



## FYBER ADVERTISER TERMS AND CONDITIONS

### 1. Introduction

- 1.1. The following terms and conditions (“**T&Cs**”) apply between the Fyber group company (“**Fyber**”) as agreed between the Parties in the respective Insertion Order as described in Sect. 2.2 below and any advertiser or demand partner (e.g., advertising agency) that satisfies the criteria in Sect. 2 below (“**Advertiser**”, Fyber and Advertiser each referred to as a “**Party**” and collectively the “**Parties**”). Fyber offers its services to commercial Advertisers only. Consumers are not eligible to become an Advertiser.
- 1.2. The T&Cs and any applicable Insertion Orders issued by the Advertiser and accepted by Fyber shall be collectively known as the “**Agreement**”. Terms and conditions of the Advertiser do not become part of the Agreement, unless Fyber has accepted them in writing. The Parties acknowledge and agree that, in case of a conflict between these T&Cs and the Insertion Order, the Insertion Order shall prevail. The foregoing sentence applies also to conflicts between the Insertion Order and terms and conditions provided by the Advertiser, to the extent that Fyber has accepted such terms and conditions of Advertiser in writing and in accordance with this provision.
- 1.3. Fyber shall provide a dedicated online platform (the “**Fyber Exchange**”) and certain technical services related thereto, e.g., tracking services (collectively the “**Fyber Services**”) through which the Advertiser can set up advertising campaigns (e.g., by designating the campaign territory, bid price, budget, time schedule, etc. for the display of its ads) and provide its advertisements (the “**Ads**”) to be displayed on the website(s), in the mobile application(s), or on/in other advertising space(s) (collectively the “**Ad Inventory**”) owned, maintained, or controlled by third parties who offer their Ad Inventory to the Advertiser through the Fyber Exchange (the “**Publisher(s)**”) as further specified in the Insertion Order (the “**Ad Campaign**”). The Advertiser shall pay Fyber the fees agreed in the Insertion Order in accordance with Section 3.
- 1.4. Unless otherwise agreed in the Insertion Order, by rendering the Fyber Services, Fyber acts only as an intermediary between the Advertiser and the Publisher. The Advertiser is responsible for setting up the respective advertising campaigns and for providing the Ads it wishes to submit through the Fyber Exchange for display in the Publishers’ Ad Inventory. The Publishers are free to decide whether or not they display the Ads in their Ad Inventory. Neither Fyber nor the Publishers undertake or guarantee that Ads will be displayed in a quantity satisfactory for the Advertiser.
- 1.5. Fyber may, but is not obligated to, encourage the users visiting Publishers’ Ad Inventory (the “**User(s)**”) to interact with, view, or otherwise perform activities related to the Ads (including any Payable Events, as defined below) by enabling the Publishers to set up a system to reward the Publishers’ Users for activities performed in relation to the Ads (the “**Optional Incentive System**”), for example, by offering virtual currency or other benefits. The Advertiser acknowledges that it is in Fyber’s discretion to enable Publishers to set up an Optional Incentive System and that it is in the Publishers’ discretion how a respective Optional Incentive System is operated. Users’ responses to Ads are not under Fyber’s or Publisher’s control; neither Fyber nor the Publishers undertake or guarantee to provide for a certain satisfactory response of the Publishers’ Users.

### 2. Registration

- 2.1. A company or other legal entity offering commercial goods or services may become an Advertiser by registering on the Fyber Exchange and accepting these T&Cs or by otherwise entering into a contract with Fyber for the use of the Fyber Services.
- 2.2. After registering an account with Fyber on the Fyber Exchange, the Advertiser will have the ability to fill in and submit a written insertion order signed by Advertiser specifying further details of the Ad Campaign and the Fyber Services (the “**Insertion Order**”). The Insertion Order may be submitted to Fyber as a pdf-scan by email.
- 2.3. By submitting an Insertion Order, the Advertiser submits a binding offer to enter into a contract with Fyber with regard to such Insertion Order and according to the T&Cs (the “**Advertiser Offer**”). Any statements submitted by the Advertiser through the Insertion Order or otherwise through the Fyber Exchange must be complete and correct.



