue tax invoices and adjustments notes for Commissions and Bonuses on the Affiliate's behalf to Commission Factory.

7.4.2 Self-billing tax invoices will only be issued by Commission Factory where the supplier is registered for GST.

7.4.3 The Affiliate agrees not to issue invoices or tax invoices for any Commissions and Bonuses generated pursuant to this Agreement.

7.4.4 Commission Factory will no longer be authorised to issue Self-billing invoices where Commission Factory gives the Affiliate notice in writing to such effect. This will take effect from the date specified in the notice.

7.4.5 The Affiliate warrants that:

7.4.5.1 any information regarding the Affiliate's ABN and GST registration provided to Commission Factory is correct; and

7.4.5.2 the Affiliate will immediately notify Commission Factory if it becomes GST registered, cancels its GST registration, cancels its ABN or commences operating under a new ABN.

7.4.6 Commission Factory, as the service recipient, is currently registered for GST and will notify the supplier in the event that it ceased to be registered for GST.

7.4.7 The Affiliate indemnifies Commission Factory against any loss, cost or expense incurred by Commission Factory where the Affiliate breaches this clause 7.4, including any penalties and interest.

7.5 The Affiliate will immediately update the Platform accordingly if it:

7.5.1 no longer have an active ABN; or

7.5.2 have changed or updated its GST status; or

7.5.3 transfer its business as a going concern; or

7.5.4 become registered under another ABN.

7.6 In case where the Affiliate is not, or ceases to be registered for GST, the Affiliate will provide Commission Factory with the reasons for not quoting for an ABN using the applicable form issued by the ATO.

7.7 Commission Factory will pay all self-billed invoices subject to:

7.7.1 any minimum payment thresholds implemented by Commission Factory from time to time being satisfied;

7.7.2 the correct, accurate and complete payment details and tax information of the Affiliate being provided by the Affiliate;

7.7.3 the provision of any additional information reasonably requested by Commission Factory in respect of the Affiliate's location or residence;

7.7.4 the payment not being subject to any internal audits or 'network quality' reviews from time to time;

7.7.5 completion and/or satisfaction of payment conditions and processes by the Affiliate, including any sign up, set up, or registration processes with Commission Factory or with a third-party service provider (or a third-party payment processor) chosen by Commission Factory and/or specific conditions or processes related to the relevant payment methods introduced by Commission Factory or third-party service providers (or third-party payment processors) from time to time, including by displaying on or communicated through the Platform.

7.8 The Affiliate accepts and acknowledges that Commission Factory is entitled to withhold and/or retain payments due to the Affiliate until the conditions of clause 7.7

and other terms of this Agreement (as applicable) are met, complied with and satisfied by the Affiliate.

7.9 All payments will be made by Commission Factory or a third-party service provider (or a third-party payment processor) chosen by Commission Factory to the bank account or in accordance with the payment method nominated by the Affiliate on the Affiliate Account on the Platform from time to time. In the event that payments are made by a third-party service provider (or a third-party payment processor), the Affiliate may be required to register on the third-party platform and agree to the terms and conditions, and/or fulfil other requirements, of such third-party service provider (or third-party payment processor) to be able to receive the payments. Commission Factory or the third-party service provider (or third-party payment processor) chosen by Commission Factory to process the payments is not obligated to take steps to verify the accuracy of bank account or any other payment detail information provided by the Affiliate. Updates to bank account information or payment details may take up to two Business Days to take effect.

7.10 All payments will be made in the currency in which the respective Commissions are received from Advertisers. If the Affiliate selects a different currency for receiving payments, any costs related to currency conversion or losses due to exchange rate fluctuations shall be borne by the Affiliate. This includes any internal currency conversions conducted by Commission Factory, as well as conversions by third-party service providers.

7.11 The Affiliate will immediately repay any amounts paid to the Affiliate in error, or other than in accordance with the Affiliate's rights under this Agreement.

7.12 Any underpaid Commission or Bonuses must be notified to Commission Factory immediately. Subject to clause 7.3 and other terms of this Agreement (as applicable), any underpaid Commission or Bonuses notified by the Affiliate to Commission Factory within 12 months of the underpayment will be rectified. The Affiliate hereby waives its right to recover any underpaid Commissions or Bonuses that the Affiliate fails to report to Commission Factory within 12 months of the underpayment.

