

Deutsch/Stand: 19.06.2018

Allgemeine Geschäftsbedingungen für Channel Traffic

Diese Allgemeinen Geschäftsbedingungen (nachfolgend „AGB“ genannt) werden zwischen der eGENTIC GmbH, Am Unisyspark 1, 65843 Sulzbach/Ts. (nachfolgend „eGENTIC“ genannt) und dem Unternehmen, welches Dienste von eGENTIC beansprucht (nachfolgend „Vertragspartner“ genannt), einzeln als „Partei“, gemeinschaftlich als „Parteien“ bezeichnet, abgeschlossen.

Vorbemerkung:

eGENTIC ist Listbroker und vermarktet Listen verschiedener Unternehmen (nachfolgend „Listeigner“ genannt). Die Datensätze der verschiedenen Listen werden über Internetaktionen, so zum Beispiel Gewinnspiele und Umfragen, generiert.

Bei der Registrierung für die jeweilige Aktion wird ein Nutzer sein Werbeeinverständnis zu Gunsten des jeweiligen Listeigners erklären.

Der jeweilige Listeigner ist Eigentümer der Datenbank, in welcher die personenbezogenen Daten der jeweiligen Nutzer gespeichert werden. eGENTIC ist von dem jeweiligen Listeigner bevollmächtigt, die Daten und damit die Listen in eigenem Namen zu vermarkten. Ferner umfasst die Bevollmächtigung auch die Ausgabe und den Abschluss dieser AGB.

Die Datengenerierung und Datenbehandlung erfolgen unter Berücksichtigung und Anwendung der einschlägigen datenschutzrechtlichen Regelungen. Wenn notwendig, besteht ferner zwischen der eGENTIC auf der einen Seite und dem Listeigner auf der anderen Seite, eine Vereinbarung zur Auftragsverarbeitung gemäß Art. 28 EU-Datenschutzgrundverordnung (DSGVO), nach welcher die eGENTIC u.a. explizit zur Vermarktung von den Listen berechtigt ist.

Durch den Zugang zu vielen verschiedenen Marketing Tools, garantiert eGENTIC einen qualitativ

hohen Service. Hierzu gehört ebenfalls der Zugriff auf ein Affiliate Netzwerk (nachfolgend „BigBangAds“ oder „BBA“). Dieses Affiliate Netzwerk wird von einer hundertprozentigen Tochtergesellschaft (nachfolgend „Tochter“) der eGENTIC betrieben und bietet Werbetreibenden die Möglichkeit deren Werbematerial in diesem Netzwerk zu platzieren und von den vielen teilnehmenden Werbepartnern (nachfolgend „Publisher“) über die verschiedensten Werbekanäle verbreiten zu lassen.

Diese AGB regeln das Verhältnis der Parteien bei der werblichen Nutzung der Datensätze durch das Anzeigen der Werbematerialien mittels Push-Notifications, Werbe-Bannern oder zum Zwecke des Versands von Werbe-E-Mails durch eGENTIC. Des Weiteren regelt es die werbliche Nutzung der Datensätze durch Dritte, am Affiliate-Netzwerk BigBangAds teilnehmende Publisher, der vom Vertragspartner zu Verfügung gestellten Werbematerialien, im Namen des jeweiligen Listeigners.

Insofern vereinbaren die Parteien folgendes:

1. Einzelbeauftragung und Umfang

Diese AGB regeln den Versand von sogenannten Standalone E-Mail-Kampagnen (nachfolgend „Newsletter“ oder „Werbeemails“), versendet durch eGENTIC selbst, das Anzeigen der Werbematerialien mittels „Push-Notifications“ durch eGENTIC selbst, sowie das Anzeigen der Werbematerialien durch einen „Banner“, ebenfalls durch eGENTIC selbst. Darüber hinaus ist die Verbreitung der Werbematerialien über das Affiliate Netzwerk BBA durch einen dort teilnehmenden Publisher, ebenfalls durch diese AGB geregelt. Das Produkt, die Leistungsbeschreibung, die Kampagne, das Volumen, der Zielmarkt als auch das Vergütungsmodell sowie die Kampagnendauer bzw. das Versanddatum werden in einer zwischen den Parteien abzuschließenden Einzelbeauftragung bzw. Insertion Order (nachfolgend „IO“ genannt) vereinbart.

2. Produkterläuterung

Die nachfolgenden Klauseln 2.1, 2.2, 2.3, beschreiben nur die Produkte, bei denen die Verbreitung der Werbematerialien von eGENTIC selbst durchgeführt wird. Die Klausel 2.4 beschreibt die Channel die im BBA genutzt werden. Eine Definition der Channel ist in der IO zu finden.

2.1 Newsletter Versand durch eGENTIC

Die anzuzeigende Werbung kann entweder die eigene Werbung des Vertragspartners (nachfolgend „E-Mail-Option 1“) oder die Werbung eines Vertragspartners des Vertragspartners (nachfolgend „Kunde“) (nachfolgend „E-Mail-Option 2“) sein. Bei Wahl der E-Mail-Option 2 fungiert der Vertragspartner lediglich als Vermittler.

2.2 Push-Notifications

Push-Notifications ist die Möglichkeit, das Werbematerial des Vertragspartners, auf dem vom User aktuell genutzten Display, durch kleine Push Benachrichtigungen, anzeigen zu lassen. Der Vertragspartner akzeptiert, dass eGENTIC keinen Einfluss auf die Position und/oder auf die Größe der Benachrichtigung hat, die beim User angezeigt wird. Die Position und die Größe hängen von dem App-Anbieter, den User-Einstellungen oder den Einstellungen des genutzten Systems oder Endgeräts (nachfolgend „System“) ab.

Die anzuzeigende Werbung kann entweder die eigene Werbung des Vertragspartners (nachfolgend „Push Option 1“) oder die Werbung eines Kunden des Vertragspartners (nachfolgend „Push Option 2“) sein. Bei Wahl der Push Option 2 fungiert der Vertragspartner lediglich als Vermittler.

2.3 Banner

Wenn der Vertragspartner das Produkt Banner auswählt, wünscht er die Anzeige seines Werbematerials durch ein Banner, auf verschiedenen, zwischen den Parteien vereinbarten, Webseiten.

Die anzuzeigende Werbung kann entweder die eigene Werbung des Vertragspartners (nachfolgend „Banner Option 1“) oder die Werbung eines Kunden des Vertragspartners (nachfolgend „Banner Option 2“) sein. Bei Wahl der Banner Option 2 fungiert

der Vertragspartner lediglich als Vermittler.

2.4 Verbreitung des Werbematerials durch BBA

Der Vertragspartner hat die Möglichkeit zu entscheiden, ob sein Werbematerial, über BBA und somit durch einen dort teilnehmenden Publisher, verbreitet werden soll. Hierzu kann der Vertragspartner in der IO festlegen, dass sein Werbematerial in BBA platziert wird. Der Vertragspartner kann zwischen vielen verschiedenen Channel auszuwählen. Er hat die Möglichkeit einen, mehrere oder alle Channel zu wählen.

Darüber hinaus kann die anzuzeigende Werbung entweder die eigene Werbung des Vertragspartners (nachfolgend „Affiliate Option 1“) oder die Werbung eines Kunden des Vertragspartners (nachfolgend „Affiliate Option 2“) sein. Bei Wahl der Affiliate Option 2 fungiert sowohl der Vertragspartner als auch eGENTIC lediglich als Vermittler.

Nach Unterzeichnung der betreffenden IO, wird das Werbematerial von eGENTIC in BBA platziert. Für jede BBA Kampagne muss eine einzelne separate IO erstellt werden.

3. Verpflichtungen von eGENTIC bei Versand durch eGENTIC selbst

3.1 eGENTIC wird nur diejenigen Datensätze zum Versand von Werbe-E-Mails verwenden, bei denen im Rahmen der Registrierung ein Werbe-Einverständnis zu Gunsten des jeweiligen Liseigners abgegeben wurde. Der Vertragspartner genehmigt hiermit die Adressgewinnung und kann daraus keine weiteren Ansprüche herleiten.

3.2 Es werden nur Daten verwendet, wenn im Zeitpunkt des Versands das bei der Registrierung erteilte Werbeeinverständnis des Nutzers noch aktuell ist und nicht in der Zwischenzeit – etwa durch Widerruf des Nutzers – erloschen ist.

4. Verpflichtungen von eGENTIC bei der Anzeige von Push-Notifications

4.1 eGENTIC wird nur diejenigen Datensätze zur Anzeige des Werbematerials mittels Push-Notifications verwenden, bei denen im Rahmen der Registrierung ein Werbe-Einverständnis zu Gunsten des jeweiligen Liseigners abgegeben wurde.

