

Xandr Buyer via Intermediary Terms of Service

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1. Xandr Exchange

(a) Thank you for your interest in our advertising technology services (the “**Services**”). By using our Services, you agree to these terms (the “**Xandr Buyer Terms**”) and our Service Policies located in the Xandr user interface and/or wiki (currently located at <https://wiki.xandr.com/x/agt-Aw>), which may include third party service policies and terms and conditions which you may agree to in the future in connection with the use of the Services (collectively, the “**Agreement**”). If there is ever a conflict between these Xandr Buyer Terms and our Service Policies, the Xandr Buyer Terms take precedence. You should read the Agreement carefully.

(b) When we refer to “you” throughout the Agreement, it means the individual or entity using the Services (and/or any individual, entity or successor entity, agency or network acting on your behalf). When we refer to “we,” “us” or “Xandr” it means Xandr Inc. (formerly known as AppNexus Inc.), AppNexus Australia Pty. Ltd., or AppNexus Latin America Tecnologia Em Publicidade Ltda. (the “**Xandr Party**” and collectively, the “**Xandr Parties**”), as set forth in your Xandr Buyer via Intermediary Agreement with us (your “**BVI Agreement**”) or as notified by us to you. When we refer to the “parties,” it means you and the applicable Xandr Party.

2. Access to the Services; Xandr Exchange Accounts.

Your use of the Services is subject to our approval and provisioning of an Xandr account (an “**Account**”). We have the right to refuse or limit your access to the Services. By signing up to use our Services through an intermediary technical platform (“**Tech Intermediary**”), you agree that you will not be permitted to directly access our platform or Services other than through that Tech Intermediary unless otherwise permitted by us in our sole discretion. By submitting your application to use the Services, if you are an individual, you represent that you are at least 18 years of age. By using the Services, you permit us to serve your advertisements (e.g. a banner, video, audio, or mobile advertisement) (an “**Ad**”) to digital advertising inventory (“**Ad Inventory**”) on various digital properties (e.g. websites or applications) available through the Services (each a “**Property**”) and you give us any other rights reasonably necessary for us to provide the Services, including but not limited to the right to collect, store, use, disclose and/or transfer your payment identification information, account information, and other related information deemed necessary by us or our third party partner(s) or any other third party correspondents or processors in order to provide the Services (“**Payment Information**”).

3. Your Use of Our Services

You may use our Services to conduct purchases of Ad Inventory and only as permitted by this Agreement and any applicable laws. You may discontinue your use of our Services at any time. You will be solely responsible for all use of the Services hereunder. You will not misuse or damage the Services, or use the Services to serve Ads which are malicious, deceptive, or obscene, or violate any third party right.

4. Changes to Our Services

We are constantly changing and improving our Services. We may add or remove features or functionalities of the Services at any time, and we may suspend or stop a Service altogether. We may modify the Agreement at any time. We’ll post any modifications to the Xandr Buyer Terms and any modifications to the Service Policies (other than third party policies incorporated by reference into the Service Policies which you can access directly) on their respective pages. Changes will not apply retroactively and generally will become effective 30 days after they are posted. However, changes addressing new functions for a Service or changes made for legal reasons will be effective immediately. If you don’t agree to any modified terms in the Agreement, you will have to stop using the affected Services.

