

Standard Terms for Publishers

These terms and conditions ("Standard Terms") shall be deemed incorporated by reference into and govern any media booking submitted by Dlulisa Holding BV, Herengracht 449A, 1017 BR Amsterdam, The Netherlands (trading as "UPYIELD") as advertiser or acting as agency for third party advertisers. Media bookings can either be agreed by way of signed insertion order ("Insertion Order" or "IO"), or registered Publishers can use UPYIELD's self-service platform "UPYIELD Marketplace" to select campaigns. All media bookings shall be referred to as "Booking". For the purposes of this Agreement, "Publisher" shall mean all parties directly or indirectly providing advertising inventory such as direct publishers, publisher networks and supply side platforms. These Standard Terms and the Booking terms shall be collectively referred to as the "Agreement". In case of discrepancies between these Standard Terms and the Booking terms, the Booking terms shall prevail.

1. UPYIELD Marketplace & Registration.

(a) Publishers that want to use the UPYIELD Marketplace platform may register a UPYIELD user account following the steps described during the registration process. If you are registering on behalf of your employer or any other entity, you represent and warrant that you have full legal authority to bind your employer or such entity to this Agreement. Publishers warrant that all data provided is true, complete and accurate. UPYIELD reserves the right to approve or disapprove access to the UPYIELD platform in its sole discretion. Publishers are responsible and liable for all actions under their account.

(b) UPYIELD reserves the right to modify, enhance, further develop, change, add and remove features of UPYIELD Marketplace from time to time particularly where this is customary in the industry, required by applicable law and regulations, or to optimize its services and the platform as such.

2. IO Terms, Cancellations, Modifications.

UPYIELD reserves the right to suspend and/or cancel any Booking, in whole or in part, or to modify certain Booking terms such as payouts, territory, and other campaign specifications either by written notice (email valid) or by making changes to the offers that are visible on the UPYIELD Marketplace offerwall or otherwise within the platform. If in writing, such changes as well as cancellations shall become effective at 0.00 o'clock CET on the first day following a 48 hours' change period. In UPYIELD Marketplace, modifications and cancellations may become effective in real-time unless a longer period is indicated. If Publisher does not agree with a modified offer, Publisher must stop the affected campaign(s) within the applicable change period. A summary of all Bookings is available for download from the platform.

3. Advertising Material (the "Creative").

(a) The Creatives including the links provided by UPYIELD must not be changed without the prior written consent of UPYIELD. UPYIELD must approve the final Creative. UPYIELD grants to Publisher the limited, nonexclusive right to use, display, transmit and distribute the advertisement and all contents therein solely for the limited purpose of fulfilling the advertising services in accordance with the terms of this Agreement.

(b) If Publisher uses third parties to serve advertisements, then Publisher shall be liable for their actions as for its own.

(c) Except as expressly set forth or agreed as part of the Booking, the specific positioning of advertisements by the Publisher shall be approved by UPYIELD's contact person listed in the Insertion Order.

(d) Publisher shall be liable for any unauthorized use of the Creative. Creatives must not be placed in any illegal environment or on media blacklisted by UPYIELD.

(e) UPYIELD reserves the right to suspend the use of any Creative at any time. Publisher will take all necessary steps to terminate the use of such Creative and will return all copies of the Creative and Confidential Information (as defined below) at the request of UPYIELD.

4. General Rules & Restrictions.

(a) For a Deliverable to be **“Valid”**, it must meet all criteria stated in a Booking, these Standard Terms and the following: (i) All information requested must be provided accurately in a way that UPYIELD tracking mechanisms signal such lead; and (ii) the underlying user action must have been carried out by a natural person and must not be generated automatically or otherwise in a manipulative way; and (iii) fraud detection software does not flag such lead as fraudulent; and (iv) payment providers have not flagged the lead as fraudulent; and (v) all campaign specs must be adhered to.

