

Terms and conditions for Advertisers

These terms and conditions for Advertisers (“Advertiser Terms”) are between Koneo Mobile Inc., a Delaware corporation, with its registered office at 1390 Market Street, San Francisco, CA 94102, United States (hereinafter referred to as “Koneo”) and the partner (hereinafter referred to as “the Advertiser”) as set out in the relevant respective insertion order.

Koneo and the Advertiser shall collectively be referred to as “the Parties” and singularly “the Party”.

Koneo operates a Multi Channel Performance Agency (hereinafter referred to as “Koneo”), which provides quality performance marketing and related services, as well as related technology and software (hereinafter “Koneo Ad Server”) for operators of mobile applications and/or related service providers (“Advertisers”).

Koneo allows Advertisers to market their mobile applications and/or mobile services (hereinafter referred to as “the Advertiser’s Services”) on Publisher Media (as set out below) through publishers and/or third party affiliate (publisher) partners (hereinafter collectively referred to as “the Publisher(s)”), which participate in the partner program (hereinafter referred to as “Partner Program”) set up by the Advertiser, in accordance with the provisions of these Advertiser Terms and the respective Campaign Terms.

1. Definitions

The following definitions shall apply to the Advertiser Terms and the Agreement:

1.1 Action – shall mean a click, install, lead, sale or view as a payment trigger as set out below;

1.2 Advertiser Ads – shall mean the Advertiser’s proprietary advertising materials, including, without limitation, banners, buttons, text links, video, graphic files and similar mobile media promoting the Advertiser’s Services;

1.3 Advertiser Media – shall mean the Advertiser service’s and/or any website in relation thereto (landing page, AppStore, PlayStore), accessed by a user through a tracking link on the Advertiser ads;

1.4 Business day – shall mean a day other than Saturday, Sunday or public holiday in California, United States.

1.5 Campaign – shall mean the marketing campaign, which is specified in the respective insertion order.

1.6 Koneo Services – shall mean the technical processing of the campaign, including tracking, creating statistics, administration of Advertiser ads, the administration of Publishers as well as billing and payments through Koneo and/or Koneo’s agents and/or third parties commissioned;

1.7 Insertion Order (“I.O.”) – shall mean the order duly signed by the authorized representative of Advertiser as well as of Koneo with respect to the Koneo services;

1.8 Intellectual Property Rights (“IP – Rights”) – shall mean copyrights, trademarks, patents, design rights, know-how, and any other similar protected rights in any country.

1.9 Campaign Terms – shall mean the affiliate program set up within Koneo, through which the Advertiser Services are marketed by displaying the Advertiser Ads on the Publisher Media and through which the Publisher(s) are compensated. These include any additional terms and conditions such as start and end dates for a campaign, the target countries, the pricing model, the campaign budget (cap), the pay-out, as well as traffic restrictions, which are agreed upon in the I.O. If the I.O. and these terms contradict each other, the terms of the I.O. shall prevail.

1.10 Pay-per-click – means compensation per unique click through from the Advertiser ads to the Advertiser media, directed through the Advertiser ads on the Publisher media;

1.11 Pay-per-install – means a compensation for a successful installation of a software (e.g. a client software and/or mobile application) of the Advertiser, directed through the Advertiser Ads on the Publisher Media, directed through the Advertiser Ads on the Publisher Media;

1.12 Pay-per-lead – means a compensation for leads as set out in the campaign terms, directed through the Advertiser Ads on the Publisher Media;

1.13 Pay-per-sale – means a compensation for each time a sale is completed by a user within the Advertiser's Services, directed through the Advertiser ads on the Publisher Media;

1.14 Pay-per-view – means compensation per unique view by users of the Advertiser ads on the Publisher Media. Koneo reserves the right to ask for frequency capping, if requested by the Advertiser;

1.15 Pay-outs – shall mean the specific remuneration based on pay-per-click, pay-per-install, pay-per-lead, pay-per-sale or pay-per-view or any combination of those as set out in the respective campaign terms;

1.16 Publisher Media – shall mean the advertising environment of publisher, including, but not limited to, websites, mobile sites, social media profiles, email newsletters, software, applications for smartphones, tablets and other suitable devices.

