

## **Publisher Terms & Conditions**

This Publisher Terms & Conditions (the "Agreement") is made and entered into by and between Koneo Mobile Inc., a Delaware corporation, with its registered office at 785 Market Street, San Francisco, CA 94103, United States ("KONEO"), and you ("Publisher" or "her"/"she"), the party submitting an application to become a KONEO Publisher. The terms and conditions contained in this Agreement apply to your participation in KONEO's Publisher Program accessible at [system.koneomobile.com](http://system.koneomobile.com) or through other websites or applications KONEO may make available ("Publisher Program"), being operated on KONEO's own or third party service provider online platform ("Advertising Platform"). Each Publisher Program offer (an "Offer") may be for any offering by KONEO or a third party (each such third party a "Client") and may link to a specific web site for that particular Offer ("Program Web Site"). Furthermore, each Offer may have additional terms and conditions on pages within the Publisher Program that are incorporated as part of this Agreement. By submitting an application or participating in an Offer, you expressly consent to all the terms and conditions of this Agreement.

### **1. Enrollment in the Publisher Program**

- 1.1 You must submit a Publisher Program application from our website. You must accurately complete the application to become a Publisher (and provide us with future updates) and not use any aliases or other means to mask your true identity or contact information. After we review your application, we will notify you of your acceptance or rejection to the Publisher Program, generally within two (2) business days. We may accept or reject your application at our sole discretion for any reason.
- 1.2 Publisher must accurately complete the application to become a Publisher (and provide us with future updates) and not use any aliases or other means to mask Publisher's true identity or contact information.
- 1.3 By filling in the application Publisher submits a binding offer to enter into a contract with KONEO according to the terms and conditions of this Agreement.
- 1.4 After KONEO reviews Publisher's application, KONEO will notify him of his acceptance or rejection to the Publisher Program, generally within two (2) business days.
- 1.5 KONEO may accept or reject Publisher's application at its sole discretion for any reason.
- 1.6 KONEO offers its services to commercial Publishers only. Consumers are not eligible to become a Publisher

### **2. Obligations of the Parties**

- a) Subject to our acceptance of you as a Publisher and your continued compliance with the terms and conditions of this Agreement, KONEO agrees as follows:
  - 2.1a) KONEO will make available to Publisher via the Publisher Program graphic and textual links to the Program Web Site and/or other creative materials (collectively, the "Links") which Publisher may display on web sites and apps owned or controlled by her, in emails sent by

Publisher and clearly identified as coming from her and in online advertisements (collectively, "Media"). The Links will serve to identify Publisher as a member of KONEO's Publisher Program and will establish a link from her Media to the Program Web Site.

- 2.2a) KONEO will pay Publisher for each Qualified Action (the "Commission") an amount as defined in the respective Offer's description. A "Qualified Action" means an action as defined in the Offer's description performed by an individual person who (i) accesses the Program Web Site via the Link, where the Link is the last link to the Program Web Site, (ii) is not a computer generated user, such as a robot, spider, computer script or other Automated, artificial or fraudulent method to appear like an individual, real live person, (iii) is not using pre-populated fields (iv) completes all of the information required for such action within the time period allowed by KONEO and (v) is not later determined by KONEO to be fraudulent, incomplete, unqualified or a duplicate.
- 2.3a) KONEO will pay Publisher any Commissions earned monthly, provided that her account balance is currently greater than 50 USD. Accounts with a balance of less than 50 USD will roll over to the next month, and will continue to roll over monthly until 50 USD is reached. Since KONEO will endeavor to pay out Commissions to the Publisher as early as possible, this cannot be done unconditionally. KONEO therefore reserves the right to charge back to Publisher's account any previously paid Qualified Actions that are later determined to have not met the requirements to be a Qualified Action. In case Publisher's later account Balance is lower than the due chargeback amount she is obliged to transfer the due amount back to KONEO upon request within no more than 7 business days. KONEO reserves the right to claim charge backs for up to 3 months after the respective Qualified Action has been performed by the user. KONEO also reserves the right to reclaim a payment at a later date within the statutory limitation periods if KONEO can show that the payment to the Publisher was not based on a payment claim due to a Qualified Action.
- 2.4a) In case KONEO is obliged to pay back monies already collected to Clients, banks, or payment providers, such monies are deductible in the month they are paid back. The same applies in respect of monies paid back to Clients, banks, or payment providers in the event that KONEO agrees to do so on a bona fide basis to settle a dispute, unless such settlement is not reasonable, and the Publisher contradicts in writing within 10 business days upon being informed. Circumstances which oblige KONEO to pay back monies to Clients include alleged abuse or other instances of fraud for which KONEO is not responsible, as well as refunds. Circumstances which oblige KONEO to pay back monies to payment providers or banks include credit card or debit card fraud committed by Publishers or their agents, and "Chargebacks". Chargebacks mean any credit or debit card transactions that are returned for reimbursement of the cardholder's account for any reason.
- 2.5a) Payment for Commissions is dependent upon Clients providing such funds to KONEO, and therefore, if a Client does not provide sufficient funds, KONEO will pay the Commissions for the relevant Publisher Programs to all Publishers on a pro rata basis, if necessary. If the Client does not provide sufficient funds to KONEO within 2 weeks, the Publisher shall be entitled to claim payment from the Client directly and is obliged to do so before making any claim against KONEO. In this case, if requested to do so, KONEO shall assign its claims