(b) NO MISLEADING PRACTICES as for example untrue free offers, misleading competitions, brand abuse incl. unauthorized use of third-party brands, click jacking, typo squatting, like jacking. No iframe masking, false redirects, illegal content lockers, spam, malware, spyware, adware, ransomware, scare ware or any other deceptive practices. No free trials may be offered or implied without UPYIELD’s prior approval in writing. Fake virus scans and ads implying that user’s device may be infected with a virus are strictly prohibited. No advertising in any illegal contexts as for example illegal file sharing or other copyright infringing pages, pages promoting or displaying pornography, racism, violence, hate speech or any other indecent, libelous, defamatory contents or other content unsuitable for children.

(c) UPYIELD and advertised company shall not be responsible, and will not pay, for any campaigns with incorrect URL’s, subject lines and/or unauthorized Creatives.

(d) Clear records of any activity must be made available to UPYIELD immediately if so requested by authorities or regulatory bodies, or if there is reasonable indication for a breach of the Agreement. Publisher will stop such campaigns immediately at the request of UPYIELD or when Publisher first becomes aware of a breach, whichever is earlier.

(e) Traffic limits (**“Caps”**) must not be exceeded without the consent of UPYIELD in writing (email valid). UPYIELD will not pay for any kind of over-delivery.

(f) UPYIELD does not allow any first cookie to be overwritten for 24 hours if the second click has been activated by a user clicking on an advertising unit served by an adware of Publisher. Publisher must not alter or interfere with any UPYIELD tracker link to the detriment of another publisher.

(g) Publisher must not use any UPYIELD website as a “pop under” or “sub site”. Affiliate cookies must not be placed unless through a click which is defined as a deliberate user action.

(h) E-Mail Traffic. All “EMAIL” based traffic sent by Publisher must be 100% opt-in. Publisher must provide opt-in information for any person who generates a spam complaint. In the event of a dispute, Publisher must provide all reasonably requested information and materials necessary to show such compliance and server logs prior to payment.

(i) Clicks. UPYIELD shall be credited for any low interval multiple clicks from the same source, i.e. double or multiple clicks with intervals of under three (3) seconds.

(j) If Publisher is hosting the Creative, Publisher needs to adhere to all advertising production specifications provided by UPYIELD. UPYIELD will not pay for any traffic if the tracking tool or tracking link provided by UPYIELD was not incorporated as agreed.

(k) No Brand Bidding. Publisher is not allowed to deliver any ad units triggered by keywords using trademarks of UPYIELD or advertised company.

(l) No Adware or Spyware. Publisher will not engage in any Adware and/ or Spyware activities, neither directly, nor through third parties, unless expressly agreed between the Parties. In case of such agreement, Publisher shall adhere to the following:

(i) Publisher is not allowed to use any UPYIELD tracker link as a trigger for serving advertising units to a user.

(ii) Publisher is not allowed to deliver an ad unit over any UPYIELD website if the advertising unit links to any UPYIELD website.

(m) For each culpable breach of Sections 4 (b) and 4(k) of these Standard Terms, Publisher agrees to pay to UPYIELD a penalty of one thousand euros, regardless if the breach was committed by Publisher or by a third party sub-publisher. UPYIELD reserves the right to claim higher damages, however, in such case the penalty amount will be offset.

5. Payment.

(a) Payment in accordance with the applicable

Booking terms shall be made to Publisher (a) within 60 days of receipt of a proper invoice to the accounting contact indicated on the IO or (b) UPYIELD may, in their discretion, make a self-invoicing tool available to Publishers that allows for receiving statements and payments through the UPYIELD platform.

(b) Invoices should have reasonable detail, for example the Booking reference number, the campaign invoiced, campaign duration, amount owed, the method and supporting data for assessing the amount owed and payment instructions.

(c) Concerns against statements issued by UPYIELD must be declared by Publisher within 14 days from receipt.

(d) UPYIELD reserves the right to suspend payment until pay-out is at least 500 EUR. However, if the threshold of 500 EUR is not reached over a period of three months, at Publisher's request, UPYIELD will also pay out smaller amounts.

(e) Even after receipt of a Publisher invoice, if any Deliverables are found to be not Valid, Publisher shall either issue a refund to UPYIELD or apply a mutually agreed credit to future invoices, unless Publisher can prove that Deliverable was Valid.