- 2.4. The Agreement between the Advertiser and Fyber is concluded when Fyber accepts the Advertiser Offer, either by submitting a signed acceptance notice to Advertiser as a pdf-scan by email or with an electronic signature through DocuSign (or another e-signature provider), or Fyber can decide at its sole discretion whether or not to accept the Advertiser Offer.
- 2.5. By submitting the Advertiser Offer, the Advertiser warrants that it has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder, and that the goods and services that it offers or advertises are lawful in the countries they are offered or advertised. The Advertiser also warrants that (a) it will advertise its goods and/or render its services in full compliance with all applicable laws, including any laws regarding the collection, transmission, or use of technical data and personal data, consumer protection, advertising, trademark, unfair competition, youth protection, and gambling, as well as any applicable requirements of the competent non-governmental, self-regulatory bodies in the applicable country (e.g., in Europe the IAB Europe <http://www.iabeurope.eu/> and its participating associations in the respective countries), and (b) that the Ads and any data, text, materials, information, reports, and any other content that Advertiser makes available to the Publishers through the Fyber Exchange under this Agreement (collectively, the “**Advertiser Materials**”) (i) comply and will comply with any license, terms of use, privacy policy, or any other agreement pursuant to which such Advertiser Materials were created or are offered, and (ii) are either owned or properly licensed by Advertiser or are in the public domain and their use by Fyber and the Publishers does not and will not violate, infringe, or misappropriate any proprietary or intellectual property rights of any third party (including copyright, trademarks, publicity, privacy and other personal rights). The Advertiser will not interfere or attempt to interfere with the proper working of the Fyber Services or prevent others from using the Fyber Services.
- 2.6. Fyber reserves the right, but shall have no obligation to access and review the Ads displayed through the Fyber Exchange, the goods and services promoted by the Ads, and the User Data (as defined below) the Advertiser collects through the Fyber Exchange in connection with its Ad Campaigns in order to determine whether a violation of the Agreement has occurred or to comply with any applicable law, regulation, administrative request, or governmental request.

### 3. Ad Campaign Management

The Fyber Exchange allows the Advertiser to set caps for the respective Ad Campaign subject to a 10% tolerance margin applying to each such cap for technical reasons, for example, caps on the maximum budget per day or per Ad Campaign, maximum number of Payable Events during a certain time period or per Ad Campaign, (collectively the “**Cap(s)**”). If the Advertiser is responsible for the tracking of the applicable Payable Events, the implementation of such Caps in the foregoing scope requires that the Advertiser (directly, or via its third-party tracking provider) promptly sends to Fyber all callbacks that record the completion of Payable Events relevant for the Cap set (for example, “app installed” callbacks). Fyber shall not be responsible, and shall be eligible to invoice Advertiser, for any deviation from the Caps that is caused by a delay of Advertiser or by a third party on Advertiser’s behalf in sending the required callbacks.

### 4. Fees, payment

- 4.1. The Advertiser shall pay Fyber based on the Payable Events described in the applicable Insertion Order. A “**Payable Event**” means any view (web/mobile), impression, installation (mobile), or other compensable activity of Users, subject to availability.
- 4.2. The amount payable to Fyber is based on the number of Payable Events performed with regard to the Ads delivered in the Publishers’ Ad inventory through the Fyber Exchange.
- 4.3. A Payable Event is presumed valid and compensable unless the Advertiser provides sufficient evidence that the Payable Event was the result of Fraud. “**Fraud**” means (a) any action taken by any person, which is intended to unduly inflate, either directly or indirectly, the fees payable under the Agreement; and/or (b) the generation of Payable Events by a mechanism not approved or acceptable by Fyber, including but not limited to (i) creating fake impressions, clicks, views, and installs generated by a person, a robot, an automated program, or any equivalent or similar mechanism having an equivalent or similar effect; (ii) operation of or linking to Ad Inventory sites that display no content for the sole purpose



of generating Payable Events; (iii) implementation of 1x1 pixels to deliver invisible advertisement; (iv) impersonating or misappropriating the identity of a Publisher and/or any other third party; (v) use of unsolicited email (SPAM) to promote Ad Inventory and landing sites, (vi) applying automatic redirecting of visitors, blind text or misleading links, forced clicks or views, or any other automatic processes or methods that generate a Payable Event without a conscious and willful action of a User. For clarity, the validity of a Payable Event does not require that any subsequent User activities are performed or additional outcomes are achieved (for example, to be valid, an 'install' does not require that the User actually uses the installed application afterwards).