against the Client to the Publisher in a sum equivalent to the amount due to the Publisher. The Publisher is not obliged to make a claim against the Client directly if such claim is clearly without a chance of success due to the Client being destitute.

- 2.6a) The Publisher shall be solely responsible for the payment of, and shall pay when due and indemnify KONEO against, all applicable taxes, including any VAT and other sales, use, excise or transfer taxes and other taxes associated with payments to Publisher under the Agreement (except for taxes assessed on KONEO's net income).
- 2.7a) KONEO shall automatically generate an invoice on behalf of Publisher for all Commissions payable under this Agreement and shall remit payment to Publisher based upon that invoice. All tracking of Links and determinations of Qualified Actions and Commissions shall be made by KONEO in its reasonable discretion.
- 2.8a) In the event that Publisher disputes in good faith any portion of an invoice, Publisher must submit that dispute to KONEO in writing and in sufficient detail within 14 days of the date on the invoice. If Publisher does not dispute the invoice as set forth herein, then Publisher agrees that it irrevocably waives any claims based upon that invoice.
- 2.9a) In the event that Publisher is also tracking Qualified Actions and Publisher claims a discrepancy, Publisher must provide KONEO with Publisher 's reports within three (3) days after 30th day of the calendar month, and if KONEO's and Publisher 's reported statistics vary by more than 10% and KONEO reasonably determines that Publisher has used generally accepted industry methods to track Qualified Actions, then KONEO and Publisher agree to make a good faith effort to arrive at a reconciliation. If the parties are unable to arrive at a reconciliation, then KONEO's numbers shall govern.
- 2.10a) If Publisher has an outstanding balance due to KONEO under this Agreement or any other agreement between the Publisher and KONEO, whether or not related to the Publisher Program, Publisher agrees that KONEO may offset any such amounts due to KONEO from amounts payable to Publisher under this Agreement.
- 2.11a) By and rendering the services according to this Agreement, KONEO acts only as an agent between the Client and the Publisher. The Client itself is solely responsible for submitting offers for Advertising Programs to the Publisher. KONEO has no influence in this regard and thus provides no guarantee that offers, and thus Advertising Programs, will be available in satisfactory quantity.
- 2.12a) KONEO does not allow Clients to transmit any Advertisement through the Advertising Platform to the Publisher that is unlawful, defamatory, libellous, harassing, abusive, fraudulent or obscene, or to link their Advertisements to such content. Upon being informed thereof, KONEO shall promptly remove any Advertisement containing such content. The Publisher does not have any other claims against KONEO. The Publisher acknowledges that KONEO does not constantly control all Advertisements and the respective links, as Clients have the possibility to upload Advertisements.

- 2.13a) The Publisher can request KONEO to block Links from a list of specific Clients ("Blocked Clients"). Such list may be updated by the Publisher at any time. The updated list becomes binding for KONEO only once the Publisher has transmitted it to KONEO through electronic tools provided by KONEO. In the event that Links from Blocked Clients is displayed by the Advertising Platform on the Media, the Publisher shall inform KONEO without undue delay, and provide appropriate documentation.
- 2.14a) KONEO shall use commercially reasonable efforts to block Links, from the collection of Links provided to the Publisher for display on the Media, from Blocked Domains.
- 2.15a) KONEO takes reasonable measures to protect its systems against viruses, spyware and other malicious code (together "Malicious Code"), and shall take reasonable measures to check, or have its Clients check, all Links delivered through its systems to the Publisher, for Malicious Code. However, the Publisher acknowledges that Malicious Code can never be completely prevented. It is the Publisher's responsibility to protect all data stored on its systems against unauthorized access, and data loss. The Publisher shall make its users waive, as far as legally permissible, all potential claims against KONEO based on Malicious Code, and inform its users as to appropriate measures to protect their systems.
- 2.16a) Unauthorized third parties may send e-mails under the name of KONEO, without KONEO's knowledge or consent, and such e-mails may contain Malicious Code or links to web content which, in turn, contains Malicious Code. KONEO cannot prevent such behaviour. The Publisher shall, therefore, recommend its users to check all incoming e-mail for Malicious Code prior to opening them.

