

VendViva

Vendor AGREEMENT

TERMS AND CONDITIONS

Last modified on 07/14/2016

This Vendor Agreement, the “Agreement”, is made between Xornet, Inc. DBA VendViva, a New York State Corporation (“Marketer”), and the individual or entity entering into this Agreement (“Vendor”). Both parties (the “Parties” or, individually, a “Party”) hereby agree as follows:

1.0 ADVERTISING, ORDER AND CUSTOMER GENERATION SERVICES

1.1 Advertisements. Marketer will distribute Vendor’s advertisements (“Advertisements” as further defined herein) and generate orders for Vendor’s products (“Products”). As used in this Agreement, “Advertisements” shall include creative graphics, emails, video, display ads, hyperlinks, web pages, and/or other advertising material used to generate customers for Vendor, and all related copyrights, trademarks, and service marks. Vendor shall provide said graphic content to Marketer for Marketer’s use in creating an Advertisement, which will be subject to Vendor’s final approval. Marketer may modify Advertisement with the consent of Vendor to be given or denied within 48 hours of Marketer’s request. Notwithstanding the foregoing, Marketer must honor creative changes to any Advertisement requested by Vendor within forty-eight (48) hours of Vendors request.

1.2 Offer Pages. Marketer may display all Advertisement(s) on any of the following Offer Pages (a) a web site address hosted by Marketer (b) a website address hosted by a partner of Marketer (“Publisher”)(c) a website address hosted by Vendor. Each Offer Page must include graphics, text, and other creative and functional elements provided by or approved by Vendor, which elements may not be modified without the prior consent of Vendor, provided that Marketer may add certain text, graphics, and other elements to distinguish the Offer Pages from landing pages used by other marketers.

1.3 Domain Name Registration Labeling. Marketer is prohibited from (a) using or incorporating restricted names provided by Vendor, into the domain name of Offer Pages. (b) labeling any Offer Page as an “official site” of the Product or other similar designation unless otherwise indicated by Vendor.

1.4 Privacy Policies. Each Offer Page must include a clear and conspicuous privacy policy that complies with all applicable Federal and State requirements.

1.5 Order Functionality. Each Offer Page shall include functionality that allows customers to order a Product(s). Marketer must collect and electronically transmit the following order information (“Order Information”) to Vendor in a secure and encrypted manner within 48 hours of the information being collected: Customer full name, street address, billing address, telephone number, email address, item(s) ordered with quantities.

1.6 Fraudulent Activity Prohibited. Marketer shall not generate Order Information by using any fraudulent activity, including without limitation by falsely generating Order Information. Vendor reserves the right to monitor Marketer’s use of the Advertisement(s) for fraudulent activity.

1.7 Intellectual Property. Vendor hereby grants to Marketer a limited, non-exclusive, revocable, worldwide right and license to use, distribute, and publicly display the Advertisements and/or any intellectual property rights therein, including any and all trademarks, service marks, trade dress, logos, copyrights, publicity rights or other intellectual property utilized in the Advertisement and any

components thereof (collectively, "Vendor IP Rights"). Nothing in this Agreement transfers any ownership of Vendor's IP Rights to Marketer, nor grant any right or license other than the limited license stated above. Such license shall terminate upon termination of this Agreement for any reason.

1.8 Data Transfer and Customer Service. Vendor will provide Marketer with the appropriate customer service and fulfillment center contact information including contact personnel, telephone numbers and email addresses. Order data may be downloaded over the Internet from a secure Vendor Administrative Service provided by Marketer or securely transmitted to an agreed upon location over the Internet. Vendor is responsible for all customer service responsibilities associated with orders originated by Marketer.

1.9 Insertion Order. Marketer will complete an Insertion order for each Offer containing various Offer details including the Offer payout.

1.10 Credit Card Processing. Real Time credit processing services are provided by Stripe. Vendor is required to obtain a Stripe account.