- 4.4. The Advertiser shall duly examine the performance of the Ad Campaign and the delivered Payable Events and shall notify Fyber in writing of any Fraud that could be reasonably identified in such examination without undue delay, however, no later than twenty-five (25) days after the Payable Event has been recorded and made available to Advertiser within the Fyber Exchange. If Advertiser fails to notify any such identifiable Fraud with regard to a Payable Event within such time period, the Payable Event shall be deemed valid and compensable with regard to such identifiable Fraud. If the Advertiser detects any Fraud after the expiration of such time period that was not reasonably identifiable in such first examination, the Advertiser shall notify Fyber in writing of such Fraud no later than five (5) days after its detection. If Advertiser fails to notify Fyber of such Fraud within such time period, the Payable Event shall be deemed valid and compensable also with regard to such Fraud.
- 4.5. Subject only to the next two sentences, the Payable Events and related performance information are tracked by Fyber (or by a third-party provider acting on behalf of Fyber) and reported online to the Advertiser through the Fyber Exchange ("**Fyber Tracking**"). In certain cases, as agreed between the Parties, Advertiser shall track certain Payable Event and related performance information (including post-click activities), which are relevant for the applicable Ad Campaign. Fyber may, at its own discretion, agree to use tracking information obtained by Advertiser (or by a third-party provider acting on behalf of Advertiser) for the purpose of billing the Advertiser. If the Advertiser is responsible for the tracking of the Payable Events and other payment relevant data, Advertiser (or a third-party provider acting on behalf of Advertiser) shall submit such tracking information to Fyber promptly upon the completion of the respective Payable Event, if not otherwise agreed between the Parties for the applicable Ad Campaign. In the event that Fyber Tracking applies, Advertiser shall duly examine the tracking information provided by Fyber and shall notify Fyber in writing of any inaccuracy of the Fyber Tracking that could be reasonably identified in such examination without undue delay, however, no later than twenty-five (25) days upon receipt of the applicable tracking report. If Advertiser fails to notify Fyber of any such identifiable inaccuracy within such time period, the Fyber Tracking shall be deemed correct with regard to such identifiable inaccuracy. Subject to the Advertiser providing sufficient evidence of the inaccuracy within such twenty-five (25) day period, Fyber shall issue a revised invoice.
- 4.6. Advertiser's entitlement to a revised invoice under the foregoing Subsection 4.5 shall be excluded where the difference between the evidence provided by the Advertiser and the Fyber Tracking is less than ten percent (10%), which is considered a deviation in tracking customary in trade and therefore reasonably acceptable by both Parties.
- 4.7. Payment of invoiced amount is due within thirty (30) days after the invoicing date, unless the Advertiser already has credit on its account, in which case the payable amount will be set off against such credit amount after the Payable Event has occurred (see Section 4.8 subseq.). All amounts under this Agreement will be invoiced and payable in Euros, unless otherwise agreed in the Insertion Order. The Advertiser shall bear the costs of the wireless transfer of the fees to Fyber's bank account with a bank in the European Economic Area (EEA) set out in the applicable invoice. Fyber may choose not to issue an invoice if the amount due for the billing period is €200 or less. The outstanding amount will be included in the invoice Fyber issues for the subsequent billing period. Fyber reserves the right to charge interest on any late payment in accordance with the applicable statutory interest rate.
- 4.8. To the extent that Advertiser makes a pre-payment under a given Insertion Order, Fyber will credit the Advertiser's account accordingly. The deposited pre-payment amount shall be no less than €1,000 for each single payment transaction. The Advertiser's account balances will be reduced by Fyber to offset the amount payable to Fyber under this Section 4 according to Fyber's billing practice after the Payable Event has been recorded within the Fyber Exchange.



4.9. The Advertiser can only offset counterclaims against payment claims of Fyber if the Advertiser's counterclaims are undisputed, recognized by Fyber in writing, or awarded by final court judgment. The Advertiser can only exercise a right of retention if its counterclaim is based on the same contractual relationship as the claim of Fyber.

## 5. Taxes

5.1. All fees quoted in the Agreement, the Fyber Exchange, or otherwise do not include any taxes, customs, duties, levies, and charges of any kind whatsoever that may be incurred in connection with the Fyber Services under this Agreement (hereinafter collectively the "Tax(es)"). All such applicable Taxes shall be borne and paid by the Advertiser as specified by Fyber in any invoice, and all payments by the Advertiser to Fyber shall be made without any deduction or withholding of amounts on the account of Taxes.

5.2. If the Fyber Services are subject to value-added tax ("VAT") in the meaning of the European VAT Directive or to any other similar non-European tax under the applicable tax jurisdiction, VAT in the amount applicable under statutory law at the time of payment shall be added and paid on the agreed fees by the Advertiser, provided that Fyber is the tax debtor of such VAT amounts.

5.3. If the Advertiser is required by any law or regulation to make any withholding or deduction from payments to Fyber on the account of Taxes, the Advertiser shall, together with the relevant payment, pay such additional amount as will ensure that Fyber receives an amount equal to the sum it would have received if no such withholding or deduction had been required. In such case, upon the Advertiser's request, Fyber shall provide the Advertiser with such available information and documents as reasonably necessary for obtaining an exemption from the withholding or deduction of amounts or for a refund of the amounts to be withheld by the Advertiser on the account of Taxes under the applicable tax jurisdiction.

## 6. ADVERTISER MATERIALS; OBA

6.1. The Advertiser warrants not to submit any Advertiser Materials that (a) are unlawful (for example violate any applicable law regarding the transmission of technical and personal data, consumer protection, advertising, trademark, unfair competition, youth protection, and gambling), defamatory, libelous, abusive, fraudulent, harmful to minors, sexually explicit or obscene, or contain links to content of such nature, (b) contain depictions of violence or are threatening or harassing, (c) are in breach of Section 2.5 (b) above, (d) contain viruses, spyware, adware, or any other harmful code or activity that could, in an impermissible manner, access or use, impair, or injure any data, devices, computer systems, or software of Fyber, Publishers, or Users; (e) are false, misleading, or deceptive; or (f) link to spam, bulk mail, illegal activities (e.g., illegal product or service offers), or offers with hidden costs (each, an "**Advertisement of an Objectionable Nature**").