**b) Publisher also agrees to:**

- 2.1b) Have sole responsibility for the development, operation, and maintenance of, and all content on or linked to, Publisher's Media.
- 2.2b) Ensure that all materials posted on Publisher's Media or otherwise used in connection with the Publisher Program (i) are not illegal, (ii) do not infringe upon the intellectual property or personal rights of any third party and (iii) do not contain or link to any material which is harmful, threatening, defamatory, obscene, sexually explicit, harassing, promotes violence, promotes discrimination (whether based on sex, religion, race, ethnicity, nationality, disability or age), promotes illegal activities (such as gambling where applicable), contains profanity or otherwise contains materials that KONEO informs Publisher that it considers objectionable (collectively, "Objectionable Content").
- 2.3b) Accept that KONEO neither endorses nor approves of actions performed or content made available by the Publisher.
- 2.4b) Hold KONEO harmless of any third party claims alleging the Publisher Media contains illegal content.
- 2.5b) Not make any representations, warranties or other statements concerning KONEO or

Client or any of their respective products or services, except as expressly authorized Herein.

- 2.6b) Make sure that Publisher's Media does not copy or resemble the look and feel of the Program Web Site or create the impression that Publisher's Media is endorsed by KONEO or Clients or a part of the Program Web Site, without prior written permission from KONEO.
- 2.7b) Comply with all (i) obligations, requirements and restrictions under this Agreement and (ii) laws, rules and regulations as they relate to Publisher's business, her Media or her use of the Links.
- 2.8b) Comply with the terms, conditions, guidelines and policies of any third party services (if any) used by Publisher in connection with the Publisher Program, including but not limited to, email providers, social networking services and ad networks.
- 2.9b) Always prominently post and make available to end-users, including prior to the collection of any personally identifiable information, a privacy policy in compliance with all applicable laws that clearly and thoroughly discloses all information collection, use and sharing practices, including providing for the collection of such personally identifiable information in connection with the Publisher Program and the provision of such personally identifiable information to KONEO and Clients for use as intended by KONEO and Clients, further detailed in Sect. 20c) of the Agreement.
- 2.10b) Always prominently post and make available to end-users any terms and conditions in with the Offer set forth by KONEO or Client, or as required by applicable laws regarding such Offers.
- 2.11b) Make sure to not place KONEO ads on any online auction platform (i.e. eBay, Amazon, etc).

**c) The following additional program-specific terms shall apply to any promotional programs set forth below:**

1c) Email Campaigns

For all email campaigns, Publisher must – if available – download the “Suppression List” from the Offers section of KONEO. Publisher shall filter its email list by removing any entries appearing on the Suppression List and will only send emails to the remaining addresses on its email list. KONEO will provide an opt-out method in all Links, however, if any opt-out requests come directly to Publisher, Publisher shall immediately forward them to KONEO at [noreply@koneomobile.com](mailto:noreply@koneomobile.com). Publisher's emails containing the Links may not include any content other than the Links, except as required by applicable law.

- 1.2c) Publisher agrees that failure to download the Suppression List and remove all emails from the database before mailing may result in Commission withholdings, removal or suspension from all or part of the Publisher Program, possible legal action and any other rights or remedies available to KONEO pursuant to this Agreement or otherwise. Publisher further

agrees that it will not mail or market to any suppression files generated through the KONEO network, and that doing so may result in Commission withholdings, removal or suspension the Publisher Program, possible legal action and any other rights or remedies available to KONEO pursuant to this Agreement or otherwise.

2c) Advertising Campaigns

No Links can appear to be associated with or be positioned on chat rooms or bulletin boards unless otherwise agreed by KONEO in writing. Any pop-ups/unders used for the Publisher Program shall be clearly identified as Publisher served in the title bar of the window and any client-side ad serving software used by Publisher shall only have been installed on an end-user's computer if the function of the software is clearly disclosed to end-users prior to installation, the installation is pursuant to an affirmatively accepted end user license agreement and the software be easily removed according to generally accepted Methods.

