

Advertiser Agreement

MEDIAWAYSS Sp. z o.o., (the, “Mediawayss”, “We”, etc.) as an advertising network that provide services for products monetization and promotion, connecting publishers and advertisers through our platform (the, “AnyPops”) globally, and

You (the, “Advertiser”, “You”, “Yours”, etc.) as a business that is seeking an agency to perform advertising and marketing consultancy, media and media markets analysis, media campaign planning, media time buying, and media management services, and

WHEREAS, Mediawayss has offered its services to the Publisher through www.anypops.com web site (the, “Site”, “Program”), and You has chosen to hire Mediawayss to perform these services,

NOW, agree as follows:

1. Definitions

- 1.1. “Ad(s) or Advertisement(s)” – means, such type of online advertisements like pop-unders, tubunder and overlay, generated by Advertiser’s web-servers in response to a query from Mediawayss.
- 1.2. “Advertiser” – means the company, that has decided to enter into this Agreement and that has decided to assign Mediawayss to provide online advertising services in accordance with the provisions of this Agreement.
- 1.3. “Advertiser Account” (the, “Account”) means the Advertiser’s account at Mediawayss’ platform AnyPops (www.anypops.com) for managing of campaigns.
- 1.4. “Content” means all ad content, related technology and tags provided by Advertiser that are subject to the Services under this Agreement.
- 1.5. “Effective Date” means the date of adoption by Advertiser terms of this Agreement or in the absence of its signature, the date when the Advertiser set up an Advertiser Account with Mediawayss.
- 1.6. “AnyPops” platform means Mediawayss’ digital advertising platform available on the Site, including advertisers and publishers.
- 1.7. “Confidential Information” – of the party disclosing such information shall refer to: (a) such party’s trade secrets, business plans, strategies, methods and/or practices; (b) such party’s software, tools, trade secrets, know-how, designs, technical information, proprietary methodologies, computer systems architecture and network configurations; (c) any other information relating to such party that is not generally known to the public, including information about its personnel, products, customers, financial information, marketing and pricing strategies, services or future business plans; and (d) any other information which, from all the relevant circumstances, should reasonably be assumed to be confidential and proprietary.
- 1.8. “Campaign” – certain actions set up by an Advertiser to increase traffic to the Publisher or its affiliate web-site, sales and/or attracting new customers.

2. The Service

2.1. Mediawayss through AnyPops platform shall provide You an opportunity to participate in programmatic instantaneous auction for ads slots at the web sites (hereinafter, Services).

The Services will include:

- customization and implementation an online advertising exchange (the “Exchange”) in real time bidding;
- hosting the Exchange;
- possibility of self-service;
- management service opportunity;
- providing maintenance services; and
- as necessary, providing customization and support services, including reasonable education and support, during normal business hours, all in accordance with, and subject to, the terms and conditions of this Agreement.

In order to become an Advertiser you must first accurately submit for Mediawayss account application at our web-site and comply with present Agreement (in case of using Self-service) or register yourself as an Advertiser by contacting Mediawayss directly (in case of using Management service) for acceptance, and not use any aliases or other means to mask your true identity or contact information.

After we review your application, we will notify of your acceptance or rejection as Mediawayss Advertiser. We may accept or reject your account registration at any time at our sole discretion for any reason. Mediawayss reserves the right to add, edit, remove or reclaim any account details (including your submissions) with or without your request if deemed appropriate.

By filing your account application or registering as an Advertiser you confirm your understanding and unreserved acceptance of all terms and conditions, policies (including present Agreement) of Mediawayss published at our web-site concerning the Services, and confirm You are a duly authorized signatory, has full legal capacity and all the necessary authority to bind the individual, company or other entity, and hereby submitting a legally binding electronic signature and entering into a legally binding contract. Advertiser also hereby waives any rights or requirements under any rule or the law in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means.

2.2. You may determine at your discretion the following methods of Service – Self-Service or Management service.

Self-Service assumes that all Services shall be provided through Advertisers’ account at our web-site. Mediawayss support team may provide assistance upon your request, however, all the actions or modifications made through your account shall be deemed made solely by You.

You may not transfer your account to anyone without explicit written permission of Mediawayss and you may not use anyone else’s account or password at any time without the express permission and consent of the holder of that account. Mediawayss cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations.

Management service assumes that all Services and ad campaign shall be provided by Mediawayss’ managers.

2.3. Mediawayss will implement, monitor, track and report an agreed campaign. Mediawayss will furthermore report if and when errors have occurred in a Campaign in order to rectify such errors so that such Campaign can be carried out as agreed on. Mediawayss will also, at its sole discretion, provide support and advice on a Campaign during the term of this Agreement.