6.2. In case the Advertiser Materials are an Advertisement of an Objectionable Nature in certain countries or regions of the world only ("**Restricted Countries**"), the Advertiser shall block Restricted Countries for such Advertiser Materials. To the extent that the Fyber Exchange offers an option to block the Restricted Countries and/or not to select the Restricted Countries, the Advertiser shall use this feature or otherwise instruct Fyber in writing not to display the Advertiser Materials in Restricted Countries.

6.3. Advertisements of an Objectionable Nature and Advertiser Materials not blocked or selected for Restricted Countries are collectively referred to as "**Undesired Ads**".

6.4. Fyber has the right, but is under no obligation, to review Advertiser Materials submitted by the Advertiser before they are activated (i.e., made available through the Fyber Exchange).

6.5. Fyber reserves the right to deactivate or remove any Advertiser Materials if there is any indication for Fyber to reasonably believe that such Advertiser Materials are Undesired Ads. Fyber will inform the Advertiser in case its Advertiser Materials have been removed or deactivated within a reasonable time



period. The Advertiser may replace the Undesired Ads with Advertiser Materials that comply with the Advertiser's obligations under this Section 6.

- 6.6. The Advertiser hereby grants to Fyber a non-exclusive, worldwide, royalty-free license to reproduce, distribute, display, modify, enhance, and otherwise use the Advertiser Materials in connection with the provision of the Fyber Services, including, without limitation, for delivering the Ads provided by the Advertiser through the Fyber Exchange to Users in connection with any Ad Campaign. Fyber is entitled to grant the Publishers sublicenses to the Advertiser Material in the foregoing scope if necessary for the performance of the Agreement.
- 6.7. The following terms of this Section 6.7 apply only if the Advertiser engages in online behavioral advertising (“OBA”) and/or cross-app, multi-site, or cross devices data-gathering activities (as such terms are defined by the applicable self-regulatory codices of the competent non-governmental bodies in the country to which the applicable Ad Campaign is directed (e.g., for Europe the IAB EU Framework for OBA and the Addendum thereto on the Mobile Environment thereto, <http://www.edaa.eu/european-principles/>) via any Ad Campaign. If the Advertiser engages in OBA and/or cross-app or multi-site data gathering activities, the Advertiser’s privacy policy must comply with the applicable law and at least with the following minimum requirements: (a) describe the usage activity data it collects through cookies, web beacons, or other technologies (e.g., click stream information, browser type, subject of advertisements clicked or scrolled over, location data, personal device data); (b) describe how such data may be used in connection with advertising; (c) describe how, and for what purpose, such data may be shared with any third parties or may be otherwise collected by third parties; and (d) include a conspicuous link to or description of a mechanism by which consumers may opt out of the Advertiser’s OBA activities and cross-app, cross devices, or multi-site data-gathering activities. Advertisers shall ensure that a link to the applicable privacy policy is provided wherever cross-app, multi-site, or OBA data is gathered.

## 7. Advertiser's Site

- 7.1. The Advertiser warrants that (a) it does not make available on the website, mobile website, application, or other content that is linked to by the Ads (the “**Advertiser's Site**”) any unlawful, defamatory, libelous, harassing, abusive, fraudulent, or obscene or otherwise offensive or illegal content on the Advertiser's Site, and (b) that the Advertiser's Site and the Ad Campaigns are not intended for or directed to children under the age limit set forth by applicable law or by self-regulatory codices in the country to which the Ad Campaign is directed unless specifically indicated in the Insertion Order.
- 7.2. The Advertiser shall not alter the content or appearance of any Advertiser’s Site in a manner that is illegal under the applicable laws or violates this Agreement or applicable self-regulatory codices. In the event that Advertiser intends to change any Advertiser’s Site under its ownership and/or control in a manner that materially affects rights and obligations of the Parties under this Agreement, the Advertiser shall notify Fyber within a reasonable time before the change is implemented.
- 7.3. Fyber neither endorses nor approves of actions performed or content made available by the Advertiser.
- 7.4. Without limiting the generality of foregoing provisions of this Section 7, the Advertiser warrants that, to the extent that the U.S. Children's Online Privacy Protection Act of 1998 and its rules, as the same may be amended from time to time (collectively, “**COPPA**”) or any other act, co-regulation, or self-regulation principles on the protection of minors of any other country apply to the respective Ad Campaign (together with COPPA, the “**Protection of Minors Regulation**”), the Advertiser and its third-party contractors are in compliance with the applicable Protection of Minors Regulation, in particular that the Advertiser Sites and Ad Campaigns do not collect, use or disclose to any third party personal data (including, but not limited to persistent identifiers) from children under the applicable age limit from any Publishers’ User via the Fyber Service or create segments for OBA purposes that are specifically designed to target children in violation of any Protection of Minors Regulation.

