

Publisher Terms and Conditions

Last modified on 08/05/2016

These Xornet Inc (a New York Company) Publisher Terms and Conditions (“**Agreement**”), between Xornet Inc DBA VendViva and its affiliates, (“**VendViva**” or “**VVA**”), and the individual or entity entering into this Agreement (“**Publisher**”) shall govern Publisher’s participation in the VendViva Network (“**Network**”).

1. DEFINITIONS

“**Action**” means a specific activity that is required to qualify for the payment.

“**Offer Creative**” means advertising materials of any type used under this Agreement, including, but not limited to, buttons, banners, text-links, images, text, video, JavaScript, css, flash, and html.

“**Additional Offer Creative**” means advertising materials of any type used under this Agreement, including, but not limited to, buttons, banners, text-links, images, text, video, JavaScript, css, flash, and html.

“**Offer**” means a combination of Offer Creative that solicit the purchase of a product, service and or series of products and services.

“**Order**” means when an Offer is accepted and purchased by a visitor to a Publishers Website. A single order may comprise multiple items. Each order will have a unique Order number assigned to it.

“**VendViva Network**” means the third party websites through which VVA can distribute Offers and related Creatives.

“**Offer Payout**” means the amount to be paid to a Publisher for a particular Order.

“**Advertiser**” means the entity invoiced by VVA for Net Revenue.

“**PPO**” means with respect to an Offer for which payment is based upon on a Pay Per Order basis, an amount equal to the product of (i) the number of Orders less invalid orders during the applicable calendar month, multiplied by (ii) the applicable Offer Payout.

“**Order Gross Sales**” means the total order amount less taxes, and in some cases shipping and handling. The Order Gross sales calculation is determined by the Advertiser.

“**Revenue Share**” means, with respect to an Offer for which payment is based upon a percentage of Order Gross Sales, an amount equal to the product of (i) the Order Gross Sales during the applicable calendar month, multiplied by (ii) the applicable revenue share percentage payout rate.

“**Impression**” means an instance in which an Offer is served to, and received by, a Unique Visitor on the Publisher Website as measured by VVA, not including automated page refreshes.

“**Invalid Order**” means any Order (i) results from applying repeated manual or mechanically automated inputs, clicks on mouse or keyboard or any other non-human order generation processes (including but without limitation robots, spiders, scripts or other software) as well as all other Orders resulting from methods that VVA determines to be fraudulent in nature, or resulting from incentives or misleading or coercive means. (ii) with invalid billing and or shipping information. (iii) any order rejected by the advertiser.

“**Marks**” means a party’s trademarks, service marks, logos and trade dress.

“ **Offer Tags**” means scripts provided by VVA that are designed to be inserted into the code of the Publisher Pages, which scripts communicate with the Adapter provided by VVA and request transmission from the Adapter of Offers.

“**Adapter**” means code provided by VVA that is designed to be uploaded to the Publisher Website, which code communicate with servers designated by VVA and request transmission from those servers of Offers.

“**Publisher Page**” means a web page on the Publisher Website.

“**Publisher Website**” means a website, application, or other media owned or operated by Publisher, or on which Publisher is otherwise legally authorized to act in the manner contemplated by this Agreement.

“**Unique Visitor**” shall mean a visitor to the Publisher Website as identified by VVA based on such visitor's unique identifiers.

“**User Interface**” means an online tool provided by VVA through which Publishers may access reports and such other management functions as may be available from time to time.

2. IMPLEMENTATION.

Offer Tags. VVA requires placement of Offer Tags on the Publisher Website(s) participating in the Network. Publisher shall use reasonable efforts to promptly place and enable the Offer Tags.

Adapter. VVA requires the installation of the Adapter on the Publisher Website(s) participating in the Network. Publisher shall use reasonable efforts to promptly install and enable the Adapter.

License Grant. Subject to the terms and conditions of this Agreement, VVA grants to Publisher a limited, non-transferable, non-exclusive, non-sub-licensable right and license to use the Offer Tags and Adapter to display Offers on the Publisher Website, solely for the purposes of performance of this Agreement and solely during the term thereof.