2.0 ADVERTISING REQUIREMENTS

2.1 General Requirements. Marketer agrees that to the best of its ability, any web site(s) or other media property used to promote, display or transmit the Advertisements or otherwise generate orders for a Product(s) will comply with the following:

- a) does not infringe upon the personal rights, trademark, service mark trade dress, trade name, logo, publicity right, copyright, or other intellectual property of any third party;
- b) does not contain content that is an invasion of privacy, degrading, libelous, unlawful, deceptive, profane, obscene, pornographic, tends to ridicule or embarrass, or is in bad taste;
- c) does not offer incentives, points, rewards, cash, or prizes to consumers in return for their response to the Advertisement unless the terms and conditions of the offer are clearly and conspicuously presented to the consumer in accordance with federal and state regulatory laws, regulations, and guidelines;
- d) does not include content that is deceptive or misleading or otherwise fails to comply with applicable federal and state consumer protection laws;
- e) does not use any methods to generate impressions, clicks, or transactions that are not initiated by the affirmative action of a consumer;
- f) does not promote any illegal activity including without limitation the promotion of gambling, illegal substances, software piracy, or hacking.

3.0 THIRD PARTY PUBLISHERS (AFFILIATE) MARKETING

3.1 Right to Use Third party Publishers. Marketer may use other publishers within its direct network of marketing distribution channels ("Publishers") to perform the Services described in Section 1 of this Agreement ("Services"). Vendor grants Marketer the right to sublicense the right to use the Advertisements and Vendor IP Rights to Publishers. Third Party Publishers may use other marketers within their direct network of marketing distribution channels ("Publisher Affiliates") to perform the Services described in Section 1 of this Agreement. Vendor grants Marketer Publishers the right to sublicense the right to use the Advertisements and Vendor IP Rights to Marketer Publisher's Affiliates.

3.2 Marketer's Responsibilities To Publisher(s). Marketer is solely responsible for Publisher and Publisher Affiliate's compensation, if any, and compliance under this Agreement.

3.3 Affiliate Identification and Termination. Marketer must provide Vendor identifying information or an identifying reference number for each Publisher when providing Order Information generated by the Publisher. Marketer must comply with Vendors demand to terminate any Publisher within forty-eight (48) hours of demand. Upon termination of a Publisher by Vendor, Marketer is prohibited from allowing the terminated Publisher to perform the Services unless Vendor provides prior written authorization.

4.0 PAYMENT TERMS

4.1 Valid Order Information. Vendor will pay Marketer the amount set forth in the relevant Offer Insertion Order for valid Order Information provided to Vendor. Order Information is valid if it contains the specific data fields specified in Section 1.5 of this Agreement. An Order is considered invalid if it consists of duplicates, invalid data, falsified data, or fraudulent data.

4.2 Payment Procedures. Marketer's per order compensation in accordance with the applicable Insertion Order and credit card processing fees will be deducted from the total amount charged the credit card at the time the credit card is processed. Marketer is responsible for making payments or providing any and all compensation to Publishers and Publishers' Affiliates. Marketer's compensation is not refundable due to products returns or other customer service related issues.

4.3 Offer Setup. Marketer will create, design and enable functionality of all Offers. Vendor may optionally be required to pay Marketer a Offer Setup Fee. Offer Setup Fees will be mutually agreed upon by Vendor and Marketer on a per Offer bases. Set Up fees will be indicated in the Offer Insertion Order.

4.3 Payment Disputes. In the event Marketer or Vendor dispute the Payment Data, the disputing Party must notify the other in writing with supporting documentation within ten (10) days of receipt of Payment Data.

5.0 DATA OWNERSHIP; DATA SECURITY

5.1 Data Ownership and Use. Vendor agrees that all "Order Information" transmitted by Marketer to Vendor is the joint property of the Vendor and the Marketer and may be used by either party.

5.2 Confidentiality. In addition to the confidentiality provisions set forth in this Agreement, and subject to applicable law or court order and the other requirements of this Agreement, Marketer agrees to use at least the same level of care to maintain the confidentiality of Order Information as it uses to preserve the confidentiality of its own confidential information.

5.3 Data Security. Marketer represents and warrants that it has implemented and shall continue to maintain at all times during the term of this Agreement a comprehensive information security program reasonably designed to protect the physical and technical security, confidentiality, and integrity of Customer Order Information. As applicable, Marketer shall contractually require its Publishers to implement and maintain security procedures in accordance with this provision. Marketer shall immediately (and in any event, within 48 hours) after it becomes aware that any Order Information has been disclosed or revealed to, or accessed by, any unauthorized person or to any unauthorized third party, whether inadvertently, by means of a breach of Marketer's or Publisher's security processes or otherwise, provide Vendor notice of such breach and immediately and at its own expense investigate and take steps to identify, prevent, and mitigate the effects of such security breach.