## 8. Changes; Non-Availability

- 8.1. Fyber may modify the Fyber Services without prior notice but only with effect for the future (i.e., not retroactively) and provided that the modification is reasonable for the Advertiser taking into account its



interests. A modification is in particular reasonable for the Advertiser if it is necessary to adapt the Fyber Services to changed circumstances with regard to technological developments, market requirements as well as any changes in the applicable law, and in case of any new features, functions, or services added to the Fyber Exchange. Therefore, the Advertiser is granted a right of use only for the then-current version of the Services. If a modification of the Fyber Services is not reasonably acceptable for Advertiser, upon such modification coming into effect, Advertiser shall have the right to terminate the Agreement for cause pursuant to Section 9.4.

- 8.2. If Fyber cannot supply the Fyber Services during the agreed time period for reasons over which Fyber has no control ("**Non-availability of Service**"), Fyber will inform the Advertiser without undue delay, at the same time indicating – as far as possible – the expected new time period for the supply of the Fyber Services. If the provision of the Fyber Services is also not possible within such new time period (or – if such a new time period was not specified – within two (2) weeks after expiration of the original time period) for reasons beyond Fyber's control, Fyber has the right to withdraw from the concerned Insertion Order entirely or partially. In this case, any payments already made by the Advertiser for the unavailable Fyber Services will be reimbursed by Fyber without undue delay. It is also deemed a case of Non-availability of Service within the meaning of the above sentence in the case of the prevention of the timely provision of the Fyber Services through force majeure (*hoehere Gewalt*), i.e. events which cannot be reasonably foreseen and averted by Fyber by taking reasonable precautions, such as war, acts of terrorism, internal unrest, forces of nature, sabotage by third parties, strikes in areas for whose functioning Fyber is not responsible, and failure of communications networks or systems of a third party, for which Fyber is not responsible (this also applies when such a case of force majeure occurs at one of Fyber's subcontractors or suppliers). The statutory rights of withdrawal or termination of each Party in the case of such a Non-availability of Service remain unaffected.

## 9. Term, Termination

- 9.1. This Agreement shall enter into force and effect upon the execution of the applicable Insertion Order and remain in effect until terminated pursuant to this Section 9 or as otherwise provided for in the applicable Insertion Order.
- 9.2. Subject to Section 9.3 and unless otherwise agreed in the Insertion Order, each Party has the right to terminate an Insertion Order for convenience upon forty-eight (48) hours prior notice to the other Party.
- 9.3. If Fyber terminates an Insertion Order for convenience, the Advertiser will be refunded for any payments it may have already made under that Insertion Order and which are still credited to the Advertiser's account, unless the Parties mutually agree to keep the remaining funds in the Advertiser's Account. The Advertiser does not have any other claims against Fyber, unless otherwise provided in the Agreement. If the Advertiser terminates an Insertion Order for convenience while it has a pre-paid balance in its account, or where the Parties have agreed that the Advertiser spends a given amount of money for Ads on the Fyber Exchange under the terminated Insertion Order ("**Guarantee Sum**"), the Agreement and the Insertion Order shall remain in force until the Guarantee Sum has been spent or until there is no more pre-paid balance in the account.
- 9.4. Either Party has the right to terminate an Insertion Order under this Agreement for cause with immediate effect upon notice to the other Party. A termination for cause by either Party includes, but is not limited to, termination due to any material breach of this Agreement by the other Party.
- 9.5. If Fyber terminates an Insertion Order for cause, Fyber is entitled to offset from the remaining balance in the Advertiser account, if any, Fyber's reasonable costs and any damages incurred in connection with such termination.
- 9.6. If there is no option provided to terminate an Insertion Order under this Agreement within the Fyber Exchange account, the termination notice shall be in writing, signed by the terminating Party, and shall be sent to the address or email address of the other Party set out in the Insertion Order.
- 9.7. Either Party may terminate the entire advertising relationship with the other Party, including all Insertion Orders, ("**Termination of Relationship**") with or without cause within a thirty (30) days prior notice to the other Party in writing and signed by the terminating Party. Upon the effective date of Termination of



Relationship under this provision, Fyber will cancel the Advertiser account and send a final invoice to the Advertiser for Payable Events under any Insertion Order still valid until the effective date of such termination. Sections 9.3 to 9.6 shall apply *mutatis mutandis* to Termination of Relationship.

