



## FYBER PUBLISHER TERMS AND CONDITIONS

THESE PUBLISHER TERMS AND CONDITIONS (“**T&Cs**”) are made by and between Fyber GmbH, (“**Fyber**”) and the party using the Service as a publisher (“**Publisher**”, as defined below) in addition to the Fyber Terms of Use and the Fyber Privacy Policy, both as currently available on Fyber’s Website.

### DEFINITIONS

“**Account**” means an online, password protected Publisher account allowing Publisher to manage its advertising revenues over the Fyber Ad Monetization Platform.

“**Account Data**” means information regarding Ad performance on Publisher Properties as well as other information Fyber makes available to Publisher over the Ad Monetization Dashboard.

“**Ad Codes**” means the advertising codes that Fyber includes in the Ads.

“**Ad**” or “**Ads**” means any advertisements, including any graphics, text, hyperlinks or other promotional content therein, provided by Advertiser, on its own behalf or on behalf of any third party Advertiser or demand partners, to Fyber, for placement via the Service.

“**Ad Server**” means the technology and functionality made available to Publisher via the Website, including tools for campaign management, ad trafficking and the logic system supporting targeting for optimization.

“**Advertiser**” or “**Advertisers**” means third party clients of Fyber that submit Ads to the Fyber Ad Monetization Platform, either directly or indirectly.

“**Agreement**” means these T&Cs, the Publisher Agreement and any amendments, annexes or addenda thereto, as well as any related or additional agreements signed between Fyber and Publisher.

“**Commission**” means the compensation Fyber pays to Publisher under the Publisher Agreement, consisting of the agreed-upon percentage of the Net Proceeds actually collected and received by Fyber in connection with applicable User Activities.

“**Confidential Information**” means any non-public information relating to or disclosed in the course of and/or in connection to the Agreement, which is or should reasonably be understood to be confidential. The terms of this Agreement are the Confidential Information of each party. Confidential Information does not include information that: (a) is or becomes part of the public domain through no fault of the receiving party or any wrongful act committed by a third party; (b) was already in possession of the receiving party without an obligation of confidentiality; or (c) was independently developed by the receiving party without violation of this Agreement.



“**Dashboard**” or “**Ad Monetization Dashboard**” means the panel through which Publishers can set up their apps and integrate ad sources as well as manage, optimize and analyze their Ad monetization strategy.

“**Fyber Ad Monetization Platform**” or “**Platform**” means the online platform developed, maintained and offered by Fyber to Publisher in connection with providing the Services.

“**Fyber API**” means Fyber’s application programming interface that specifies patterns of interaction between certain software components.

“**Fyber Exchange**” means demand exchange Platform provided by Fyber that enables Publisher to display advertising campaigns as provided by third party Advertisers, on Publisher Properties.

“**Fyber Property**” means the Services, Website, Tracking Data, Account Data, Ads and/or the Ad Server, as well as any intellectual property right (including rights in the Fyber SDK and proprietary API) held and/or licensed by Fyber.

“**Fyber SDK**” (Software Development Kit) means the proprietary library of code that can be added by Publishers to their application project in order to use the Fyber services and show Ads inside their application.

“**Inventory**” means the elements of any Publisher Property that Publisher makes available via the Services for the placement of Ads.

“**Mediation**” means a service that enables integration and management of multiple ad networks in order to enable Publisher to serve a variety of Ad formats and placements on the Publisher Properties.

“**Net Proceeds**” means the total of the revenues generated as a result of User Activities for the applicable Ad less all applicable advertising agency commissions, discounts, fees, charge-backs, credit card processing fees, refunds and taxes, except for taxes on Fyber’s net income.

“**Prohibited Content**” means the categories of content listed under Section 6.2 to these T&Cs.

“**Publisher**” (also referred to as “**Developer**”) means a customer of Fyber that desires to make Inventory available via the Service for the placement of Ads.

“**Publisher Agreement**” means the principal contract signed between Fyber and Publisher, including all related agreements, amendments and addenda thereto, if any, in which the parties determine the specific terms related to the subject matter.

“**Publisher Property**” means mobile applications and websites registered by Publisher over its Account over which Ads are served.



“**Publisher Property Characteristics**” means description and categorizing of Publisher Properties, including complete and accurate descriptions of the content, nature, and functionality of each Publisher Property.