6.0 RECORDKEEPING

During the Term of this Agreement and for one (1) year thereafter, Marketer will maintain accurate books and records relating to the Services, including the provision of Services by Publishers. Such books and records must include, without limitation, records of all transactions with Affiliates involving the Services, records and copies of marketing campaigns used in the Services, records of consumer and customer service inquiries related to the Services, and records of complaints related to Marketer's and Publisher's marketing activities under this Agreement. At its own expense, Vendor shall have the right to examine, review, copy, and/or extract from such books and records upon at least five (15) days prior written notice to Marketer.

7.0 TERM AND TERMINATION

This Agreement shall commence with the acceptance of an Insertion Order by Marketer. This Agreement shall be automatically renewed with the acceptance of subsequent Insertion Orders by Marketer. This Agreement may be terminated by Vendor at anytime, provided (a) Marketer fails to perform any obligation required to be performed under this Agreement and such failure is not corrected within five (5) days from receipt of written notice by Vendor advising Marketer of such failure or (b) as otherwise provided in this agreement. Vendor shall be responsible for any compensation owed to Marketer for valid Order Information delivered to Vendor through the date of Termination.

8.0 COMPLIANCE WITH LAWS AND REGULATIONS

8.1 Marketer represents and warrants that

- a) It will perform the Services in compliance with all applicable State and Federal laws and regulations, and will obtain contractual representations and warranties from its Publishers that performance of the Services will comply with all such laws and regulations.
- b) It is not presently the subject of any investigation or prosecution by any federal or state governmental body or agency, and to the best of its knowledge, no such investigation or prosecution is threatened; and if it becomes involved or named in any action, investigation, complaint or other Action by or before any governmental or regulatory authority, Marketer will immediately provide notice to Vendor of such action.
- c) It has obtained all necessary permits, licenses, authorizations, or other registrations required to conduct its business activities, and will obtain contractual representations and warranties from its Affiliates that they have obtained same.

8.3 Vendors Represents and Warrants:

- a) It is in compliance with all applicable State and Federal laws and regulations.
- b) It is not presently the subject of any investigation or prosecution by any federal or state governmental body or agency, and to the best of its knowledge, no such investigation or prosecution is threatened; and if it becomes involved or named in any action, investigation, complaint or other Action by or before any governmental or regulatory authority, Vendor will immediately provide notice to Marketer of such action.
- c) It has obtained all necessary permits, licenses, authorizations, or other registrations required to conduct its business activities and that it has all licenses and ownership rights to market and sell each product identified in the Insertion Order(s).

9.0 REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that: (a) It is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation; (b) It has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; (c) This Agreement has been duly and validly executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; (d) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any applicable law or regulation or any judgment, order or decree, a material default under any material contract by which it or any of its material assets are bound or an event that would, with notice or lapse of time, or both, constitute such a default. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY OTHER WARRANTY REGARDING QUALITY, ACCURACY, COMPLETENESS, RELIABILITY OR PERFORMANCE.

10.0 INDEMNIFICATION

Marketer agrees to indemnify, defend, and hold Vendor harmless from and against any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to (a) any breach or alleged breach by Marketer, its employees, Affiliates, agents or contractors of any obligations, representations or warranties contained in this Agreement; (b) the gross negligence or willful misconduct of Marketer or of any employee, agent, Affiliate or contractor of Marketer.

Vendor agrees to indemnify, defend, and hold Marketer harmless from and against any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to (a) any breach or alleged breach by Vendor, its employees, Affiliates, agents or contractors of any obligations, representations or warranties contained in this Agreement; (b) the gross negligence or willful misconduct of Vendor or of any employee, agent, Affiliate or contractor of Vendor.

11.0 LIMITATION OF LIABILITY

NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, COST OF CAPITAL, OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF Vendor UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS RECEIVED BY MARKETER FROM VENDOR HEREUNDER.