7.13 Commission Factory shall be entitled to retain unclaimed Commissions and Bonuses and the Affiliate shall forfeit any claim in respect of such unclaimed Commissions and Bonuses if (i) a self-billed invoice has been generated but Commission Factory has been unable to transfer payment and (ii) correct and up to date payment details have not been provided to Commission Factory within 12 months of the self-billed invoice in question.

7.14 Commission Factory shall be entitled to recover paid Commissions from the Affiliate in case of an insolvency of an Advertiser if an insolvency claim is made against

Commission Factory which obliges Commission Factory to pay back Commissions which were paid in breach of applicable insolvency law.

7.15 The Affiliate will not receive any interest on Commissions or Bonuses held to Affiliate`s account.

7.16 Commissions and Bonuses to Affiliates are paid by Commission Factory in its own right and not as agent for Advertisers.

7.17 In clauses 7.16 to 7.23, a word or expression defined in the GST Act which is not otherwise defined in this Agreement has the meaning given to it in that GST Act.

7.18 All fees, charges and other consideration provided by Commission Factory to the Affiliate under this Agreement is exclusive of GST unless it is specifically expressed to be GST inclusive. If the Affiliate makes a taxable supply to Commission Factory under or in connection with this Agreement, Commission Factory must pay the Affiliate an additional amount ("**GST Amount**") equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST).

7.19 The GST Amount must be paid by Commission Factory at the same time as any consideration for the taxable supply is first paid or provided or later on demand if not paid at that time.

7.20 If an adjustment event varies the amount of GST payable in respect of a supply by the Affiliate under this Agreement, Commission Factory must adjust the amount payable by Commission Factory to take account of the adjustment event. Any payment under this clause is to be treated as an increase or decrease of the GST Amount.

7.21 Subject to an express provision in this Agreement to the contrary, any payment or amount required to be made under this Agreement which is calculated by reference to sales, revenue, income or any amounts received or receivable from a third party ("**Revenue**") will be calculated by reference to that Revenue exclusive of GST.

7.22 If part of a supply is a separate supply under GST Act (including for GST attribution purposes), that part is a separate supply for the purpose of this clause.

7.23 Clauses 7.16 to 7.22 will survive the termination of this Agreement by any party.

8 Affiliate's Relationship With Advertisers

8.1 The Affiliate's participation in the Network does not create any contract between the Affiliate and any Advertiser.

8.2 During the Term the Affiliate will not, directly or indirectly, enter or attempt to enter into any agreement, understanding or other form of arrangement (whether express

or implied) with any Advertiser where payments are made to the Affiliate in respect of any marketing services (including but not limited to affiliate, display, programmatic, search, email and click-to-call marketing) other than under this Agreement, without Commission Factory's prior written approval.

8.3 For the avoidance of doubt, and in accordance with clause 7.9, this includes any payments related to Actions generated in connection with this Agreement, all of which must be processed exclusively through Commission Factory or the designated third-party service provider chosen by Commission Factory.

9 Warranties And Indemnity

9.1 Each party warrants and undertakes to the other for the Term that:

9.1.1 it has full power and authority to enter into this Agreement;

9.1.2 it holds all licences and approvals necessary for the performance of its obligations under this Agreement;

9.1.3 it will perform its obligations under this Agreement in accordance with all applicable laws and using reasonable skill and care; and

9.1.4 it will not make any false, misleading or disparaging representations or statements regarding the other party.