Restrictions; Prohibited Activities. Publisher is prohibited from doing any of the following: Place the Offer Tags and/or Adapter on any Publisher Website that have not been specifically approved for participation in the Network. In addition, VVA may approve additional Publisher Pages or Publisher Websites in writing (with email being sufficient) in its sole discretion. Alter, reverse engineer, decompile, disassemble, sell, rent, lease, sublicense, transfer, or otherwise make available the Offer Tags, Adapter, or Offer Creatives or any copies thereof to any third party, or create derivative works therefrom. Copy the Offer Tags, Adapter or Offer Creatives, except for performance of this Agreement or for backup, archival and disaster recovery purposes. Place Offer Tags and or Adapter on blank websites or parked domain or on websites with no content. Serve Offer Creatives from any location other than the VVA servers or servers approved by VVA. Induce persons to place and Order based on incentives (e.g. rewards programs). Use unsolicited email to promote Offers. Use auto spawning browsers, or automatic redirecting of visitors, or any other method that may lead to artificially high numbers of Orders. Use of any method that may lead to falsely generated or an artificially high number of orders.

Publisher recognizes that a breach of any of these conditions could result in immediate, extraordinary and irreparable damage to VVA and its relationships with its advertising clients, and that damages may be difficult to measure. Upon a determination by VVA, in its sole discretion, that Publisher has violated any of the foregoing conditions, Publisher agrees that VVA may, in addition to other legal remedies, assess liquidated damages of up to One

Thousand Dollars (\$1,000.00) per occurrence of each such violation, and that such liquidated damages are reasonable

Prohibited Content. VVA does not accept any Publisher Website that contains the following content:

- i. any content that contains or promotes concepts that are hateful or disparaging towards any race, religion, gender, sexual orientation or nationality;
- ii. any content that promotes firearms, bombs and other weapons or how-to guides for any of these items;
- iii. any content that contains or promotes illegal activities, including, but not limited to hacking, phreaking and online gambling;
- iv. any content that contains or promotes pornography or graphic sexual depictions;
- v. any content that contains, promotes or links to indecent, obscene or highly explosive subject matter; or
- vi. any content that facilitates or promotes illegal file-sharing (MP3s, copyright protected video, or the equivalent)

(Collectively referred to as the “**Prohibited Content**”).

Publisher represents and warrants that during the term of this agreement none of the Publisher Websites on which it displays Offers shall contain or promote any Prohibited Content. VVA reserves the right to reject or block any Publisher Page or Publisher Website at any time at its sole discretion. The Offers shall not contain Prohibited Content. If Publisher violates the foregoing representation and warranty, VVA’s sole and exclusive remedies shall be as follows: (i) VVA may at its discretion provide notice to Publisher, and Publisher shall in such case have the opportunity to work with VVA to remedy the issue; (ii) VVA may cease (temporarily or permanently) delivering Offers to the Publisher Website(s); and (iii) indemnification as set forth in Section 8 of this Agreement.

In the event that Publisher materially changes the Publisher Website content after approval into the Network, Publisher must send written notice (with email being sufficient) to VVA of the changes immediately. Notices should be sent to Publisher’s Account Manager or to publishers@offersondemand.com. Publisher’s participation in the Network is non-exclusive.

Ownership Rights. Except for the limited license rights expressly granted to Publisher in this Agreement, VVA, its Partners, and its Licensors, retains all right, title and interest in and to the Network, the technology utilized by VVA to operate the Network, the Offer Tags, the Adapter, and the Offer Creatives, including but not limited to all patent, trademark, copyright, trade secret and all other intellectual property rights therein.

Publisher Responsibilities. Publisher is solely responsible, at its own expense, for procuring, maintaining and operating all hardware, software, networks, systems and third-party services (e.g., Internet access) necessary to (i) operate the Publisher Website, (ii) use the Offer Tags, (iii) display the Offers, (iv) access and use the Network services, and (v) install the adapter.

Delivery and Suspension of Offer. All Offer delivery shall be subject to frequency capping, targeting parameters, and availability established by VVA. Publisher agrees that VVA may access, crawl, index and cache the Publisher Website or any portion thereof for such purposes. Publisher will be alerted when an Offer is suspended, deleted or modified (with email being

sufficient).

Activation. Publisher shall activate the Offer Tags and Adapter no later than thirty (30) days after execution of this Agreement. Publisher shall not remove the Offer Tags and Adapter for more than thirty (30) consecutive days during the term of this Agreement. In the event that VVA determines that Publisher violated one or more of the foregoing sentences in this paragraph VVA may, at its option, revert to a lower payment rate to Publisher or suspend Publisher activity.

Offer Tags, Adapter, Additional Offer Creatives. Offer tags, Adapter downloads and instructions as well as additional Offer Creative are available to approved Publishers at www.offersondemand.com. Offers creatives may be placed on third party websites such as social networks but only in the case when the Additional Offer Creatives links directly to a Publisher's web page displaying an Offer.