“**Real-Time Bidding**” means the technology and related online services provided by Fyber that (a) allows Publisher and Advertisers to access and use Fyber’s automated, Real-Time Bidding system to purchase Inventory on Advertiser’s own behalf or on behalf of any third party advertiser; and (b) enables Fyber to facilitate the delivery of Ads to users of the Publisher Properties on Advertiser’s behalf or on behalf of any third party advertiser.

“**Service**” or “**Services**” means the services provided by Fyber as listed under Section 1 to these T&Cs.

“**Term**” means the period of the relationship between Fyber and Publisher under this Agreement from the date of execution of the Publisher Agreement until its valid termination or expiration under these T&Cs and the Publisher Agreement.

“**Tracking Data**” means performance and use data related to Ads, including instances in which an Ad is rendered for display within a given Publisher Property or clicked upon by end users, as well as data identifying the end user’s device, operating system on which the Publisher Properties was running, the wireless carrier providing service to such device, and the geographical location of the device.

“**Tracking Method**” means the reporting and/or tracking procedures currently used by Fyber to measure traffic, performance and related data.

“**User Activities**” means activities of end users applying the incentive mechanism and/or all other activities over the Platform relevant for the payment arrangement under the Publisher Agreement.

“**Website**” the website located at [www.fyber.com](http://www.fyber.com) including all content published thereunder.

Fyber and Publisher agree to the following:

## 1. SERVICES

Subject to the terms of these T&C’s, Fyber will use commercially reasonable efforts to provide the following Services (collectively, the “**Service**”):

- 1.1 Host, maintain and make available the Website, the Publisher Account and the Ad Monetization Dashboard;
- 1.2 Serve Ads provided by Advertisers for distribution over Publisher Properties registered in the Publisher Account; Fyber does not assume any obligation to routinely check Ads provided by Advertisers. In case Fyber is notified that a specific Ad is not compliant with its policies, advertiser contracts, applicable laws



or regulations, Fyber will investigate and at Fyber's discretion remove that Ad, if necessary;

- 1.3 Provide Fyber Ad Mediation and Fyber Ad Exchange Platforms;
- 1.4 Make the Fyber API available to deliver Ads to the Publisher Properties; and
- 1.5 Track Account Data and make it available to Publisher.

## **2. SIGN-UP AND APPROVAL PROCESS**

- 2.1 Publisher must establish an Account by completing the registration process on the Website. Publisher must provide Fyber with accurate and complete information, including contact and payment information, corporate and tax official identification number, as well as accurate Publisher Properties Characteristics.
- 2.2 Publisher is solely responsible for submitting to Fyber its Publisher Properties Characteristics and for keeping such information up-to-date, including activating or deactivating filters available on the Dashboard and applying various blacklisting and tagging features to screen out certain categories of Ads from being served on its Publisher Property.
- 2.3 Fyber may: (a) store and manage the Inventory; (b) select the Ads to be delivered to the Publisher Properties; (c) identify, select and manage relationships with Advertisers; (d) determine the terms under which Ads are distributed and marketed; (e) establish price schedules and other terms and conditions applicable to the distribution of Ads by Fyber; and (f) take all actions relating to the foregoing.
- 2.4 Publisher will keep its Account information up-to-date by promptly notifying Fyber of any changes in the Account information. Account access is provided on a password-protected basis. Fyber specifically points out that for security reasons access data should be changed regularly.
  - a. Publisher agrees to keep access data (such as login data, passwords, and other data required in order to access the Services) strictly confidential and not to disclose such data to any third party without Fyber's written approval in advance.
  - b. Publisher agrees not to participate in any unauthorized use of the Account, the login name or password and any other access data. If a third party uses an Account after having gained possession of the access data due to insufficient security exercised by Publisher the use by that third party shall be deemed as being performed by Publisher.
  - c. The Publisher must inform Fyber immediately upon becoming aware of the fact that an unauthorized third party has gained access data or that an unauthorized third party uses Publisher's equipment, property and/or system.



- d. In case of a justifiable suspicion that access data are known to an unauthorized third party or that Publisher's equipment, property and/or systems are or were used by a third party, then, for security reasons, Fyber reserves the right (but it is not obliged) either to change the access data at its own discretion without prior notification or to block the Account. In such cases, Fyber will inform the Publisher immediately and provides the new access data upon request within a reasonable time. Publisher has no claim that the original access data must be restored.

Upon violation of Publisher obligations under this provision as a result of a willful act or negligence on the part of Publisher, Fyber reserves the right to terminate the Account and/or to remove Publisher and/or any Publisher Properties from the Service at any time in Fyber's sole discretion.

