



# **General Terms and Conditions of Business for the Placement of Ligatus Services on Partner Sites**

Version: May 17, 2018

# Preamble

These General Terms and Conditions of Business for the Placement of Ligatus Services on Partner Sites ("**Partner Terms**") govern the relationship between the Ligatus GmbH, Christophstr. 19, 50670 Köln, Germany, ("**Ligatus**", "**we**", "**us**" or "**our**") and our Partners regarding the placement of Advertising Campaigns offered by us or our cooperation partners on their Partner Sites. Unless otherwise explicitly agreed, these Partner Terms shall apply exclusively thereto. General contractual conditions or conditions of business of the Partner are excluded herewith; this shall also apply if the conditions of the Partner are not explicitly contradicted or we provide our part of the agreement without contradiction.

# Definitions

**"Ligatus Services"** means all services and products offered by Ligatus and/or our affiliated companies under the name and trademark of Ligatus ("the Ligatus Group").

**"End User"** shall be deemed to be the human individual using a Partner Site.

The **"Customer"** is our contractual partner on the demand-side: this can be either an agency (with agency clients), a direct client, a cooperation partner such as a demand side platform (DSP), trading desk or a technical aggregator (including companies in the Ligatus Group). Agencies, as set forth herein, shall be deemed to work in their own name and on their own account.

Our **"Partner"** is a contractual partner of us who provides us with or markets Placements on Partner Sites.

**"Partner Sites"** shall be deemed to be the Partner's desktop and mobile web sites as well as mobile applications on any device.

The **"Partner Agreement"** is a contract between us and our Partner regarding the delivery of Advertising Campaigns on the Partner Site(s).

**"Partner Remuneration"** means the monetary compensation the Partner receives from us for the delivery of Advertising Campaigns on Partner Sites.

**"Revenue Share"** means the percentage of Adjusted Gross Revenues that we pay to our Partner as indicated in the Partner Agreement.

**"Adjusted Gross Revenues"** shall be those fees received from Customers for delivering Advertising Campaigns on Partner Sites, less applicable taxes and the Ligatus Service and Handling Fee.

The **"Ligatus Service and Handling Fee"** shall be a variable lump sum determined by our equitable discretion based on fees and agency/supplier agreements related to our execution of the Partner Agreement. These may include, without limitation, transaction fees, agency rebates and commissions, average cancellation rates, bad debt, external sales agent commissions, technology as well as other fees attributed to Advertisers.

A **"Placement"** shall be defined as the area on a Partner Site on which we deliver Advertising Campaigns on behalf of our Customers.

An **"Advertising Campaign"** is the content or creative of an Advertiser for the purpose of a delivery to Placements. This can be advertising media or content recommendations.

An **"Advertiser"** shall be deemed to be the legal person which – or the products or services of which – are advertised by the Advertising Campaigns.

A **"Demand-Side Platform (DSP)"** is a system that allows buyers of digital advertising inventory to manage multiple ad exchange and data exchange accounts through one interface.

## I. Service; Delivery; Advertising Campaigns

**1. Advertising Campaigns:** The Advertising Campaigns shall be fully provided by us or our Customers. The components of the code provided by us may not be changed, stored or cached by the Partner.

**2. Specifications:** The characteristics of the Advertising Campaigns shall, unless agreed otherwise, be in accordance with our current specifications, retrievable at <https://www.ligatus.com/en/guidelines>.

**3. Subject to Adjustment:** We reserve the right to exchange or modify the content in the Advertising Campaigns at any time. Such may not be concluded by our Partner.

**4. Legality of Advertising Campaigns:** The content of Advertising Campaigns delivered by our Customers is beyond our control. Therefore, our obligation insofar is limited to the following: with reasonable commercial effort we contractually oblige our Customers to not provide Advertising Campaigns that violate statutory law or third party rights and to adhere to our “Ligatus Advertising Guidelines”, available at <http://i.ligatus.com/corporate-resources/guidelines/advertising-guidelines.pdf> which are hereby incorporated by reference in their entirety.