1.17 User – shall mean a natural person.

2. Scope of the Agreement

2.1 The following Advertiser Terms form part of each existing or future I.O. or any other confirmed or otherwise concluded agreement between Koneo and the Advertiser, even – with respect to future I.O.s and/or agreements - if the Advertiser terms have not been expressly agreed upon again. The Advertiser Terms and each respective I.O. shall be collectively referred to as “the Agreement”.

2.2 Koneo provides the Koneo Services and any other services for any Advertiser solely on the basis of the Agreement.

2.3 Any terms and conditions of Advertisers that are contrary to or deviate from or are supplemental to these Advertiser Terms shall not be recognized unless the express written consent of Koneo has been provided. The applicability of these Advertiser Terms shall not be impaired by the fact that Koneo – with knowledge of any terms and conditions of an Advertiser, that are contrary to or deviate or supplemental from these Advertiser Terms – renders the Koneo Services without reservations.

2.4 If the Advertiser is an advertising agency, a media buyer or any other media or advertising intermediary acting on behalf of another Advertiser (hereinafter “the Client”), then the Advertiser shall make sure that the terms of the Agreement are also imposed on its Client and the Advertiser shall bear full responsibility to comply with the terms and conditions of the Agreement, regardless of any fault of the Client. The Advertiser shall in any case remain fully and solely reliable for any payments due to Koneo. In case of doubt, any reference to the Advertiser shall refer to the Advertiser as well as to the Client.

2.5 Only legal entities as well as natural persons as entrepreneurs of unlimited legal capacity may become party of the Agreement. Koneo reserves the right to demand supporting documents from the Advertiser to prove its legal status and in case of an employee of the Advertiser and/or an agency registering with Koneo and/or concluding the Agreement, to demand a written authorization.

3. Koneo Services

3.1 Koneo shall use reasonable endeavours to supply the Koneo Services in accordance with the respective I.O. and all material aspects. The Koneo Services shall be further described in the respective I.O.

3.2 Koneo shall be entitled to provide the Koneo Services or parts thereof through third parties or its agents.

3.3 Koneo may assist and support the Advertiser in the creation and/or development of Advertiser Ads, subject to such assistance and support being part of the I.O. or an additional agreement between the Advertiser and Koneo. To the extent Koneo has created and/or developed Advertiser Ads, Koneo reserves all intellectual property rights to such Advertiser Ads or parts thereof.

3.4 Koneo shall not be obliged to render the Koneo Services to Advertiser to a certain extent and no term in the Agreement shall be understood in the sense that Koneo must do so.

3.5 Koneo reserves the right, at its own discretion, to modify, update, maintain or suspend the Koneo Performance Network, the Koneo Platform and the Koneo Ad Server (“technical measures”). Koneo shall notice the Advertiser, as far as plannable, with a period of 48 h in advance of such technical measures, if these have a substantial impact on the Koneo services rendered to Advertiser.

3.6 The positioning, placement, frequency and other editorial decisions related to the Advertiser Ads shall be compliant with the campaign restrictions and shall be made by Koneo, in its sole discretion, unless otherwise agreed in the respective I.O. The Advertiser may request Koneo, that Advertiser Ads placed on Publisher Media may be moved or repositioned, if the Advertiser has the impression, that the current position of the Advertiser ads may damage the Advertiser’s and the Advertiser’s services reputation. In the event of such movement or reposition, Koneo shall not be liable for any of claims against Koneo based on such movement or reposition.

4. Obligations of the Advertiser, Advertiser ads

4.1 The Advertiser shall develop and/or create the Advertiser Ads and all aspects thereto. Advertiser shall be the sole owner of any IP-Rights with respect to such Advertiser Ads.

4.2 Koneo reserves the right to reject, omit, exclude or terminate any Advertiser ad for any reason at any time, with subsequent written notice (email shall be sufficient) to such Advertiser, whether or not such Advertiser Ad was previously used.

