

Onvoir – Publisher Terms and Conditions

1. Definitions and Interpretation

1.1 In these Terms and Conditions, the following terms and expressions shall, unless the context requires otherwise, have the meanings set out opposite them:

"Agreement" means the agreement signed by the Publisher and Onvoir (brand owned and operated by ClickStream Media Pvt Ltd) which is subject to these terms and conditions.

"Bona Fide Internet User" means a real living individual person conducting legitimate internet searches and clicks, which to avoid doubt shall exclude without limitation robots, spiders, hitbots, scripts, software, hidden links, scraper and other mechanical, artificial or fraudulent mechanisms and persons paid to conduct searches or clicks.

"Media Listing" means links, code and advertising generated by Onvoir's servers in response to a query from the Publisher for display on the Publisher's website or websites owned by sub-Publishers in the Publisher network.

"Intellectual Property Rights" means all patents, registered designs, unregistered design rights, copyrights, database rights, topography rights, trade marks, trade names, logos, trade secrets and know-how, supplementary protection certificates, petty patents, utility models, applications for any of the above and the right to make applications and any and all other intellectual or industrial property rights of any description (and rights of a similar nature) anywhere in the world existing now or at any time in the future and whether registered or registerable or not.

"Publisher" means a party who has entered into an agreement with Onvoir which is subject to these terms to provide Bona Fide Internet Users with access to Media Listings.

"Publisher Commission" means the amount of the commission earned by the Publisher calculated by applying the Publisher Commission Percentage to the click price, (as notified by Onvoir to the Publisher at the time Media Listings are delivered by Onvoir in response to a Publisher's request), for each specific Revenue Click Through.

"Publisher Commission Percentage" means the percentage as set out in the Agreement.

"Revenue Click Through" denotes a Bona Fide Internet User actively clicking on a Media Listing on the Publisher website (excluding any click through from an IP address considered by Onvoir, at its sole discretion, to be of unacceptably poor quality or of a fraudulent nature).

1.2 Unless the context requires otherwise references in these Terms and Conditions to the singular shall include the plural and vice versa; and reference to one gender shall include

all other genders. Headings in these Terms and Conditions are for convenience only and do not affect interpretation.

1.3 References in these Terms and Conditions to Onvoir website(s) shall be to a website(s) owned by and maintained by or on behalf of Onvoir.

1.4 References in these Terms and Conditions to the Publisher website(s) shall be to a website(s) owned by and maintained by the Publisher.

2. Publisher Obligations

2.1 In consideration for payment of the Publisher Commission by Onvoir, the Publisher agrees, for the duration of the Agreement:

2.1.1 to display Onvoir Media listings on the Publisher's website in the format received from Onvoir or in a way that has been approved in writing by Onvoir;

2.1.2 to use its reasonable endeavours to introduce Bona Fide Internet Users to websites linked to the Media Listings and to take all reasonable measures to ensure that internet users who are not Bona Fide Internet Users are not introduced to these websites. Onvoir's determination as to whether an internet user is a Bona Fide Internet User shall be final;

2.1.3 to give Onvoir all reasonable assistance to enable Onvoir to facilitate the display of the Media Listings on the search results pages of the Publisher's website;

2.1.4 to comply with Onvoir's reasonable requests to limit the number of requests sent to Onvoir in any given period;

2.1.5 to provide Onvoir with the IP address of the Bona Fide Internet User in respect of each request sent to Onvoir;

2.1.6 to provide Onvoir with an anonymised but uniform sub-Publisher id with each request to facilitate poor traffic source detection in the instance where a Publisher is providing traffic to Onvoir from their own Publisher network and to stop any requests from any sub-Publisher which Onvoir may request from time to time;

2.1.7 to comply with any request from Onvoir to not allow Media Listings to be displayed on any websites specified by Onvoir; and

2.1.8 to ensure that any user name and password which is assigned to the Publisher shall be kept secure and confidential and not disclosed to any third party.