12.0 CONFIDENTIALITY

12.1 **Confidential Information.** For purposes of this Agreement, the term “Confidential Information” means non-public information that either party designates as being confidential or which, under the circumstances surrounding disclosure, reasonably ought to be treated as confidential, including without limitation, the terms of this Agreement. Confidential Information disclosed to a party by any employee, agent, representative, or affiliate of the other party is covered by this Agreement. Confidential Information will not include any information that: (i) is or subsequently becomes publicly available without a breach of any obligation of confidentiality owed to a party under this Agreement or by any third party; (ii) was already known to a party prior to the other party’s disclosure of such information so long as such information already known to a party can be substantiated by 3rd party data or documentation; (iii) became known to a party from a source other than the other party and other than by a breach of an obligation of confidentiality owed to the party by such source and confirmation is

verifiable with third party; or (iv) is independently developed by a party so long as documentation is available to verify such independent development. Without limiting the foregoing, the payment terms of this Agreement and the Insertion Order shall be deemed Confidential Information.

12.2 Non-Disclosure. Neither party will disclose any Confidential Information to third parties for at least five (5) years following the termination of this Agreement; provided, however, that a party may disclose Confidential Information to its professional advisors on a need to know basis if such advisors have agreed to keep such information confidential in the same or a substantially similar manner as provided for in this Agreement. Neither party will use any Confidential Information except as expressly permitted by, or as required to achieve the purposes of, this Agreement. Each party will take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information of a similar nature, to keep confidential the Confidential Information. Notwithstanding anything contained in this Section to the contrary, a party may disclose Confidential Information in accordance with a judicial or other governmental order or as may be required by statute; provided, however, that a party so disclosing Confidential Information (the “Disclosing Party”) will give the other party (the “Protected Party”) as much advance notice as reasonably possible of any such disclosure so that the Protected Party may seek a protective order or other remedy. The Disclosing Party will comply with any protective order or equivalent relating to the Confidential Information. In the event such a protective order is not obtained, the Disclosing Party will use its reasonable best efforts to ensure that only the minimum portion of the Confidential Information necessary to comply with the law is disclosed. The parties agree that monetary damages for breach of confidentiality under this Section may not be adequate and the non-breaching party shall be further entitled to injunctive relief.

13.0 GENERAL PROVISIONS

13.1 Governing Law; Modification; Entire Agreement. This Agreement and the Insertion Order (i) shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of laws principles; (ii) may be amended only by written agreement signed by both parties, Vendor (iii) constitute the complete and entire expression of the agreement between the parties, and shall supersede any and all other agreements, whether written or oral, between the parties. Email correspondence shall not be considered binding or a part of this Agreement. Any controversy or claim arising out of this Agreement shall be submitted to the jurisdiction of the federal and state courts located in New Jersey, and the parties irrevocably agree to submit to the exclusive jurisdiction of any such court.

13.2 Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court, arbitrator, or arbitration panel having competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

13.3 Independent Contractors. The parties shall at all times be independent contractors with respect to each other in carrying out this Agreement, and nothing herein renders them partners, joint ventures or employer and employee. Each of the parties shall be solely responsible for its own employees in connection with performance under this Agreement, and all salaries, wages, and benefits owed thereto.

13.4 Assignment. Neither party may assign or transfer this Agreement without the prior written consent of the other, which shall not be unreasonably withheld.

13.5 Headings. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

13.6 Notices. All notices required by this Agreement shall be in writing (email and facsimile acceptable) and deemed to have been effectively given and received: (a) five (5) business days after the date of mailing; (b) when transmitted, if sent by email or facsimile, provided a confirmation of facsimile transmission is produced by the sending machine; or (c) when delivered personally or sent by express courier service. Notices shall be addressed to the individuals and addresses specified on the Insertion Order.

13.7 Force Majeure. Neither party shall be liable for delay or failure to perform any of its obligations hereunder to the extent that such delay or failure arises from any cause beyond that party's reasonable control. Performance times shall be considered extended for a period of time equal to the time lost because of such delay or failure. A party affected by force majeure shall promptly advise the other of the circumstances and shall seek to mitigate the impact of the force majeure as promptly as possible.

13.8 Rights and Remedies. Unless otherwise specified, the rights and remedies granted to a party under this Agreement are cumulative and in addition to, not in lieu of, any other rights and remedies which the party may possess at law or in equity.

13.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13.10 Modifications. Marketer 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.