3c) Publisher Network Campaigns

All Publishers that maintain their own Publisher networks and intend to broker KONEO's offers through their network need prior written approval from KONEO. In case approval is granted, Publisher agrees to place the Links in its Publisher network (the "Network") for access and use by those Publishers in Publisher's Network (each a "Third Party Publisher"). If Third Party Publisher is itself a network (and thus working with further Third Party Publishers), then Publisher needs to get prior written approval from KONEO for each one of those Third Party Publisher Networks. Publisher agrees that it will expressly forbid any Third Party Publisher to modify the Links in any way. Publisher agrees to maintain its Network according to the highest industry standards. Publisher shall not permit any party to be a Third Party Publisher whose web site or business model involves content containing Objectionable Content. All Third Party Publishers must be in good standing with Publisher. Publisher must require and confirm that all Third Party Publishers affirmatively accept, through verifiable means, terms at least equivalent to those in this Agreement prior to obtaining access to the Links. Publisher shall promptly terminate any agreement with a Third Party Publisher who takes, or could reasonably be expected to take, any action that violates the terms and conditions of this Agreement. In the event that either party suspects any wrongdoing by a Third Party Publisher with respect to the Links, Publisher shall promptly disclose to KONEO the identity and contact information for such Third Party Publisher. Publisher shall promptly remove any Third Party Publisher from the Publisher Program and terminate their access to future Offers of KONEO in the Network upon written notice from KONEO. Unless KONEO has been provided with all truthful and complete contact information for a Third Party Publisher and such Third Party Publisher has affirmatively accepted terms at least equivalent to those in this Agreement as recorded by KONEO, Publisher shall remain liable for all acts or omissions of any Third Party Publisher.

4c) Incentive Traffic

Publisher acknowledges that KONEO is a non-incentivized traffic network. This means, that Publisher is not allowed to provide incentives (e.g. virtual or real currency) to his or her users for performing any actions resulting in a successful conversion event. Conversions achieved through providing incentives will therefore be treated as invalid and may lead to

the exclusion of Publisher from KONEOs' network. This applies to all offers unless incentive traffic is explicitly approved in the offer description. KONEO may explicitly approve incentive traffic for certain offers in writing (e.g. via Email) on a case by case basis. Publisher will generally receive lower payouts for incentive traffic, details will be specified within the offer description or in separate Email.

- 4.1c) Unless otherwise agreed upon, Publisher may not use any self-generated creative assets that have not explicitly been approved by KONEO. Self-generated creative assets that do fully comply with the advertisers' marketing message and brand identity and are therefore only adjusted variations of the creative material provided in the offer description will generally be approved.

### **5c) Confidentiality**

- 5.1c) Except as otherwise provided in this Agreement or with the consent of KONEO, Publisher agrees that all information, including, without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, and pricing and sales information, concerning KONEO or any of KONEO's clients and/or partners provided by or on behalf of any of them shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by Publisher for any purpose other than her participation in the Publisher Program.
- 5.2c) Publisher shall especially not use any information obtained from the Publisher Program to develop, enhance or operate a service that competes with the Publisher Program, or assist another party to do the same.
- 5.3c) After and during the term of the Agreement, neither party will use for any purpose or disclose to any third party, any Confidential Information of the other party. Any exception to this must be obtained in advance.
- 5.4c) The foregoing restriction does not apply to information that has been developed independently by the receiving party without access to the other party's Confidential Information or has been rightfully received from a third party authorized to make such disclosure or has been approved for release in writing by the disclosing party or has become publicly known through no breach of this Sect. 5c) (before Sect. 3) by the receiving party or is required to be disclosed by a competent legal or governmental authority, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to disclosure and assists in obtaining an order to protect the information from public disclosure.

### **6c) Non-circumvention**

- 6.1c) Publisher explicitly agrees to withhold completely from entering into a business relation with or from approaching KONEO's clients either directly or through third parties with regard to user acquisition or performance marketing services for the term of this agreement and a period of time of six months after the end of this agreement.

- 6.2c) Any direct or indirect business relations between Publisher and KONEO's clients with regard to the above named services have to either involve KONEO as intermediary or require prior written consent.
- 6.3c) This also extends to any other companies founded, in whole or in part held, controlled or administered directly or indirectly by Publisher, as long as Publisher is able to prevent such against the interests of KONEO.
- 6.4c) Publisher is personally responsible to follow this commitment and must not use any means circumvent his obligation.
- 6.5c) Breach of this clause will result in a contractual penalty to be determined by an independent court in KONEO's residential country and should not be less than twice the financial loss caused through this unauthorized action with a minimum fee of 750,00 EUR.
- 6.6c) An obligation to reimburse damages will thereby not be excluded.
- 6.7c) In case Publisher can prove having entered into a business relation with KONEO's client (the advertiser) before entering into a business relation with KONEO, this clause should not be enforced.