3. Payment.

General. Payment to Publisher shall be based on the payment rates set for forth in the “Current Offer” Section of the User Interface. VVA may from time to time modify such payment rates at its sole discretion. Offer Payout payments shall be made by VVA no later than the 15th day after the end of the month in which invoiced Net Revenues were received by VVA. Publisher will be paid at the account level (i.e., if Publisher has multiple accounts, each account may be evaluated independently). No checks or automatic deposits will be issued for any amounts less than \$25 U.S.D. All un-issued earnings will roll over to the next pay period in which the amounts due exceed \$25 U.S.D. Any dispute regarding a payment hereunder must be submitted to VVA in writing(with email being sufficient) within sixty (60) days of such payment or it shall be deemed waived. To ensure timely payment, Publisher must ensure that Publisher's account information as displayed in the User Interface is accurate and up to date, including its banking account information, address, phone,email address, and legal entity identification . There will be a Two Dollar (\$2.00) service fee for any payment made by check. Automatic deposit transactions will be free.

- a) Payout Type and Calculations. Offers payouts are based on two payout types PPO or Revenue Share. The payout types and Offer payouts are available to approved Publisher in the User Interface. Revenue Share will be expressed in terms percentage of Order Gross Sales.
- b) Withholding Payment. VVA reserves the right to withhold payment from Publisher if Publisher has engaged in activity that is either prohibited hereunder or is outside the scope of that which is permitted under this Agreement.
- c) Taxes. By participating in the Network, Publisher assumes complete and sole responsibility for any income taxes owed as a consequence of such participation and agrees to indemnify and hold VVA harmless from any such taxes. VVA shall provide Publisher with appropriate tax information, including earnings on Form 1099 as required by applicable law. If Publisher resides in the United States, then Publisher agrees to provide its Social Security number or Federal Employee Identification Number and any other reasonable information to VVA for tax reporting purposes. Such information will be used for no purpose other than for tax reporting purposes. If Publisher resides outside of the United States, then Publisher may be asked to complete appropriate forms for tax purposes and agree to accurately complete such forms. VVA may withhold payment from Publisher in the event that Publisher does not

provide accurate tax information or complete any necessary tax or reporting forms, as determined in VVA's sole discretion. Sales taxes, if applicable will be the responsibility of the Advertiser.

- d) **Reporting.** GMT-5 Greenwich Mean Time(GMT-4 During Daylight Saving) shall be the time period for traffic and tracking purposes. Statistics regarding Offer Creatives shall be available to approved Publisher in the User Interface.. Publisher acknowledges that in some cases, VVA will need to make adjustments to reported statistics due to specific contractual provisions (e.g., bonuses), Invalid Orders, statistical errors, or third party tracking provided by advertisers or their agencies.

4. Accounting. VVA shall have the responsibility in its sole and reasonable discretion for calculation of statistics and payments, including, but not limited to, Impressions, Orders, Actions and revenue generated on or through the Publisher Website, as applicable.

5. Use of Data and Privacy. Publisher represents and warrants that, at all times during the term of this Agreement:

(a) it shall maintain a posted privacy policy accessible by direct link from the Publisher Website's home page that complies with all applicable laws and regulations, and shall abide by such privacy policy;

(b) such privacy policy shall: (i) disclose that Publisher allows third parties to serve advertising within the Publisher Website; (ii) disclose the type of information collected by such third parties. VVA may from time to time require Publisher to provide specific additional notice mechanisms consistent with applicable laws or industry self-regulations for the purpose of providing end users with information and choices in connection with online advertising. VVA uses its best efforts to comply with Children's Online Privacy Protection Act of 1998 ("COPPA") and amendments thereto and requires each Publisher to do the same. Publisher represents and warrants that: (i) it shall designate Publisher Websites as having children's or non-children's content as well as designating if it knowingly collects any personal information from children under the age of thirteen; and (ii) it shall promptly notify VVA in the event that either its content or its policy on data collection changes.

6. Term; Termination. This Agreement shall terminate and renew in accordance with the term and termination provisions of the applicable Order. Upon termination, any licenses granted by VVA hereunder shall immediately terminate and Publisher must remove all Offer Tags and Adapter from the Publisher Website and cease delivery of any and all Offer Creatives. In the case of termination, VVA will pay Publisher all uncontested amounts due during the next billing cycle. The following Sections of the Agreement, and those which by their nature are ongoing obligations, shall survive any expiration or termination of this Agreement: 3, 6 through 18.

