



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; Fyber and Publisher, each referred to as a “**Party**” and, collectively, as the “**Parties**”) 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 access and use the Services and to manage the offering of its Inventory to Advertisers and third-party advertisers for placements of Ads over the Fyber Exchange and the Fyber Mediation Platform.

“**Account Data**” means the Ad Performance Data and the Mediation Data (if applicable) as well as other information Fyber may make available to Publisher over the Ad Monetization Dashboard during the Term.

“**Ad**” means any advertisement, including any graphics, text, hyperlinks, or other promotional content therein, provided by Advertisers to Fyber to be served over the Fyber Exchange.

“**Ad Code**” means the advertising code that Fyber includes in the Ads for tracking purposes.

“**Ad Server**” means the functionalities provided by Fyber that enable the self-serving by Publisher of advertisements on Publisher Properties, including tools for Ad campaign management, Ad trafficking, and the logic system supporting targeting for optimization.

“**Advertiser**” means the third-party client of Fyber, including advertisers, their advertising agencies, and other demand partners who have entered into a contract with Fyber to serve their Ads over the Fyber Exchange for placement on the Publisher Properties of Fyber’s Publishers.

“**Agreement**” means these T&Cs; the Publisher Agreement (if any); any additional agreement executed between Fyber and Publisher relating to the subject matter hereof (if any); and any amendments, annexes, or addenda to any of the foregoing documents.

“**Commission**” means the compensation Fyber pays to Publisher under the 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. 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 act committed by a third party in breach of an agreement or applicable law; (b) was already in possession of the receiving Party without an obligation of confidentiality at the time of its disclosure; (c) was independently developed by the receiving Party without access to the relevant Confidential Information of the other Party and violation of the Agreement; or (d) was received from a third party that was under no obligation to keep such information confidential.

“**Dashboard**” or “**Ad Monetization Dashboard**” means the panel made available in the Account through which Publishers can set up their Publisher Properties and Inventory; integrate ad sources; and manage, optimize, and analyze their Ad monetization strategy.

“**Fees**” means Fyber’s costs and fees related to the operation, maintenance, and security of the Fyber Platform that are directly associated with providing the Services to Publisher, including but not limited to costs and fees related to third-party ad serving and bidding, Fraud risk (including mitigation and prevention measures), customer support, tracking, attribution, and measurement.

“**Fyber API**” means Fyber’s application programming interface that specifies patterns of interaction between certain software components required for the delivery of Ads on the Publisher Properties through the Fyber Exchange.



“**Fyber Exchange**” means the demand exchange platform provided by Fyber to Publisher that enables Publisher to place and display Ads on Publisher Properties.

“**Fyber Mediation Platform**” means a service Fyber offers Publisher that enables Publisher to integrate, manage, and optimize in the Dashboard other ad networks and exchanges approved by Fyber with whom Publisher has a contract about the placement of Ads by third-party advertisers on the Publisher Properties (the “**Mediation Partners**”).

“**Fyber Property**” means the Services, Website, Tracking Data, Account Data, Ads, Fyber Exchange, Fyber SDK, Fyber API, the Fyber Ad Server, and any documentation relating to any of the foregoing as well as any Intellectual Property Rights in and to any of the foregoing owned and/or licensed by Fyber from third parties, including any Advertisers, except for the Publisher Data and User Data directly collected by Publisher and provided to Fyber.

“**Fyber SDK**” (Software Development Kit) means the proprietary library of code owned by Fyber that Publisher integrates in its Publisher Properties to use the Services and display Ads on its Publisher Properties.

“**Fyber Tracking Method**” means the reporting and/or tracking procedures and technology used by Fyber to track, collect or compile Tracking Data, including Fyber-accepted reporting and/or tracking procedures and technology of the Advertisers (as the case may be).

“**Intellectual Property Rights**” means any patent; copyright; neighboring right to copyright, including database right, right to trademarks, to trade and business secrets, to trade dresses, to domain names, to mask works, to moral rights of authors of copyright protected works, publicity, privacy, and any other personal right, right of attribution, or integrity; or any other intellectual or industrial property right anywhere in the world, whether under statutory, common law, or otherwise.