### **7c) Limited License & Intellectual Property**

- 7.1c) KONEO grants Publisher a nonexclusive, nontransferable, revocable right to use the Links and to access KONEO's web site through the Links solely in accordance with the terms of this Agreement, for the sole purpose of identifying Publisher's Media as a participant in the Publisher Program and assisting in increasing sales through the Program Web Site. KONEO does not grant to the Publisher any license, express or implied, to the intellectual or industrial property of KONEO or its licensors, except for a limited right of use according to the terms and for the duration of the agreement.
- 7.2c) Publisher may not alter, modify, manipulate or create derivative works of the Links or any KONEO graphics, creative, copy or other materials owned by, or licensed to, KONEO in any way. Furthermore, Publisher agrees not to modify, alter, create or copy derivative works of the provided data, information, content or software of the Advertising Platform.
- 7.3c) Publisher is only entitled to use the Links to the extent that she is a member in good standing of the Publisher Program. KONEO may revoke Publisher's license anytime by giving her written notice. Publisher agrees that she will use any data (including any usage data and compilations thereof), information or software, provided by KONEO to her, only for the purpose of providing and optimizing Links for KONEO on her Media according to the Agreement.
- 7.4c) Except as expressly stated herein, nothing in this Agreement is intended to grant Publisher any rights to any of KONEO's trademarks, service marks, copyrights, patents or trade



Secrets.

- 7.5c) By registering, Publisher grants KONEO the right to name her as a reference for KONEO's services. This includes the right to use the Publisher's logo on KONEO's websites and show advertising best practices to other Publishers of KONEO. The Publisher may revoke this right at any time, in writing, for any future use. Publisher agrees that KONEO may use any suggestion, comment or recommendation she chooses to provide to KONEO without Compensation.
- 7.6c) All rights not expressly granted in this Agreement are reserved by KONEO. KONEO will retain all rights, title, and interests in and to the Advertising Platform (except for any licensed content and third-party Advertisements included therein), including all data (such as any usage data and compilations thereof), information and software related thereto. The Publisher acknowledges that the software, information, content and data related to the Advertising Platform (such as any usage data or compilations thereof) are protected for KONEO under copyright and similar rights and may contain trade secrets or other intellectual or industrial property owned or licensed by KONEO.

#### **8c) Termination**

- 8.1c) This Agreement shall commence on the date of KONEO's approval of Publisher's Publisher Program application and shall continue thereafter until terminated as provided herein.
- 8.2c) Each party has the right to terminate the Agreement at any time with immediate effect, unless otherwise agreed upon. Publisher may terminate her participation in the Publisher Program at any time by sending written notice to her account manager. KONEO may terminate Publisher's participation in one or more Offers or this Agreement at any time and for any reason which KONEO deems appropriate with or without prior notice to Publisher by disabling the Links or providing her with a written notice.
- 8.3c) The parties remain free to terminate the Agreement for cause at any time.
- 8.4c) In case KONEO is responsible for a termination of the Agreement for cause, all outstanding amounts shall be paid out, provided those amounts were earned through qualified actions as defined in §2.a.3. The Publisher shall not have any other claims, unless otherwise provided in the Agreement.
- 9c) KONEO may terminate the Agreement in particular for, but not limited to, the following reasons:
  - 9.1c) The Publisher culpably breaches any legal rule, or the Agreement, and such breach remains unremedied despite written notice (possibly via e-mail); a written notice is not required in case of a severe contravention, i.e. when it would be unreasonable that KONEO remains bound by the Agreement.
  - 9.2c) The Publisher encourages fraud (as defined in Sect.12c) before 8 ).

- 9.3c) The Publisher has not used its account for six months despite a reminder.
- 9.4c) Cases in which it would be unreasonable for KONEO to remain bound by the Agreement generally include infringements of Sect. 2 b) 2., 2. b) 4., and 4.2 of the Agreement.
- 9.5c) In case KONEO rightfully declares termination for cause, KONEO is entitled to withhold 50 % percent of all Commission still payable to the Publisher as damages. The Publisher remains free to prove that no, or only substantially lower damages, were suffered.
- 9.6c) If there is no option to terminate the Agreement within the Advertising Platform, the termination has to be declared in writing. A termination for cause can only be declared in writing. E-mail is sufficient.
- 9.7c) Upon termination of Publisher's participation in one or more Offers or this Agreement for any reason, she will immediately cease all use of and delete all Links, plus all KONEO or Client intellectual property, and will cease representing herself as an KONEO or Client Publisher for such one or more Offers.

#### **10c) Remedies**

- 10.1c) In addition to any other rights and remedies available to KONEO under this Agreement and by law KONEO reserves the right to delete any actions submitted through Publisher's Links and withhold and freeze any unpaid Commissions or charge back paid Commissions to Publisher account if (i) KONEO determines that she has violated this Agreement, (ii) KONEO receives any complaints about her participation in the Publisher Program which KONEO reasonably believes to violate this Agreement or (iii) any Qualified Action is later determined to have not met the requirements set forth in this Agreement or on the Publisher Program. Such withholding or freezing of Commissions, or charge backs for paid Commissions, shall be without regard as to whether or not such Commissions were earned as a result of such breach.
- 10.2c) In the event of a material breach of this Agreement, KONEO reserves the right to disclose Publisher's identity and contact information to appropriate law enforcement or regulatory authorities or any third party that has been directly damaged by her actions.

