

General Terms and Conditions of Displaying Advertisements on Digital Media in the Affiliate Model

1. Definitions

Whenever the following terms are used in these General Terms and Conditions of Displaying Advertisements on Digital Media in the Affiliate Model, they shall be understood as follows:

1. **„Application“** – the Brain DOOH application, used for placing Orders by the Client, allowing the Client to independently determine the Campaign parameters, such as: types and locations of Advertising Media, number of Contacts, preferred deadline for the Display; access to the Application is granted to the Client by Optimizers on the basis of a separately concluded Application Use Agreement;
2. **„CPM“** – Advertising campaign implemented by Optimizers on the Advertising Media in the Cost Per Mille model, where the purchase option is based on the price for 1,000 Contacts, and the main parameter is the number of Contacts in a given period of time;
3. **„Personal Data“** – information about an identified or identifiable natural person; an identifiable natural person is a person who may be identified, directly or indirectly, in particular based on an identifier such as name and surname, residential address;
4. **„Digital Citylight“ (DG_CL)** – an advertising medium equipped with an LCD screen, placed in an open area, adapted for Digital Display of digital content; displayed content can only be static, and the length of individual content cannot be shorter than 10 sec.; Advertisement Digital Display on Digital Citylight media is made for at least 19 hours per day, however an LCD screen may be saved at night;
5. **„Digital Cityscreen“ (DG_CS)** – Advertising media equipped with an LED screen, placed in an open space, adapted to Display digital content; displayed content may be static or dynamic; Advertisements are displayed on Digital Cityscreen media for no less than 19 hours a day, provided that the LED screen may be turned off at night;
6. **„Digital Indoor“ (DG_IN)** – Advertising media equipped with an LCD screen, placed inside a building, adapted to Display digital content; displayed content may be static or dynamic; Display of Advertisements on Digital Indoor media is carried out during the working hours of the shopping mall/building in which the Media are installed, no less than 12 hours a day, subject to the right of the owner of the Media to adjust the time of Displaying Advertisements to the periodic guidelines of the shopping mall or building owners;
7. **„Business Day“** – every day of the week, excluding Saturdays, Sundays and public holidays;
8. **„Display“** – a paid service of displaying the Client’s Advertisements in the CPM model, provided by Optimizers on Digital Media, on the terms and conditions specified in the Order and General Terms and Conditions;
9. **„Advertising campaign“** – a paid service provided by Optimizers covering all activities performed by Optimizers in order to carry out the Display on the terms and conditions specified in the Order and General Terms and Conditions;

10. **„Client“** – an entity ordering an Advertising Campaign on Advertising Media;
11. **„Contact“** – the number of movements in the vicinity of the Advertising Medium that generate the opportunity to view the Advertisement displaying on a given Advertising Medium by a moving recipient; Contacts are generated by Advertisements’ Digital Display on Advertising Media, and the number of Contacts for individual Advertising Media is determined on the basis of the DOOH Contacts Measurement Methodology, the content of which is an annex to the General Terms and Conditions (available here);
12. **„Digital Media“ or „Advertising Media“** – Digital Citylight, Digital Cityscreen and Digital Indoor advertising media;
13. **„New Mobile Technologies“** – technologies allowing access to the content, websites or messages encoded in the Advertisement using mobile devices;
14. **„Optimizers“** – Optimizers sp. z o.o. with the registered office in Warsaw (00-732), ul. Czerska 8/10, entered in the register of entrepreneurs kept by the District Court for the Capital City of Warsaw, 13th Commercial Division of the National Court Register under number KRS: 0000606069, TIN: 521-37-25-310;
15. **„Advertisement“** – static or dynamic digital advertising material, in the form and format required by Optimizers, without sound, made available to Optimizers by the Client via the Application for Display; the possibility of static or dynamic Advertisements’ Display depends on the type of Advertising Medium, on which the Display is carried out;
16. **„Application Use Agreement“** – an agreement concluded between the Client and Optimizers on the form applicable at Optimizers, together with attachments and annexes, regulating the principles of using the Application; the Application Use Agreement may be concluded or amended in writing, electronically or using a regular (non-qualified) electronic signature (unless the further provisions of the General Terms and Conditions provide otherwise), however, it is permissible to sign the Application Use Agreement by certain persons by a handwritten signature, and by other persons by an ordinary or qualified electronic signature;
17. **„Order“** – an agreement regarding the order for the implementation of an Advertising Campaign in the CPM model, concluded between the Client and Optimizers using the Application;
18. **„General Terms and Conditions“** – these General Terms and Conditions of Displaying Advertisements on Digital Media in the Affiliate Model.