2.4. Mediawayss does not guarantee: (i) the placement, positioning or the timing of delivery of any Ad, or (ii) the number (if any) of any impressions, publications, conversions or clicks on any Ad on any Mediawayss Property.

3. Costs incurred, Contents and Positioning

3.1. Advertiser shall submit Contents for all Ad types in accordance with such due date as may be set out in this Agreement or as otherwise is communicated by Mediawayss.

3.2. Unless otherwise agreed in writing, the positioning of Ads on a Mediawayss Property is at Mediawayss sole discretion.

3.3. If Advertiser asks Mediawayss to carry out the posting or modification of a campaign or any element of the campaign (including without limitation through an authorization for Mediawayss to optimize campaigns generally), Mediawayss will carry out such posting and/or modification within 48 hours. Any such posting or modification carried out by Mediawayss shall be deemed approved by Advertiser from the earlier of: (i) confirmation from Advertiser, and (ii) the end of the 12th hour following the posting or modification carried out by Mediawayss. If Advertiser does not approve of the posting or modification, it must notify Mediawayss via e-mail within 12 hours of the posting or modification.

3.4. Advertiser is solely responsible for all: (i) Contents generated by or for Advertiser; (ii) properties to which a Content directs users (including without limitation content on the domain or landing page reached by clicking on the Content URLs; and/or (iv) Advertiser Services.

4. Fees, Payment and Advertiser Account

4.1. All stats and reported numbers for the purposes of billing and general delivery reporting are based on Mediawayss server reports unless otherwise mentioned in the relevant Insertion Order (the "IO").

4.2. In the event that Advertiser believes that there is a discrepancy in Mediawayss's server reports, Advertiser must provide Mediawayss with a reasoned report of such discrepancy within three (3) calendar days from receipt of Mediawayss's server reports. Otherwise, Mediawayss shall not be liable for such discrepancy. If the parties are unable to arrive at reconciliation, then significance of discrepancy will be divided in half.

4.3. Mediawayss provides the ability to perform payments by using payment service providers. Advertiser shall have the right to select any payment service provider available. You agree that Mediawayss is not responsible for any actions applied by the payment service provider including but not limited to any additional transaction fees, banking commissions or currency fees applied to your transaction. All payments to Mediawayss include the above-mentioned fees and commission, if applicable.

Advertiser is responsible for all applicable taxes associated with provided ad services, other than taxes based on Mediawayss income.

4.4. In case of using Self-Service Advertiser shall make a deposit of funds to its Advertiser Account in advance. The minimum amount of initial deposit is \$100 US Dollars. By using Self-Service you agree that setting limitations on Ads campaigns budget and spending shall be entirely your responsibility. If the funds in your Advertiser Account are exhausted, all running campaigns will be suspended immediately.

4.5. In case of using Management services Advertiser shall set up all limitations and budget (fixed or unlimited) with Mediawayss managers, who run Ads campaign, into IO. So Advertiser has to control spending of advertising budget and undertakes to inform Mediawayss in written about further actions to optimize such campaign. You shall pay for Services on the base of the invoices, issued by Mediawayss, by one the following options: (i) prepayment, (ii) fixed in the relevant Insertion Order (the "IO").

4.6. Advertiser acknowledges and agrees that any credit card and related billing and payment information that Advertiser provides to Mediawayss may be shared by Mediawayss with companies who work on Mediawayss' behalf such as payment processors and/or credit agencies solely for the purpose of checking credit and/or effecting payment to Mediawayss and serving customers account.

4.7. Mediawayss shall not be liable for any use or disclosure of such information by such third Party.

4.8. Advertiser shall be responsible for any pricing, Bid, Ad Unit Values, Bidding Terms, Account configuration or category classifications errors or other errors (“Buyer Errors”) resulting in a completed transaction (Ad Unit served), and shall be liable for any payments due in connection with the completed transaction. Advertiser acknowledges that:

- all executed transactions are final;
- notification of Buyer Errors must be reported by the Company within 24 hours;

4.9. Mediawayss reserves the right to discontinue service, withhold payment at any time and terminate present Agreement without liability to Advertiser in case of material breach of this Agreement by the Advertiser or its associated services. Parties hereby agree that any form of fraudulent or illegal activity, or any violation of the applicable laws and regulations, or any activity specified in Section 8 of this Agreement shall be deemed a material breach of this Agreement.

4.10. Mediawayss shall have the right to adjust your account balance in the case of (i) need of payment of bonuses, (ii) to deduct transaction fees, (iii) due to technical reasons, (iv) due to fraudulent activity, (v) upon additional agreement by the Parties.