(f) Budgets agreed in a Booking do not represent a commitment of UPYIELD or advertiser but a binding cap and therefore must not be exceeded without prior written approval by UPYIELD or advertiser.

(g) For unused funds, Publisher shall, at UPYIELD's choice, either issue a credit note and refund or keep serving the Creatives. Payment term for refunds is 14 days from UPYIELD's request. Late payments accrue interest of 7% per month or the maximum allowed under applicable law, whichever is lower.

- (h) UPYIELD shall not be obliged to make payment for any Deliverables which are not Valid or otherwise not in accordance with campaign specifications, special instructions or any other terms of this Agreement.
- (i) UPYIELD reserves the right to set off refund claims and other claims it may have against Publisher against Publisher's invoices.
- (j) Payment by UPYIELD is subject to advertisers making payment to UPYIELD unless advertiser is an affiliated company of UPYIELD.
- (k) UPYIELD shall have the right to assign the payment claims against the advertiser that are related to the Publisher traffic to Publisher. Publisher hereby accepts such assignment as satisfactory *in lieu* of payment and therefore, with the completion of the assignment there will be no additional claims against UPYIELD related to the concerned traffic.
- (l) Each party shall be responsible for and pay its own income taxes, sales and use taxes, value-added taxes, and any other taxes, license or registration fees, duties, and other similar assessments or charges levied or imposed by any jurisdiction as a result of the execution of this Agreement, the performance of any obligations under this Agreement or the transfer of any property, rights or any other grant under the terms of this Agreement.

6. Reporting.

- (a) Within two (2) business days of the agreed campaign start date, Publisher will provide confirmation to UPYIELD in writing that delivery has begun (email sufficient).
- (b) UPYIELD will provide statements in electronic form, either via email or through the UPYIELD Marketplace (the "**Statements**"). The Statements indicate the consolidated amounts payable for the relevant accounting period. Accounting period is monthly unless expressly agreed otherwise. Ongoing reporting data such as for example daily statistics made available by UPYIELD through UPYIELD MARKETPLACE or another online reporting tool is preliminary. Invoices and payment are based on the consolidated Statements only.
- (c) If there is a discrepancy of greater than 10% between Publisher data and the Statements, the Parties shall analyze and negotiate in good faith a mutually agreeable basis for invoicing. If the discrepancy cannot be resolved within ten (10) business days, Publisher shall invoice based on UPYIELD's numbers unless and to the extent that Publisher can prove UPYIELD's numbers wrong.

7. Data Protection & Data Processing

- (a) When processing personal data, both parties act as data controller and ensure their compliance with all applicable data privacy laws, the terms of this Agreement and their applicable privacy policies. More particularly, the parties expressly commit to adhere to the principles of data processing in accordance with art. 5 and 32 of the EU General Data Protection Regulation (GDPR) and shall take appropriate measures to respect the rights of data subjects under the GDPR and all other privacy laws and regulations.
- (b) The parties will process data including personal data exclusively for the purposes of traffic validation, fraud prevention and services optimization. Any processing of personal data received from the other party outside that scope shall require the prior written approval of the other party.
- (c) Both parties ensure that they are each legally entitled to provide traffic data including advertising identifiers, IP addresses and possibly other personal information for the contractual purposes of traffic validation, fraud prevention and services optimization, and, if required, have obtained the necessary consents. This shall include the purpose of passing on such data to the relevant advertiser, sub-publisher or other third-

party partner provided that these third parties have committed their compliance with applicable privacy laws. Such data must not be used for any other purpose and processed in accordance with applicable privacy laws.

(d) The sharing of personal data that would allow the immediate identification of a data subject as well as data belonging to the special categories of personal data (art. 9 (1) GDPR) is not the subject of this Agreement and therefore, each party must not provide such data to the other party.

(e) Where personal data is transferred from the EU to “third countries” as defined by EU regulations, the parties will separately sign “Set II - Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)” about such transfer which shall form an integral part of this Agreement.