5. Payments; Payment Obligations; Fees

- (a) All amounts owed by you to us for your use of the Buyer Service will be calculated by us solely on the basis of our accounting and measurements and you agree that you will not dispute any amounts owed hereunder on the basis of third party accounting or measurements. Amounts charged by us may be inclusive of fees which are disclosed to you within the Services or have been agreed to by us with your Tech Intermediary. In addition, we may reduce a bid amount and retain the deducted amount due to discrepancy offsets based on historical counting differences with Sellers (as defined below) that we designate as "external", "third party" or "Exchange" and/or other account costs (including access charges imposed by Sellers). As used herein "**Seller**" means a party (e.g., a network, SSP, or publisher) that sells, attempts to sell, or serves an Ad to Ad Inventory through a Service.
- (b) Unless otherwise expressly agreed to the contrary in writing (including via email) between the Parties, we will invoice your Payment Facilitator for your use of the Buyer Services hereunder, provided that you will be solely responsible for paying us all amounts owed in respect of your use of the Buyer Services to the extent such Payment Facilitator fails to timely pay Xandr. Your "**Payment Facilitator**" will be Fast Pay Partners LLC or such other provider of similar payment facilitation services that we may permit you to use in the future. Late payments will bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less).
- (c) To the extent we have agreed in writing that you will not be using a Payment Facilitator, which determination is in our discretion and revocable at anytime upon notice to you, we will invoice you directly for your use of the Buyer Services hereunder and you will be solely responsible for paying us all amounts owed in respect of your use of the Buyer Services. Late payments will bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). To the extent you are paying us pursuant to this clause (c), except in the event of termination, all amounts owed to us pursuant to your use of the Services must be paid within thirty (30) days of the date of invoice. You are responsible for providing complete and accurate billing and contact information to us, and notifying us promptly of any changes to such information. If you require assistance with your invoices or our billing process, please submit a "Client Finance" case through the [Customer Portal](#).
- (d) Your use of the Services may be subject to credit limits, as determined by us in our sole discretion from time to time. You will promptly provide us with information we reasonably require to complete our payment review process.
- (e) In addition to our other rights and remedies, we may offset any payments owed by you under the Agreement against any fees we owe you under the Agreement or any other agreement.
- (f) In the event you transact, input pricing terms, or are invoiced or paid in a currency other than U.S. dollars, any applicable currency conversions will be described in, performed in accordance with, and subject to any fees described in the written documentation in the Xandr user interface and/or wiki (currently located at <https://wiki.xandr.com>), including any terms incorporated by reference or link therein, in each case as may be modified by us from time to time (the "**Currency Documentation**"). All fees invoiced or paid hereunder will be in U.S. dollars; provided that all fees invoiced and paid hereunder will be in (i) Australian dollars if your BVI Agreement is with AppNexus Australia Pty. Ltd. and (ii) Brazilian reais if your BVI Agreement is with AppNexus Latin America Tecnologia Em Publicidade Ltda. (in each case, your "**Invoicing Currency**"). You may request to be invoiced and to pay us in a different currency than your current Invoicing Currency by submitting a request through the Customer Portal and, upon our approval, which will be given in our sole discretion, your Invoicing Currency will be changed as of the first day of the calendar month following our approval. We may, in our sole discretion and for any reason, revert your Invoicing Currency to U.S. dollars at any time upon notice to you.

6. Third-Party Beneficiaries

We operate a marketplace for Sellers and you to transact with each other. We are neither the buyer nor the Seller, and therefore do not assume, and expressly disclaim, all liability arising from your use of the Services except as expressly set forth herein, including but not limited to, liability arising from Ads, Ad Inventory, and Properties. To facilitate direct dispute resolution between Sellers and you using our Services, each Seller that sells Ad Inventory to you is an intended third-party beneficiary of your obligations hereunder in connection with your purchase of Ad Inventory from them (other than your obligations to pay for such Ad Inventory). You agree not to assert a defense based on lack of privity against any Seller seeking to enforce this Section 6.

7. Taxes

Unless expressly specified by us, charges for Services do not include any taxes or government charges levied by or due to any duly authorized taxing authority and you will, without offset against or deduction from amounts otherwise owed by you hereunder, pay any such taxes and government charges derived from or imposed on transactions through the Services, including sales, value-added, goods and services, use, transfer, gross income based withholding, privilege, excise and other taxes and duties.