## 10. Use of data

- 10.1. **Publisher Data.** The Publishers may make available to the Advertiser through the Fyber Exchange certain data that relates to the Publishers' Ad Inventory, including, but not limited to, any information regarding the Users and their use of such Ad Inventory, including, but not limited to, advertiser identifiers, session-based browsing behavior, and http header information (the "**Publisher Data**"). Advertiser may only use or disclose Publisher Data as strictly necessary to facilitate the delivery of Ads through the Fyber Exchange to such Publishers' Ad Inventory. Unless otherwise explicitly agreed upon between the Parties in writing, Advertiser will not use or disclose any Publisher Data for any other purpose, including, without limitation, for retargeting purposes, to create targeting profiles or segments that are specific to any individual User or to otherwise append any Publisher Data to any other data maintained by or on behalf of the Advertiser. Advertiser agrees not to enhance and/or combine any Publisher Data with any personally identifiable data of the User or with any other User Data in a way that makes possible to determine the identity of any User. Advertiser shall treat Publisher Data as Confidential Information of Fyber. Following the completion of any Ad Campaign, Advertiser will delete any Publisher Data that it has accessed or received, unless otherwise is agreed upon between the Parties in writing.
- 10.2. **User Data.** To the extent Advertiser collects any data or information (a) provided by or collected about Users directly via any Ad; or (b) collected about Users by Advertiser via any website, mobile application, or other online service accessible to Users who click on, or otherwise interact with, any Ad (collectively the "**User Data**"), Advertiser shall be solely responsible for ensuring that it complies with all applicable laws relating to the collection, use, and disclosure of User Data. Without limiting the generality of the foregoing, if Advertiser collects User Data, Advertiser shall be solely responsible for ensuring that it provides all necessary notices to and obtains all necessary consents from Users in accordance with any applicable laws, including, without limitation, by providing notice of a legally adequate privacy policy that (a) is readily accessible to Users wherever User Data is collected, and (b) fully and accurately discloses what User Data is collected and how such User Data is used and shared. For clarity, User Data does not include any Publisher Data or Ad Campaign Data.
- 10.3. Fyber owns all right, title and interest in and to any data that Fyber collects in connection with any Ad Campaign through the Fyber Exchange, which may include, without limitation, information about Advertiser domain, Ads, the number of views, clicks and conversions (collectively the "**Ad Campaign Data**"). Fyber grants the Advertiser a royalty-free, non-exclusive, worldwide, non-assignable and non-sublicensable right to use the Ad Campaign Data solely in connection with the execution and for the term of the applicable Ad Campaign. Advertiser shall treat such Ad Campaign Data as Confidential Information of Fyber.
- 10.4. **Advertiser Tracking Data.** To the extent Advertiser provides to Fyber any data or information in connection with any Ad Campaign, which may include, without limitation, information about Advertiser domain, Ads, and the number of views, clicks, and conversions, Advertiser hereby grants Fyber a royalty-free, non-exclusive, worldwide, perpetual and assignable right to analyze, combine with other data, and otherwise use such in connection with the Fyber Services, including for providing the Fyber Services for the applicable Ad Campaigns of Advertiser, for generally enhancing, improving, and optimizing the Fyber Services, for statistical purposes, and market research.

## 11. Indemnification

- 11.1. Fyber shall indemnify, defend, and hold harmless Advertiser and its directors, officers, employees, and agents (and successors, heirs, and assigns) (the "**Advertiser Parties**") against any liability, damage, loss, or expense (including reasonable attorneys' fees and costs) incurred by the Advertiser 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



Advertiser's use of the Fyber Exchange 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 Advertiser.

- 11.2. Advertiser shall indemnify, defend, and hold harmless Fyber, and its directors, officers, employees, and agents (and successors, heirs and assigns) (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 Advertiser's representations, warranties, or covenants under this Agreement; (b) Advertiser's unauthorized use of the Fyber Exchange (not including claims for which Fyber is indemnifying Advertiser under Section 11.1); or (c) allegations that Advertiser's Site contains illegal content or content that is otherwise prohibited by this Agreement.
- 11.3. The indemnified Party will provide the indemnitor with prompt notice of any claim (provided that the failure to promptly notify shall only relieve indemnitor of its obligation to the extent it can demonstrate material prejudice from such failure) and at the indemnitor's expense, provide information, and assistance reasonably necessary to defend such claim. The indemnitor will not enter into any settlement or compromise that would result in liability to the indemnified Party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnifying Party has the right, at the indemnifying Party's expense, to assume the exclusive defense and control of any matter for which the indemnifying party is required to indemnify the indemnified party.

## 12. Limitation of Liability

- 12.1. Subject to Sections 12.2 and 12.3 each Party shall be liable pursuant to statutory law for damages and futile expenses (jointly the "**Damages**") caused to the other Party. Each Party's liability for Damages of the other Party (irrespective of the legal nature of the claim, whether under contract, tort, or otherwise)

(a) caused by (i) a breach of material obligations under this Agreement with ordinary negligence (*einfacher Fahrlässigkeit*), or by (ii) a breach of non-material obligations by employees or vicarious agents of the Parties who are not legal representatives or executive officers (*leitende Angestellte*) of a Party with gross negligence (*grobe Fahrlässigkeit*), shall be limited to those Damages foreseeable at the time of the conclusion of this Agreement that typically arise in transactions of this nature;

(b) caused by a breach of non-material obligations under this Agreement with ordinary negligence shall be excluded;

(c) and caused by a defect of the Fyber Services that already existed at the conclusion of this Agreement shall be excluded, provide that the Damages were not caused by negligence or willful intent of Fyber.