Dieses Werbe-Einverständnis wird vom Nutzer erteilt, indem auf dem System des Nutzers Cookies zur werblichen Nutzung platziert werden. Die Platzierung solcher Cookies hängt ausschließlich davon ab, ob der Nutzer dem zustimmt und das System es ermöglicht.

4.2 eGENTIC wird sicherstellen, dass Push-Notifications mit Werbematerial nur den Nutzern angezeigt wird, deren Werbeeinverständnis hierfür aktuell und gültig ist.

5. Verpflichtungen von eGENTIC bei der Anzeige von Banner

5.1 eGENTIC wird dafür Sorge tragen, dass das vom Vertragspartner zur Verfügung gestellte Werbematerial in gewünschter Art und Weise dargestellt wird.

5.2 eGENTIC ist es nicht erlaubt eigenmächtig das anzuzeigende Werbematerial zu verändern. Im Falle von Problemen, die eine technische Einbindung des Werbematerials zur Folge haben können, wird eGENTIC den Vertragspartner stets kontaktieren und gemeinsam mit ihm und mögliche Veränderungen besprechen.

6. Verpflichtungen von eGENTIC bei Platzierung des Werbematerials in BBA

6.1 eGENTIC platziert das Werbematerial in BBA, so wie vom Kunden übermittelt und gewünscht. eGENTIC nimmt keine Beurteilung des Werbematerials vor.

Im Konkreten bedeutet dies, dass eGENTIC keine rechtliche oder sonstige Überprüfung des vom Vertragspartner zur Verfügung gestellten

Werbematerials vor Platzierung durchführt.

6.2 Im Falle von kurzfristigen Änderungen des Werbematerials durch den Vertragspartner, wird eGENTIC diese Veränderungen so schnell wie möglich, ohne schuldhaftes Verzögern, an BBA weiterkommunizieren.

6.3 eGENTIC wird dafür Sorge tragen, dass das zu Verfügung gestellte Werbematerial in korrekter und gewünschter Art und Weise dargestellt wird, unabhängig davon, welcher Channel genutzt werden soll.

6.4 eGENTIC übernimmt die Rechnungsstellung, die Zahlungsmodalitäten und das Tracking nach Maßgaben wie in Punkt 9. Dieser AGB festgeschrieben.

7. Verpflichtungen des Vertragspartners

7.1 Der Vertragspartner wird dafür Sorge tragen, dass die von ihm verwendete Werbung, beworbenen Waren und/oder Dienstleistungen rechtskonform sind und keine Rechte Dritter verletzen. Er garantiert, keine Werbetexte zu verwenden und/oder Waren und/oder Dienstleistungen zu bewerben, die in irgendeiner Form rechtswidrige Inhalte enthalten und/oder rechtswidrig sind (zum Beispiel illegale, obszöne, pornographische, gewaltfördernde, beleidigende, belästigende und/oder verleumderische Inhalte, Materialien und/oder Informationen) und/oder bei denen insbesondere der Vertrieb der beworbenen Artikel in dem entsprechenden Markt/Land unzulässig ist (z.B. nicht genehmigtes Glücksspiel) oder bei denen Vertriebsbeschränkungen gelten, die bei einer Versendung der Mails/Bewerbung missachtet würden (z.B. FSK18, Glücksspielstaatsvertragsrechtliches Werbeverbot) und/oder durch die Rechte, Marken- und/oder Urheberrechte Dritter verletzt würden. Es ist darüber hinaus verboten, andere Gewinnspiele und/oder Inhalte zu bewerben, welche auf den Prozess der

Generierung von Datensätzen in irgendeiner Weise Bezug nehmen. #

7.2 Sobald dem Vertragspartner bekannt wird, dass ein Nutzer seine Werbe-, datenschutzrechtliche oder sonstige im Rahmen des Generierungsprozesses abgegebene Einwilligung widerrufen oder ein sonstiges Recht ausgeübt hat, das die Wirksamkeit einer solchen Einwilligung berührt, so hat der Vertragspartner eGENTIC umgehend, spätestens aber an Werktagen innerhalb von 24 Stunden und an sonstigen Tagen bis um 11:00 Uhr am darauffolgenden Werktag, hierüber zu informieren. Auf Anfrage von eGENTIC hat der Vertragspartner durch Vorlage einer aussagekräftigen, schriftlichen Dokumentation umgehend, spätestens aber an Werktagen innerhalb von 24 Stunden und an sonstigen Tagen bis um 11:00 Uhr am darauffolgenden Werktag nachzuweisen, dass eine derartige Rechtsausübung durch den betreffenden Nutzer tatsächlich stattgefunden hat. Dabei ist insbesondere der Wortlaut des Nutzers in Bezug auf die in Frage stehende Rechtsausübung eGENTIC zur Verfügung zu stellen. Der Vertragspartner trägt dafür Sorge, dass er die zur Erfüllung der vorstehend genannten Pflichten notwendigen Informationen erhält, insbesondere, wenn er sich eines Dienstleisters zur Kontaktierung der Nutzer bedient.

7.3 Der Vertragspartner stellt zwei (2) Tage vor dem Versanddatum der Newsletter, der Anzeige mittels der Push-Notifications oder Online-Schaltung des Banners, die Werbemittel und -inhalte sowie Tracking-URLs zur Verfügung. Der Vertragspartner ist verpflichtet, jegliche Änderung der zur Verfügung gestellten Werbemittel und -inhalte unverzüglich ohne schuldhaftes Zögern eGENTIC anzuzeigen.

7.4 eGENTIC behält sich das Recht vor, die vom Vertragspartner zur Verfügung gestellten Werbemittel jederzeit ohne Angaben von Gründen abzulehnen. Der Vertragspartner stimmt diesem Recht zu.

7.5 Der Vertragspartner erklärt sich damit einverstanden, dass das Firmenlogo, der Firmenname und/oder der Schriftzug in der Werbe-E-Mail und zu Zwecken der geforderten Werbung verwendet werden dürfen.

7.6 Darüber hinaus erteilt der Vertragspartner dem Publisher in BBA ein nicht-exklusives, nicht-übertragbares und widerrufbares Recht, sein zu Verfügung gestelltes Werbematerial zu Werbezwecken zu nutzen, vorausgesetzt, dass eine Verbreitung des Werbematerials über BBA gewünscht ist. Der Vertragspartner willigt ausdrücklich ein, dem Publisher eine solche Lizenz zu erteilen. Der Publisher ist ausschließlich dazu berechtigt, das Werbematerial für den notwendigen Umfang und in der IO festgelegten Channel zu verwenden.

7.7 Wählt der Vertragspartner die Verbreitung seines Werbematerials über das Affiliate Netzwerk BBA aus, akzeptiert er, unabhängig welcher Channel gewünscht ist, dass ein teilnehmender Publisher das Werbematerial auf seinen angebotenen Channel platziert und verbreitet. Weiterhin weiß und akzeptiert der Vertragspartner, dass bei Wahl eines Channels, wo eine direkte Ansprache eines Nutzers erfolgt (z.B. Newsletter, SMS, etc.), die angesprochenen Nutzer aus der Datenbank des Publishers stammen. Es handelt sich hierbei um keine Nutzer aus eGENTIC's Datenbank. Der Vertragspartner akzeptiert, dass für diese Nutzer, allein der Publisher verantwortlich ist und eGENTIC nicht für eine fehlende oder unwirksame Werbeeinwilligung dieser Nutzer haftbar gemacht werden kann.

7.8 Der Vertragspartner stellt dem Publisher das Werbematerial zur Verfügung und erteilt ihm das Recht zur werblichen Nutzung für die in der entsprechenden IO festgelegten Dauer. eGENTIC hat keinen Einfluss auf die Übertragung von Nutzungsrechten.

7.9 Zusätzlich verpflichtet sich der Vertragspartner bei Wahl einer Option 2 der angebotenen Produkte, also wenn der Vertragspartner als Vermittler agiert, die Verpflichtungen dieser AGB, insbesondere die Bestimmungen 7.1 –

7.9 und 8.1 – 8.3, auch seinem Kunden aufzuerlegen.