- 2.5 Publisher will comply at all times with all applicable policies of third party platforms that distribute its Publisher Property, including the policies, rules and standards of Apple, Android, Facebook, Microsoft and Google to mobile application developer policies, API terms and all other guidelines posted on their respective websites, whichever may apply to Publisher.

### 3. LICENSE GRANT AND PROPRIETARY RIGHTS

- 3.1 **To Publisher.** Subject to these T&Cs and for the duration of the Term, Fyber hereby grants Publisher a limited, non-exclusive, non-transferable, non-sub-licensable, revocable license to: (a) publish and display Ads provided by Fyber within the Publisher Properties in an unmodified form; (b) incorporate the Fyber API in the Publisher Properties and use the Ad Codes to enable Fyber to deliver Ads to users of such Publisher Properties; (c) access and utilize the Ad Server, and (d) access and use the Account Data, in each case for purpose of Publisher's internal business operations only. Nothing contained in this Section 3.1 shall transfer any right, title, or interest in or to Fyber Property. As between Fyber and Publisher, Fyber and its suppliers retain all right, title and interest in and to the Fyber Property.
- 3.2 **To Fyber.** Subject to these T&Cs and for the duration of the Term, Publisher grants to Fyber the right and license, in Fyber's sole discretion, to: (a) select and publish Ads within the Publisher Properties; (b) promote, market, and sell to Advertisers and to their advertising agencies or affiliates the rights to place and publish Ads within the Publisher Properties; (c) measure Tracking Data and share such data with Advertisers, to the extent necessary to provide, maintain and improve the Fyber Platform and the Service; and (d) to access the Publisher Properties, including any password protected area thereof, for the purpose of serving Ads and collecting Tracking Data. Subject to the rights granted herein, nothing contained in this Section 3.2 shall transfer any right, title, or interest in or to the Publisher Properties and, as between Publisher and Fyber, Publisher and its suppliers retain all right, title and interest in and to the Publisher Properties.



#### 4. TERM AND TERMINATION

- 4.1 The Agreement shall continue to bind the parties until and unless duly terminated by either Publisher or Fyber.
- 4.2 Either party may terminate the Agreement with or without cause effective upon a thirty (30) days' prior written notice to the other party; provided, however that termination will not be effective until all Ads scheduled to be delivered through the Service have been delivered.
- 4.3 Fyber may suspend Publisher's access to all or any part of the Service immediately, with or without notice, if Fyber believes in good faith that Publisher or any of Publisher Properties violates any provision, representation or condition of the Agreement. Fyber may choose to terminate the Agreement if such violation is not cured within five (5) business days after notice to Publisher.
- 4.4 Upon termination of the Agreement under the abovementioned provisions, all rights and licenses granted to Publisher shall immediately terminate. Publisher shall discontinue all use of the Website and shall have no rights in or to any Account Data or Tracking Data, which shall, as between Publisher and Fyber, be the exclusive property of Fyber.
- 4.5 If instructed by Fyber, Publisher shall delete upon termination all copies of any Tracking Data, Account Data, and/or related materials. Termination of this Agreement will not release the parties of any obligation accruing prior to such expiration or termination. The rights and duties of the parties under Sections 4, 5, 7, 8, and 9 will survive the termination or expiration of the Agreement.

#### 5. PAYMENT

- 5.1 **Fyber Exchange Commission.** Fyber shall pay Publisher the Fyber Exchange Commission for marketplace services according to the revenue share stipulated in the Publisher Agreement, an equivalent agreement between the parties, or, in the absence of a specific agreement, the standard Fyber revenue share. Publisher's sole compensation under this Agreement (defined above as "**Commission**") shall be derived from the Net Proceeds actually collected and received by Fyber in connection with the required User Activities. Fyber shall in no event be responsible for paying any Commission if the Advertiser fails to pay Fyber. In case that the balance of amounts payable to the Publisher is less than two hundred euro (€ 200) or the equivalent thereof in the applicable currency, the balance will be carried forward to the following calendar month until (a) the balance of amount exceeds two hundred euro (€ 200) or the equivalent thereof in the applicable currency, or (b) the Agreement is terminated.
- 5.2 **No assurance of any particular earnings.** Publisher acknowledges that, unless agreed upon separately in writing, Fyber provides no assurance that Publisher will earn any particular amount of Commission, that Publisher will recoup any



expenditure made in fulfillment of its obligations under this Agreement, or that Fyber shall fill any percentage of available Ad space of any Publisher Property.