7. Limitation of Liability. EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR OTHER SIMILAR DAMAGES NOR FOR ANY LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF SAVINGS, LOSS OF CLIENTELE, LOSS OF USE OR LOSS OR CORRUPTION OF DATA, WHETHER UNDER TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHER THEORIES OF RECOVERY, EVEN IF THE PARTY WAS OR SHOULD HAVE BEEN AWARE OR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE PARTIES' INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER EXCEED THE AGGREGATE AMOUNTS PAID OR OWED UNDER THIS

AGREEMENT BY EITHER PARTY DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

8. Indemnification.

a) Publisher. Publisher hereby agrees to defend, settle and pay damages on behalf of VVA and its officers, directors, agents, affiliates and employees associated with any and all third party claims, actions, liabilities, losses, expenses, damages, and costs (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") that may at any time be incurred by any of them by reason of any claims, suits or proceedings (i) arising out of any material breach by Publisher of any term, condition, representation or warranty under this or any other agreement with VVA; (ii) relating to a contaminated file, virus, worm, or Trojan horse originating from Publisher's Website (other than through a Creative supplied by VVA, unless such Creative was modified by Publisher without the express written consent of VVA); (iii) content on the Publisher Websites; or (iv) related to any violation of any intellectual property right or any other third party right, except for Creatives supplied by VVA, unless such Creatives were modified by Publisher without the express written consent of VVA.

b) VendViva. VVA hereby agrees to defend, settle and pay damages on behalf of Publisher and its officers, directors, agents, affiliates and employees associated with any and all Losses that may at any time be incurred by any of them by reason of any claims, suits or proceedings (i) arising out of a material breach by VVA of any term, condition, representation or warranty under this Agreement; (ii) relating to a contaminated file, virus, worm, or Trojan horse originating from Creatives or code supplied by VVA; or (iii) related to any violation of any intellectual property right or other third party right in connection with Creatives supplied by VVA. Notwithstanding anything to the contrary in this Agreement, VVA shall not be obligated to indemnify Publisher or any other party to the extent a third party claim arises out of material modifications by Publisher to Creatives supplied by VVA without the express written consent of VVA.

c) Indemnification Procedures. Any claim for indemnification hereunder shall be subject to the following provisions: (i) the indemnifying party shall be given prompt written notice of the claim by the indemnified party, provided that any delay in providing notice shall not relieve the indemnifying party of its indemnity obligations under this Agreement unless, and only to the extent, the indemnifying party was prejudiced by the delay; (ii) the indemnifying party shall have the right to control the defense and all negotiations relative to the settlement of any such claim, provided that no settlement admitting liability on the part of the indemnified party may be made without the express written consent of the indemnified party; and (iii) the indemnified party shall reasonably cooperate with the indemnifying party and its counsel at the indemnifying party's cost and expense.

9. Confidentiality. Each party ("Discloser") acknowledges that during the performance of its obligations under this Agreement, it may disclose Confidential Information (as defined below) to the other party ("Recipient"). "Confidential Information" means information regarding Discloser's trade secrets, personnel, products, customers, financial data, marketing and pricing strategies, services, business plans, methods, computer systems architecture, network configurations, any information which is governed by any now-existing or future non-disclosure agreement between the parties, and any other information which is or should reasonably be understood by Recipient to be of a confidential or proprietary nature. Recipient agrees that it will not disclose any Confidential Information to anyone except an employee, agent or advisor (collectively, "Representatives") who has a need to know same, and who is bound by confidentiality and non-use obligations at least as protective of Confidential Information as are those in this Section, and that it will not use Confidential Information for any

purpose not permitted under this Agreement. Recipient will protect the Confidential Information in the same manner it protects its own confidential and proprietary information, but in no event shall such protection be less than a reasonable standard of care.

The foregoing obligations shall not apply to the extent Confidential Information must be disclosed by Recipient to comply with any requirement of law or order of a court or administrative body (provided that Recipient agrees to notify Discloser of the issuance of such order as soon as practicable, to reasonably cooperate with Discloser (at Discloser's expense) in its efforts to convince the court or administrative body to restrict disclosure), and to disclose only the portion of such information that it is legally required to disclose. "Confidential Information" does not include information that: (i) is known to or in the possession of Recipient prior to its disclosure to Recipient hereunder, as evidenced by the Recipient's written records; (ii) is or becomes known or generally available to the public through no act or omission of Recipient or its Representatives in breach of this Agreement; (iii) is made available free of any legal restriction to Recipient by a third party; or (iv) is independently developed by Recipient without use of or reference to Confidential Information. Notwithstanding anything to the contrary in this Agreement, VVA may use and disclose any aggregate information (i.e. information that does not identify or relate specifically to Publisher), which it has collected or received in providing the service, to the extent necessary to perform, enhance or improve its services and/or for VVA's business and marketing purposes.