7.10 Wünscht der Vertragspartner eine Option 2 eines Produkts, ist ihm bekannt, dass er nur als ein Vermittler tätig ist. Ein als Vermittler tätiger Vertragspartner tritt mit Auftragserteilung die Zahlungsansprüche gegen seinen Kunden aus dem der Forderung zugrundeliegenden Vereinbarung an eGENTIC ab, unabhängig davon welches Produkt gewählt wurde, eGENTIC nimmt diese Abtretung hiermit an (Sicherungsabtretung). eGENTIC ist berechtigt, diese dem Kunden des Vermittlers gegenüber offenzulegen und geltend zu machen, wenn die Forderung von eGENTIC gegen den Vertragspartner nicht innerhalb der in der entsprechenden IO vereinbarten Zahlungsfrist beglichen ist. Der Vertragspartner akzeptiert, dass diese Sicherungsabtretung auch gültig ist, wenn das Werbematerial über BBA verbreitet wird.

7.11 Dem Vertragspartner ist ebenfalls bekannt, dass die Tochter von eGENTIC alleiniger Inhaber und Betreiber des Affiliate-Netzwerks BBA ist. Hierzu akzeptiert der Vertragspartner, dass er mit Unterzeichnung der entsprechenden IO ausdrücklich in die Allgemeinen Geschäftsbedingungen (nachfolgend „A-AGB“) der Tochter einwilligt. Weiterhin akzeptiert er, dass ohne die Einwilligung in die A-AGB keine Teilnahme an dem Affiliate-Programm möglich ist. Die A-AGB sind unter [www.egentic.com/termsandconditions\(channeltraffic\)](http://www.egentic.com/termsandconditions(channeltraffic)) zu finden

8. Störfälle

8.1 Sollten die Parteien davon erfahren, dass bei einem Datensatz die Gefahr einer missbräuchlichen Registrierung besteht (z.B. unautorisierte Registrierung im Namen eines Dritten) und/oder etwaige Einwilligung eines Nutzers widerrufen, ihr widersprochen oder in sonstiger Weise von einem Berechtigten eines seiner Rechte geltend gemacht wurde, werden sie sich unverzüglich davon in Kenntnis setzen. Der Betroffene Datensatz wird sodann ggf. – je nach Zielrichtung des geltend

gemachten Begehrens – bei beiden Parteien gesperrt und nicht weiter genutzt.

8.2 Im Fall der rechtlichen Inanspruchnahme durch einen Dritten, der eine wirksame Einverständniserklärung bezweifelt, werden sich die Parteien unverzüglich über den Sachverhalt unterrichten und ein etwaiges Vorgehen miteinander abstimmen.

8.3 Der Vertragspartner ist – insbesondere unter Bezugnahme von Punkt 7.1 dieser AGB – für den Inhalt und die Form der Werbung, die unter Nutzung des Werbedatensatzes verbreitet wird, verantwortlich. Es wird ausdrücklich klargestellt, dass eGENTIC keine rechtliche Prüfung des Werbeinhalts vornimmt. Sollten eGENTIC und/oder der jeweilige Listesigner durch einen Dritten wegen des Inhalts oder der Form der Werbung in Anspruch genommen werden, wird der Vertragspartner die in Anspruch genommene Gesellschaft von allen etwaigen Ansprüchen freistellen und auch die angemessenen Kosten einer Rechtsverteidigung übernehmen. Die Geltendmachung eines darüberhinausgehenden Schadensersatzanspruchs bleibt von dieser Regelung unberührt.

8.4 Sollte der Vertragspartner sich dafür entscheiden, dass sein Werbematerial über BBA verbreitet werden soll, unabhängig von welcher Option, akzeptiert er, dass der jeweilige Publisher, der beauftragt wird, für die die Einhaltung der einschlägigen Rechte und Gesetze, bezüglich der Verbreitung des zu Verfügung gestellten Werbematerials, verantwortlich ist. Insbesondere aber nicht ausschließlich, ist das Vorliegen einer gültigen Werbeeinwilligung der angesprochenen Nutzer gemeint. Im Fall der rechtlichen Inanspruchnahme des Vertragspartners durch einen Dritten bezüglich der widerrechtlichen Verbreitung seines Werbematerials durch einen Publisher, beispielsweise wegen einer fehlenden oder ungültigen Werbeeinwilligung, oder wegen widerrechtlicher Nutzung des Werbeinhalts durch den Publisher, akzeptiert der Vertragspartner, dass

keine Ansprüche gegen eGENTIC geltend gemacht werden können.

9. Vergütung

9.1 Der Vertragspartner vergütet eGENTIC entsprechend der Regelung in der IO auf CPM, CPL CPO oder CPC-Basis.

9.2 Die Rechnungsstellung erfolgt monatlich. Alle Preisen verstehen sich zuzüglich 19% Ust. Soweit nicht anders vereinbart ist die Rechnung innerhalb von vierzehn (14) Tagen ab Rechnungsdatum zu begleichen.

9.3 Sofern der Vertragspartner eine Vergütung auf CPL und/oder CPO Basis vereinbart hat, ist dieser verpflichtet, entsprechend an eGENTIC innerhalb von dreißig (30) Tagen einen Bericht, wieviel Leads oder Bestellungen generiert wurden, zu senden. Sollte der Vertragspartner dieser Verpflichtung nicht nachkommen, ist eGENTIC berechtigt, auf Grundlage einer EUR 50,00 CPM Basis abzurechnen.

9.4 eGENTIC ist verantwortlich dafür, diesen Report aus 9.3, zu Abrechnungszwecken, dem Publisher zu übermitteln, falls die Verbreitung des Werbematerials über BBA gewünscht wurde.

Sollte eGENTIC durch einen Publisher wegen des Fehlens eines solchen Berichts in Anspruch genommen werden, und das Fehlen dieses Berichts auf ein Verschulden des Partners zurückzuführen ist, wird der Partner eGENTIC von allen etwaigen daraus resultierenden Ansprüchen freistellen und auch die angemessenen Kosten einer Rechtsverteidigung übernehmen. Die Geltendmachung eines darüberhinausgehenden Schadensersatzanspruchs bleibt von dieser Regelung unberührt.

10. Datenschutz

10.1 Wird der Vertragspartner als Auftragsverarbeiter seines Kunden tätig, garantiert er, dass alle gesetzlichen Voraussetzungen der Auftragsverarbeitung und des Datentransfers, einschließlich ggf.

notwendiger geeigneter Garantien i. S. v. Art. 44 ff. DSGVO, eingehalten werden.

10.2 Der Vertragspartner sichert zu, die ihn und/oder das Vertragsverhältnis betreffenden datenschutzrechtlichen Vorschriften einzuhalten und im Falle eines datenschutzrechtlich relevanten Sachverhaltes eGENTIC umgehend darüber zu informieren.

11. Sanktionen bei Vertragsverletzung

11.1 Der Vertragspartner verpflichtet sich, an eGENTIC für jeden schuldhaften Verstoß gegen die Bestimmungen dieser AGB – je nach Schwere des Verstoßes und Verschuldensgrad des Vertragspartners bei diesem Verstoß – eine Vertragsstrafe von bis zu EUR 15.000,00 zu bezahlen. Die Geltendmachung eines darüberhinausgehenden Schadensersatzanspruchs bleibt von dieser Regelung unberührt.

11.2 Bei Wahl der E-Mail-Option 2, Affiliate Option 2, Banner Option 2 und Push Option 2 ist der Vertragspartner verpflichtet, die gleiche Vertragsstrafe zu Gunsten von eGENTIC seinem Kunden vertraglich aufzuerlegen, so dass eGENTIC im Verstoßfall ein unmittelbarer Vertragsstrafenanspruch gegen den Kunden zusteht.

12. Sonstiges

12.1 Mit Ausfertigung der ersten IO akzeptiert der Vertragspartner diese AGB. Diese AGB werden auf unbestimmte Zeit geschlossen und können von dem Vertragspartner mit einer Kündigungsfrist von einer (1) Woche gekündigt werden. eGENTIC ist berechtigt, diesen Vertrag jederzeit mit sofortiger Wirkung zu kündigen. Im Falle der Kündigung dieser AGB muss eine bereits andauernde Kampagne durchgeführt und innerhalb der Kündigungsfrist beendet werden. Eine IO kann entsprechend der in der IO vereinbarten Kündigungsfrist separat gekündigt werden.

12.2 Etwaige Allgemeine Geschäftsbedingungen des

Vertragspartners finden keine Anwendung.

12.3 Die zu diesen AGB geschlossenen IOs werden integrale Bestandteile dieser AGB. Sollten zwischen den Regelungen einer IO und diesen AGB Widersprüche bestehen, haben die Regelungen der IO Vorrang.

12.4 Beide Seiten bewahren vorbehaltlich einer gesetzlichen oder gerichtlich angeordneten anderweitigen Verpflichtung Stillschweigen über die in diesen AGB und der IO vereinbarten Konditionen und den Inhalt des Vertrags.