5. Limited Warranty

5.1. Mediawayss warrants that the Service will perform substantially and materially in accordance with this Agreement and under normal use and circumstances, and for the purpose intended.

5.2. Except for the express warranties set forth above and to the extent permitted by law Mediawayss expressly disclaims all other warranties of any kind with respect to the Service, whether express or implied, including without limitation any warranties for merchantability, fitness for a particular purpose, that the Services will be uninterrupted, completely secure and/or free of software errors.

5.3. Mediawayss furthermore expressly disclaims any responsibility in relation to (i) any claims made in relation to Ads, campaigns or any Contents or (ii) any claims made in relation to the publication of any such Ads, campaigns or Contents on any web sites such as, including but not limited to, streaming sites, File Sharing Sites, and sites with adult content.

6. Advertiser’s Representations and Warranties

6.1. Each party will make every effort to uphold the highest ethical and commercial standards. If Mediawayss requests that advertisements should be removed from or not placed in any context that harms the goodwill or reputation of Mediawayss, Advertiser will promptly comply with such request.

In case of violation of its obligations under present Agreement by Advertiser, Mediawayss reserves the right to stop providing services and withhold Advertisers’ remuneration or fine.

6.2 Advertiser accepts and acknowledges the full responsibility in the event that the Contents in a campaign would be deemed invalid or illegal in any applicable jurisdiction.

6.3 Each Party waives its rights against the other in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement. Nothing in this clause limits or excludes either Party’s liability for fraud.

6.4 In order to be eligible to become an Advertiser of software or other applications, Your software or applications must meet the following criteria:

- not to generate or facilitate unsolicited bulk commercial email;

- not to violate, or encourage the violation of, the legal rights of others;
- not to be used in any unlawful, invasive, infringing, defamatory, or fraudulent purpose;
- not to distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature (i.e. malware);
- it must not to alter, disable, interfere with or circumvent any aspect of the software of third parties or advertisement services particularly;

Advertiser will make all reasonable efforts to prevent unauthorized use of its software or application and to terminate any unauthorized use. Advertiser will promptly notify Mediawayss of any unauthorized use of, or access to, the software or application of which it becomes aware.

Advertising software shall be installed only with the consent of the user, and shall provide ability of its removal without special additional programs.

6.5 Hereby you represent and warrant that you have all necessary rights, permits and licenses to start ad campaign and for display Advertisement and operate your web-sites and business activities in the selected jurisdictions. In case of breach of this obligation, Mediawayss may terminate this Agreement at any time without prior notice and claim for compensation of incurred losses.

6.6. Advertiser undertakes to ensure that its servers support the traffic directed to ad campaign through our service. Anyway, Mediawayss takes no responsibility for all the consequences in case your servers cannot support the traffic directed to your web-site.

6.7. Advertiser accepts and acknowledges the full responsibility in the event that the Contents in a Campaign would be deemed illegal in any jurisdiction.

6.8. You hereby agree not to use Mediawayss' system interface, available to You in connection with the execution of this Agreement, in any ways not provided for by this Agreement, including not to distribute or transfer it to any third party.

6.9. Hereby You agree not to grant any third parties the opportunity to place Ads that violate the requirements of the legislation, as well as ethics and morality rules. You shall bear all the expenses and losses incurred from Your illegal use of copyrighted materials (including Ads, trademarks, etc).

6.10. You warrant not to use automated tools, including robots, scripts, or spiders, for generation of the inquiries or gather information from the interface of the Mediawayss.

6.11. Hereby You warrant that You will not use the Mediawayss system interface for any purposes that violate any applicable laws or rights of any third parties, including its intellectual property.

6.12. You grant not to modify, adapt, translate, disassemble or otherwise attempt to derive the source code of any software, used in Mediawayss.

7. Fraudulent Activity

You are expressly prohibited from using any means, devices or arrangements to commit fraud, violate any applicable law, interfere with other affiliates or falsify information in connection with the Services or exceed your permitted access to Mediawayss web-site. You are prohibited from any practice of disguising (cloaking) an Ads with different content or landing page. Mediawayss shall have the right, in proven cloaking attempts, to ban Your Advertiser Account, to withhold funds and to take all necessary legal actions to restore the damage caused by this violation. In any case Mediawayss shall make all determinations about fraudulent activity in its sole discretion.

8. Indemnification

Advertiser agrees to indemnify and hold Mediawayss, its affiliates, subsidiaries, successors and assigns harmless from any and all claims, actions, judgments or liabilities arising out of or in connection with Advertiser's Campaign, any breach of this Agreement by Advertiser and/or of any representation, warranty or agreement in this Agreement.