- 5.3 **Mediation Fees.** Mediation Fees, if applicable, shall be due from Publisher and payable to Fyber as set forth in the Publisher Agreement.
- 5.4 **Taxes.** Publisher is responsible for providing and maintaining accurate contact and payment information.
- 5.5 **Tracking.** Publisher agrees and acknowledges that all tracking of User Activities will be determined solely by the Fyber Tracking Method. No other measurements or statistics of any kind shall be accepted by Fyber or have any effect under the Agreement. Publisher further agrees and acknowledges that the determinations of Fyber with respect to the Tracking Method and/or Commissions and other fees are final. Fyber takes commercially reasonable measures to ensure that its Tracking Method at any point shall meet technical industry standards, but it cannot guarantee the absolute accuracy of the Tracking Method. If discrepancies occur, the parties will negotiate in good faith an amiable solution, otherwise Fyber's numbers will be decisive.
- 5.6 **Fraud.** Fraudulent activity ("**Fraud**") includes, among others and without limitations, (a) any action taken by Publisher, or anyone for whom in law Publisher is responsible, which is intended to inflate, either directly or indirectly, the Commission payable to Publisher; and/or (b) the generation of leads by a mechanism not approved or acceptable by Fyber, including the use of unsolicited email (SPAM) to promote Publisher Properties, automatic redirecting of visitors, blind text or misleading links, forced clicks, bots or any other method or automatic process that may lead to an artificially high number of delivered clicks or other User Activities. Fyber reserves the right, where it has a reason to believe in good faith that Fraud actually took place, to withhold or suspend payment of associated Commissions, unless and until Publisher provides evidence satisfactorily establishing the validity of such User Activities. The remedy set forth in this Section is cumulative and in no way limits or waives any other remedies available to Fyber.
- 5.7 **Incentives.** Publisher may set up and/or operate incentive mechanisms that reward users for performing certain actions. This may consist of granting the user additional premium services within the Publisher Property or crediting virtual currency to the user that otherwise would have to be acquired. The Publisher shall not reward the user with "real" (i.e., non-virtual) rewards such as real money, goods or other tangible objects, as well as rewards that have a monetary value outside its platform, without notifying Fyber in advance and receiving a written approval from Fyber. THE PARTIES SPECIFICALLY AGREE THAT FAILURE TO NOTIFY FYBER ACCORDING TO THIS SECTION IS A MATERIAL BREACH OF PUBLISHER'S REPRESENTATIONS AND WARRANTIES.

## 6. REPRESENTATIONS AND WARRANTIES





6.1 **General.** Each party represents and warrants that (a) it has the full corporate or organizational right, power, and authority to enter into the Agreement and to perform the acts required of it; (b) the execution of this Agreement and the performance of its obligations and duties, do not and will not violate any agreement to which it is a party or is bound, or any applicable federal, state or municipal law or regulation to which it is subject; and (c) this Agreement constitutes a valid and binding agreement enforceable in accordance with its terms.

6.2 **Publisher Representations and Warranties.**

a. Publisher represents and warrants that it shall ensure that all Publisher Properties (i) comply with all applicable federal and state laws and regulations, such as the criminal code and youth protection provisions, and do not contain or promote any illegal content; (ii) do not offer any rebates, coupons or incentives, including cash, points, prizes, and contest entries with the sole purpose of attracting visitors to the Publisher Properties to generate Commission; (iii) do not violate any intellectual property rights or otherwise violate or breach any duty toward, or rights of, any person or entity, including without limitation rights of privacy and publicity; (iv) do not contain any spyware, pirated software, digital rights protection circumvention or hacking tools, spamming tools, or any materials endorsing or encouraging violence, war, hatred, revenge, racism, sexism, victimization, discrimination of any kind, insults, pornography, obscenity, criminal activity, or any materials suitable to cause serious moral harm to children and young people or which threaten their well-being, or which are otherwise prohibited by any applicable law; (v) do not result in any consumer fraud, product liability or breach of contract to which Publisher is a party, or cause injury to any third party; (vi) do not contain any content that reflects unfavorably on Fyber and/or its Advertisers (each "**Prohibited Content**"); (vii) comply with all applicable terms, conditions and policies of application store vendors such as Google Play and Apple Store, including Apple's Developer Program License Agreement, the Android Market Developer Distribution Agreement, and any other terms required by third party distribution platform providers; and (viii) will only offer "virtual currency" as an incentive unless in compliance with the notification requirement set forth in these T&Cs.

b. **Notice.** Publisher further represents and warrants that: (i) none of the Publisher Properties are installed on a user's device without the user's consent; (ii) each Publisher Property provides clear disclosure and removal policies; (iii) Publisher includes within each Publisher Property and on any site from which a Publisher Property is available for download, a privacy statement disclosing that Publisher permits third parties to serve Ads within the Publisher Property and collect and use information about how the user uses the Publisher Property, including Tracking Data; and (iv) Publisher obtains an affirmative opt-in from each user consenting the collection of Tracking Data and it maintains documentation establishing such opt-in consents.