8. Confidentiality

You agree not to disclose Xandr Confidential Information without our prior written consent. "**Xandr Confidential Information**" includes: (a) all of our software, technology and documentation relating to the Services; (b) the existence of, and information about, beta features in a Service; (c) Ad Inventory availability, volume, or pricing data available through the Service; and (d) any other information made available by us that is marked confidential or would normally be considered confidential under the circumstances in which it is presented. Xandr Confidential Information does not include information that you already knew prior to your use of the Services, that becomes public through no fault of yours, that was independently developed by you, or that was lawfully given to you by a third party.

9. Data; Intellectual Property

(a) As between we and you, you will own any information and/or data provided by you to the Services and the data from your purchase or attempted purchase of Ad Inventory ("**Your Data**"). We may use, access, retain, and disclose Your Data in order to provide the Services, to enforce the terms of the Agreement, to facilitate and optimize the purchase and sale of Ad Inventory on our platform, to comply with any request of a governmental or regulatory body (including subpoenas or court orders), as aggregated information about Services, and to your Payment Facilitator (as applicable) and Tech Intermediary. You give us all permissions we need to exercise these rights. Notwithstanding the foregoing, you may not collect or use data from or about a Seller, publisher or Property for purposes of creating interest based user segments for retargeting purposes without permission from the Seller, publisher or Property unless the data is derived from user's click or other interaction with the Ad and not related to the name, context or brand of the Seller, publisher, or Property.

(b) Other than as set out expressly in the Agreement, neither party will acquire any right, title or interest in any intellectual property rights belonging to the other party or to the other party's licensors. If we provide you with software in connection with the Services, we grant you a non-exclusive, non-sublicensable license for use of such software for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by us, in the manner permitted by the Agreement. You may not copy, modify, distribute, sell, or lease any part of our Services or included software, nor may you reverse engineer or attempt to extract the source code of that software, unless laws prohibit those restrictions or you have our written permission. You will not remove, obscure, or alter our copyright notice, or other proprietary rights notices affixed to or contained within any of our services, software, or documentation. You grant to us and our affiliates a worldwide, perpetual, irrevocable, royalty-free right to use and incorporate into the Services any suggestion, input, enhancement request, recommendation, correction, specification, or other feedback provided by you relating to the operation of the Services.

(c) We may include your name and logo in our presentations, marketing materials, customer lists and financial reports.

10. Privacy

You will ensure that your use of the Services, including the acquisition of any information and/or data provided by you to the Services, is compliant with applicable privacy laws, rules, and regulations, including industry self-regulations ("Privacy Laws") and the applicable terms set forth in our [Privacy Agreements](#), as may be updated by us from time to time. If, apart from your use of the Services, you associate data derived from your use of the Services with information that directly identifies an individual, you will do so only in accordance with all Privacy Laws.

11. Term; Termination; Suspension

This agreement will terminate: (1) upon you providing at least thirty (30) days' prior notice of termination to us, (2) at any time upon notice from us at our sole discretion, or (3) in the event your relationship with the Payment Facilitator (as applicable) or Tech Intermediary is terminated, unless we and you agree otherwise, including via email. We may at any time suspend, limit or terminate your use of the Services for any reason, provided that any such suspension or termination will not relieve you of your obligation to pay outstanding amounts owed to us hereunder. If you breach the Agreement or we suspend or terminate your Account, you (i) will not be allowed to create a new Account, and (ii) may not be permitted to use other of our products, directly or indirectly. We will have no obligation to provide you with any direct access to our Services or to provide you any information, reporting or other data upon termination of this agreement.

12. Representations; Warranties; Disclaimers

(a) You represent and warrant that (i) you have full power and authority to enter into the Agreement; (ii) you are the owner of, or are legally authorized to act on behalf of the owner of, each Ad; (iii) neither we nor any of our affiliates has ever previously terminated or otherwise disabled an Account created by you due to your breach of the Agreement or due to invalid activity; (iv) entering into or performing under the Agreement will not violate any agreement you have with a third party or any third-party rights; and (v) all of the information provided by you to Xandr is correct and current.