**5. Delivery:** Neither party shall be liable for adequate usage of the Placements provided by the Partner, nor for damage caused by force majeure or for technical disruptions falling within the field of responsibility of third parties (e.g. transmission channels of telecoms or access provider disruptions). The mix in the Advertising Campaigns provided by us or our cooperation partners shall depend on the optimization algorithm defined by us or a technical system of our cooperation partners, and shall hence not be guaranteed, nor shall the success of the placement of Advertising Campaigns. Ligatus reserves the right to provide its own campaigns if no Advertising Campaigns are available for delivery to Partner's Placements.

## II. Granting of rights; Restrictions

**1. Self Promotion:** The Partner herewith grants us and the Ligatus Group the right to state as a reference for the purpose of our own advertising the Partner Sites, using the logo and/or commercial designations, in all and any media and commercial presentations.

**2. Granting of Rights:** The Partner hereby grants us any rights and licenses necessary for the fulfilment of this Partner Agreement. In particular, the Partner hereby expressly grants to us - and we accept - all rights necessary to enable Ligatus and its cooperation partners to store, audit, optimize, deliver and serve Advertising Campaigns to Placements and/or otherwise provide the Ligatus DSP to the Partner.

**3. Performance Manipulation:** The Partner may not manipulate the performance of the Advertising Campaigns either directly, indirectly through third parties or by any other (technical) means. We will not remunerate clicks or page views generated through such means or on pages and Placements not subject to the Partner Agreement; the same applies if blocked due to Adblockers.

**4. Content on Partner Site(s):** The Partner herewith guarantees that the Partner Sites and their content comply with applicable statutory law and do not violate any third-party rights. In particular, websites with content that is erotic, pornographic, politically extremist, glorifies war, incites to agitation of the people, violence or racial hatred or containing instructions on how to commit criminal offences, illegal exchanges, torrent websites or file hosters shall be prohibited in our network. We reserve the right to withhold payments and stop the delivery of Advertising Campaigns on Partner Sites entirely or in parts if there are indications that the Partner Sites are in violation of the above and to stop the delivery if their content is otherwise unacceptable to us.

## III. Reporting; Invoicing; Payment

**1. Online-Reporting Tool:** The Partner shall receive access via a personal account to our online-reporting, which shall document a record of impressions, clicks and revenue for all Sites and Placements of the Partner and other relevant metrics via a technical system on the integrated Advertising Campaigns as well as the values that are relevant for invoicing and internal purposes from the time the Placement is live (as subject to the individual Partner Agreement).

**2. Invoicing; Payment:** The invoicing shall be effected on the basis of the figures relevant to invoicing provided by us (which may differ from our reporting tool due to technical reasons). We shall provide to the Partner a credit note by the end of a month for the previous month based on figures relevant to invoicing per Partner Site. Payment, plus the statutory rate of VAT (if applicable), shall be effected within sixty (60) days after the date of the credit note. If the Partner Agreement expires - for whichever reason - we will pay to the Partner all open amounts within thirty (30) days after the termination date. The Partner is obliged to delete any tags upon termination of the Agreement. No payment is due for delivery of Advertising Campaigns after termination of the Agreement due to a failure of the Partner to delete such tags.

**3. Reporting Derogations:** Derogations in measurements of up to 10% shall be considered as slight, and shall not be regarded as a material defect or as overachievement (fluctuation tolerance). In case of derogations in measurements greater than 10% the parties will determine the origin of the difference and make their best efforts to reduce the statistical discrepancy.

## IV. Privacy; Transparency

**1. Privacy; Cookies:** Both parties will comply with applicable data protection law, especially including, but not limited to, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, "GDPR"). The Partner guarantees to implement and obtain all legally required information on the Partner Sites to End Users in this regard.

**2. Independent Controllers:** The parties acknowledge that they, in their relationship to one another concerning privacy on Partner Sites in respect to End Users, function as "Independent Controllers", each one responsible for the processing of personal data in their individual sphere – Ligatus towards the Placements, and the Partner for the „rest“ of the Partner Site, meaning the Partner's „own“ content (i.e. such content not delivered by Ligatus). Hence, as both parties consider themselves as Independent Controllers according to Art. 4 No. 7 GDPR, the conclusion of any "controller-to-processor agreements" according to Art. 28 GDPR is mutually deemed not necessary.