9.2 The Affiliate warrants and undertakes to Commission Factory for the Term that:

9.2.1 neither the Affiliate nor any of its officers or shareholders have previously been party to an agreement terminated by Commission Factory or any Awin Group Company for breach;

9.2.2 no officer or shareholder of the Affiliate has been an officer or shareholder of a company (or other entity) party to an agreement terminated by Commission Factory or any Awin Group Company for breach;

9.2.3 all information about the Affiliate set out in the Application Form, on the Platform, or otherwise provided to Commission Factory is complete, true, accurate, not misleading and will be kept up to date;

9.2.4 its marketing of any Advertiser or its Products will comply with all Advertising Standards and Data Regulation;

9.2.5 the Affiliate Service will be operated in accordance with all applicable laws (including Advertising Standards and Data Regulation);

9.2.6 it shall comply with the Code of Conduct and the Supplier Code of Conduct at all times;

9.2.7 it shall comply with all relevant tax laws;

9.2.8 it shall retain ultimate control of the operation of the Affiliate Service;

9.2.9 it shall not use the Platform other than in accordance with the terms of the licences granted under clause 10, nor use the Platform or any part of it to build a product or service which competes with the Platform or any part of it;

9.2.10 it is the owner or valid licensee of any Intellectual Property Rights appearing on the Affiliate Service, and that no part of the Affiliate Service infringes the rights of any third party;

9.2.11 all Advertiser Materials will be accurately and faithfully reproduced; and

9.2.12 it shall ensure that its Sub-affiliates (where applicable) are made aware of, and are obliged to comply with, the terms of this Agreement.

9.3 The Affiliate will indemnify, defend and hold harmless Commission Factory and any of its Group Company (including its directors, employees, agents or contractors), from and against any claims, costs, damages, losses, liabilities and expenses (including legal fees) relating to any claims, actions, suits or proceedings by third parties against Commission Factory or any Commission Factory Group Company arising out of or related in any way to any breach by the Affiliate or its Sub-affiliates (where applicable) of any of the warranties at clauses 9.1, 9.2 and 12.4, any breach by the Affiliate or its Sub-affiliates of clauses 11, 10.3 and 10.7, and/or any breach of its Sub-affiliates of the terms of this Agreement. This indemnification shall include, but is not limited to, reimbursement of any Commissions or Bonuses generated and received by the Affiliate as a result of a breach by the Affiliate of this Agreement, as well as the reimbursement of the Tracking Fees in respect of such Commissions (or Bonuses, Approved Sales or such other basis as may be agreed by Commission Factory and an Advertiser) which have been generated in breach of this Agreement by the Affiliate directly to the Advertisers. The Affiliate accepts and agrees that such reimbursement shall constitute a genuine pre-estimation of the loss suffered by Commission Factory as a result of the breach of this Agreement.

10 Intellectual Property

10.1 Commission Factory grants to the Affiliate, for the duration of its participation in the Advertiser Program, a revocable, non-exclusive, non-transferable, royalty-free, worldwide sublicence to publish Advertiser Materials, without modification, on the Affiliate Service in the Promotional Spaces to the extent necessary to enable the Affiliate to market the respective Advertiser and its Products on the Network in compliance with the Agreement and the Program Terms.

10.2 A sublicence granted to a Sub-network under clause 11 shall be further sub-licensable by the Sub-network to Sub-affiliates on terms equivalent to clause 11, with Commission Factory's prior written consent.

10.3 A sublicence granted by a Sub-network under clause 10.2 shall not be capable of further sublicence by the Sub-affiliate without Commission Factory's prior written consent.

10.4 Commission Factory hereby grants to the Affiliate a revocable, non-exclusive, non-sub-licensable, non-transferable, royalty-free worldwide licence to use the Platform to the extent necessary for the Affiliate to participate in the Network and perform its obligations under this Agreement.

10.5 The Affiliate will not, and will not attempt to, change, reverse engineer or create derivative works of the Platform or the Tracking Code.

10.6 Each party reserves all of its right, title and interest to any of its Intellectual Property Rights licensed under this clause 10, or which it creates under this Agreement or which is created by operation of the Tracking Code.

10.7 The Affiliate shall use information and data obtained from and in connection with participating in the Network only for the purpose of this Agreement. Uses for any other purpose, or disclosure of such information and data are prohibited.

10.8 Either party may identify the other party in lists of clients or customers and may use the other party's name and logo in marketing materials and presentations. Any other use shall require the prior written consent of the other party.

10.9 The Affiliate shall make available to Commission Factory all requested information in respect of its use of the Platform within 15 days upon request of Commission Factory.