(b) OTHER THAN AS EXPRESSLY SET OUT IN THE AGREEMENT, WE DO NOT MAKE ANY PROMISES ABOUT THE SERVICES. FOR EXAMPLE, WE DON'T MAKE ANY COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICES, THE SPECIFIC FUNCTION OF THE SERVICES, OR THEIR PROFITABILITY, RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WE PROVIDE EACH SERVICE "AS IS". TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED. WE EXPRESSLY DISCLAIM THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

13. Limitation of Liability

TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR ANY INDEMNIFICATION OBLIGATIONS HEREUNDER OR YOUR BREACH OF ANY INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY OBLIGATIONS AND/OR PROPRIETARY INTERESTS RELATING TO THE AGREEMENT, (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THE AGREEMENT FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND (ii) EXCEPT WITH RESPECT TO AMOUNTS OWED BY A PARTY FOR USE OF THE SERVICES HEREUNDER, EACH PARTY'S AGGREGATE LIABILITY UNDER THE AGREEMENT IS LIMITED TO THE NET AMOUNT PAID BY THAT PARTICULAR PARTY TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. Each party acknowledges that the other party has entered into the Agreement relying on the limitations of liability stated herein and that those limitations are an essential basis of the bargain between the parties.

14. Indemnification

You agree to indemnify and defend Xandr, its affiliates, agents, and Buyers from and against any and all third-party claims and liabilities arising out of or related to Your Data and/or the Properties, including any content served on the Properties that is not provided by Xandr, your use of the Services, or your breach of any term of the Agreement.

15. General Provisions

(a) **Communications.** In connection with your use of the Services, we may contact you regarding service announcements, administrative messages, and other information unless you opt out of receiving those communications.

(b) **Governing Law; Venue.** This Agreement is governed by and construed in accordance with New York law without regard to the conflicts of law rules thereof. The jurisdiction and venue for all disputes hereunder WILL BE the state and federal courts in the County and State of New York, AND THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.

(c) **Assignment.** You may not assign or transfer any of your rights under this Agreement without Xandr's written consent (including via email).

(d) **Entire Agreement; Amendments.** This Agreement is our entire agreement relating to your use of the Buyer Service and supersedes any prior or contemporaneous agreements on that subject. This Agreement may be amended (i) in a writing signed by both parties that expressly states that it is amending the Agreement; or (ii) as set forth in Section 4 if you keep using the Services after Xandr modifies the Agreement.

(e) **Severability.** If any particular term of the Agreement is not enforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

(f) **Independent Contractors.** The Parties are independent contractors, and this Agreement does not create an agency, partnership, or joint venture.

(g) **Subcontractors.** We may use subcontractors (including consultants, third-party services providers or agents) in connection with providing the Services.

(i) **Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.

(j) **No Waiver.** Other than as set forth in Section 5, the failure of either party to enforce any provision of the Agreement will not constitute a waiver.

(k) **No Third-Party Beneficiaries.** Other than as set forth in Sections 6 and 14, this Agreement does not create any third-party beneficiary rights.

(l) **Survival.** Any provisions of this Agreement that by their nature are intended to survive, will survive termination (including for the avoidance of doubt the provisions of Section 5 and 8) of these Xandr Buyer Terms will survive termination.

(m) **Country Specific Restrictions.** Our Service Policies may include restrictions on the countries in which you can use our Services (including restrictions on audiences you can target with your ads). You should review them carefully.

(n) **Notices.** All notices under this Agreement must be in writing (including by email) and will be deemed effective when delivered. All notices shall be sent, in the case of Xandr, to Xandr Inc., Attn: Legal Department, 28 W. 23rd Street, 4th Floor, New York, NY 10010, and in the case of you, to the notices email address you have provided for such purpose to your Tech Intermediary or Payment Facilitator (as applicable), your BVI Agreement, or as otherwise notified to us by you through the Customer Portal.