12.5 eGENTIC ist berechtigt, den Vertragspartner als Kundenreferenz unter Verwendung des Namens und Logos zu nennen.

12.6 Sollten eine oder mehrere Bestimmungen dieser AGB rechtsunwirksam sein oder werden, so soll dadurch die Gültigkeit der übrigen Bestimmungen nicht berührt werden. Die ungültige Bestimmung wird schnellstmöglich durch eine andere Bestimmung ersetzt, die dem wirtschaftlichen Gehalt der rechtsunwirksamen Bestimmung am nächsten kommt.

12.7 Änderungen und Ergänzungen dieser AGB einschließlich dieses Schriftformerfordernisses bedürfen zu ihrer Wirksamkeit der Schriftform. Die Parteien sind sich darüber einig, dass zur Einhaltung der Schriftform eine elektronische Signatur im DocuSign oder EchoSign Verfahren ausreichend ist.

12.8 Es gilt deutsches Recht. Gerichtsstand ist Frankfurt am Main.

English/current as of:
19.06.2018

Terms and conditions for Channel Traffic

These terms and conditions (hereinafter **"T&C"**) are concluded between eGENTIC GmbH, Am Unisyspark 1, 65843 Sulzbach/Ts. (hereinafter **"eGENTIC"**) and the advertising company (hereinafter **"Partner"**), referred to individually as **"Party"** or collectively as **"Parties"**.

Abstract:

eGENTIC is acting as list-broker and markets email lists of different companies (hereinafter **"Listowner"**). The data sets contained in different lists are generated through different internet campaigns, e.g. surveys and sweepstakes.

When registering for the respective campaign a user declares his/her consent to receive advertising (hereinafter **"Advertisement or Campaign"**) on behalf of the respective Listowner.

The respective Listowner is also the owner of the database in which personal data of the users are stored. eGENTIC is authorised by the respective Listowner to market the data sets and thus the different email lists. The release of this T&C is also covered by the authorisation.

The generation of data and the data processing is carried out under observance and application of the relevant data protection regulations. In addition, contracts between eGENTIC on the one hand and the Listowner respectively on the other hand concerning data processing in accordance with Art. 28 of the European General Data Protection Regulation (GDPR) have been laid out, under which eGENTIC, amongst other things, is explicitly authorised to market such lists for direct marketing.

Furthermore, by accessing numerous marketing tools, eGENTIC guarantees a high quality service. Thus, a hundred percent subsidiary (hereinafter

"Subsidiary") of eGENTIC. Operates and manages an affiliate network (hereinafter **"BigBangAds"** or **"BBA"**), where Advertiser can place their advertising material and Publisher can pick this material to perform the Campaigns through different available advertising channel of the participating publishers.

These T&C regulates the relations between the Parties in this economic use of data sets for advertising purposes by showing advertising Push-Notifications, advertising banners or by dispatching of advertising E-Mails through eGENTIC. Furthermore it regulates the use of datasets by using different advertising channels of other third parties (hereinafter **"Publisher"**), through their Affiliate-Network Big Bang Ads, in the name of the respective Listowner by using the advertising material provided by the Partner.

In this respect the Parties agree as follows:

1. Insertion order and scope

These T&C cover the dispatch of Standalone E-Mail campaigns (hereinafter **"Newsletter"**) dispatched through eGENTIC itself, the advertising shown through **"Push-Notifications"** through eGENTIC itself and the display of advertising material in a **"Banner"**, as well through eGENTIC itself. Moreover, the distribution of the advertising material through eGENTIC's Affiliate-Network BBA by a participating Publisher is covered by these T&C's. The description of service, the Campaign label, the volume, the target market as well as the payment model/price and the Campaign duration will be agreed upon in an Insertion Order (hereinafter **"IO"**) to be concluded between the Parties.

2. Product explanation

The following clauses 2.1., 2.2, 2.3, describe only the products, which are offered by eGENTIC directly. The clauses 2.4 describes the channels used in BBA. A definition of the possible advertising channels is included in the IO.

2.1 Newsletter dispatched through eGENTIC

The advertising material to be shown via E-Mail may be the Partner's own advertising material (hereinafter **"E-Mail Option 1"**) or may be the advertising material of the Partner's contractual partner (hereinafter **"Client"**) (hereinafter **"E-Mail Option 2"**). For the avoidance of doubts, by choosing E-Mail Option 2 the Partner shall only act as an intermediary.

2.2 Push-Notifications

Push-Notifications mean the possibility to show Partner's advertising material on users display through small sized push notifications. The Partner agrees that eGENTIC has no influence on the position and/or the size of the push notification. The position and the size are depending on the app provider, user's settings, and the used operating system (hereinafter **"System"**).

The advertising material to be shown in a Push-Notification may be the Partners own advertising material (hereinafter **"Push Option 1"**) or may be the advertising material of the Partner's Client (hereinafter **"Push Option 2"**). By choosing Push Option 2, the Partner shall only act as an intermediary.

2.3 Banner

The Partner is aware that he chooses the product banner if he wants advertising material to be shown in a banner on different available websites to be determined between the Parties hereinafter.

The advertising material to be shown in a Banner may be the Partner's own advertising material (hereinafter **"Banner Option 1"**) or may be the advertising material of the Partner's Client (hereinafter **"Banner Option 2"**). For the avoidance of doubts, by choosing Banner Option 2 the Partner shall only act as an intermediary.

2.4 Distribution of the advertising material through BBA

The Partner can decide, if his advertising material shall be distributed through BBA and one of the participating Publisher Distribution means, the Partner has in the IO the possibility to choose, that his advertising material shall be placed in BBA. The partner can choose between different advertising

channels. The Partner can choose between one, several and all, possible channels.

Moreover, the advertising material to be shown via BBA may be the Partner's own advertising material (hereinafter "Affiliate Option 1") or the advertising material of its client (hereinafter "Affiliate Option 2"). By choosing Affiliate Option 2, the Partner (in regard to its client) and eGENTIC (in regard to BBA) shall act as intermediators.

After conclusion of the respective IO, the advertising material will be placed in BBA by eGENTIC. For each BBA Campaign a separate IO has to be issued

3. Obligations of eGENTIC when dispatching Newsletter through eGENTIC

3.1 For the dispatch eGENTIC shall only allow using data sets of its own database if an advertising consent has been granted by the respective user for the benefit of the respective Listowner during the registration process. Hereby the Partner permits/accepts the lead generation and is not able to derive any other claims.

3.2 eGENTIC will only allow using data sets if the consent of the user to accept advertising given at the registration process is – to eGENTIC's knowledge – still valid at the time when the advertising e-mail is to be dispatched and the consent has not extinguished in the meantime – possibly, because the user has revoked.

4. Obligation of eGENTIC by Push Notifications

4.1 For showing the advertising material in Push-Notifications eGENTIC shall only allow using data sets where an advertising consent has been granted by the respective user for the benefit of the respective Listowner.

This consent has been granted by the respective user through accepting the placing of specific advertising cookies in his used operating system; the placement of such cookies depends exclusively on whether this is allowed

and enabled in the settings of the system used by the user.

4.2 eGENTIC shall ensure that the Push-Notifications with the advertising material of the Partner will only be shown to user whose consent is still valid

5. Obligation of eGENTIC by Banner

5.1 eGENTIC shall ensure that the advertising material delivered by the Partner is shown in a correct manner.

5.2 eGENTIC is not allowed to change the advertisement delivered in his own discretion. In cases of objections regarding the technical implementation, eGENTIC shall contact the Partner and the Parties shall agree on possible amendments.

6. Obligation of eGENTIC by placing advertising material in BBA

6.1 eGENTIC place the advertising material in BBA as provided and specified by the Partner itself. eGENTIC does not assess the advertising material provided by the Partner. In particular, there will be no legal review and no further approval-process of the advertising material provided by the Partner.

6.2 In case of any short-dated changes of the Advertising Material, eGENTIC shall communicate those changes in BBA as soon as possible and with undue delay.

6.3 eGENTIC shall ensure that the advertising material provided by the Partner, is shown in a correct manner, independently of what channel shall be used.

6.4 eGENTIC shall handle billing, payment and tracking according to Point 9 of this T&C's.

