

Smaato Referral Program Terms and Conditions

Last Modified: August 18, 2015

Smaato, Inc. (“**Smaato**“) provides the Smaato Referral Program (“**Referral Program**”), pursuant to these terms, which hereby incorporate by reference the Terms & Conditions governing the use of the Smaato website, available at <https://www.smaato.com/terms/> (the “**Smaato Terms & Conditions**”, and together with these Referral Program terms collectively referred to “**Terms**”). The Referral Program allows Smaato’s existing Publishers, developers and/or Supply Partners as of August 1, 2015 (“**Existing Partners**”) which are eligible to participate in the Referral Program pursuant to these Terms (“**Referrers**”), to refer a new mobile publisher and/or an app developer (“**Referee**”) for the use of Smaato Services. Capitalized terms used but not defined herein have the meanings ascribed to them in Smaato’s standard Terms and Conditions, as described above.

THESE TERMS ARE A LEGAL AGREEMENT BETWEEN YOU, AS REFERRER OR REFEREE, AND SMAATO. PLEASE READ THESE TERMS CAREFULLY BEFORE PARTICIPATING IN THE REFERRAL PROGRAM OR USING THE SERVICES OR ANY PART THEREOF. BY PARTICIPATING IN THE SMAATO REFERRAL PROGRAM, YOU (1) REPRESENT THAT YOU ARE (A) AT LEAST 18 YEARS OF AGE (IN CASE OF AN INDIVIDUAL) OR (B) AUTHORIZED TO ENTER INTO THESE TERMS (IN CASE OF AN ENTITY), AND (2) AGREE TO BE BOUND BY ALL TERMS INCORPORATED HEREIN.

By participating in the Referral Program, Referrer and Referee agree to use the Referral Program in the manner specified herein and shall comply with all applicable Terms. Provided that Referrer is in good standing and compliant with the Terms, Referrer may be eligible to receive ten percent (10%) of the revenue generated by a qualified Referee for a period of six (6) consecutive months. The participation and use of the Referral program shall be in accordance with the following terms, including all Smaato Terms & Conditions, Smaato Privacy Policy and Smaato Content Guidelines, as referenced herein:

1. **Privacy.** By participating in the Referral Program, Referees may be asked to provide Smaato with “personally identifiable” information such as the name, postal mailing address, e-mail address, telephone number, pay pal account, and other billing information of the Referee. In addition, Smaato may give Referee the option to provide Smaato with certain information about Referee’s business. Any personally identifiable information collected will be used in accordance with Smaato’s Privacy Policy, which can be found at <http://www.smaato.com/privacy/>.

2. Referral Program Requirements:

- a. **Referrer Eligibility to Participate.** The Referral Program will be available only to Existing Partners which have generated at least one USD (\$1) in revenue over the last eighteen (18) calendar months.
 - i. A “**Referral**” made by eligible Referrers shall mean a qualified Referee for which Referrer is directly responsible for soliciting and referring to Smaato. To submit a Referral, the Referee shall register on the Smaato SPX platform with the unique referral link that contains the Referrer’s publisher ID, collected by Smaato.
 - ii. The “**Referral Date**” shall mean the date of transmission of a Referral by Referrer to Smaato.
 - iii. For avoidance of doubt, an Existing Partner shall be any Publisher, developer or Supply partner to which Smaato has furnished Services, or which has registered for any Smaato

monetization platforms, including but not limited to the Smaato SPX and PSSP platforms, prior to the applicable Referral Date of a Referral.

- b. Qualified Referee. Referrer shall only refer a Referee that: (i) has not previously registered for, or participated in, the Smaato Services and is not an Existing Partner of Smaato; (ii) is not a Multiplier (e.g., any company that aggregates multiple mobile app developers and publishers) (“Multiplier”); (iii) meets the requirements provided herein; (iv) is a valid publisher, app developer or software developer capable of participating in the Smaato Services.
- c. Referee Compliance. To participate in the Referral Program:
 - i. The Referee must adhere to and comply with the Smaato Terms & Conditions, available at <https://www.smaato.com/terms/>.
 - ii. The Referee must strictly comply with the Smaato Content Guidelines, available at <http://www.smaato.com/content-guidelines/>.
 - iii. The Referee may be eligible for inclusion in the Smaato Publisher Spotlight to advertise Referee’s Media Ad Inventory, provided that Referee has a minimum of ten (10) million Impressions per month.
 - 1. **“Mobile Ad Inventory”** shall mean the advertising space on the applicable Publisher or developer’s Mobile Sites or Apps that Publisher makes available for the display of Ads on an End-User’s Wireless Device visiting a Publisher Site or App.
 - 2. **“Impressions”** means a single instance of displaying an Advertisement to a bona fide End-User on such End-User’s Wireless Device. For the avoidance of doubt, “Impression” excludes any “display” of Advertisements that has been obtained by fraud or other illegal conduct, and/or by mechanical or other technical means where there is no bona fide End-User that actually views the display on their Wireless Device.
- d. Restrictions.
 - i. In the event the Referee provides the same Mobile Ad Inventory as that of the Referrer (e.g. Mobile Ad Inventory from the same App or Mobile Website), Smaato shall not be obligated to pay the Referral Commission.
 - ii. Smaato reserves the right, in its sole discretion, to deny, withhold or withdraw a Referral Commission from any Referrer if:
 - 1. Smaato determines, in its sole discretion, that such Referrer has engaged in fraudulent referral activity, including but not limited to, any attempt of Referrer to refer itself using an alias name, any acquisition of Referrals by Referrer through unsolicited communication to persons and/or entities unknown to Referrer, or through any violation of applicable privacy laws and regulations;
 - 2. Referrer does not comply with any of the Terms hereunder;
 - 3. any other abuse or attempted abuse of the Referral Program that occurs.