2. Content of Advertisements

1. Optimizers reserves the right to make its own assessment of the Advertisement presented by the Client in terms of its compliance with applicable law and good practices. If Optimizers questions the content of the Advertisement, the Client will change it so that its content does not raise legal doubts.
2. Advertising on media installed in shopping malls additionally requires each time obtaining (via Optimizers) acceptance of the content and form of the Advertisement from the owners/distributors of shopping malls.
3. Optimizers reserves the right to refuse to accept or refuse to continue display the Advertisement without incurring any liability in this respect if:
 - a) The advertising is contrary to applicable law (including the provisions of the Press Law, the Act on Gambling, the Act on Upbringing in Sobriety and Counteracting Alcoholism or the Pharmaceutical Law), good practices, and may lead to the violation of any rights of third parties or the legitimate interests of Optimizers (or entities related to it by capital), violates human dignity or for other reasons may be considered an act of unfair competition,
 - b) a third party or an authorized body raises objections in writing regarding the content of the Advertisement,

- c) the institution responsible for ensuring compliance with the principles of media ethics or advertising ethics raises reservations regarding the Advertising,
- d) the content or form of the Advertisement would objectively expose the Digital Media on which the Advertisement would be displayed to a high risk of destruction as a result of acts of vandalism,
- e) the owner/distributor of real property (including a shopping mall) or bus shelters on which Digital Media are installed will raise objections regarding the content of the Advertisements.

Refusal or suspension of the Display of an Advertisement for the reasons specified above does not result in the obligation to pay by Optimizers any compensation to the Client.

4. The rights indicated above in section 3 are vested in Optimizers if, in accordance with the provisions of section 1 of this paragraph, the Client refuses to change the content of the Advertisement or makes it in a manner inconsistent with the Optimizers' instructions.
5. Notwithstanding the provisions of section 3 above, Optimizers has the right to refuse to Display Advertisements if the content of the Advertisement violates the provisions of contracts concluded by Optimizers (or entities related by capital to Optimizers) with the owners/distributors of the shopping mall where the Media are installed (in particular with regard to prohibitions on promoting certain products or services that may result from such agreements) or other obligations of Optimizers, or entities related by capital to Optimizers, towards their partners (provided that due to the confidential nature of such agreements or other obligations, Optimizers will not be obliged to disclose to the Client their content). If the Display is refused for the above reasons, the Client will have the right to deliver an Advertisement with different content.
6. Optimizers has the right not to display the Advertisement within the time specified by the Client for technical, programmatic or other justified reasons.
7. Acceptance of an Advertisement for Display by Optimizers does not mean that Optimizers accepts any liability towards third parties for the content or form of the displayed Advertisements.
8. The Client shall repair any damage incurred by Optimizers in connection with the content or form of the presented Advertisement, including: to bear all costs of dispute proceedings, including court fees, costs of legal representation and other reasonable expenses of Optimizers incurred in connection with any claims of third parties related to the Display of the Client's Advertisements and the costs of repairing damaged Advertising Media. At the same time, Optimizers shall immediately inform the Client about reported claims or initiation of proceedings regarding the content or form of the Advertisement.
9. If, as a result of the evaluation of the Advertisement made in accordance with the provisions of this paragraph, or for other reasons attributable to the Client, it is necessary to make changes or corrections to the content of the Advertisement, the Client is not entitled to any claim against Optimizers related to the reimbursement of costs incurred in connection with the re-preparation of the Advertisement.

3. Representation of The Client

1. The Client represents and warrants that the Advertisement does not violate any legal provisions and that the Client is entitled to all rights in intangible assets to the Advertisement, including copyrights and related rights to the extent necessary for the Display, and the Display of the Advertisement does not violate any rights of third parties (including related with the protection of Personal Data). The Client further represents and warrants that Display the Advertisement does not involve Optimizers' obligation to pay any remuneration, in particular royalties to the creators and/or entities of related rights participating in the creation and production of the Advertisement, collected by them directly or through collecting societies regarding copyright and related rights.