7. Obligations of the Partner

7.1 The Partner ensures that the advertising provided by the Partner in connection with this T&Cs are in conformity with the law and do not violate third party rights. He guarantees that he will not use any advertising texts

containing illegal content (e.g. any illegal, obscene, pornographic, violent, abusive, harassing and/or libellous content, material and/or information) in any form whatsoever and/or advertising for articles the distribution of which is entirely prohibited in the respective applicable target market/country (e.g. unauthorised gambling) or the distribution of which is subject to restrictions that were disregarded when sending the mails (e.g. FSK18, State Treaty on Gambling Advertising Prohibition) and/or in which third party rights, trademarks and/or copyrights were violated. Furthermore it is prohibited to advertise sweepstakes and any kind of advertising content referring to lead generation processes.

7.2 As soon as the Partner becomes aware that a User has withdrawn his consent given during the generation process with respect to advertising, data protection law or for other reasons, so as to affect the validity of such consent, then the Partner must inform eGENTIC thereof immediately, but at latest on working days within 24 hours and on other days by 11:00 am on the subsequent working day. At the request of eGENTIC, the Partner must immediately prove, by presentation of a properly informative and written documentation, and at latest on working days within 24 hours and on other days by 11:00 am on the subsequent working day, that such an exercise of his rights by the user concerned has in fact occurred. For this purpose, in particular, the actual wording of the user in relation to the exercise of rights in question must be made available to eGENTIC. The Partner shall ensure that he receives the necessary information in order to comply with the above-mentioned obligations, and in particular, when he uses a service provider for contacting the user.

7.3 Two (2) days prior to the date of transmission of the Newsletter, the start of the Push-Notification or put online the Banner, the Partner shall provide all advertising material and Tracking-URLs. The Partner shall communicate any changes and/or amendments of the provided advertisement without undue delay.

7.4 The Partner accepts eGENTIC's right to refuse any provided advertising material at any time without giving any reason.

7.5 The Partner agrees with the use of his company logo, company name and/or lettering in the advertisement. Moreover, he agrees to serve the needs of the advertisement.

7.6 Furthermore, hereby a respective nonexclusive, non-transferable, and revocable right to use the Advertising Material for advertising purposes is also granted by the Partner to a Publisher in BBA, if the distribution of the advertising material shall be performed through BBA. The Partner expressly agrees to grant such a license to the Publisher. The Publisher is only entitled to use the Advertising Material for the chosen channel in the IO to the extent necessary.

7.7 The Partner agrees, by choosing the product Affiliate, independently of the options, that a Publisher of BBA places the advertising material for its provided channel, as ordered by the Partner. Furthermore, the Partner agrees by choosing a channel where a direct contact to user happen (e.g. Newsletter, SMS, etc.), that the Publisher contacts individuals of his own database. These users are not users of eGENTIC's database. The Partner accepts that eGENTIC is not responsible or can be made liable for the advertising consents of the users contained in Publisher's database.

7.8 The Partner provides the advertising material for the channels and entitles the Publisher to use the advertising material during the time of the specific Campaign. eGENTIC has no influence regarding the transmission of rights of use

7.9 Additionally if Option 2 of any of the products is selected, that means the Partner is acting as an intermediary in this regard, the Partner commits himself to impose by contract on his Client the obligations stated in this T&Cs, including without limitation to the subparagraphs 7.1 – 7.9 as well as 8.1 – 8.3.

7.10 Upon the issue of an order with Option 2 of any of the products, the Partner acting as an intermediary shall assign to eGENTIC all and any payment claims against his Client under the contract on which this claim is based. eGENTIC hereby accepts this assignment (assignment for security). eGENTIC will be entitled to disclose and claim this to the Partner's Client in the event that eGENTIC's claim against the Partner has not been paid within the respective payment period stated in the invoice. The Partner agrees that this assignment is also valid when his advertising material shall be distributed through a Publisher in BBA.

7.11 The Partner knows that the Subsidiary is owner and operator of BBA, not eGENTIC. Therefore, he agrees that with signing the respective IO he expressly consents to the use of the Advertiser Terms and Conditions (hereinafter "AT&Cs") of the Subsidiary. The Partner accepts that a participation in BBA is not possible without accepting Subsidiary's AT&Cs, which can be viewed under www.egentic.com/termsandconditions/channeltraffic

8. Problem incidents

8.1 The Parties shall inform each other immediately if they gain knowledge that in a data record is the risk of an improper registration (e.g. unauthorised registration in the name of a third party) and/or the advertising consent has been revoked, withdrawn or a user asserts any other right. The data record in question will be blocked and no longer used, depending which right is asserted.

8.2 In the case of legal recourse by a third party who doubts whether a declaration of consent is effective, the Parties shall promptly inform each other of the facts and coordinate possible further procedure.

8.3 The Partner – also with reference to point 7.1 of this T&C - is responsible for the content and form of the advertising disseminated with the use of the data sets. Explicitly eGENTIC does not assess the advertising material provided by the Partner under legal aspects. If a third party seeks to enforce a claim against

eGENTIC and/or the respective Listowner due to the content or form of the advertising, the Partner shall indemnify eGENTIC, the respective Listowner and/or the respective Publisher against any claims that might arise and also assume responsibility for paying appropriate costs for legal defence. This regulation does not impair the right to assert an additional claim to damage compensation.

8.4 If the Partner decides that his advertising shall be distributed through BBA, however Option 1 or Option 2, he agrees that the respective Publisher is responsible for the legal compliance of the distribution of Partners advertising material, included but not limited to the existence and validity of the respective advertising consent. If a third party seeks to enforce a claim against the Partner due to the incompliance of distribution, e.g. an invalid consent and/or the misuse of the advertising content provided by the Partner, the Partner agrees that he has no rights to enforce a claim against eGENTIC.

9. Payment

9.1 The Partner pays on CPM-basis, CPL-basis, CPO-basis, or CPC-basis, according to the specification in the IO.

9.2 All prices quoted are net of 19% VAT. Unless otherwise agreed, the invoice amount is payable within fourteen (14) days from the invoice date.

9.3 If the Partner chooses payment on CPL- or CPO-basis, the amount of generated leads has to be reported to eGENTIC within thirty (30) days after the date of dispatch. Otherwise eGENTIC is entitled to invoice on a EUR 50, 00 CPM basis.

9.4 eGENTIC is responsible to forward partner's report in point 9.3 to the publisher, to ensure the correct invoicing on publisher's side.

If a publisher seeks to enforce a claim against eGENTIC due to the failure of reporting on the Partner's side and consequently the inability of eGENTIC passing on the exact report to the publisher, the Partner shall indemnify eGENTIC against any claims that might

arise thereof and assume responsibility for paying appropriate costs for legal defence. This regulation does not impair the right to assert any additional claims to damage compensation.

10. Data protection

10.1 In the case of, that the Partner acts as a contract processor for his client. The Partner shall guarantee that all the legal requirements for contract processing and data transfer will be observed, including where necessary any suitable guarantees that may be necessary in accordance with Art. 44 et seq. GDPR.

10.2 The Partner warrants that he will comply with the requirements under data protection law that apply to him and/or the contractual relationship, and that he will inform eGENTIC without delay if any circumstances arise that have implications under data protection law.

11. Sanction in the event of a violation

11.1 The Partner undertakes to pay to eGENTIC a contract penalty of up to EUR 15,000.00 for each culpable breach of the provisions of these T&Cs, depending on the seriousness of the offence and the degree of culpability of the Contractual Partner. This provision does not impair the right to assert a claim for compensation for damages.

11.2 In cases of the E-Mail Option 2, Affiliate Option 2 and Push Option 2 the Partner is obliged to impose the same penalty on his Client for the benefit of eGENTIC, so eGENTIC may assert a claim directly against the Client in cases of violation.

12. Final provisions

12.1 Once the Partner has accepted these T&Cs by issuing the first IO, these T&Cs are concluded for an indefinite time and can be terminated by the Partner with notice of one (1) week. eGENTIC is entitled to terminate these T&Cs at any time with immediate effect. In cases of termination of these T&Cs any current campaign – ordered through an IO – must be processed and finished within this notice period. Any IO can be terminated separately according

to the respective regulation stated in the IO.

12.2 Unless expressly agreed by eGENTIC, all Partners' terms and conditions are rejected.

12.3 All individual IO's concluded in connection with these T&C become an integral part of these T&C. In cases of any dissent between this T&C and the IO, the regulations in the IO have priority.

12.4 Both Parties are obligated to keep secret the conditions agreed in these T&Cs and the contents of these T&Cs unless they are obliged due to legal or other judicial order.

12.5 eGENTIC is allowed to mention the Partner as reference customer by using the name and the company logo.

12.6 If one or more of the provisions of these T&Cs should be or become legally invalid, this will not affect the validity of the remaining provisions. The invalid provision must be replaced as quickly as possible by a provision with a content that in business-economic terms approximates that of the legally invalid provision as closely as possible.