#### **11c) Anti-Spam Policy**

- 11.1c) Publisher must strictly comply with the law in regard to sending email and other messages. All emails sent in connection with the Publisher Program must especially include the appropriate party's opt-out link. From time to time, KONEO may request – prior to Publisher sending emails containing linking or referencing the Publisher Program that Publisher submits the final version of her email to KONEO for approval by sending it to her KONEO representative and upon receiving written approval from KONEO of her email the email may be transmitted to third parties.

- 11.2c) It is solely Publisher's obligation to ensure that the email complies with the law. Publisher agrees not to rely upon KONEO's approval of her email for compliance with the law, or assert any claim that she is in compliance with the law based upon KONEO's approval.

### **12c) Fraud**

- 12.1c) Publisher is expressly prohibited from using any persons, means, devices or arrangements to commit fraud, violate any applicable law, interfere with other Publishers or falsify information in connection with referrals through the Links or the generation of Commissions or exceed her permitted access to the Publisher Program. Such acts include, but are in no way limited to, using automated means to increase the number of clicks and/or actions through the Links or completion of any required information, using spyware, using stealware, cookie-stuffing and other deceptive acts or click-fraud.
- 12.2c) KONEO shall make all determinations about fraudulent activity in its reasonable discretion.

### **13c) Representations and Warranties**

- 13.1c) Publisher hereby represents and warrants that this Agreement constitutes her legal, valid, and binding obligation, enforceable against her in accordance with its terms and that Publisher has the authority to enter into this Agreement.
- 13.2c) Subject to the other terms and conditions of this Agreement, KONEO represents and warrants that it shall not knowingly violate any law, rule or regulation which is applicable to KONEO's own business operations or KONEO's proprietary products or services.

### **14c) Modifications**

- 14.1c) Each log-in to the Advertising Platform is subject to the Agreement. The Agreement can be printed or saved on storage media.
- 14.2c) KONEO may make changes to the Agreement (including amendments) at any given time, for the future, if this should prove necessary (in particular to reflect changes in the Advertising Platform or changes in the legal framework applicable to it, such as new legislation or case-law) and provided the Publisher is not disadvantaged contrary to good Faith.
- 14.3c) The Publisher will be notified of changes to the Agreement in appropriate written form (possibly via e-mail). KONEO will notify the Publisher on the Advertising Platform, or via e-mail. Changes to the Agreement will always be highlighted upon first login after the changes or amendments have been made.
- 14.4c) The Publisher may dispute changes to the Agreement within a time period of two weeks following receipt the notification of the changes and the possibility of taking notice thereof. It is recommended that the Publisher submits its opposition in writing (for

example via e-mail).

- 14.5c) The changes to the Agreement become binding in the event that the Publisher (i) does not dispute the changes within the above-mentioned time period or (ii) continues to use the Advertising Platform or (iii) continues to place Links on the Media, after having received the notification of the changes to the Agreement without having disputed the Changes.
- 14.6c) KONEO will inform the Publisher about the possibility of disputing the changes and the legal consequences, especially the legal consequences of a lack of opposition, when notifying the Publisher about the changes to the Agreement.
- 14.7c) If the Publisher disputes the changes in time, each party may terminate the Agreement with one month's prior notice unless termination is possible at any time according to Sect. 7c) Until termination (before Sect.5), the Agreement in their former version will govern the Publisher's relationship with KONEO. The Publisher does not have any other claims against KONEO.
- 14.8c) In addition, KONEO may change, suspend or discontinue any aspect of an Offer or Link or remove, alter, or modify any tags, text, graphic or banner ad in connection with a Link. Publisher agrees to promptly implement any request from KONEO to remove, alter or modify any Link, graphic or banner ad that is being used by Publisher as part of the Publisher Program.
- 14.9c) Unless otherwise provided in the Agreement, KONEO will usually communicate with the Publisher via e-mail. The Publisher shall make sure that it receives all e-mails sent by KONEO to the address submitted in the course of the application, or at a later date. The Publisher will in particular configure the spam filter accordingly and regularly check all incoming e-mail under this address. KONEO may choose any other appropriate means of communication.

#### **15c) Independent Investigation**

- 15.1c) Publisher acknowledges that she has read this Agreement and agrees to all its terms and Conditions.
- 15.2c) Publisher has independently evaluated the desirability of participating in the Publisher Program and each Offer and is not relying on any representation, guarantee or statement other than as set forth in this Agreement or on the Publisher Program.

#### **16c) Claims Based on Defects**

- 16.1c) KONEO grants the Publisher access to the Advertising Platform in the then current version only (see Sect. 18c) (before Sect.14). The Publisher cannot claim that a given state or functional range is maintained or achieved. The Publisher acknowledges that the Advertising Platform, as any other software, can never be completely free of bugs.