2. The Client represents and warrants that New Mobile Technologies included in the content of the Advertisements do not violate the law or the rights of third parties, and in particular do not lead to websites/ messages containing content, including advertisements, prohibited by applicable law. The Client is also solely liable for any damages incurred by third parties in connection with the use of New Mobile Technologies included in the content of its Advertisement.
3. The Client declares that it consents to Optimizers using the Advertisement submitted to the Display for Optimizers' marketing and self- promotional purposes. The above consent applies in particular to Optimizers' right to use photos of advertising media with Advertisements displayed on them for marketing and self-promotional purposes (such as: newsletter, commercial presentations, catalogues, promotional materials on Optimizers' websites and other forms of presentation on the Internet). The above consent is not limited in time or territory. In addition, the Client represents and warrants that it has all consents and authorizations from the creators and holders of any intellectual property rights to the Advertisements, which consents and authorizations ensure that Optimizers will perform the Agreement for the use of the Application, including the activities described in this point, without the need to pay remuneration for the benefit of any third parties, and without violating any third party rights.
4. The Client declares that it consents to the use by Optimizers for marketing and self- promotional purposes of the results of marketing research regarding the conducted Advertising Campaigns, including public disclosure of data specifying the number and type of Advertising Media on which the Advertising Campaigns were carried out, the geographical range of the Advertising Campaigns and the company Client (excluding Personal Data). The above consent is not limited in time or territory.
5. The Client's liability in the event of damage incurred by Optimizers as a result of the Client's actions or omissions (including making false statements in these General Terms and Conditions) is regulated in these General Terms and Conditions and in the Application Use Agreement.

4. Placing Orders

1. The Advertising Campaign is implemented on the basis of an Order, in accordance with the General Terms and Conditions and the Application Use Agreement and in accordance with applicable law.
2. A person authorized to act in the name and on behalf of the Client places an Order via the Application provided by Optimizers, each time specifying the parameters of the Campaign, such as: types and locations of Advertising Media, the number of Contacts and the preferred period of the Display, and at the same time also makes available via the Application Optimizers Advertisement to be displayed as part of the execution of a given Order.
3. Optimizers, within 2 (two) Business Days of placing an Order via the Application, evaluates the Advertisements in accordance with the provisions of § 2 above and also in terms of the technical feasibility of implementing the Campaign in accordance with the parameters specified by the Client. Additionally, Optimizers submits an application for acceptance of the Advertisement to the owners/ managers of shopping malls (if the Advertisements are to be displayed on Advertising Media installed in the malls).
4. In the event of a positive assessment made pursuant to section 3 above and- if required- after obtaining approval from the owner/ manager of the shopping mall, Optimizers launches Advertisement Display via the Application, in accordance with the Order placed by the Client.
5. For the avoidance of doubts, Optimizers reserves that the start date of the Display indicated by the Client in the Order may be postponed by the period necessary to assess and obtain the consents referred to in section 3 above. In such a case, the Client is not entitled to any claims against Optimizers related to the postponement of the start date of the Display.

6. In the event of Optimizers' reservations regarding the Advertisement or Campaign parameters specified by the Client in the Order (especially in the event of unavailability of display time on the Advertising Media), as well as in the event of failure to receive acceptance of the Advertisement from the shopping mall, Optimizers shall contact the Client within no longer than two (2) Business Days from the date of placing the Order by the Client in order to establish new conditions for the implementation of the Display. In the situation described in this section, the Order is deemed not to have been placed, excluding the Client's right to submit any claims against Optimizers in this respect.
7. The Client declares that all persons placing Orders shall be authorized to act in the name and for the benefit of the Client. The Client shall be solely liable to Optimizers for the actions or omissions of the above-mentioned persons. The Client shall not be entitled to any claims against Optimizers for actions or omissions of persons placing Orders on behalf of the Client and undertaking activities via the Application other than those related to Display of the Client's Advertisements.