4.3 The testing of tracking pixels or any other mechanism(s) (hereinafter referred to as “Tracking Measurements”) for observing and recording the performance of a campaign will be the responsibility of the Advertiser. In the event that the Advertiser incorrectly places Tracking Measurements or if the Advertiser removes or alters Tracking Measurements at any time during a campaign without express written permission from Koneo or if the Tracking Measurements are interrupted or disrupted due to technical problems, server downtime, data loss, transmission errors or other reasons, and, as a result, the Tracking Measurements are not recording valid actions correctly, the Advertiser shall pay to Koneo, as liquidated damages, a sum equal to the daily average revenue generated by Koneo for the campaign in question in a period of seven (7) days immediately preceding such interruption, multiplied by the number of days rounded up in respect of which tracking has been interrupted or rendered inoperable or ineffective.

If there has not been a tracking of seven days, the daily average revenue generated by Koneo, based on all current campaigns with the respective Advertiser, shall be decisive for liquidated damages.

4.4 The Advertiser shall be entitled to impose additional Campaign Terms on the Publisher(s) in relation to a campaign, provided that these do not conflict with the Agreement and/or the applicable law.

4.5 The Advertiser grants to Koneo a non-exclusive, worldwide, royalty-free, sub-licensable license to use, perform, reproduce, display, transmit, modify, copy and distribute the Advertiser Ads in accordance with the Agreement.

5. Validation of actions

5.1 Unless otherwise agreed in the Agreement, the Advertiser’s tracking technology shall be the sole system to track applicable actions and to calculate Koneo’s remuneration. However, if Advertisers actions deviate significantly from Koneo’s tracked numbers, Koneo has the right to audit the Advertisers numbers. The Advertiser shall therefore, at all times, during the term of the Agreement and for a period of three months thereafter, grant Koneo access to the Advertiser’s tracking system and/or tracking reports.

5.2 All Actions shall be deemed irrevocably confirmed or cancelled no later than 10 (ten) days in the following month by the Advertiser and thus be finally payable to Koneo as set out in the Agreement (“Validation Period”). If the Advertiser does not reasonably object Actions within the validation period, such Action shall be deemed validated after the expiration of the Validation Period.

5.3 In case Actions are cancelled by the Advertiser, the Advertiser must prove on reasonable grounds the non-validation of such Actions. The Advertiser shall furnish Koneo with all relevant information and/or documentation, including, but not limited to, business records, and log files as well as any objections it may have on the Actions it has not validated, in order to allow Koneo

to review if the non-validation by the Advertiser was complete and accurate. In case the information provided is accurate and complete, Koneo shall classify the relevant Actions as cancelled. However, Koneo reserves the right to audit the given information during normal business hours of the Advertiser in order to review its classification at a later stage.

5.4 An Action shall be especially, but not exclusively, considered as being non-valid, if it is generated automatically by a technical device and/or software (e.g. robot, spider, script).

6. Payments

6.1 The Advertiser agrees to pay for, and Koneo agrees to provide, the Koneo service's identified and set forth in the Agreement.

6.2 Unless otherwise agreed in the respective I.O., the remuneration of Koneo shall be based on the Pay-outs for Actions as set out in the respective Agreement.

6.3 Koneo will invoice the Advertiser up to 5 business days after receiving the report, which has to be provided by the Advertiser no later than 10 (ten) days after the previous month. If the respective date is not a business day, the next business day shall be the applicable day for invoicing. All invoices shall be submitted to the Advertiser electronically. The report has to include the following:

- a) new installs;
- b) cumulated installs;
- c) cost per action;
- d) revenue total.

These shall be (upon Koneo's request) divided into:

- a) overall (across all domains and countries);
- b) per domain/country;
- c) per day;
- d) total per month.

Should the Advertiser fail to provide Koneo with a report within 10 days following the end of the preceding month, Koneo's tracking results will be used and shall be deemed irrevocably accepted by the Advertiser.

6.4 Any and all remuneration will be due to Koneo within 14 (fourteen) business days from the respective date appearing on the respective invoice, unless otherwise agreed in the Agreement.