- iii. Smaato may reject any Referral that references any Existing Partner, including any Referee that Smaato has commenced discussions with regarding Smaato's Services prior to the Referral Date.
- iv. Smaato reserves the right, on a case-by-case basis, to accept Referees which were registered on the Smaato SPX platform (and/or Smaato's legacy PSSP platform) prior to the Referral Date in the event such Referee began sending Mobile Ad Inventory traffic only after the Referral Date.

3. Referral Commission and Payment Terms.

- a. Referral Commission. The Referrer shall be entitled to receive 10% of the Net Revenue Share (as defined in the Smaato Terms & Conditions) generated by the Referee each month during the first 6 consecutive months of the Referee's use of the Smaato Services ("Referral Commission"), provided that both Referrer and Referee are in compliance with all Terms herein, and Referee continues to use the Smaato Services for a period of six (6) months. In the event a Referee terminates or suspends its use of the Smaato Services prior to the six (6) month term, Referrer shall not receive any further Referral Commission. Notwithstanding anything herein to the contrary, in no event shall Smaato be obligated to pay a Referral Commission for any Referral involving an Existing Partner.
- b. Payment Terms. The Referral Commission shall be calculated by Smaato at the end of each calendar month in which the revenues were generated. Smaato shall make payment of the applicable Referral Commission to Referrer within sixty (60) days of Smaato's receipt of the revenues generated by the Referee, provided that the Referral is compliant with all Terms herein. Referrer shall have a valid Paypal account issued within the Smaato SPX platform and/or a current wire transfer account with Smaato in order to receive any Referral Commission hereunder. If the amount payable to Referrer for any given month is less than \$100, Smaato will roll such amount over to the subsequent payment period until the amount payable reaches a minimum of \$100.
- c. Fraudulent Behavior. Smaato shall determine, in its sole discretion, whether any Publisher acts or omissions are deceptive, fraudulent or violate the Terms for use of the Smaato Services. Examples of such acts may include, without limitation, clicks without referring URLs, high CTR, high numbers of repeat clicks, and clicks from non-approved root URLs ("Fraudulent Behavior"). Smaato reserves the right to withhold payment from a Publisher and/or block a Publisher from use of the Smaato Services, if Publisher has engaged in activity that is in violation of the Smaato Terms & Conditions for use of the Smaato Services, or is deceptive or fraudulent in nature as reasonably determined by Smaato in its sole discretion.
 - i. In the event a Referee engages in such Fraudulent Behavior and Smaato determines it is necessary to block such Referee from participating in the Smaato Services within the first six (6) months of Referee's use of the Smaato Services, Smaato shall not pay the remainder of the Referral Commission to Referrer. Further, Smaato reserves the right to require Referrer to issue a credit or reimburse Smaato for the amount of the Referral Commission which Smaato has remitted to Referrer for such Referee engaged in Fraudulent Behavior.

4. LIMITATION OF LIABILITY

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE SMAATO TERMS & CONDITIONS AS REFERENCED HEREIN, ANY PARTICIPATION IN THE REFFERAL PROGRAM IS AT THE REFERRER AND REFEREE'S OWN RISK. NEITHER SMAATO, IT'S OFFICERS, EMPLOYEES, DIRECTORS, OR ANY OTHER AFFILIATES OF SMAATO, SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE REFERRAL PROGRAM WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

IF EITHER REFERRER OR REFEREE IS DISSATISFIED WITH THE REFERRAL PROGRAM AND/OR THE SMAATO SERVICES, THE CONTENT AVAILABLE ON OR THROUGH THE SERVICES, OR WITH ANY OF THE TERMS OF SERVICES, THE REFERRER AND/OR REFEREE'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES.

5. WARRANTY DISCLAIMER

THE SMAATO REFERRAL PROGRAM AND ALL SERVICES PROVIDED IN CONNECTION HEREWITH, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THE TERMS HEREUNDER, SMAATO MAKES NO OTHER WARRANTY AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, THE SITE, AND ITS CONTENT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE.

6. **Updates.** Smaato may occasionally update these Referral Program Terms, including any Terms & Conditions on the Smaato website, as referenced herein. Upon such update(s), Smaato will also revise the "Last Updated" section indicated at the top on the page. Smaato encourages all participants in the Referral Program to periodically review all applicable Smaato Terms. The continued use of the Smaato Site by all participants in the Referral Program constitutes an agreement to the Terms herein and any updates.
7. All legal notices and provisions outlined in the Smaato Terms & Conditions provided on the Smaato website, and incorporated by reference herein, shall govern these terms and the provision of, and participation in, the Smaato Referral Program. As Smaato may occasionally update the Terms & Conditions on Smaato's website, all participants in the Referral Program shall periodically review all applicable Smaato Terms. The continued use of the Smaato Site by all participants in the Referral Program constitutes an agreement to all Terms hereunder, including any and all updates. Any questions regarding the Smaato Referral Program should be sent via email to support@smaato.com.