9. Rejection of Campaign Content

9.1. Mediawayss has, in its sole discretion, the right, without any liability, to deny any advertising material that includes or based on any inappropriate or illegal content such as, including but not limited to, the following examples:

- illegal activity (i.e. how to build a bomb, hacking, "phreaking", etc);
- hate-mongering (i.e. racial, political, ethnic, religious, gender-based, sexuality-based or personal, etc.);
- violence, obscene or vulgar language and abusive content or content which endorses or threatens physical harm;
- illegal substance;
- drugs or any related paraphernalia;
- adware, malware, viruses, phishing offers;
- creatives should not contain the words like "your software is outdated", "your device is infected", "viruses found" etc. No misleading ads, providing false info to the user;
- false or deceptive investment advice, and others;

If Advertiser provides software for campaign, it shall be free from any spy- or malicious software. In confirmation of this fact the Advertiser can provide duly executed SSL-, or Code sign certificate.

Advertiser will defend, indemnify and hold Mediawayss or its affiliates and representatives harmless from any damages, liabilities, costs, and expenses (incl. attorneys' fees) resulting from any claim, judgment or proceeding brought by a third party.

In case where advertisements are placed in such locations, Mediawayss reserves the right to withhold payment for the entire campaign and/or submit an immediate legal action against Advertiser and/or set a financial penalty, based on the damages caused to Mediawayss (a financial penalty - is the amount an advertiser account balance).

9.2. Advertiser further acknowledges and accepts that Mediawayss may stop a Campaign in case Advertiser's site includes inappropriate content as described under section 9.1 above.

9.3. In order to ensure compliance with this section 9, Advertiser must notify Mediawayss in writing of any changes to the content on Advertiser's site which could be deemed inappropriate content.

10. Non-Solicitation

Advertiser hereby agrees not to contact websites in the Mediawayss in order to purchase advertisement space from them or engage in practice that would be deemed competitive to the efforts of Mediawayss in its attempts to represent the website's advertising spaces. Violation of this clause shall be deemed a material breach of this Contract.

11. Confidentiality

11.1. Definition. As used in this Agreement, the term “Confidential Information” of the party disclosing such information shall refer to: (a) such party’s trade secrets, business plans, strategies, methods and/or practices; (b) such party’s software, tools, trade secrets, know-how, designs, technical information, proprietary methodologies, computer systems architecture and network configurations; (c) any other information relating to such party that is not generally known to the public, including information about its personnel, products, customers, financial information, marketing and pricing strategies, services or future business plans; and (d) any other information which, from all the relevant circumstances, should reasonably be assumed to be confidential and proprietary.

11.2. Obligations. Each party agrees that it will not disclose any Confidential Information of the other party to any third-party, and that it will not use Confidential Information for any purpose not permitted under this Agreement. Each party will protect the Confidential Information of the other party in the same manner that it protects its own confidential and proprietary information, but in no event shall such protection be less than a reasonable standard of care. This 11 supplements and does not supersede any existing non-disclosure or confidentiality agreements between the parties.

11.3. Exceptions. The foregoing obligations shall not apply to the extent Confidential Information of a disclosing party: (a) must be disclosed by the receiving party to comply with any requirement of law or order of a court or administrative body including any applicable stock exchange (provided that each party agrees to the extent legally permissible to notify the other party upon the issuance of any such order, and to cooperate in its efforts to convince the court or administrative body to restrict disclosure); or (b) is known to or in the possession of the receiving party prior to the disclosure of such Confidential Information by the disclosing party, as evidenced by the receiving party’s written records; or (c) is known or generally available to the public through no act or omission of the receiving party; or (d) is made available free of any legal restriction to the receiving party by a third party; or (e) is independently developed by the receiving party without use of any Confidential Information.

12. Cancellation

12.1. Either party may cancel the ads campaign and terminate present Agreement with 48 hours’ written notice to the other party.

12.2. Mediawayss shall be entitled, with immediate effect, to stop Advertiser’s Campaign or to prematurely terminate this Agreement in writing where: (a) Advertiser uses the Service in a manner that entails the perpetration of a crime; (b) Advertiser uses the Service in a manner that occasions losses or the risk of loss for Mediawayss or any third Party; (c) it may be reasonably assumed that a continued Campaign violates governing law; (d) notwithstanding reminders, Advertiser fails to pay agreed fees to Mediawayss within a stated time; (e) Advertiser otherwise fails to comply with this Agreement and such breach of contract is material; or (f) Advertiser is placed into insolvent liquidation or is otherwise insolvent.

In this case, Mediawayss shall have the right to block your account immediately and to withhold the remaining fund at your account as a fine.