6.5 Koneo reserves the right, at any time, to request an advance payment from the Advertiser with respect to a new or current campaign.

6.6 Any amounts due to Koneo shall be plus the statutory sales tax, as far as sales tax is obligatory with respect to the Koneo Services to the Advertiser. The Advertiser shall bear any and all banking fees related to payments by the Advertiser to Koneo.

6.7 If the Advertiser fails to make any payment due to Koneo under the agreement by the due date, a late interest shall accrue on the overdue amount on a daily basis from the due date at the rate of 10 % per annum of the base rate of the Federal Reserve System. Such interest shall accrue until actual payment of the overdue amount by the Advertiser.

6.8 Unless otherwise agreed in the respective I.O., all payments to Koneo shall be made in US Dollar.

7. Warranties, Indemnification

7.1 The Advertiser represents and warrants that

- a) it has the full power and authority to enter into and perform its obligations under the Agreement during its duration;
- b) the Advertiser Ads and the Advertiser Services will comply with all applicable laws, including, but not limited to, any applicable provisions for consumer protection, data protection and competition law;

c) no Advertiser Ads and/or Advertiser Services infringe intellectual property rights of third parties, nor will the Advertiser make Koneo and/or a publisher to infringe such rights by any means;

d) it will not manipulate any browser functionalities, which prevents users from perform standard browser functions;

e) the Advertiser Ads and Advertiser Services do not contain any misinterpretations or any content that is defamatory, contain content that is violent, obscene, offensive, including content that contains nudity or implied nudity or content that is morally or ethically offensive or sexual suggestive, promote or support illegal gambling or sweepstakes or contests or contain any “worm”, “virus”, “Trojan” or other code which could impair or injure any hardware, software, person or entity;

7.2 The Advertiser shall indemnify and hold harmless, at first request, Koneo from any and against any and all liabilities, losses, damages or expenses (including, without limitation, reasonable attorney's fees, costs and expenses) arising out of or related to any claim related to the Advertiser's breach of warranties set out in this sec. 7.

8. Limitation of Liability

8.1 Koneo shall not be liable to for the content on Advertiser Ads, for damages or other disturbances caused by defects and/or interoperability of Advertiser Ads and/or for damages resulting from the insufficient availability or imperfect functioning of the internet and/or the app stores.

8.2 Apart from the limitations set out in sect. 8.1, in all cases of contractual and non - contractual liability Koneo shall only pay compensation for damages in accordance with the principles set forth below:

a) to the full amount, only in cases of wilful acts as well as in case of absence of an agreed property, that Koneo has guaranteed;

b) in case of gross negligence, limited however of the amount of foreseeable damages, which should have been avoided through adherence to the obligation violated;

c) in all other cases: only for the breach of an essential contractual duty which is of special importance for achieving the purpose of the agreement and on which the parties can normally rely on (cardinal obligation) to the extent of the typically foreseeable damages. In this case, the liability for indirect and non – foreseeable damages, loss of profits, loss of savings and financial damages due to claims of third parties shall be excluded. The liability shall be limited per case to USD 25,000, in total to the amount payable to Koneo according to the Agreement. Essential contractual duties are those duties, where failure to comply endangers the purpose of the Agreement, e.g. significant late compliance, not just insignificant failure in cooperation and communication or not insignificant duties which are essential to the success of the contractual purpose;

d) if Koneo is insured against the damages that have occurred, but restricted to the amount of insurance coverage and subject to the condition precedent of full insurance payment.

8.3 The exception to contributory negligence remains open for Koneo.

8.4 Insofar the liability of Koneo is restricted or excluded according to the provisions set forth above, this shall also apply to the personal liability to Koneo's employees, personnel, staff and other agents as well as authorized representatives.