Therefore, the Advertising Platform can only be considered to be defective if its usability is affected severely and for a significant period of time. This is especially the case if the mathematical calculation or the display of the Publisher's Commission (see § 7) is incorrect, unless the error is negligible.

- 16.2c) The Publisher shall document any faults in the Advertising Platform, and report them in writing (along with a log of the error messages displayed, if applicable). Before reporting a potential bug, the Publisher will consult the instruction and other troubleshooting tools provided by KONEO (especially frequently asked question lists, forums and boards for troubleshooting). The Publisher will use its best efforts to support KONEO in any attempts to debug.
- 16.3c) The Publisher will notify KONEO of any faults, without undue delay upon discovery, in writing (fax, letter or e-mail). To comply with this, it is sufficient that the report is sent in time. If no notice has been given within this deadline, all claims based on such defects shall forfeit.
- 16.4c) KONEO is not liable for defects caused by external influences, faulty handling, force majeure or changes or manipulations which are not carried out by KONEO.
- 16.5c) The Publisher is liable for any costs incurred by KONEO based on incorrect reports by the Publisher, especially in the event that there is no defect, or the defect has been caused by the Publisher itself.
- 16.6c) KONEO does not assume any warranties.

#### **17c) Mutual Indemnification**

- 17.1c) Publisher hereby agrees to indemnify, defend and hold harmless KONEO and Clients and their respective subsidiaries, affiliates, partners and licensors, directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on (i) any failure or breach of this Agreement, including any representation, warranty, covenant, restriction or obligation made by Publisher herein, (ii) any misuse by Publisher, or by a party under the reasonable control of Publisher or obtaining access through Publisher, of the Links, Offers or KONEO or Client intellectual property, or (iii) any claim related to Publisher's Media, including but not limited to, the content contained on such Media (except for the Links).
- 17.2c) KONEO hereby agrees to indemnify, defend and hold harmless Publisher and its subsidiaries, affiliates, partners, and their respective directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on a claim that KONEO is not authorized to provide Publisher with the Links.
- 17.3c) The indemnifying party has the right, at the indemnifying party's expense, to assume the

exclusive defense and control of any matter for which the indemnifying party is required to indemnify the indemnified party. The indemnified party agrees to cooperate with the indemnifying party's defense of such claims.

**18c) Technical and Commercial Limitations; Changes; Availability**

- 18.1c) Unless otherwise provided for in this Agreement, KONEO provides the Advertising Platform on an "AS IS" and "AS AVAILABLE" basis.
- 18.2c) AKONEO offers the Publisher use of the Advertising Platform over the Internet subject to technical and commercial limitations as defined below.
- 18.3c) KONEO may modify the Advertising Platform without prior notice. Therefore, the Publisher is granted a right of use only for the then current version. The Publisher may reduce or cease its use of the Advertising Platform in the event that those are modified.
- 18.4c) KONEO reserves its right to cease operation of the Advertising Platform at any time, without giving reasons or prior notice. Any balance owed to the Publisher will be paid out. Any other claims are excluded, unless otherwise provided for in the Agreement.
- 18.5c) KONEO undertakes to assure an availability of the Advertising Platform of 95% (ninety percent) as a yearly average. Periods during which the Advertising Platform are not available because of technical or other problems outside KONEO's control (such as force majeure or third party fault) and periods during which routine maintenance works are carried out, are excluded from this. KONEO may restrict access to the Advertising Platform if required for network security, maintenance of network integrity and the prevention of severe malfunction of the network, the software or stored data. The Publisher's rights in case of intent or gross negligence remain unaffected.

**19c) Limitation of Liability**

- 19.1c) KONEO is not responsible for damages, unless they are caused intentionally or by gross Negligence.
- 19.2c) Liability for breach of a cardinal obligation or an essential obligation is limited to the damage which could have been foreseen. A cardinal obligation is an obligation whose fulfillment is a prerequisite for enabling the proper fulfillment of the contract in the first place and in which the customer may normally trust.
- 19.3c) The damage which can be foreseen is limited to EUR 2,500.00 per Publisher.
- 19.4c) The aforementioned limitation of liability also applies to the personal liability of staff, employees, assistants, vicarious agents, contributors, representatives, organs, shareholders of KONEO and their members.
- 19.5c) The aforementioned limitations of liability determined in Sect. 19.1c to 19.4c ( before

15.1 to 15.4) do not apply to the liability for personal injury of life, body, and health. The limitation of liability pursuant to Sect. Sect. 19.1c and 19.4c (before Sect. 15.1 and 15.4) does not apply in case the damage is the result of a breach of a cardinal obligation, an essential obligation or a guarantee.