- c. **Ads.** Publisher represents and warrants that it shall not, and shall not permit, assist or encourage any third party to: (i) display the Ads other than via the Publisher Properties; (ii) modify, alter, translate, or create any derivative works of any Ad, in whole or in part, in any manner; (iii) alter, obscure or remove any notice, credits, attributions, or acknowledgements contained on or in the Ads; (d) use, copy, reproduce, retransmit, disseminate, re-purpose, broadcast or circulate any Ad other than as expressly permitted herein; (iv) use the Ad in any manner that may give any false or misleading impression or attribution; (v) develop any application or program having the same primary function as the Service; (vi) circumvent, disable or otherwise interfere with security related features of the Ad or the Service; (vii) reverse engineer, disassemble, decompile or otherwise attempt to derive any source material for the Service, in whole or in part; or (viii) contact, market to, communicate with, or solicit any Advertiser either directly or indirectly in connection with Advertiser's participation, actual or potential, in any service, website, or network that is similar to or in competition with the Service.

## 7. CONFIDENTIALITY; PRIVACY

- 7.1 The receiving party of any Confidential Information will use the same degree of care to protect the disclosing party's Confidential Information as it uses for its own similar information, but in no event less than reasonable care, and will use such Confidential Information only for the purpose of exercising its rights or fulfilling its obligations under this Agreement.
- 7.2 The receiving party will promptly return or destroy the disclosing party's Confidential Information upon request of the disclosing party.
- 7.3 The receiving party shall not disclose any Confidential Information to any person or third party other than (a) to its employees and authorized agents who have a strict business need to access such Confidential Information and who agree to comply with the terms of this Agreement regarding the protection, use and confidentiality of such Confidential Information, (b) if required to do so by applicable law, administrative process or court order; provided, however, that the receiving party shall limit the disclosure to only that information that must be disclosed to comply with such law, process or order and shall give the disclosing party prompt prior notice of such compelled disclosure to the extent legally permitted, so that the disclosing party may seek to protect such information.
- 7.4 **Privacy.** Each party represents and warrants that it will comply with (a) all applicable laws, governmental regulations and court or governmental agency orders, decrees and policies relating in any manner to the collection, use or dissemination of information about users or otherwise relating to privacy rights, (b) any written agreements that do not conflict with these T&Cs with non-governmental certification bodies, including but not limited to the Network Advertising Initiative, and (c) such party's posted privacy policy, as amended from time to time, with such privacy policy to include any and all disclosures and



election (i.e., opt-out) procedures that may be required under applicable laws in light of the activities contemplated by this Agreement.

#### 7.5 **COPPA.**

a. To the extent Publisher makes content available to children under the age of thirteen in the United States, this Section 7.5 shall apply. Publisher represents and warrants that: (i) Publisher will comply with all applicable laws and regulations related to Children's Online Privacy Protection Act of 1998 and its rules, as the same may be amended from time to time (collectively, "**COPPA**"); (ii) except as specifically set forth in a notice described in this section, the Publisher Properties are not directed to children under the age of thirteen and Publisher does not have actual knowledge that the Publisher Properties collect personal information from children under the age of thirteen; and (iii) Publisher shall not collect or pass to Fyber any personal information for any purpose not permitted under COPPA.

b. Publisher may access a designated area in the Dashboard allowing it to flag its Publisher Property as directed to children under the age of thirteen by clicking a check box. In case Publisher does not flag its Publisher Property accordingly or give Fyber any other notice in accordance with this provision, Fyber may rely on Publisher's representation and reasonably assume that Publisher Property is not directed to children under the age of thirteen. Publisher shall provide a prompt written notice to Fyber if the representations in this Section 7.5 are, or become, untrue with respect to any Publisher Property; provided, however, that no such notice shall relieve Publisher of its obligations pursuant to such representations until such notice is received by Fyber.