8. Liability.

(a) Publisher warrants that (i) it will comply with all applicable laws and regulations also including laws and regulations pertaining to advertising and data privacy, these Standard Terms, the Booking specifications and any other specifications communicated by UPYIELD; (ii) the Creative is not placed in any illegal context.

(b) Publisher indemnifies UPYIELD and advertised company against damages and all claims made by third parties resulting from any breaches of Publisher’s warranties given under this Agreement.

(c) Both Parties’ claims under applicable law remain unaffected.

9. General Provisions.

(a) Notices. All notices shall be in writing and addressed to the party to be served at the respective addresses or Email addresses set forth in the preamble of this Agreement.

(b) Changes to these Standard Terms.

(i) UPYIELD reserves the right to amend these T&C to cover changes to its services as for example the adding or removing of features, or to reflect changes in applicable law and regulations. UPYIELD will inform Publisher in writing either via email or by posting changes in the platform at least two weeks in advance of (a) such changes, (b) of Publisher’s right to object such changes and (c) of the fact that unless Publisher objects, such updated T&C will become effective upon expiry of the two weeks’ period. The foregoing only applies to changes that are not material to the Agreement i.e. that they do not affect the parties’ rights and obligations in a way that the original understanding between the parties is more than just insignificantly affected.

(ii) If Publisher objects to a change of these T&C, the previously agreed version of the T&C will remain in effect. However, either party will be entitled to terminate the Agreement with two weeks’ notice.

(c) Entire Agreement. This Agreement constitutes the entire understanding between the parties about the subject matter hereof and supersedes all prior communication. UPYIELD accepts no counter offer and/or other terms and conditions.

(d) Confidentiality. “**Confidential Information**” means materials, data, and other information concerning the operation, business, projections, market goals, financial affairs, products, services, customers and intellectual property rights of the other Party that may not be accessible or known to the public. Confidential Information shall include, but not be limited to, the terms of this Agreement, the Creative and any incorporated third party intellectual property, and any information which concerns technical or financial details of UPYIELD’s and advertised company’s operations. The Parties acknowledge that through their relationship under this Agreement, they may have access to and acquire Confidential Information of the other Party. Each Party

receiving Confidential Information ("**Receiving Party**") agrees to maintain all such Confidential Information received from the other Party ("**Disclosing Party**"), both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party further agrees to use the Confidential Information only for performing this Agreement. Notwithstanding the foregoing, the obligations set forth herein shall not apply to Confidential Information which: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; (iv) is independently developed by the Receiving Party without resort to the Confidential Information; or (v) is required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure and shall work with the Disclosing Party in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure.

(e) Amendments and Waiver. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only in the form of a non-electronic record referencing this Agreement and signed by the Parties hereto.

(f) Force Majeure. Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to circumstances beyond the party's reasonable control such as for example earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events.

(g) Severability. If a court of competent jurisdiction should find any provision of this Agreement to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby.

(h) Assignment. Neither Party may assign or transfer this Agreement or any obligation hereunder without the prior written approval of the other Party, except that, upon written notice, a UPYIELD may assign or transfer to an entity within its group of affiliated companies or to an entity acquiring all or substantially all assets of that Party, whether by acquisition of assets or shares, or by merger or consolidation. Any assignment in violation of this section shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

(i) Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, joint venturer, or partner of the other Party. Neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. Each Party shall bear its own costs and expenses in performing this Agreement.

(j) Governing Law. This Agreement and any disputes related to it shall be governed by, construed, and enforced in all respects in accordance with the laws of Germany. The Parties submit to the exclusive subject matter jurisdiction, personal jurisdiction and venue of the courts of Berlin, Germany.

9. Other Definitions.

The terms "**Affiliate**", "**CPA Deliverables**" ("**CPA**"), "**CPC Deliverables**" ("**CPC**"), "**CPL Deliverables**" ("**CPL**"), "**CPM Deliverables**" ("**CPM**"), "**Deliverables**" and "**Third Party**" shall have the meaning as defined by The Interactive Advertising Bureau (IAB) in the IAB Standard Terms and Conditions Version 3.0 available under the following link: http://www.iab.net/media/file/IAB_4As-tsandcs-FINAL.pdf.