**3. OBA:** The Partner herewith takes note of the fact that we, in adherence to the legal framework conditions, may where appropriate use techniques such as behavioral advertising and retargeting systems when implementing the Advertising Media and that we have subjected ourselves to the code on online behavioral advertising (OBA) of the Bundesverband Digitale Wirtschaft (BVDW), seated in Germany.

**4. Transparency:** We may provide our Customers and cooperation partners with Placement-ID's and their corresponding URLs on Partner Site(s). At any time during the term of the Partner Agreement our Partner can object to such provision by notifying us.

## V. Liability; Confidentiality

**1. Liability:** We shall be liable for damage – regardless of its legal ground – only where the Partner asserts compensation claims based on intent or gross negligence on the part of us or our agents/representatives. This shall not apply to our liability for assured properties and to a violation of major contractual duties. Where we are not accused of an intentional or grossly negligent violation of a contract in the case of a violation of cardinal duties, liability for damage shall be limited to the foreseeable damage typically occurring; this shall also apply where the Partner demands compensation for wasted expenditure instead of damages to compensate for the service. Unless we acted with intent or gross negligence, we shall not be liable for indirect damage, consequential harm caused by a defect or loss of profit. All and any of the above limitations of liability shall not apply in the event of personal injury to life, body or health or in the context of mandatory liability in accordance with the German Product Liability Act (if applicable). The above limitations of liability shall also apply to our employees, bodies, representatives, agents and subcontractors. All and any claims asserted against us for a breach of a contractual provision shall lapse within one year of the statutory commencement of lapse where they do not result from intentional conduct. Where we are claimed against by the Partner in respect of the implementation of Advertising Campaigns on Partner Sites, we shall be entitled to satisfy such claims by assigning all and any claims to which we are entitled to against the Customer or Advertiser - in part or in whole.

**2. Indemnification:** The Partner shall indemnify us with regard to any third-party claims asserted against us in respect of a violation of applicable legal provisions or rights of third parties by the Partner, content provided by the Partner or on the Partner Sites and any violation of these Partner Terms or the Partner Agreement. The indemnification shall include the cost of legal defense. Further statutory claims by us shall thereby remain unaffected.

**3. Confidentiality:** Unless otherwise explicitly agreed, the Parties shall treat the Partner Agreement, in particular the prices and conditions, in strict confidentiality. This shall not apply if a court or authority orders the disclosure or if this is necessary in order to enforce own rights against the respectively other contracting Party. We shall furthermore be entitled to disclose the content of this Partner Agreement to any third parties who are commissioned, as well as to affiliated enterprises in accordance with section 15 of the German Stock Companies Act (Aktiengesetz).

## VI. Final provisions

**1. Transfer of rights:** We reserve the right to transfer the rights and duties from the Partner Agreement to third parties for reasonable factual causes, especially, but not limited to, developments within the Ligatus Group. We will notify the Partner of any such instance in good time.

**2. Severability Clause:** In case any provision of these Partner Terms or any clause in the Partner Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired

thereby. The ineffective provision shall be replaced by an effective provision which approximates the economic purpose of the ineffective provision as closely as possible.

**3. Written Form:** Alterations of or additions to these Partner Terms shall require to be in writing in order to be effective (if not explicitly stated otherwise). This shall also apply to the rescission of the requirement of written form. An (e-)signed (PDF) document of the Partner Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

**4. Amendments to these Partner Terms:** We reserve the right to effectively change these Partner Terms if we are faced with, for example, new organisational, technical and procedural requirements, a development in law or the legal situation or the commercial grounds of our products and services. We will inform our Partners via e-mail of such amendments (and any legal consequences thereof). Should our Partner not object to the validity of the new Terms and Conditions in writing within fourteen (14) days, these shall be deemed accepted.

**5. Place of performance, applicable law and jurisdiction:** The place of performance and the court venue shall be the domicile of Ligatus in Cologne, Germany. German substantive law shall apply, without recourse to the provisions on conflict of laws.