7.6 Publisher further represents and warrants that, in addition to the foregoing provisions, it has and shall maintain a privacy policy that: (i) fully and completely discloses to users of the Publisher Properties the practices of Publisher, Fyber or third parties with respect to the collection, use and disclosure of data and other information (including, but not limited to, personally identifiable information) through the use of cookies and similar methods, including for advertising purposes, on the Publisher Properties; (ii) discloses that Publisher allows third parties to serve advertising within the Sites; and (iii) provide an easy opt-out tool for users who wish to avoid collection of Tracking Data that includes clear and conspicuous opt-out information and instructions.

## 8. **DISCLAIMERS; LIMITATION OF LIABILITY**

### 8.1 **Advancements; Quality; Deficiencies; Disclaimers.**

a. The Service, by its nature, needs to be updated and developed continuously over time. Updates ensuring and improving usability may introduce some changes in and to the Service. The aim of Fyber while introducing such changes is to improve the Service and Publisher's use experience. Therefore,



Fyber grants the Publisher access to the Service in its available form or version at the relevant time. Publisher acknowledges that changes to the Service might affect system and compatibility requirements. Publisher shall have no claim for maintaining or restoration of the Service to a specific condition or scope. Publisher's causes of action in case of deficiency related to technical usability of the Services remain unaffected. Fyber therefore reserves the right to offer new features, to remove features from the Service or to change them. Publisher hereby consents to changes in and to the Service, as introduced by Fyber from time to time, and to additions, deletions, re-introducing and otherwise changes in features. In addition, Publisher hereby consents to the introduction of changes in properties, functions, or capacities of every Service element or features at Fyber's discretion. Such changes may improve, but also reduce to a significant degree the effectiveness and function of certain features or even remove certain features entirely. In such cases, Publisher has the right to terminate the Agreement effective immediately upon notice. Publisher shall have no other claims against Fyber due to changes in and to the Service under this subsection (a).

- b. Fyber provides the Service in accordance with the state of the art. However, Fyber cannot guarantee that the Service is free of any defect or deficiency at any time. Publisher therefore acknowledges that the Services might not work flawlessly at all times. Fyber makes best efforts to ensure complete usability of the Service. At the same time, the software that is part of the Service (as any software) cannot be provided completely free of bugs and errors. In such cases, Publisher may only claim damages for deficient Service if the usability thereof is seriously and lastingly impaired.
- c. Publisher acknowledges that the Service may be subject to technical limitations. This applies specifically to the maximum memory capacity or maximum size of data.
- d. Fyber is entitled to delete data and/or refuse storage of data if the technical limits are exceeded and in consideration of the provisions of these T&Cs. Fyber will notify the Publisher prior to deleting the data to the extent such actions are affecting the Publisher.
- e. Fyber protects its systems against virus attacks. Despite all precautions, a virus attack cannot be entirely excluded. In addition, it may happen that an unauthorized third party sends e-mails using the name of Fyber without Fyber's consent. Such e-mails may contain viruses, so-called "spyware" or links to web contents that contain viruses or spyware. These acts are beyond the influence of Fyber. Therefore, Publisher should scan for viruses all incoming e-mails sent under the name of Fyber. The same applies to e-mails of other Publishers or Advertisers.
- f. The Publisher should adequately document and report in writing to Fyber of any defect identified in the Service. Prior to reporting any error, Publisher should consult the Service instructions and possibly any other support for



troubleshooting provided by Fyber (particularly lists with frequently asked questions, discussion forums about problems, or the like). Publisher will provide all necessary cooperation and assist Fyber in its efforts to resolve any issue with the Service.

- g. Excluded from warranty are errors that occur through external influences such as operating errors by the Publisher, force majeure, modifications that were not carried out by Fyber, or any other manipulations.