#### **20c) Data Protection**

- 20.1c) The Publisher agrees to provide KONEO, and/or the Clients on request, with figures regarding delivery, the number of clicks, and other advertising-related data.
- 20.2c) The Publisher shall store all data reported by KONEO through the Advertising Platform (including user data and usage data) in conformity with all legal requirements.
- 20.3c) The Publisher shall not transmit any personal data (i.e. data allowing identification of an individual) to KONEO, unless data protection laws allow for such transmission.
- 20.4c) The Publisher shall duly inform the users of the Media about the cooperation with KONEO and its implications (Sect. 20.5c to Sect. 20.7c)(Before Sect. 16.5 to Sect 16.7), in a privacy policy or other appropriate form, and seek consent, if consent is required by law for KONEO and/or the Clients to perform the actions described in Sect. 20.5c to Sect. 20.7c (Before Sect. 16.5 to Sect. 16.7).
- 20.5c) The Publisher acknowledges that KONEO and/or the Clients may store user data and usage data, which they collect automatically or through forms filled in by the users.
- 20.6c) The Publisher acknowledges that KONEO and/or the Clients may use such data to optimize their offers and services, to better target users with Advertisements which better match their interests, and for statistical purposes, market research, and the promotion of their respective goods and services.
- 20.7c) The Publisher acknowledges that KONEO and/or the Clients may use e-mail addresses and other contact data submitted by the users for marketing and promotion, as far as allowed by applicable law.

#### **21c) Protection of Login Data**

- 21.1c) The Publisher shall keep all access data (login, passwords etc.) for the Advertising Platform ("Access Data") strictly confidential. The Publisher shall promptly inform KONEO in case it learns or suspects that an unauthorized third person is in possession of the Access Data.
- 21.2c) In case KONEO has reason to believe that an unauthorized third party is in possession of Access Data, KONEO may, without assuming any responsibility to do so, and always acting in its sole discretion, change the Access Data without prior notice or block the respective account. KONEO will promptly inform the Publisher and will, upon request, communicate the new Access Data to the Publisher without undue delay. The Publisher cannot claim to

have its initial Access Data restored.

- 21.3c) In case a third party uses, through the Publisher's fault, the Publisher's Access Data, the Publisher is liable for all such actions, and for damages. In such event, all access through the Publisher's Access Data shall be considered as an access by the Publisher.

**22c) Governing Law & Miscellaneous**

- 22.1c) The courts of San Francisco, State of California, United States, shall have exclusive Jurisdiction.
- 22.2c) The laws of the State of California, United States apply for all contracts concluded by KONEO on the basis of the Agreement and any claims arising therefrom, and for all claims related to the use of the Advertising Platform. The application of the United Nations Convention on Contracts for the International Sale of Goods and United States International Private Law are excluded.
- 22.3c) This Agreement contains the entire agreement between KONEO and Publisher with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements or understandings, written or oral. Terms and conditions of the Publisher do not become part of the Agreement, unless KONEO has accepted them in writing.
- 22.4c) All or any of KONEO's rights and obligations under the Agreement may be assigned to a subsequent owner or operator of the Advertising Platform in a merger, acquisition or sale of all or substantially all of KONEO's assets. The Publisher must not assign or transfer the Agreement or any or all of its rights thereunder without the prior written consent of KONEO. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and valid assigns of the parties hereto.
- 22.5c) Except as set forth in the "Modifications" section above, this Agreement may not be modified without the prior written consent of both parties. Any changes, amendments or the abrogation of the Agreement (partly or entirely) require written form (letter, fax or e-mail); the requirement of written form can only be waived in written form.
- 22.6c) If any provision of this Agreement is held by a court of competent jurisdiction to be unlawful, void, invalid or inoperative, then in such jurisdiction that provision shall be deemed severable from the Agreement and the remaining provisions of this Agreement shall continue in effect and the invalid portion of any provision shall be deemed modified to the least degree necessary to remedy such invalidity while retaining the original intent of the parties.
- 22.7c) Each party to this Agreement is an independent contractor in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.
- 22.8c) KONEO's failure to act with respect to a breach by the Publisher does not waive KONEO's



right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by KONEO under the Agreement shall be deemed effective unless delivered in writing and signed by a duly appointed representative of KONEO.

22.9c) Section headings used in the Agreement are for convenience only and shall not affect the interpretation of the Agreement.

**22.10c) The English version of the Agreement is decisive.**

22.11c) By submitting an application to Publisher Program, Publisher affirms and acknowledges that she has read this Agreement in its entirety and agrees to be bound by all of its terms and conditions. If Publisher does not wish to be bound by this Agreement, she should not submit an application to Publisher Program. If an individual is accessing this Agreement on behalf of a business entity, by doing so, such individual represents that they have the legal capacity and authority to bind such business entity to this Agreement.