11 Confidentiality

11.1 Each party will only use Confidential Information to enjoy its rights or comply with its obligations under this Agreement. Save as set out in this Agreement, neither party will disclose any Confidential Information. Confidential Information shall be kept confidential.

11.2 The obligations of confidentiality in this Agreement will not apply to Confidential Information to the extent it:

11.2.1 is in the public domain (other than as a result of a breach of this Agreement);

11.2.2 can be demonstrated as having been independently developed by the receiving party;

11.2.3 is published on the Platform in the implementation of and in accordance with this Agreement;

11.2.4 is used to create benchmarking report(s) in anonymised and aggregated form;

11.2.5 is required to be disclosed by law or court order.

11.3 The Affiliate agrees that Commission Factory may use performance data of the Affiliate relating to this Agreement for the creation of benchmarking reports, which are aggregated and anonymised. Such agreement can be withdrawn upon written notice to Commission Factory.

11.4 Commission Factory may disclose Confidential Information to Awin Group Companies.

11.5 This clause will survive termination of this Agreement for five years.

12 Data Protection And Cookies

12.1 Commission Factory and the Affiliate will comply with their respective obligations under Data Regulation. Each party will provide the other party any co-operation reasonably requested to enable the other party's compliance with this clause 12.

12.2 In accordance with Data Regulation, the Affiliate will obtain the prior, freely given, specific and informed consent of any Visitors to any cookies served by Commission Factory on the Visitor as a result of a Click.

12.3 The Affiliate will not provide any Personal Data to Commission Factory without Commission Factory's prior written consent.

12.4 The Affiliate warrants and undertakes for the Term that it holds any rights or consents necessary for:

12.4.1 any Processing under this Agreement, undertaken by Commission Factory or any Advertiser acting as a Data Processor on behalf of the Affiliate acting as a Data Controller, including any Processing of Personal Data relating to the Affiliate and any Authorised Users;

12.4.2 the transfer outside of the EEA of Personal Data by Commission Factory or any Advertiser.

12.5 Subject to clause 4, to the extent that a party is a Data Controller and the other party is a Data Processor, the party acting as a Data Processor will:

12.5.1 Process Personal Data only in accordance with the Data Controller's instructions from time to time;

12.5.2 as soon as practicable after becoming aware, notify the Data Controller of any communication it receives relating to the Processing of Personal Data;

12.5.3 as soon as practicable after becoming aware, inform the Data Controller if any Personal Data is lost, disclosed, damaged, destroyed or unlawfully Processed;

12.5.4 within three Business Days of receipt of a Data Subject access request, notify the Data Controller and, at the Data Controller's expense, assist the Data Controller's response; and

12.5.5 take appropriate technical and organisational measures against accidental loss and damage to, and the unlawful Processing of, Personal Data.

12.6 The Affiliate will not do or omit to do any act which may cause Commission Factory to be in breach of any of its obligations under the Data Regulation.

13 Limitation of Liability

13.1 This clause 13 sets out the entire liability of Commission Factory, its Group Companies and vicarious agents under or in connection with the Agreement. Claims for damages shall be excluded unless otherwise specified in this clause 13.

13.2 Commission Factory will not be liable for any losses of the Affiliate if Commission Factory's compliance with the Agreement is prevented by the acts or omissions of the Affiliate.

13.3 Commission Factory will not be liable to the Affiliate for: loss of profit, business, goodwill, anticipated savings, goods, contract, use or data; losses arising from the acts or omissions of an Advertiser, technology partner or any third party; or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

13.4 The total liability of Commission Factory and its Group Companies in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Agreement will be limited to the amount of Tracking Fee actually received by Commission Factory from Advertisers in respect of Commissions paid to the Affiliate in the 12 month period preceding the date on which the claim arose.