12.7 Changes and additions to these T&Cs, including this written form requirement, must be set out in writing to be effective. The Parties also agree that for the purposes of complying with the written form, an electronic signature in the DocuSign or EchoSign procedure is sufficient.

12.8 German law applies. The place of jurisdiction is Frankfurt am Main



current Stand of
19.06.2018

Terms and Conditions Advertiser

The following terms and conditions are entered into and between eGENTIC Asia Pacific Pte. Ltd. (hereinafter "eGENTIC") and the advertising company (hereinafter "Advertiser"), referred to individually as "Party" or collectively as "Parties".

eGENTIC operates and manages an affiliate network (hereinafter "BigBangAds") a publishing company (hereinafter "Publisher") and an Advertiser may participate in.

The Advertiser wants its concrete advertising of its goods and services (hereinafter "Advertising Material") to be shown through different ways of advertisements, including but not limited to banners, emails, iFrames and/or videos (hereinafter "Advertising Channel").

By using BigBangAds the Advertiser can place his Advertising Material combined with the respective Advertising Channel and concrete financial conditions (hereinafter "Advertising Campaign") in order to be picked and performed by a Publisher. Such an Advertising Campaign may be governed – beside this Agreement – by further specific conditions issued by the Advertiser (hereinafter "Campaign Terms") which have to be observed by the Publisher picking and performing the concrete Advertising Campaign.

Picking and performing the Advertiser Campaign, the Publisher may publish the Advertising Material – by adhering the desired Advertising Channel – through banners and/or iFrames and/or videos that will be shown on the Publishers' own websites and/or on third parties websites where banner and/or iFrame and/or video places have been booked and/or emails that may be sent by the Publisher or by third parties delegated by the Publisher and/or other networks operated by the Publisher by adhering any restriction stated in the Campaign Terms.

I. Participation

1. The Advertiser has to submit an application from the website www.big-bang-ads.com. The application has to be accurately completed. It is strictly forbidden to use any aliases or other means to mask Advertiser's true identity or contact information. The Advertiser is obliged to provide eGENTIC with future updates. Finishing of the application process and transmitting the application constitutes the acceptance of our offer to conclude the Agreement. After eGENTIC has reviewed the application successfully, eGENTIC will notify Advertiser of any acceptance by granting access to BigBangAds in order to offer Advertising Campaigns. Furthermore eGENTIC may accept or reject Advertiser's application at its sole discretion for any reason. In case of a rejection any data filled in by the Advertiser and transmitted to BigBangAds will be deleted. In case of a rejection no enforceable right could be derived, including without limitation any right of participation.

2. For the avoidance of doubts by completing the application and giving its consent to this Agreement by ticking the check box the Advertiser submits its acceptance for the conclusion of this Agreement regarding the participation in the BigBangAds-Network.

II. Advertising Campaign, Campaign Terms, and Insertion Order

For offering a n Advertising Campaign in order to be picked and performed by the Publisher the Advertiser has to contact its contact person of BigBangAds and to submit the Advertising Material, Advertising Channel as well as the Campaign Terms. In the Campaign Terms specific regulation can be agreed, e.g. payment model/financial conditions, forbidden forms of publishing the advertisement etc. According to this an insertion order (hereinafter "IO") shall be issued and sent to the Advertiser. An example is attached as **Annex 1** to this Agreement. Such an IO needs to be signed from both eGENTIC and the Advertiser. After conclusion of the IO the offer will be

placed in BigBangAds. For each Advertising Campaign a separate IO has to be issued.

III. Obligations of the Advertiser

1. The Advertiser ensures that all Advertiser Material (i) are not illegal, (ii) do not infringe upon the intellectual property of third parties, including without limitation trademarks and/or copyrights, and/or further third party rights and/or personal rights of any third party and (iii) do not contain or link to any material which is – including without limitation – harmful, threatening, defamatory, obscene, sexually explicit, harassing, promotes violence, promotes discrimination (whether based on sex, religion, race, ethnicity, nationality, disability or age), promotes illegal activities (such as gambling), promotes advertising for articles the distribution of which is entirely prohibited or the distribution of which is subject to restrictions that were disregarded when publishing, contains profanity or otherwise contains materials that Big Bang Ads informs you that it considers objectionable. Furthermore it is prohibited to place Advertising Materials relating to sweepstakes and any kind of advertising content referring to lead generation processes.

2. In addition the Advertiser ensures not to place any of the following forbidden forms of advertising: mass subscription (automatic entry websites and/or scripts), forced clicks, webhosting, image hosting, file sharing, user generated content without editorial control, misleading user flows (e.g. violating any applicable law, rules, or regulations, including without limitation the causing of false impression regarding prize distribution and the use of incentives) and interstitial pages.

3. Expressly it is not permitted to especially use and/or distribute viruses, ransom ware worms, trojan horses, rootkits, key loggers, dialers, spyware, illegal adware, malicious BHOs, rogue security software and other malicious programs.

4. Any ad serving software used by the Advertiser shall only been used installed on an end-user's computer in a legally admissible manner, including without limitation that the function of the software is clearly disclosed to end-users prior to installation, the installation is pursuant to an affirmatively accepted and understandable end user license agreement and the software can be easily removed according to generally accepted methods. Ad serving software may be allowed in the respective Campaign Terms.

5. The Advertiser ensures not make any representations, warranties or other statements concerning Big Bang Ads and/or eGENTIC and/or Advertiser or any of their respective products or services, except as expressly authorized herein.

6. According to point VI. of this Agreement the Advertiser ensures not to place the brand of eGENTIC and/or any Publisher and/or the brand BigBangAds on any platform and/or online platform, website and/or any other place without prior written consent of the respective trademark owner. Written means and includes letter, fax, email and/or Skype. In general the Advertiser ensures to not infringe any intellectual property rights of eGENTIC and/or any Publisher, including without limitation trademarks and/or copyrights. The Advertiser ensures to not copy or resemble the look and feel of eGENTIC's and/or any Publisher's website and/or create the impression that the Advertiser Material is in any way associated to Big Bang Ads, eGENTIC and/or any Publisher, without prior written permission from eGENTIC and/or Publisher. The definition of unwritten stated in this paragraph III.6 applies.

7. The Advertising Material must refer to the Advertiser itself, respectively the Advertisers' goods and services. It is strictly forbidden to use any content referring to a third person different to the Advertiser. Furthermore it is strictly forbidden to use Advertising Material that masks Advertiser's true identity and/or that may mislead end-user in any way. No Advertising Material shall

appear to be associated with or be positioned on chat rooms or bulletin boards unless otherwise agreed in writing.

8. The Advertiser will comply with all (i) obligations, requirements, and restrictions under this Agreement, (ii) laws, rules, and regulations as they relate to the business of the Advertiser and/or the Advertiser Material, and (iii) the terms, conditions, guidelines, and policies of any third party services used by Advertiser in connection with the BigBangAds, including but not limited to, email providers, social networking services.

9. Where required the Advertiser will always prominently post and make available to end users, including prior to the collection of any personally identifiable information, a privacy policy in compliance with all applicable laws that clearly and thoroughly discloses all information with regard to collection, use and sharing practices. Furthermore and in general Advertiser guarantees to act in compliance with all applicable privacy/data protection regulations.

10. With regard to the Advertising Material the Advertiser is not permitted to use any kind of advertising, whether directly or indirectly, connected with BigBangAds, eGENTIC and/or any Publisher. Furthermore it is not permitted to create the impression that any Advertising Material has been initiated by BigBangAds, eGENTIC and/or any Publisher or that BigBangAds, eGENTIC and/or any Publisher are in any way associated with the Advertising Material.

11. The Advertiser accepts the obligation to pay to eGENTIC a contract penalty up to EUR 10.000,00 for each culpable offence against this provision II. The amount of the contractual penalty depends on the severity of the offense and is at the discretion of eGENTIC.

This regulation does not impair the right to assert a further claim to damage compensation.

12. If a third party seeks to enforce a claim against eGENTIC and/or the

Publisher due to any Advertising Campaigns including any Advertiser Material, and/or any offence against the provision II, the Advertiser shall indemnify eGENTIC and/or the Publisher against any and all claims that might arise and also assume responsibility for paying appropriate costs for legal defence.

13. If a Publisher seeks to enforce a claim against eGENTIC due to any Advertising Campaigns including any Advertiser Material and/or any offence against the provision II by the Advertiser, the Advertiser shall indemnify eGENTIC against any and all claims that might arise and also assume responsibility for paying appropriate costs for legal defence.