10. Marks Usage. Publisher authorizes VVA to disclose its membership in the Network and grants VVA a non-exclusive, worldwide, royalty-free right and license to use, reproduce and display : (i) Publisher's Marks in connection with VVA's sales materials and presentations and as otherwise needed to perform its obligations under this Agreement; and (ii) Publisher's Marks and statistics relating to the performance of a particular advertiser or agency's Offer Creative on the Publisher Website, to such advertiser or agency. VVA authorizes Publisher to disclose its membership in the Network and grants Publisher a non-exclusive, worldwide, royalty-free right and license to use, reproduce, and display VVA's Marks solely for the purpose of disclosing Publishers membership in the Network, subject to revocation by VVA

11. Entire Agreement; Assignment. This Agreement, as and if amended, and the associated Orders, shall constitute the entire and only agreement between the parties regarding Publisher's participation in the Network, and shall supersede all previous communications, representations or Agreements, whether written or oral between the parties relating to the services provided hereunder. Publisher may not assign this Agreement or any Order without the prior written consent of VVA, which consent shall not be unreasonably withheld. Any assignment by Publisher without such consent shall be void ab initio. This Agreement shall inure to the benefit of all permitted successors, heirs and assigns.

12. Representations and Warranties.

a) Both Parties. Each party represents and warrants to the other that (i) it has the full right, power, and authority to enter into this Agreement; (ii) the execution of this Agreement and performance of its obligations under this Agreement do not and will not violate any other agreement to which it is a party; and (iii) this Agreement constitutes a legal, valid and binding obligation when agreed to.

b) Publisher. Publisher represents and warrants that (i) it is legally authorized to place the Offer Tags and Adapter on the Publisher Website(s) and to perform its obligations herein with respect to the Publisher Website; and (ii) it will conduct its business and fulfill its obligations under this Agreement in compliance with all applicable laws, statute, ordinance, rules and regulations relevant to the performance of its obligations under this Agreement.

c) VendViva. VVA represents and warrants that it (i) has all necessary licenses and clearances to

use and permit Publisher to use the Offer Tags, Adapter and Offer Creatives in the manner authorized by this Agreement, and (ii) will comply with all applicable laws, statute, ordinance, rules and regulations relevant to the performance of its obligations under this Agreement.

13. Modifications. VVA shall have the right to change, modify or amend these Terms, in whole or in part, by posting revised Terms on its website at least five (5) days prior to the effective date of such change. Publisher's continued use of the Network after the effective date of such change shall be deemed Publisher's acceptance of the revised Terms.

14. Warranties; Disclaimer. EXCEPT AS OTHERWISE SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTIES (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT), GUARANTEES, REPRESENTATIONS, PROMISES, STATEMENTS, ESTIMATES, CONDITIONS OR OTHER INDUCEMENTS, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE AND ALL SUCH WARRANTIES ARE DISCLAIMED, EXCEPT AS EXPRESSLY SET FORTH HEREIN. PUBLISHER UNDERSTANDS AND ACKNOWLEDGES THAT THERE IS NO GUARANTEE THAT ANY MINIMUM LEVEL OF REVENUE, OR ANY REVENUE, WILL BE GENERATED AS A RESULT OF THIS AGREEMENT.

15. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the substantive laws of the State of New York without regard to its conflict of law principles. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts situated in the County of Monroe in New York, in connection with any action arising between the parties.

16. Severability and Waiver; Captions. If any provision of this Agreement shall be held or made invalid or unenforceable by a court decision, statute, rule or otherwise, the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect. Any waiver (express or implied) or delay by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. The captions appearing in this Agreement are inserted only as a matter of convenience. This Agreement shall be interpreted as if drafted jointly by the parties.

17. Force Majeure. Neither party will be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes ("Force Majeure").

18. Notices. Notices may be provided via e-mail, or other written means and will be effective immediately.

19. Provision of Offer Impressions. Publisher shall ensure that there are no "Spikes" in the number of requests for Offers delivered to VVA from Publisher's web pages. VVA may at its sole discretion, reject requests for Offers that are delivered as part of a Spike. A "Spike" means any sudden increase in Offer requests that VVA deems to be the result of fraudulent activity, Prohibited Activities as set forth in this agreement, a compromised Publisher's website or web page, an attack on a Publishers website or web page such as a DOS (denial of service).