## 8.2 Limitation of Liability; Availability.

- a. Fyber shall only have an unlimited liability for damages if it acted willfully and with gross negligence. In the event of any violation of significant contractual duties, Fyber shall also be liable in the event of simple negligence. Significant contractual duties (or so-called cardinal duties) in accordance with the law are only such duties facilitate the proper execution of the Agreement and such duties on the fulfillment of which the Publisher can rely.
- b. Fyber's liability is always limited to the foreseeable damage in case of a violation of significant contractual duties.
- c. The typical foreseeable damage in accordance with the above subsection b. shall be no more than 2,000 Euro per Account.
- d. The above-mentioned liability limitations do not apply to the liability in the event of injury to life, body and health or in case Fyber assumed a guarantee or in case of liability in accordance with the Product Liability Act. Fyber's liability in accordance with Section 44a of the German Telecommunication Act (TKG) shall remain unaffected thereby.
- e. Fyber shall be liable for advice only if it concerns a problem with its Service.
- f. On an annual average, Fyber guarantees availability of 99.5% for each Service. Excluded from availability calculation under this provision are (i) periods, during which the server for the individual Service cannot be reached because of technical or other problems beyond the influence of Fyber (e.g. force majeure, culpability of third parties, and similar occurrences); (ii) periods during which regular maintenance takes place. In addition, Fyber may limit access to the Service if required for reasons of network security and operation, maintenance of the network integrity, and particularly to operations and measure to prevent serious malfunctions of the network, software or stored data. All the periods mentioned herein are not considered in the calculation of availability. Fyber's liability for non-availability of the server shall remain unaffected in the case of intent and gross negligence. The Service may not be retrievable worldwide. Whether the Service can be retrieved fully or in a limited manner may depend on legal regulations and licensing requirements in particular countries.



- g. The above-mentioned limitations to liability also apply to the liability of employees, workers, staff members, representatives and agents of Fyber, in particular to the benefit of shareholders, employees, representatives, company bodies and their members with regard to their personal liability.

## 9. INDEMNIFICATION

- 9.1 **By Fyber.** Fyber shall indemnify, defend and hold harmless Publisher and its directors, officers, employees and agents (and successors, heirs and assigns) (the “**Publisher Parties**”) against any liability, damage, loss or expense (including reasonable attorneys’ fees and costs) incurred by the Publisher Parties in connection with any third-party claim that the Fyber Services, in the form provided by Fyber, infringe any Intellectual Property Right of a third party, unless and to the extent such infringement arises from Publisher’s use of the Fyber Services in violation of this Agreement. In the event of any such threatened or actual claim, in addition to its indemnification obligations herein, Fyber will have the right to either (a) replace or modify the infringing or allegedly infringing components of the Fyber Services, or (b) immediately terminate this Agreement upon written notice to Publisher. This Section states Fyber's entire liability and Publisher's sole and exclusive remedy for infringement claims and actions.
- 9.2 **By Publisher.** Publisher shall indemnify, defend and hold harmless Fyber, and its directors, officers and employees (the “**Fyber Parties**”) against any liability, damage, loss or expense (including reasonable attorneys’ fees and costs) incurred by the Fyber Parties in connection with any third-party claim arising out of or relating to (a) any alleged or actual breach of its representations, warranties or covenants under Sections 2, 3, 6, 7 or 10.2 of these T&Cs; (b) Publisher’s unauthorized use of the Fyber Services (not including claims for which Fyber is indemnifying Publisher); (c) if Publisher Properties contain any Prohibited Content; (d) if Publisher Properties or users’ downloads, installations or any use thereof violate any law or infringes upon or misappropriates any intellectual property right, publicity or privacy right; and (e) if Publisher has not disclosed Fyber’s Ad Tracking practices as required by the Agreement.
- 9.3 **Conditions.** As a condition of the foregoing indemnification obligations, the indemnified party will: (a) give the indemnitor prompt written notice of the relevant claim; (b) cooperate with the indemnitor, at the indemnitor's expense, in the defense of such claim; and (c) give the indemnitor the right to control the defense and settlement of any such claim, except that indemnitor will not enter into any settlement that affects the indemnified party's rights or interest without the indemnified party's prior written approval, which shall not be unreasonably withheld or delayed. The indemnified party will have the right to participate in the defense at its own expense.

## 10. GENERAL PROVISIONS

- 10.1 **Entire Agreement; Amendment; Severability.** The Agreement supersedes all previous agreements between the parties relating to the subject matter hereof.



No provision of the Agreement will be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is made in writing and signed by both parties. If any provision of the Agreement is found by a competent authority to be unenforceable or invalid under the applicable law, the validity of the remaining provisions will not be affected. Such provision will be interpreted so as to best accomplish the objectives of the parties within the limits of applicable law or applicable court decisions.