IV. Obligations of eGENTIC

1. eGENTIC operates BigBangAds and conducts its business with due care and diligence of a prudent and conscientious businessman.

2. eGENTIC shall provide the Advertising Campaigns as provided by the Advertiser itself. eGENTIC does not assess the advertisement provided by the Advertiser, including without limitation any legal assessment of the Advertising Material.

3. In cases of any short-dated changes of the Advertising Material eGENTIC shall communicate those changes in BigBangAds as soon as possible and with undue delay.

4. eGENTIC shall ensure that the Advertising Campaign is shown in a correct manner.

5. eGENTIC will attempt to make BigBangAds available. In cases of any system failure of BigBangAds, eGENTIC attempts to restore the functionality of the system as far as possible. In case of any system failure and/or system interruption no enforceable right could be derived.

6. eGENTIC does not guarantee the constantly availability of BigBangAds and all actions connected with this availability, including without limitation

the availability of the Advertising Material, the Advertiser's landing page and the accounting system. In exceptional cases it might happen that some transactions might not be counted and/or recorded. No right could be derived against eGENTIC due to such interruptions.

7. Advertiser provides the Advertising Material for the Publisher and entitles the Publisher to use the Advertising Material during the time of the specific campaign. eGENTIC has no influence regarding the transmission of rights of use. Please see also point IX of this Agreement.

8. eGENTIC shall handle billing, payment and tracking according to point V of this Agreement.

V. Billing, payment, and tracking

1. Billing and payment will be separated into four (4) different entities: European Union, Asia Pacific, North America, and South America. Each Advertiser will be allocated to one of these entities, from whom the respective billing and payment will ensue.

In cases the Advertiser has not been acquired directly from one of eGENTIC's employees and has registered itself independently in BigBangAds the Advertiser will be allocated to the respective accounting and billing entity according to the country schedule attached as **Annex 2** to this Agreement.

In cases the Advertiser has been acquired by an eGENTIC's employee and has afterwards registered in the BigBangAds the Advertiser will be allocated to the accounting and billing entity the employee works for. That means the Advertiser's allocation will be done by eGENTIC's employee.

Any offered Advertising Campaign includes a code consisting of (i) a shortcut for the country the advertisement shall be shown in (ii) a shortcut referring to an internal identifier of an Advertiser and (iii) a shortcut referring to the entity the Advertiser is allocated to for billing and payment purposes (hereinafter "**Geo-**

Code"). For the avoidance of doubts: a Geo-Code may have the following shortcuts AU-EXT-EU which means that the advertisement shall be shown in Australia, the Advertiser is an external one and the entity in the European Union shall be the allocated entity for billing and payment purposes. Possible shortcuts for the accounting/billing entity are: EU (European Union), AP (Asia Pacific), NA (North America) and SA (South America). The respective billing entity is visible through the Geo-Code. Furthermore the respective accounting and billing entity is visible in the IO according to point II. of this Agreement.

The Advertiser will receive an invoice including performed Advertising Campaigns and detailed figures issued by the respective entity.

For the avoidance of doubt the company name of the billing entity will be listed hereinafter:

- EU (European Union): eGENTIC GmbH
- AP (Asia Pacific): eGENTIC Asia Pacific PTE LTD.
- NA (North America): eGENTIC North America Corp.
- SA (South America): eGENTIC Brasil Geração Mundial de Leads Ltda.

2. The level of payment (hereinafter collectively "**Commission**") depends on the specific action, behaviour and/or business transaction agreed in the Campaigns Terms and/or the Advertising Campaigns, for example whether a payment shall be done in cases of generated leads and shall be paid on CPL basis. Advertiser has no right of refund for any costs and expenses in any way associated with the Advertising Campaign. A Commission has to be paid if (i) a specific action, behaviour and/or business transaction – depending on the Campaign Terms and the IO – has come out attributable to Publisher's promotional activity, (ii) the specific action, behaviour and/or business transaction has been tracked and recorded by eGENTIC and has been validated according to point V.5., , and (iii) no misuse and/or violation appears

according to the conditions of this Agreement.

3. Any Commissions has to be paid according to the regulations stated in the IO, e.g. monthly, bimonthly, or weekly, depending also on the specific Advertising Campaign and the Campaign Terms if any. Any Commission has to be paid within the payment period stated in the corresponding invoice. If the Advertiser does not pay within the payment period stated in the invoice, he will be in default without any further reminder, which will result in default interest amounting to 9 % above the respective base interest rate. Any threshold may be agreed in the IO too.

4. Publisher payment is dependent upon Advertiser provides such funds to eGENTIC. Therefore any Advertiser's default may end in further payment claims asserted from both eGENTIC and the respective Publisher.

5. For tracking the Parties will rely on the Advertiser's numbers if eGENTIC has access to the Advertiser's tracking system. If eGENTIC does not have access to the Advertiser's tracking system, the Advertiser must report the generated data correctly to eGENTIC to the best of his knowledge and belief. If the Advertiser chooses payment on CPL- or CPO-basis, the amount of generated leads has to be reported to eGENTIC after the date of dispatch. All reports from the Advertiser have to be done latest within the first 10 days after the end of a calendar month. Otherwise all tracking and ensuing invoicing will be made by eGENTIC in its sole discretion.

Basically all tracked data sets have to be paid, as agreed in the IO.

In the event that the Advertiser disputes in good faith any portion of a credit advice, the Advertiser must submit that dispute to eGENTIC in writing and in sufficient detail within seventy-two (72) hours of the date stated in the invoice. If Advertiser does not dispute the accounting data as set forth in the invoice, Advertiser agrees that it irrevocably waives any claims based upon that accounting data. Furthermore in order to receive any Commission the specific action, behaviour and/or

business transaction must be validated. Such validation will be done by the Advertiser and the Advertiser has to provide a proper cancellation reason for each cancelled transaction.

In the event that the Advertiser criticizes the quality of the received data, he must notify eGENTIC in written within 14 days of receipt of the data. The notification must contain a detailed description of the lack of quality. Otherwise the complaint will not be accepted. If the Advertiser can prove a reduced quality, eGENTIC is entitled to charge at least 70 % of the tracked data.

VI. Misuse

1. In addition to point III. of this Agreement any kind of misuse that means any dishonest and/or forbidden practices infringing applicable law, this Agreement, Campaign Terms and/or the honest principle of BigBangAds is strictly forbidden. This includes without limitation (i) any tracking manipulation, (ii) using any persons, means, devices or arrangements to commit fraud, violate any applicable law, interfere with other affiliates, or falsify information in connection with the generation of Commissions and/or (iii) exceeding Advertiser's access to BigBangAds.

2. In cases of misuse eGENTIC is entitled to an extraordinary termination without any notice period and with immediate effect.

3. The Advertiser accepts the obligation to pay to eGENTIC a contract penalty up to EUR 10.000,00 for each culpable offence against this provision VI. The amount of the contractual penalty depends on the severity of the offense and is at the discretion of eGENTIC.

This regulation does not impair the right to assert a further claim to damage compensation.

4. If a third party seeks to enforce a claim against eGENTIC and/or a Publisher due to any misuse and/or any offence against the provision V, the Advertiser shall indemnify eGENTIC and/or the Publisher against any and all claims that might arise and also assume

responsibility for paying appropriate costs for legal defence.

5. If a Publisher seeks to enforce a claim against eGENTIC due to any misuse and/or any offence against the provision VI by the Advertiser the Advertiser shall indemnify eGENTIC against any and all claims that might arise and also assume responsibility for paying appropriate costs for legal defence.

VII. Blocking and deactivation

In cases of suspicion of any Advertiser's offence against this Agreement eGENTIC at its sole direction is entitled to block and/or deactivate Advertiser's account for the duration of any review or irrevocably with immediate effect. In such cases Advertiser will be informed without undue delay and the possibility of an Advertiser's statement will be given.

VIII. Confidentiality

Except as otherwise provided in this Agreement or with the consent of eGENTIC, Advertiser agree that all information, including without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, and pricing and sales information, concerning eGENTIC, BigBangAds and/or any Publisher shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by Advertiser for any purpose other than Advertiser's participation in BigBangAds, except and solely to the extent that any such information is generally known or available to the public through a source other than the Advertiser. Advertiser shall not use any information obtained from BigBangAds to develop, enhance, or operate a service that competes with BigBangAds, or assist another party to do the same.

IX. Limited License and Intellectual Property

1. eGENTIC grants to Advertiser a nonexclusive, non-transferable, revocable right to use and to access

BigBangAds solely in accordance with the terms of this Agreement.