3. Onvoir Obligations

Subject to the Publisher complying with its obligations under clause 3 Onvoir shall:

3.1 supply the Publisher with the necessary links and/or code for inclusion on the Publisher's website to allow the display of Media Listings; and

3.2 give the Publisher reasonable assistance to facilitate the display of the Media Listings on the Publisher website.

4. Price and Payment

4.1 Provided that the Publisher has complied with its obligations under this Agreement, Onvoir shall pay the Publisher Commission to the Publisher in accordance with clause 5.2.

4.2 Onvoir shall provide the Publisher with a user name and password to access the online user traffic reports which reports shall include a breakdown of Revenue Click Throughs. Within 30 days following the end of the relevant month, the Publisher shall issue an invoice to Onvoir for the amount of the Publisher Commission for that month. Onvoir shall make payment of Publisher Commission payable to the Publisher within 30 days of receipt by Onvoir of a valid and accurate invoice from the Publisher.

4.3 Onvoir's determination of the number of Revenue Click Throughs during any period shall be final except in the event of manifest error. Onvoir's determination of what proportion of the Revenue Click Throughs originate from sources or mechanisms which are not Bona Fide Internet Users and whether any subsequent Publisher Commission is due shall be solely at Onvoir's discretion and shall be final.

4.4 Where Onvoir becomes aware that it has paid Publisher Commission in respect of internet user traffic which is not from Bona Fide Internet Users it shall be entitled to deduct the relevant amount of such Publisher Commission from the next payment of Publisher Commission due.

5. Intellectual Property Rights

5.1 During the term of the Agreement and subject to the terms set out herein, each party hereby grants to the other a non-exclusive, non-transferable licence to use, display and reproduce its logo, trademarks and service marks on its websites and promotional materials solely for the purposes of the display of the Media Listings by the Publisher on its website as set out in this Agreement, and for promoting and advertising the Publisher as a Onvoir Publisher.

5.2 The Publisher acknowledges and agrees that, as between Onvoir and the Publisher, Onvoir shall retain ownership of all Intellectual Property Rights and other right, title and interest to and in all the content and materials of the Media Listings and its websites directories, database, algorithm, indexing and related technology.

5.3 The Publisher agrees that it will not take any action that would undermine, conflict with, or be contrary to the Intellectual Property Rights and interest of Onvoir or other Onvoir Publishers or Onvoir's other commercial Publishers and resellers, including, without limitation, that:

(i) it will not make any use of, or attempt to register, any logo, trademark, service mark or trade name substantially similar to any logo, trademark, service mark or trade name of Onvoir or other Onvoir Publishers or Onvoir's other commercial Publishers and resellers; and

(ii) it will not sell, resell, rent, licence, sub-licence, transfer, assign or redistribute the Media Listings except as expressly permitted in this Agreement, and in particular in accordance with clause 3.1. The Publisher shall immediately inform Onvoir of any action taken by any third party (so far as the Publisher is aware) that would undermine, conflict with, or be contrary to the Intellectual Property Rights and interests of Onvoir or other Onvoir Publishers or Onvoir's other commercial Publishers and resellers, and assist Onvoir as reasonably required in taking action against the third party concerned (including without limitation being joined in any legal action deemed necessary by Onvoir to protect its rights or those of other Onvoir Publishers or Onvoir's other commercial Publishers and resellers).

6. Publicity and Marketing

Both parties will mutually approve any announcements or promotional material and the timing of distribution thereof in connection with this Agreement or the marketing of the related service. To avoid doubt, nothing in this clause 7 shall require Onvoir to obtain any approval from the Publisher of Onvoir's publicity and marketing activities relating to other Onvoir Publishers or Onvoir's other commercial Publishers and resellers.

7. Publisher Warranties

The Publisher hereby represents, warrants and undertakes to Onvoir as follows:

7.1 it has, and will retain throughout the term of the Agreement, all right, title and authority to enter into this Agreement, to grant to Onvoir the rights and licences granted in this Agreement and to perform all of its obligations under this Agreement.

7.2 it has complied and will comply with all relevant statutory provisions in relation to its obligations hereunder including, without limitation, any and all applicable data protection legislation and regulations and that it has obtained and will obtain any and all necessary rights, approvals and consents (including without limitation any necessary consents from individuals in relation to the processing of their personal data) to allow it to perform its obligations hereunder.