12.3. This Agreement will be blocked when the Advertiser Account has not been in use for more than three (3) months.

You will receive a notification informing you that your account is blocked because of “Inactive account status”. After deactivation, you will have 90 calendar days to restore your account. To do so, you have to login to your account and follow the steps described there. If your account is not reactivated within 90 calendar days it will be deleted without option to restore it.

If your account balance is 0 EUR/USD, the system will automatically block your account. If your account balance is 1 EUR/USD or more, the remaining fund will be fully deducted from your account.

12.4. You acknowledge and agree that in case of Your account been deleted at any reason it doesn't mean that user data would be erased also.

13. Assignment

13.1. Mediawayss shall be entitled, in whole or in part, to assign its rights and obligations under this Agreement to a company within the same de jure or de facto group of companies as Mediawayss without Advertiser's prior consent.

13.2. Advertiser shall not be entitled to assign its rights or obligations under this Agreement without Mediawayss' prior written consent.

14. Intellectual property

Hereby we grant you a non-exclusive, non-transferable, revocable right to use Mediawayss services and to access our web site through solely in accordance with the terms of this Agreement.

You may not alter, modify, manipulate or create derivative works of Mediawayss or any our graphics, creative, copy or other materials owned by, or licensed to Mediawayss in any way. We may revoke your license anytime by giving you written notice. Except as expressly stated herein, nothing in this Agreement is intended to grant you any rights to any of Mediawayss' trademarks, service marks, copyrights, patents or trade secrets. You agree that we may use any suggestion, comment or recommendation you choose to provide to Mediawayss without compensation. All rights not expressly granted in this Agreement are reserved by Mediawayss.

15. Entire Agreement and Variation

Mediawayss reserves the right to amend the terms and conditions of this Agreement. The Advertiser shall be informed of such amendments by e-mail or through the information being made available on Mediawayss's website. The Advertiser shall be deemed to have received such notice within two (2) weeks of the notice being sent by e-mail or made available on Mediawayss's website. Where the Advertiser does not accept the amendment, the Advertiser shall be entitled, within thirty (30) calendar days from the date of dispatch of the e-mail or, where appropriate, thirty (30) calendar days from the amendment being published on the website, provided that the changes have an adverse effect, that could not be considered as minor, on the Advertiser, to terminate the Agreement with immediate effect. Where the Agreement is not terminated by the Advertiser within the aforementioned time, the Advertiser shall be deemed to have accepted the new terms and conditions.

16. Assignment and Jurisdiction

Mediawayss may assign this Agreement to a subsidiary or business successor. You may not assign this Agreement without the prior written consent of Mediawayss, which shall not be unreasonably withheld. This Agreement shall be construed and governed by the law of the Poland (PL). You expressly consent to the exclusive venue and personal jurisdiction of the courts in and of the Poland (PL) for any actions arising from or relating to this Agreement or your use of our service.

17. Limitation of Liability; Disclaimer of Warranty.

IN NO EVENT SHALL Mediawayss BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM YOUR USE OF THE SITE, OPERATION OF A PROGRAM, OR YOUR DISPLAY OF ANY PROGRAM CREATIVE ON YOUR MEDIA, INCLUDING BUT NOT LIMITED TO BROKEN IMAGES, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES, EVEN IF Mediawayss HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE INFORMATION, CONTENT AND SERVICES ON THE SITE ARE PROVIDED ON AN "AS IS" BASIS WITH NO WARRANTY. YOU USE THE SITE AND RUN PROGRAMS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, Mediawayss DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATION OF THE SITE, THE INFORMATION, SERVICES, AND CONTENT INCLUDED ON THE SITE AND PROVIDED BY Mediawayss, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Mediawayss DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ON THIS SITE OR PROVIDED BY Mediawayss IS ACCURATE, COMPLETE OR CURRENT.

18. Severability

If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

19. Refund Policy

19.1. Refund could be applied only upon written request containing reasons for your refund to finance@mediawayss.com in case if Ad campaign can not be launched due to reasons included but not limited to noncompliance of the advertising materials with the requirements of current legislation, unacceptable quality and / or content of the creative, other reasons deemed applicable by Mediawayss' administration.

19.2. Refund will be made in the amount of unused funds, and include expenses for bank services or other operating expenses. Amount must be calculated based off Mediawayss' reporting system.

19.3. Period of return of unused funds is 30 days after receipt of written request. The refund will made the same path that got the funds to the account.

19.4. In case of detection unacceptable quality offers (adware, malware, viruses, phishing offers and ets. - see 9.1) the amount of the account balance is not returned.