- 10.2 **Confidential.** Neither party shall disclose the terms or conditions of this Agreement or any other Confidential Information to any third party, except as permitted under Section 7 of these T&Cs or to its professional advisors under a strict duty of confidentiality. Notwithstanding anything to the contrary stated in these T&Cs, Fyber may communicate the general nature of the Agreement and identify or announce Publisher and Publisher Properties as participating in the Service to third parties, including in communications to existing and potential Advertisers, as well as in Fyber's promotional and press materials.
- 10.3 **Publicity and Test Results.** (a) In connection with the cooperation under this Agreement, each party shall have the right to mention the company name of the other party in press releases, promotional materials and other public communications. Either party may exercise the aforementioned right also securing the prior approval of the other party if at least one Publisher Property has been live with at least one of Fyber's ad products for at least three calendar months prior to the date of communication. (b) Additionally, Fyber shall have the right to make available to the public case studies that contain information about the Publisher. Such case studies will outline business situations, problems, analysis, solutions and results in connection with Publisher using the Fyber Ad Monetization Platform. The preparation of such case studies shall be done in cooperation with the Publisher and the publication thereof is subject to the approval of Publisher.
- 10.4 **Force Majeure.** Neither party will be liable for failure or delay in performing its obligations due to causes beyond its reasonable control, including without limitation acts of God, terrorism, war, riots, fire, earthquake, flood or degradation or failure of third party networks or communications infrastructure.
- 10.5 **Notice.** Notices must be in writing and will be deemed given when (a) delivered personally, or (b) delivered by recognized overnight courier (established by written verification of personal, certified or registered delivery from a courier or the postal service), or (c) by fax (established by a transmission report), or (d) if sent by email to the recipient and most up-to-date email address provided by the other party, provided that (i) the sending party can confirm that the email was apparently sent successfully according to its ordinary technical records and does not receive an error notice and (ii) the email includes in the subject line "LEGAL NOTICE". If sent by email from Publisher to Fyber, the following address should be copied: [legal@fyber.com](mailto:legal@fyber.com). Notices to a party shall be sent to the postal and electronic mail addresses set forth in the Publisher Agreement, or such different address as a party may designate in writing to the other party during the Term.





#### 10.6 **Modifications.**

- a. Fyber reserves the right to change or revise these T&Cs at any time effective prospectively if Fyber considers such steps necessary without adversely affecting the Publisher under the principle of equity and good faith. In particular, any changes in the legal environment may require a change of these T&Cs. Moreover, any new court decisions constitute a change in the legal situation. Some changes and advancements of the Service may necessitate a change or an amendment to these T&Cs.
- b. Any change or amendment will be announced in a suitable manner at least four weeks prior to its effective date. In general, the information about the modification of the T&Cs is announced by e-mail and/or on the Website or in the Service.
- c. The Publisher has the right to object to any change or amendment within four weeks after the date of publication/notification and possibility of acknowledgment. In case of a timely objection, both parties are entitled to a right to terminate the Agreement for cause in accordance with the termination provisions specified in this Agreement. Other rights to terminate shall be unaffected thereby. If the Publisher does not object within the objection period or if the Publisher continues to use the Service, then the change or amendment shall be deemed accepted and become an integral element of the Agreement.
- d. Fyber will inform the Publisher specifically of the changes in the T&Cs and the possibility to object and cancel, of the deadline and the legal consequences, particularly the consequences of non-objection.

10.7 **Governing Law and Jurisdiction.** These T&Cs and the Agreement are governed by the laws of the Federal Republic of Germany, excluding its conflict of laws principles. Publisher and Fyber agree that the courts in Berlin, Germany shall have exclusive jurisdiction over any suit between the parties arising out or relating to this Agreement, and the parties hereby consent to the personal jurisdiction and venue of these courts.

10.8 **Assignment.** The parties will not assign this Agreement or any rights or interest thereunder to any third party without the prior written consent of the other party. No assignment by Publisher, with or without Fyber's consent, will relieve Publisher from any of its obligations under this Agreement. Notwithstanding the foregoing, either party may assign the Agreement (a) pursuant to a merger or a sale of all or substantially all of its assets or capital stock; or (b) to any successor or assignee of all or substantially all of its business. Subject to the foregoing terms and restriction on assignments, the Agreement will be fully binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. Except as permitted by the foregoing, any attempted assignment or delegation will be null, void and of no effect.





- 10.9 **Independent Contractors.** The relationship of the parties is that of independent contracting entities and nothing in the Agreement is intended nor shall be construed to create an employer/employee relationship, a principal/agent relationship or a partnership or joint venture relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. Neither party will have the power to bind the other party or incur obligations on its behalf without the other party's prior written consent.
- 10.10 **Third-Party Beneficiaries.** It is not the intention of this Agreement to create any third-party beneficiary rights in any third-party individual or entity that is not a party to this Agreement

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