A material contractual obligation of a Party according to the meaning of the foregoing sentence is an obligation, the fulfilment of which is a prerequisite for enabling the proper fulfilment of the Agreement in the first place and on which the other Party regularly relies and may rely.

- 12.2. **TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS APPLYING IN THE COUNTRY WHERE THE ADVERTISER HAS ITS SEAT, EXCEPT FOR DAMAGES CAUSED BY WILLFUL INTENT OR GROSS NEGLIGENCE OF FYBER, (I) FYBER WILL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY EVEN IF FYBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (II) THE TOTAL LIABILITY OF FYBER FOR ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, SHALL NOT EXCEED €2,500.**





12.3. Notwithstanding the foregoing, nothing said in this Agreement shall limit the Parties' liability for Damages arising from death or personal injury, from breach of a contractual guarantee as to the quality of a good or service, or, in case of any other liability pursuant to applicable mandatory law, where such liability cannot be excluded or limited by agreement between the Parties in advance.

12.4 Fyber provides anti-fraud rules for the Publishers to respect; however, Fyber is under no obligation to monitor whether these rules are being followed, and Fyber shall not be liable to Advertiser in case anti-fraud rules are not properly implemented by Publishers.

### **13. Data Protection**

13.1 Each Party represents and warrants that it will comply with all (a) applicable laws, governmental regulations, and court or governmental agency orders, decrees, and policies relating in any manner to the collection, use, or dissemination of User Data or otherwise relating to privacy rights; (b) written agreements with non-governmental certification bodies, if applicable; 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 procedures that may be required under applicable laws in light of the activities contemplated by this Agreement. Where any content (including any Advertiser Materials) is made available to any individual in the European Union, both Parties will duly observe all of its obligations under European data protection legislation, in particular Directive 95/46/EC, Directive 2002/58/EC, and Directive 2009/136/EC as implemented nationally and any other relevant data protection and privacy laws which may arise in connection with this Agreement. Advertiser acknowledges that Fyber (i) may store User Data, Ad Campaign Data, and Publisher Data, which may be used to optimize Fyber's offers and services, for statistical purposes, and market research; (ii) may use e-mail addresses and other contact data submitted by Users for marketing and promotion, only as permitted by applicable law; and (iii) does not own or control the Publishers' Ad Inventory and makes no representations or warranties with regard to the Publishers' Ad Inventory, including the adequacy of any privacy notice(s) or consent mechanism(s) available on or through the Publishers' Ad Inventory, the age of the Publishers' audience, or the content of the Publishers' Ad Inventory.

### **14. Protection of Login Data**

14.1 The Advertiser shall keep all access data (login, passwords etc.) for the Fyber Exchange ("**Access Data**") strictly confidential. Sharing Access Data with any third party without the prior, written approval of Fyber is strictly prohibited. The Advertiser shall promptly inform Fyber in the event that it learns or suspects that an unauthorized third person is in possession of the Access Data.

14.2 In case Fyber has reason to believe that an unauthorized third party is in possession of Access Data, Fyber may, without assuming any responsibility to do, so change the Access Data without prior notice or block the respective account. Fyber will inform the Advertiser without undue delay and will, upon request, communicate the new Access Data to the Advertiser without undue delay. The Advertiser shall have no right to having its initial Access Data restored.

14.3 In case a third party uses, through the Advertiser's fault, the Advertiser's Access Data, the Advertiser is liable for any and all actions and damages arising from such use. In such event, all access through the Advertiser's Access Data shall be considered as an access by the Advertiser.

### **15. Access to the T&Cs; Changes and Further Notices; Communication**

15.1 Each login to the Fyber Exchange is subject to the T&Cs. The T&Cs can be printed or saved on storage media.

15.2 Fyber may modify these T&Cs at any time and for any reason. The Advertiser will be notified of changes to the T&Cs in writing either on the Fyber Exchange and/or via email to the email address provided in the Advertiser account on the Fyber Exchange. Once Fyber has provided such notice to the Advertiser, all future Insertion Orders will be subject to the revised T&Cs.

15.3 Unless otherwise set out in the Agreement, Fyber will communicate with the Advertiser by submitting notices in the Advertiser's account on the Fyber Exchange or via email.