7.3 The Publisher's website, and the websites belonging to any sub-Publisher on whose site the Media Listings are displayed, does not contain any offensive, slanderous or libelous content or infringe any copyright, trademark or intellectual property right or violate the privacy of any individual or breach advertising standards or violate any Laws in any country or jurisdiction where the Publisher's website is accessible or contain any material which is disparaging or abusive or any incorrect information relating to Onvoir or any of its advertisers.

8. Onvoir Warranty

Onvoir hereby warrants that it has and will retain throughout the term of this Agreement all right title and authority to enter into this Agreement, to grant to the Publisher the rights and licences granted in this

Agreement and to perform all its obligations under this Agreement.

9. Indemnity

The Publisher shall indemnify, hold harmless and defend at its own expense, Onvoir from and against any liability, claim, action proceeding or expense arising out of or in connection with:

(i) any breach of the Publisher Warranties or otherwise in respect of any content or other aspect of the Publisher's websites or the websites belonging to any sub-Publisher on whose site the Media Listings are displayed, other than the advertisements presented by Onvoir, (including but not limited to website content, Intellectual Property Rights associated with such content and violations of laws relating to obscenities and privacy); and

(ii) any other material breach of or failure to perform its duties or obligations under the terms of this Agreement.

10. Exclusion and Limitation

10.1 The Publisher hereby confirms that it is not entering into this Agreement in reliance on any warranty or representation given by Onvoir, except as expressly set out herein.

10.2 The Publisher acknowledges that Onvoir makes no warranties of any kind for interruption in service for the Onvoir websites, Context Stream and Onvoir search facilities for the Media Listings and except as expressly set out in these Terms and Conditions, all warranties representations, and conditions express or implied, statutory or otherwise are hereby expressly excluded by Onvoir to the fullest extent permitted by law.

10.3 Nothing in clause 10.2 shall exclude liability for fraudulent misrepresentation.

10.4 The Publisher's entitlement to receive Publisher Commission in respect of any particular month is conditional upon the Publisher rendering a correct and valid invoice to Onvoir within six months of the end of that particular month.

10.5 Onvoir shall not be liable for, to the extent that they are beyond the reasonable control of Onvoir, acts or omissions of telecommunications operators or internet service providers or as a result of internet congestions

11. Economic Loss

Onvoir shall not in any event be liable to the Publisher or any third party, whether in contract, tort or otherwise, and irrespective of cause for:

11.1 any loss of profit, business, goodwill, contracts, revenues or anticipated savings suffered by the Publisher, any sub-Publisher or the Publisher Advertisers; or

11.2 any special, indirect or consequential loss of any nature whatsoever suffered by the Publisher, any sub-Publisher, or a third party whether resulting from the use of Onvoir services under or pursuant to this Agreement including non-delivery, interruption in service, or failure of the internet infrastructure that the Onvoir service relies upon, however that interruption or failure is caused, or in respect of any other liability arising on the part of Onvoir to the Publisher and/or any third party.

12. Limitation of Liability

The maximum amount of Onvoir's liability to the Publisher under this Agreement shall not in any event exceed the amount of the Publisher Commission earned by the Publisher during the previous period of twelve months.

13. Term and Termination

13.1 The Agreement shall commence on the Commencement Date and shall continue unless terminated by either party or unless the Publisher does not send any requests for Media Listings to Onvoir for a period of at least 90 days in which case the Agreement will lapse.

13.2 The Agreement can be terminated by the Publisher at any time with immediate effect by giving notice to Onvoir in writing.

13.3 Onvoir may terminate the Agreement with immediate effect by notice in writing to the Publisher if it considers that:

(i) the Publisher is in breach of any warranties by the Publisher under this Agreement; or

(ii) in the event that the Publisher introduces internet users who are not Bona Fide Internet Users in breach of its obligations under clause 2.1.2 of this Agreement; or

(iii) in the event of any other breach of this Agreement which breach has been notified by Onvoir to the Publisher and has not been remedied within 14 days of such notification; or

(iv) in Onvoir's sole discretion, it believes that the Publisher is fraudulently using means to generate Revenue ClickThroughs with the intent of inflating Publisher Commission.