5. Performance of The Campaign

1. Optimizers has the exclusive right to decide on the order of displaying Advertisements on Digital Media.
2. Optimizers has the exclusive right to decide on the order and frequency of Advertisement Displays on individual Digital Media, due to the fact that Advertisement Displays in the CPM model is carried out in proportion to the number of Contacts, that is specified in the Order, and availability of display time on individual Advertising Media during the Campaign implementation period.
3. Optimizers is entitled to a temporary break in the Display for technical reasons. Optimizers shall make every effort to ensure that the breaks in Displaying indicated above are as short as possible. Breaks in Displays for technical reasons do not affect the assessment of Optimizers' compliance with their obligations regarding Advertisement Displays. The Display shall take place immediately after the reasons preventing the provision of services cease to exist.
4. Optimizers shall not be liable to the Client for non-performance or improper performance of the Advertising Campaign service for reasons attributable to third parties, in particular owners/disposers of real estate (including shopping malls) or bus shelters on which Digital Media are installed, or caused by actions force majeure, defined as circumstances beyond the control of Optimizers that make it completely or partially impossible to carry out an Advertising Campaign, such as, for example: natural disaster, state of epidemic, state of war, state of emergency, road accidents, strikes or protest actions, construction disasters, terrorist attacks, closure or restriction of access to specific areas, acts of vandalism.
5. Optimizers has the right to entrust the execution of the Advertising Campaign in whole or in part to subcontractors, provided that it is responsible for the actions or omissions of subcontractors as for its own actions.
6. The Client declares that it accepts the fact that in order to assess the correctness of the execution of the Advertising Campaign in the CPM model, the number of Contacts generated in total on all Advertising Media covered by the Campaign is important, which means that the number of Advertisement Displays carried out on individual Media covered by the Advertising Campaign may vary, and such a circumstance does not affect the correct implementation of the Advertising Campaign by Optimizers.
7. The Client declares that it accepts the fact that the number of Contacts generated during the Advertising Campaign may be lower than the number of Contacts specified in the Order, and such a circumstance does not affect the correctness of the execution of the Advertising Campaign by Optimizers. In such a case, the amount of remuneration due to Optimizers will be determined based on the number of generated Contacts.

6. Performance Campaign Report

1. A report showing the implementation status of the Advertising Campaign commissioned by the Client to Optimizers on the basis of the Order shall be made available to the Client on an ongoing basis in the Client's panel available via the Application. The report referred to in the preceding sentence shall contain a list of Digital Media on which the Display is carried out, along with the current number of Displays of the Client's Advertisements and the number of Contacts generated on individual days of the Campaign.
2. Reports on previously completed Client Campaigns shall be available in the Client panel (accessed via the Application) for a period of not less than 6 (six) months from the date of completion of the Campaign.
3. The Client has the additional right to commission Optimizers to perform the so-called premium photo Report that shall contain high-quality photos of a fixed number of Digital Media with the Client's Advertisement, with the Optimizers having the right to choose the location of the Digital Media. The amount and terms of payment of remuneration for the production of a premium photo report shall be agreed by the Parties on the basis of separate negotiations and confirmed in writing or electronically.

7. Complaints

1. Complaints regarding the method and quality of the implementation of the Advertising Campaign shall be reported by the Client to Optimizers via e-mail within 2 (two) days from the date of receiving information about the incorrect course of the Advertising Campaign, but no later than within 4 (four) days from the end of the Display. The complaint shall include a description of any faults or defects in the Advertisement Display in relation to the terms of the Order.
2. If the deadline for submitting a complaint is not met, it shall not be considered by Optimizers.
3. In each case, Optimizers shall inform the Client about the method of considering the complaint via e-mail within 5 (five) Business Days from the date of its submission.
4. Filing a complaint does not release the Client from the obligation to pay the remuneration due to Optimizers for the implemented Advertising Campaign.
5. Optimizers' liability for the performance of Orders is limited to actual damage and intentional fault and the amount of net remuneration paid by the Client to Optimizers on the basis of the Order to which the damage relates and to the date of the event constituting the basis for any possible compensation claims of the Client against Optimizers.