### **16. Ownership of Rights**



- 16.1 The Advertiser acknowledges that, by registering to the Fyber Services, it grants Fyber the right to name the Advertiser as a reference for Fyber's Services. This includes the right to use the Advertiser's logo on Fyber's websites. The Advertiser may revoke this right at any time, in writing, for any future use.
- 16.2 Fyber will retain all rights, title, and interests in and to the Fyber Services (except for any licensed content and third-party Ads included therein), including all data (such as any usage data and compilations thereof), information and software related thereto. The Advertiser acknowledges that the software, information, content, and data relating to the Fyber Services are protected for Fyber under copyright and similar rights and may contain trade secrets or other intellectual or industrial property owned or licensed by Fyber.
- 16.3 The Advertiser agrees not to modify, alter, create, or copy derivative works of the provided data, information, content, or software of the Fyber Exchange. Fyber does not grant to the Advertiser any license, express or implied, to the intellectual or industrial property of Fyber or its licensors, except for a limited right of use according to the terms and for the duration of the Agreement.

## 17. CONFIDENTIALITY

- 17.1 **"Confidential Information"** means any non-public information relating to or disclosed in the course of and/or in connection with this Agreement, which is or should reasonably be understood to be confidential. Among other things, and without limiting the generality of this definition, the Ad Campaign Data and the Publisher Data are Confidential Information of Fyber; the terms of this Agreement are Confidential Information of both Parties. 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.
- 17.2 Neither Party shall disclose Confidential Information to any third party, except as permitted under this Section 17. Notwithstanding anything to the contrary in this Agreement, Fyber may communicate the general nature of the Agreement and identify or announce Advertiser as using the Fyber Exchange to third parties, including in communications to existing and potential customers, as well as in Fyber's promotional and press materials.
- 17.3 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 of a prudent business person, and will use such Confidential Information only for the purpose of exercising its rights or fulfilling its obligations under this Agreement.
- 17.4 The receiving Party will promptly return or destroy the disclosing Party's Confidential Information upon request of the disclosing Party, provided however, that the receiving Party shall have the right to archive a copy of Confidential Information if and to the extent required by applicable mandatory law for the required record retention period. In this event the receiving Party shall return, destroy, or delete (as applicable) such copy upon the expiration of the required record retention period.
- 17.5 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 in connection with the performance of this Agreement and who agree to comply with the terms of this Agreement regarding the protection, use, and confidentiality of such Confidential Information, or (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.
- 17.6 The confidentiality obligations of the Parties set out in this Section 17 shall apply during the term of this Agreement and shall survive its termination or expiration for any reason whatsoever.

## 18. Miscellaneous

- 18.1 Fyber's failure to act with respect to a breach by the Advertiser does not waive Fyber's right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by Fyber under the Agreement shall be deemed effective unless delivered in writing and signed by a duly appointed representative of Fyber.



- 18.2 All or any of Fyber's rights and obligations under the Agreement may be assigned to a subsequent owner or operator of the Fyber Exchange in a merger, acquisition, or sale of all or substantially all of Fyber's assets.
- 18.3 The Advertiser must not assign or transfer the Agreement or any or all of its rights thereunder without the prior written consent of Fyber.
- 18.4 Section headings used in the Agreement are for convenience only and shall not affect the interpretation of the Agreement.
- 18.5 If any provision of this Agreement is or becomes invalid or unenforceable or if this Agreement contains any omissions, the validity of the remaining provisions will not be affected. The Parties shall replace any invalid or unenforceable provision and remove any omission by a valid and enforceable provision that the Parties would have agreed on in good faith and taking into consideration the purpose of this Agreement if they had been aware of the invalid or unenforceable provision or the omission when entering into this Agreement.
- 18.6 Except for the limitations of liability set out in Section 12, which shall be exclusively governed by the laws applying in the country where Advertiser has its seat, this Agreement and all future amendments hereto, including any obligations, rights, and claims of the Parties arising out of or in connection with this Agreement – irrespective of their legal grounds (e.g., under contract, tort, or otherwise) – shall be exclusively governed by the laws of the Federal Republic of Germany, excluding conflicts of laws principles.
- 18.7 The Advertiser and Fyber agree that the courts at Fyber's seat shall have exclusive jurisdiction over any claim, dispute, or action arising under or in connection with this Agreement or any future amendment hereto, irrespective of the legal nature of such dispute, claim, or action (e.g., under contract, tort, or otherwise). Mandatory statutory provisions on exclusive jurisdiction of courts shall not be affected by the foregoing provisions.
- 18.8 This is the entire agreement between the Parties relating to the subject matter of this Agreement and it supersedes all prior commitments, negotiations, and understandings with respect to Advertiser's use of the Fyber Services. Further verbal or written agreements, arrangements, or commitments with respect to the subject matter of this Agreement do not exist or shall subsequently be executed between the Parties via a written instrument signed by both Parties. With the exception of Fyber's representative managing directors, authorized signatories, and other persons authorized to represent Fyber, who are named as Fyber's authorized representatives with respect to the corresponding business relationship with Advertiser, Fyber's employees are not authorized to enter into verbal or other agreements with Advertiser or make verbal or other commitments which deviate from Fyber's agreements and commitments concluded in writing, including this Agreement.