13.5 Except as expressly stated otherwise in this Agreement, all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13.6 The Network, the Platform, the Tracking Code, their use and the results of such use are provided "as is" to the fullest extent permitted by law. Commission Factory disclaims

all express or implied warranties, including warranties of satisfactory quality and fitness for a particular purpose, which may be implied in respect of the Network, the Platform, the Tracking Code, their use and the results of such use. The performance of the Network, the Tracking Code and the Platform relies on third parties beyond Commission Factory's control, and in particular, the maintenance by Advertisers of the proper integration of the Tracking Code into Advertiser URLs. Commission Factory specifically disclaims any warranty:

13.6.1 that the use or operation of the Network, the Platform or the Tracking Code will be uninterrupted or error-free;

13.6.2 that the Tracking Code will be properly integrated into the Advertiser URLs;

13.6.3 that the Tracking Code accurately records Actions at all times;

13.6.4 in respect of the Advertiser Materials, including any warranty that the Advertiser Materials comply with Advertising Standards;

13.6.5 that defects will be corrected;

13.6.6 that the Network, the Platform or the Tracking Code are free of viruses or malicious code;

13.6.7 that any security methods employed will be sufficient;

13.6.8 in respect of any Advertiser or any third party or its technology; and

13.6.9 regarding correctness, accuracy, or reliability of the Network, the Platform, the Tracking Code, and any information, data or material included in or made available through the Network, the Platform, the Tracking Code.

13.7 Commission Factory shall only be held liable in cases of intent or gross negligence of one of its legal representatives, executives or other vicarious agents, in the event of any culpable breach of a material contractual obligation and limited to the amount of the typically foreseeable loss.

13.8 Nothing in this Agreement limits or excludes the liability of Commission Factory in the event of culpable injury to life, limb or health, fraud, fraudulent misrepresentation or fraudulent misstatement as well as in cases of mandatory statutory liability.

14 Termination And Suspension

14.1 This Agreement will start on the Effective Date and continue until terminated in accordance with its terms.

14.2 Either party may terminate the Agreement on 30 days' written notice to the other party for any reason.

14.3 Without prejudice to its other rights or remedies, a party may terminate the Agreement immediately on written notice to the other party, if:

14.3.1 the other party materially breaches this Agreement; material contractual obligations are those obligations whose fulfilment is essential for the proper performance of a contract and on whose compliance the contractual partner relies and may rely;

14.3.2 the other party is deemed unable to pay its debts; steps are made to wind up, or appoint an administrator over, the other party; a third party becomes entitled to appoint a receiver over the assets of the other party; the other party negotiates with all or a class of its creditors, or proposes or enters a compromise with such creditors; or any similar or analogous event occurs.

14.4 Commission Factory may (i) terminate this Agreement or (ii) Suspend the Affiliate and apply any related measures, immediately on written notice and at its sole and absolute discretion, if the Affiliate:

14.4.1 does not access the Affiliate Account for a period of six months or if no Commissions have been generated for a period of six months;

14.4.2 is reasonably suspected by Commission Factory:

I. to have breached any

(a) of the warranties at clauses 9.1 and 9.2;

(b) Program Terms of an Advertiser;

(c) part of the Code of Conduct, including the Supplier Code of Conduct.

II. to undertake any deceptive activity intended to manipulate tracking, performance data, Visitor behaviour, or system integrity, or to mislead Commission Factory, Advertisers, or Visitors, for illegitimate or fraudulent gain.

14.4.3 undergoes a Change of Control.

15 Consequences of Termination And Suspension

15.1 During any period of Suspension:

15.1.1 the Affiliate is not permitted to access the Platform;

15.1.2 all licences will be Suspended, and the Affiliate shall immediately deactivate the Links and remove any Advertiser Materials from the Affiliate Service; and

15.1.3 no payments will be made to the Affiliate.

15.2 On termination of the Agreement:

15.2.1 all licences will terminate, and the Affiliate shall immediately deactivate the Links and remove any Advertiser Materials from the Affiliate Service;

15.2.2 each party will return or at the other party's option destroy all Confidential Information in its possession within five Business Days;

15.2.3 the Affiliate Account will be permanently closed;

15.2.4 unless terminated by Commission Factory under clauses 14.3 or 14.4, Commission Factory will pay all outstanding Commissions and Bonuses due to the Affiliate; and

15.2.5 by Commission Factory under clauses 14.3 or 14.4 all unpaid Commissions as of the date of termination, or accruing after the date of termination, shall be forfeited irrevocably and the Affiliate hereby waives any right or entitlement to recover such Commissions and Bonuses.