8. Remuneration of Optimizers

1. The Client shall pay Optimizers remuneration for the provided Advertisement Display services.
2. The amount of remuneration due to Optimizers for the implementation of the Advertising Campaign shall be each time determined based on the number of Contacts actually performed under a given Order and the price list applicable at Optimizers on the day of placing the Order, taking into account the discounts granted to the Client.
3. Remuneration amounts for Advertising Campaigns shall be payable on the basis of VAT invoices issued by Optimizers by the 15th day of the month following the provision of the service in whole or in part.

4. The remuneration shall be paid by the Client by transfer to the Optimizers bank account within 14 days from the date of issuing the VAT invoice, by transfer to the Optimizers bank account number indicated on the invoice.
5. Failure to meet the payment deadline shall result in charging statutory interest for the entire delay period.
6. The day of payment of the remuneration is the day on which the full amount of the remuneration due to Optimizers is credited to the bank account of Optimizers.
7. In the event of failure to meet the payment deadline referred to in section 3 above, Optimizers has the right to refuse to accept an Order for subsequent Displays of the Client's Advertisements.

9. Order Cancellation

1. The remuneration shall be paid by the Client by transfer to the Optimizers bank account within 14 days from the date of issuing the VAT invoice, by transfer to the Optimizers bank account number indicated on the invoice.
2. Client's resignation, described in section 1 above, results in the cessation of further Displaying of Advertisements on Advertising Media, subject to the provisions of the next sentence. For technical reasons, the actual end of the Advertisement Display may take place within two hours from the moment the Client selects the opt-out function. In exceptional cases, due to reasons beyond the control of Optimizers (in particular in the event of failure of Advertising Media), the time of actual completion of the Display may be extended by the time necessary to remove the above-mentioned reasons.
3. If the Client resigns from further implementation of the Display, Optimizers is entitled to remuneration only for the number of generated Contacts.
4. Optimizers, until the first day of the Display, has the right to refuse to execute the Order without incurring any liability in this respect, in the event of obtaining information about the Client's due and unfulfilled obligations towards any company of the Agora S.A. Capital Group. (i.e. towards Agora S.A. and all companies related to Agora S.A.).
5. If Optimizers refuses to process the Order in accordance with section 4 above, the Client is not entitled to any claim related to the reimbursement of the costs of producing the Advertisements or any other costs related to placing the Order.

10. Personal Data Processing

1. The order for the implementation of Advertising Campaigns, submitted to Optimizers by the Client, involves the processing by Optimizers of personal data of persons representing the Client (i.e. name, surname, position), persons designated as contact persons for the purpose of implementing the Agreement for the use of the Application (i.e. name, name, position, e-mail address and telephone number), and may also involve the processing of personal data of persons authorized to act on behalf of the Client in order to place Orders- if the e-mail address of such a person provided as a login when creating a Client account in the Application contains personal data.
2. The data controller of Personal Data indicated in section 1 above is Optimizers sp. z o.o. with the registered office in Warsaw (00-732), ul. Czerska 8/10 („Data Controller”).
3. Contact with the Data Controller is possible by e-mail, address: daneosobowe@optimizers.com.pl or in writing, to the address of the Data Controller's registered office.