2. Furthermore and hereby a respective nonexclusive, non-transferable, and revocable right to use the Advertising Material for purposes of performing the Advertising Campaign is also granted by the Advertiser to the Publisher. Advertiser expressly agrees to granting such a license to the Publisher. Publisher is only entitled to use the Advertising Material to the extent necessary to perform its work and obligations under this Agreement.

3. Advertiser may not alter, modify, manipulate, or create derivative works of any Big Bang Ads graphics, creative, copy or other materials owned by, or licensed to, eGENTIC in any way.

4. The licenses may be revoked at any time by giving the Advertiser notice. Except as expressly stated herein, nothing in this Agreement is intended to grant Advertiser any rights to any of eGENTIC's trademarks, service marks, copyrights, patents, or trade secrets. All rights not expressly granted in this Agreement are reserved by eGENTIC.

X. Termination

This Agreement shall commence on the date of eGENTIC's approval of Advertiser's application and shall continue thereafter until terminated as provided herein. Advertiser may terminate its participation by deregister at BigBangAds. Any concrete Advertising Campaign can be terminated with a notice period of seventy-two (72) hours in writing. The definition of written according to point III.6 applies. eGENTIC may terminate the Advertiser's participation in one or more Advertising Campaigns and/or this Agreement at any time and for any reason which eGENTIC deems to be appropriate with or without prior notice to Advertiser. Upon termination of Advertiser's participation in one or more Advertising Campaigns and/or this Agreement for any reason, Advertiser will immediately cease all use of and delete all Advertising Material and connected links, plus all Big Bang Ads and/or eGENTIC and/or Advertiser intellectual

property and will cease representing itself as a Big Bang Ads member.

XI. Data Protection

1. eGENTIC collects, processes, and uses personal data in compliance with the applicable data protection law.

2. Where required eGENTIC is entitled to collect, store, and use personal data in order to enable Advertisers access to BigBangAds and to perform the respective services.

3. In particular eGENTIC collect, store, and use those personal data indicated by the Advertiser during the participation process. Furthermore the data will be used in order to get in contact with the Advertiser. Any other processing and/or use of data only ensues according to an explicit consent of the Advertiser or in cases eGENTIC is entitled to do so according to statutory regulations.

4. The Advertiser is entitled to allege its rights according to statutory data protection regulations, including without limitation to obtain information regarding the stored personal data.

5. Advertiser ensures to collect, process, and use personal data in compliance with the applicable data protection law.

6. By accepting this Terms and Conditions, the Advertiser consents and allows the use of his and/or his company's information, including sharing with a third party, to assess, detect, prevent, or otherwise enable detection and prevent of malicious, invalid, or unlawful activity and/or general fraud prevention.

XII. Remedies

In addition to any other rights and remedies available to eGENTIC under this Agreement eGENTIC reserves the right to initiate appropriate legal steps if (i) eGENTIC determines that Advertiser has violated this Agreement, including without limitation any violation of the Advertiser obligations according to point III. of this Agreement, any

violation of any payment requirement according to point V of this Agreement and/or any violation of the misuse conditions stated in point VI of this Agreement, (ii) eGENTIC or a Publisher receives any complaints about Advertiser's participation in BigBangAds which eGENTIC reasonably believes to violate this Agreement or (iii) any specific action, behaviour and/or business transaction is later determined to have not met the requirements set forth in this Agreement. In the event of a material breach of this Agreement, eGENTIC reserves the right to disclose Advertiser's identity and contact information to appropriate law enforcement or regulatory authorities or any third party that has been directly damaged by Advertiser's actions.

XIII. Representations and Warranties, Limitation of Liability

1. The Parties guarantee that they are entitled to conclude this Agreement.

2. IN NO EVENT SHALL EGENTIC BE LIABLE FOR ANY UNAVAILABILITY OR INOPERABILITY OF BIGBANGADS, ADVERTISING MATERIAL, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR OTHER INJURY, DAMAGE OR DISRUPTION OF ANY KIND BEYOND THE REASONABLE CONTROL OF EGENTIC.

3. IN CASES OF ANY MATERIAL AND FINANCIAL DAMAGE CAUSED BY NEGLIGENCE EGENTIC'S LIABILITY AND THOSE OF ITS AGENTS IS LIMITED TO THE VIOLATION OF ESSENTIAL CONTRACTUAL OBLIGATIONS, HOWEVER, LIMITED TO THE REASONABLY FORESEEABLE DAMAGES TYPICALLY ASSOCIATED WITH THIS KIND OF CONTRACT AT THE TIME OF CONCLUSION OF THE CONTRACT. ESSENTIAL CONTRACTUAL OBLIGATIONS ARE OBLIGATIONS THE PERFORMANCE OF WHICH SHAPES THE CONTRACT AND IN WHICH THE PARTNER MAY REASONABLY TRUST. THIS LIMITATION OF LIABILITY ALSO APPLIES IN CASES OF INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGE INCLUDING,

WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES AND GOODWILL.

XIV. Indemnification and Penalty

1. Besides any indemnification stated in this Agreement Advertiser hereby agrees to indemnify, defend and hold harmless eGENTIC and Advertiser and their respective subsidiaries, affiliates, partners and licensors, directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on (i) any failure or breach of this Agreement, including any representation, warranty, covenant, restriction or obligation made by Advertiser herein, (ii) any misuse by Advertiser, or by a party under the reasonable control of Advertiser or by a party obtaining access of the Advertising Material, Advertiser Campaign or Big Bang Ads or eGENTIC and/or Advertiser intellectual property through Advertiser, or (iii) any claim related to the Advertising Campaign, including but not limited to the content contained in a campaign, such as Advertising Material and/or the Campaigns Terms.

2. Besides any penalty stated in this Agreement Advertiser hereby accepts to pay to eGENTIC a contract penalty of EUR 5.000,00 for each culpable offence against this Agreement.

XV. Modifications

In addition to any notice permitted to be given under this Agreement, eGENTIC may modify any of the terms and conditions of this Agreement at any time by providing Advertiser with a notification by E-mail. The changes will become effective within ten (10) business days after such notice. If the modifications are unacceptable to Advertiser, Advertiser may terminate this Agreement within a ten (10) business day period. Advertiser's continued participation in BigBangAds ten (10) business days after a change notice has been posted will constitute Advertiser's acceptance of such change. In addition, eGENTIC may change,

suspend, or discontinue any aspect of Advertising Material or remove, alter, or modify any tags, text, graphic or banner ad in connection with Advertising Material. Advertiser agrees to promptly implement any request from eGENTIC to remove, alter or modify any link, graphic or banner ad that is being used by Advertiser as part of BigBangAds.

XVI. Independent Investigation

Advertiser acknowledges that Advertiser has read this Agreement and agrees to all its terms and conditions. Advertiser has independently evaluated the desirability of participating in BigBangAds and is not relying on any representation, guarantee or statement other than set forth in this Agreement.

XVII. Governing Law and Miscellaneous

1. This Agreement is governed by the laws of Germany. Frankfurt am Main is the place of jurisdiction.

2. Advertiser may not assign all or any part of this Agreement without eGENTIC's prior written consent. The definition of written according to point III.6 applies. eGENTIC may assign this Agreement at any time with notice to Advertiser. Subject to that restriction, this Agreement will be binding on and enforceable against the Parties and their respective successors and assigns. eGENTIC's failure to enforce Advertiser's strict performance of any provision of this Agreement will not constitute a waiver of eGENTIC's right to subsequently enforce such provision or any other provision of this Agreement. Advertiser shall be responsible for the payment of all attorney's fees and expenses incurred by eGENTIC to enforce the terms of this Agreement.

3. This Agreement contains the entire agreement between eGENTIC and Advertiser with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements or understandings, written or oral. The definition of written according to point III.6 applies.

4. Advertiser agrees that eGENTIC shall not be subject to or bound by any Advertiser insertion order and/or online terms and conditions that amend and/or conflict with and/or supplement this Agreement, regardless of whether eGENTIC "clicks through" or otherwise indicates its acceptance thereof. Expressly any general terms and conditions of the Advertiser do not apply.

5. Except as set forth in point XIV. of this Agreement, this Agreement may not be modified without the prior written consent of both Parties. The definition of written according to point III.6 applies.

6. If any provision of this Agreement is held to be void, invalid or inoperative, the remaining provisions of this Agreement shall continue in effect and the invalid portion of any provision shall be deemed modified to the least degree necessary to remedy such invalidity while retaining the original intent of the Parties.

7. Each Party to this Agreement is an independent contractor in relation to the other Party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the Parties.