8.5 For all damage claims against the Advertiser a limitation period of one year applies.

8.6 In no event will Koneo or its directors, employees or agents be liable to you or any third person for any indirect, consequential, exemplary, incidental, special or punitive damages, including for any lost profits or lost data arising from your use of the site or the service, any platform applications or any of the site content or other materials on, accessed through or downloaded from the site, even if Koneo is aware or has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained herein, Koneo's liability to you for any cause whatsoever, and regardless of the form of the action, will at all times be limited to the amount paid, if any, by you to company for the service during the term of membership, but in no case will Koneo's liability to you exceed USD 25,000. You acknowledge that if no fees are paid to company for the service, you shall be limited to injunctive relief only, unless otherwise permitted by law, and shall not be entitled to damages of any kind from company, regardless of the cause of action.

9. Confidentiality

9.1 The Parties undertake to treat confidentially also beyond the end of the agreement any and all information which is protected by law or contains business or trade secrets or which is designated as being confidential, that is disclosed or provided to them by the other contracting party respectively within the context of the contractual negotiations or performance ("confidential information").

9.2 The Parties shall disclose any confidential information to their employees or any third parties on a strict need to know basis only.

9.3 Notwithstanding the foregoing, confidential information shall not include information of which it is proven by the receiving party that:

- (a) it was already known to the receiving party at or prior to the time of disclosure by the disclosing party;
- (b) it is or becomes publicly known through no act of the receiving party;
- (c) it is received without restrictions from a third party without breach of any obligation of nondisclosure;
- (d) it is independently developed by the receiving party;
- (e) the receiving party is under an obligation to disclose pursuant to the order of a court of law or public authority.

10. Term and termination

10.1 The Agreement shall start on the date of signature of any respective I.O. and shall continue for an indefinite term, if not explicitly agreed otherwise.

10.2 Either Party may terminate the agreement for convenience purposes upon 48 (forty eight) hours prior written notice to the other Party. The right to termination for cause shall remain unaffected.

10.3 Upon termination of the Agreement for any reason whatsoever, or expiry of the agreement, the Advertiser shall pay Koneo immediately all outstanding unpaid invoices and all amounts then due and owing as of the termination date, and invoiced by Koneo.

11. General

11.1 The terms of the respective I.O. shall supersede all contrary terms set forth in the Advertiser Terms, unless expressly set forth to the contrary.

11.2 Nothing in the Agreement is intended to, or shall be deemed to establish a partnership or joint venture between Koneo, the Advertiser or a Publisher. The Agreement shall not constitute either party to be the agent of the other party for any purpose. Neither Party shall have the authority to act as an agent for, or to bind, the other Party in any way. The Advertiser expressly agrees that any obligations set out in the respective campaign terms of Advertiser shall in no way be construed as obligations to Koneo.

11.3 Offsetting and claiming rights of retention by the Advertiser shall only be admissible, if the counterclaims used as a basis are undisputed or have been acknowledged by Koneo. The Advertiser shall only be entitled to exercise a right of retention as far as his counterclaim is based on the same contractual relationship.

11.4 Should any individual provision of the Advertiser Terms and/or the I.O. be regarded as being invalid, partially or entirely, this shall not affect the validity of the remaining provisions. The invalid provision shall be deemed to be replaced by a provision that is legally effective and comes closest, in the usual understanding, the economic intend and purpose of the invalid provision. The same shall apply to any unintentional omission to the Advertiser terms.

11.5 The Parties will attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this section ("Dispute"). If the Dispute is not resolved through verbal and written

communications, the matter will be governed by the AAA/IAB Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less v3.0 ("IAB3.0" - located at <http://goo.gl/ssYxB>), or its successor, for arbitration. Any Dispute submitted to arbitration shall be determined by arbitration in San Francisco, California, USA before a sole arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State. The language of the arbitration shall be English. The arbitration shall be administered by IAB pursuant to its Comprehensive Arbitration Rules and Procedures. Except with respect to a party's indemnification obligations, the arbitrator will have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. Judgment on the arbitration award ("Award") may be entered in any court having jurisdiction. The arbitrator shall, in the Award, allocate all of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the party that primarily prevails, against the party that did not primarily prevail.

11.6 These Terms and any action related thereto will be governed by the laws of the State of California without regard to or application of its conflict of law provisions or your state or country of residence. All claims, legal proceedings or litigation arising in connection with the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.