4. Personal Data provided by the Client shall be processed for the purposes of:
 - a) concluding a contract and implementing commissioned advertising services and fulfilling public law obligations arising from the relevant legal provisions, including accounting and tax regulations- the legal basis for processing is the fulfilment of legal obligations imposed on the Data Controller (Article 6(1)(c) of the General Regulation on the protection of personal data no. 2016/679 (“Regulation”) and the legitimate interest of the Data Controller (Article 6(1)(f) of the Regulation);
 - b) implementation of the Data Controller’s legitimate interests consisting in the processing of Personal Data for the purposes of the Data Controller’s own marketing directed to the Client- the legal basis for data processing is Article 6 section 1 letter f) Regulation;
 - c) implementation of the Data Controller’s legitimate interests consisting in the possibility of establishing or pursuing possible claims or defending against such claims by the Data Controller- the legal basis for data processing is Article 6 section 1 letter f) Regulation.
5. Personal Data may be transferred to entities providing the Data Controller with services related to the conclusion of a contract and the implementation of Orders, i.e. in particular subcontractors, as well as entities providing accounting services, suppliers of IT systems and IT services, entities providing legal services (including tax and debt collection), entities providing document archiving services, companies belonging to the Agora Capital Group (i.e. Agora S.A. and related companies).
6. Personal Data shall be processed for the duration of the Data Controller. The Personal Data processing period may be extended each time by the limitation period for claims, if the processing of personal data is necessary for the Data Controller to pursue any claims or defend against such claims. After this period, Personal Data shall be processed only to the extent and for the time required by law.
7. Data subjects have the right to: access the content of the Personal Data and request its rectification, deletion, limit processing, the right to transfer Personal Data and object to the processing of Personal Data for reasons related to their particular situation.
8. Data subjects also have the right to object to the processing of Personal Data processed for direct marketing purposes.
9. Data subjects have the right to lodge a complaint with the supervisory authority responsible for the protection of Personal Data if it is found that the processing of Personal Data by Optimizers violates the provisions of the Regulation.
10. Providing Personal Data of persons representing the Client and persons designated to implement the Agreement for the use of the Application is voluntary, but necessary for the conclusion and performance of the Agreement for the use of the Application and for placing Orders.

11. Final Provisions

1. All disputes arising from Orders or the Agreement for the use of the Application or in connection with the Orders or the Agreement for the use of the Application, its performance or interpretation shall be submitted by the Parties for resolution by the court competent for the Mokotów district of the Capital City of Warsaw. The law applicable to the Application Use Agreement is the law applicable in the territory of the Republic of Poland.
2. The content of the Application Use Agreement and information regarding negotiations conducted in connection with its conclusion, as well as information regarding placed Orders and the conditions of their implementation, is confidential and intended solely for the Parties for the purpose of implementing the Advertising Campaign. Optimizers is authorized to provide confidential information to entities from the Agora Capital Group (i.e. Agora S.A. and its related companies).

3. The obligation of confidentiality does not apply to cases where the disclosure of confidential information is required on the basis of and in accordance with the applicable mandatory provisions of law, at the request of an authorized public administration body or court.
4. Optimizers has the right to refer to the fact of concluding the Agreement for the use of the Application and the execution of Orders and to include the Client's name (excluding Personal Data) in its advertising materials, reference lists and presentation materials with general information about the services performed or performed. Optimizers has the right to provide information about the subject of services, their implementation time and their estimated value in public procurement proceedings or other similar proceedings conducted on a basis other than Public Procurement Law. At the same time, Optimizers undertakes not to publish any detailed information regarding mutual relations regulated by the Application Use Agreement or Orders, without the Client's consent expressed in writing or electronically.
5. The transfer of the Client's rights and obligations arising from the Agreement for the use of the Application or Orders to a third party requires prior consent from Optimizers expressed in writing or electronically for it to be valid.
6. The Client declares that it will not set off any of its receivables against Optimizers' receivables unless the Parties agree otherwise.
7. Optimizers reserves the right to make changes to these General Terms and Conditions. Changes to the General Terms and Conditions shall be posted on the website www.ams.com.pl, and the Client shall be informed about the changes in the electronic form (to the provided e-mail addresses). If, within two weeks from the date of receipt of information about changes to the General Terms and Conditions, the Client does not express any objection in writing or electronically, it is deemed that it has consented to the change to the General Terms and Conditions. If the Client objects to the change of the General Terms and Conditions, the Parties shall continue to execute the currently applicable Order in accordance with the previously applicable General Terms and Conditions.
8. In the event of any differences between the content of the General Terms and Conditions and the Order, the provisions of the Order shall prevail. In the event of a conflict between the provisions of these General Terms and Conditions and the provisions of the Application Use Agreement, the provisions of the Application Use Agreement shall prevail, unless Optimizers decides otherwise.
9. The General Terms and Conditions apply only to Orders concluded by Optimizers with Clients via the Application.
10. The General Terms and Conditions do not apply to the implementation of Advertising Campaigns ordered by entities other than those specified in section 9 above, in particular natural persons ordering Advertising Campaigns for purposes unrelated to their business or professional activity.
11. The General Terms and Conditions of Displaying Advertisements on Digital Media in the Affiliate Model enter into force on 1 July 2024.