15.3 Termination of this Agreement will not affect any existing rights or remedies.

15.4 Such provisions of the Agreement that, by their nature, would be expected to survive termination shall survive any such termination.

16 Notices

16.1 Notices given under this Agreement will be in writing and:

16.1.1 displayed by Commission Factory on the Platform;

16.1.2 delivered by the Affiliate by hand or sent by pre-paid first-class post or recorded delivery post to Commission Factory at Commission Factory's registered office;

16.1.3 delivered by Commission Factory by hand or sent by pre-paid first-class post or recorded delivery post to the Affiliate at its notice address set out in the Application Form (or such other address as may be set out on the Affiliate Account);

16.1.4 sent by Commission Factory by email to the Affiliate's notice email address set out in the Application Form (or such other notice email address as may be set out on the Affiliate Account); or

16.1.5 sent by the Affiliate to the dedicated submission form or such other notice email address provided by Commission Factory.

16.2 A notice displayed by Commission Factory on the Platform will be deemed to have been received at the time of its display (or if displayed outside business hours, at 9 am on the first Business Day following display). A notice delivered by hand will be deemed to have been received when delivered (or if delivered outside business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received two Business Days after posting. A notice sent by email will be deemed to have been received at the time of transmission as shown by the sender's records (or if sent outside business hours, at 9 am on the first Business Day following dispatch).

17 General

17.1 Commission Factory may change the terms of this Agreement on 14 days' notice to the Affiliate.

17.2 Certain functionalities or services offered by Commission Factory or third parties may be subject to additional terms. Such terms may be communicated to the Affiliate before those functionalities or services are supplied, including by displaying on the Platform. Any terms or agreements between the Affiliate and third parties (including without limitation Advertisers, third-party payment processors, and technology partners) are solely between the Affiliate and such third party. Commission Factory is not a party to any such terms or agreements and shall have no liability, responsibility, or obligation under such terms or agreements, unless otherwise explicitly agreed in writing by Commission Factory.

17.3 Commission Factory may set off any liability of the Affiliate against any liability of Commission Factory. In the event of any amounts paid to the Affiliate in error and not immediately paid by the Affiliate in breach of clause 7.11 or any overpayment to the Affiliate, Commission Factory reserves the right to withhold or set off any future Commission or Bonus payments against the amount of the overpayment.

17.4 Time for performance of clauses 3.11, 4.6, 7.4.5.2, 7.5, 7.11, 15.1.2 and 15.2.1 are of the essence of this Agreement.

17.5 No party will be liable for any breach of this Agreement arising from circumstances beyond its reasonable control (a "**Force Majeure Event**"). If a Force Majeure Event continues for six months, the unaffected party may terminate this Agreement by giving 30 days' written notice to the other party.

17.6 The Affiliate may not assign or subcontract its rights or obligations under this Agreement in whole or part without Commission Factory's prior written consent.

Commission Factory may assign or subcontract its rights or obligations under this Agreement, including to an Awin Group Company.

17.7 Nothing in the Agreement constitutes a partnership, joint venture, or employment relationship between the parties, nor constitutes a party the agent of the other. No party has the authority to bind the other. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Commission Factory and the Affiliate, or Commission Factory and the employees, personnel, or subcontractors of the Affiliate, including Sub-affiliates.

17.8 A Person who is not a party to this Agreement will not have any statutory rights under or in connection with it.

17.9 A counterpart of this Agreement executed and/or transmitted electronically shall be treated as fully binding and with full legal force and effect.

17.10 This Agreement constitutes the entire agreement between the parties relating to its subject matter, to the exclusion of the United Nations Convention on Contracts for International Sale of Goods.

17.11 Without affecting and without prejudice to any other right or remedy available to a party under this Agreement or by operation of law, the parties agree that they will work in good faith to resolve any dispute or claim arising out of or relating to this Agreement amicably before initiating a lawsuit or other formal legal proceedings against the other party.

17.12 This Agreement is governed by the law of Australia and the courts of Australia and New South Wales have exclusive jurisdiction.