13.4 Onvoir may terminate the Agreement by giving the Publisher notice of no less than 30 days, such notice to be given in writing

13.5 Either party shall have the right to terminate the Agreement by notice in writing to the other with immediate effect in the event that the other becomes insolvent or bankrupt or makes an arrangement with creditors or in the case of a company goes into liquidation other than for the purpose of reconstruction or amalgamation.

13.6 Without prejudice to any rights, obligations and liabilities outstanding at the date of termination of the Agreement, upon such termination the rights and licences granted under the Agreement shall be deemed to have been terminated and the parties shall take all reasonable measures to ensure that the content and the materials of the other party are removed from their own content and materials and shall respond promptly to any reasonable requests from the other in this regard.

13.7 Whilst termination of this Agreement will not affect accrued rights and liabilities of either party, neither party shall have any additional right to compensation as a result of termination of the Agreement.

13.8 Without prejudice to any other rights and remedies that Onvoir may have for breach of the Agreement by the Publisher, Onvoir shall have the right, without notice or liability to the Publisher or any third party, to withhold the Media Listings until such time as the breach is remedied.

14. General

14.1 Neither this Agreement nor any right or interest hereunder shall be assignable by either party without the other party's prior written consent (not to be unreasonably withheld or delayed).

14.2 The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of that or any other right in this Agreement.

14.3 The Agreement shall be binding upon, and inure to the benefit of the parties and their permitted successors and assignees.

14.4 These Terms and Conditions may be amended by Onvoir from time to time by posting a copy of the new terms and conditions on the Onvoir website. The new terms and conditions will be available on the Onvoir website for at least 30 days before they are implemented.

14.5 Notices to the Publisher sent pursuant to the Agreement may be in writing or may be sent electronically by email to the Publisher at the email address registered in the contact details page of the Publisher login area on the Onvoir website. Notices to Onvoir pursuant to the Agreement may be in writing or sent electronically by email to support@Onvoir.com. Any notice in writing may be delivered by hand or sent by post to the recipient at its address shown on the Agreement or in the case of a company in the UK to its registered office. Notices delivered by hand shall be deemed to be received on the day of delivery and those posted shall be deemed received on the second working day thereafter.

14.6 This Agreement shall be governed by and construed in accordance with Indian Law and the parties submit to the exclusive jurisdiction of the Indian courts.

14.7 This Agreement sets out the entire agreement between the parties in relation to the subject matter hereof and the parties acknowledge that in entering into this agreement they have not relied upon any representations other than those reduced to writing in this Agreement. The provisions of this clause shall not apply in the case of any fraudulent misrepresentation.

14.8 Neither party shall be liable for any breach of this Agreement due to any case beyond its reasonable control (save in respect of any obligation for the payment of monies) including but not limited to Acts of God, inclement weather, flood lightning or fire, industrial action, act or omission of government, or other competent authority, riot, war or act or omission of any other party for whom that party is not responsible.

14.9 Any term or provision of this Agreement held to be illegal or unenforceable shall, if possible, be interpreted so as to be construed as valid, but in any event the validity or enforceability of the remainder hereof shall not be affected.

14.10 Without prejudice to any other right which any party who is not a party to this Agreement may have, nothing in this Agreement shall confer on any such third party any right to enforce any term of this Agreement under the Indian Contract Act.

14.11 This Agreement may be executed in any number of counterparts (each of which taken together shall be deemed to constitute one and the same agreement and each of which individually shall be deemed to be an original) with the same effect as if the signatures on each counterpart were the same original document.

14.12 Nothing in this Agreement nor the rights of or performance of the parties' respective obligations hereunder shall constitute either party as the agent or legal Publisher of the other.

14.13 Except as expressly provided in this Agreement neither party shall be entitled to bind or contract on behalf of the other party in any manner whatsoever.