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

“**Mediation Data**” means information related to the performance of Ads of third-party advertisers served by Mediation Partners 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 of these T&Cs.

“**Publisher**” means a customer of Fyber who offers and makes Inventory available via the Fyber Exchange for the placement of Ads and/or uses the Ad Serving Services.

“**Publisher Agreement**” means a written contract signed between Fyber and Publisher (if any), including all amendments and addenda thereto, in which the Parties agree on certain specific terms related to the subject matter hereof.

“**Publisher Property**” means any mobile application or website owned or managed and registered by Publisher on its Account over which Ads are served.

“**Publisher Property Characteristics**” means description and categorization of the Publisher Property, 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) allow Publisher and Advertisers to access and use Fyber’s automated Real-Time Bidding system to purchase Inventory; and (b) enable Fyber to facilitate the delivery of Ads to the Users of the Publisher Properties on Advertisers’ behalf.

“**Services**” means the services provided by Fyber to Publisher, as listed under section 1 of these T&Cs.

“**Tax**” means all taxes, customs, and charges accessory to taxes within the meaning of section 3 (1) – (4) of the German General Tax Code (*Abgabenordnung*) and any similar taxes, customs and charges accessory to taxes under non-German laws as well as all other governmental charges of any kind whatsoever.



“**Term**” means the term of the Agreement from the date of its execution until its valid termination or expiration under these T&Cs or the Publisher Agreement (if any).

“**Tracking Data**” means (i) information relating to the performance of the Ads served on the Publisher Properties, including any User Activities (the “**Ad Performance Data**”); (ii) the Mediation Data; (iii) data relating to the Publisher Properties, including the Publisher Property Characteristics (“**Publisher Data**”); and (iv) data relating to the Users and their use of the Publishers Properties, including advertiser identifiers, session-based browsing behavior, http header information, device-related data, such as the type of the User’s device, the operating system on which the Publisher Properties were running, the wireless carrier providing communication services to such device, and the geographical location of the device (“**User Data**”) that is (in each case (i) to (iv)) either tracked by Fyber or made available to Fyber by the Advertisers, by Publisher, or the Mediation Partners.

“**User**” means any end user who installs, downloads, accesses, or otherwise uses any Publisher Properties on his or her device.

“**User Activity**” means any view (web/mobile), impression, installation (mobile), or other activity of Users in connection with their use of the Publisher Properties, including any activity subject to the incentive mechanism, compensable under the Agreement.

“**VAT**” means value-added taxes within the meaning of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax, as amended from time to time (the “**EU VAT Directive**”), and the Council Implementing Regulation (EU) No 282/2011 of March 2011, as amended from time to time (the “**EU VAT Regulation**”).

“**VAT Information**” means the VAT-related information requested from Publisher during registration, it being understood that the terms in the VAT-related queries during registration shall be construed in accordance with the EU VAT Directive, the EU VAT Regulation, and applicable VAT laws in Germany.

“**Website**” the website located at 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 provide the following Services during the Term:

- 1.1 Make the Website and the Account with the Ad Monetization Dashboard available to Publisher;
- 1.2 Make the Fyber Exchange available to serve Ads provided by Advertisers for placement on the Publisher Properties; Publisher hereby agrees that Fyber may: (a) store and manage the Inventory; (b) select the Ads to be delivered to the Publisher Properties if not otherwise agreed between Publisher and Fyber; (c) identify, select, and manage relationships with Advertisers; (d) determine the terms and conditions under which Ads are served; (e) establish price schedules and other terms and conditions applicable to the serving of Ads by Fyber; and (f) take all actions relating to the foregoing; the Advertisers are solely responsible for the Ads served, and Fyber does not assume any obligation to review and monitor the Ads provided by Advertisers;
- 1.3 Make the Fyber API and Real-Time Bidding available to Publisher so that Publisher can receive and place the Ads on the Publisher Properties;
- 1.4 Provide the Ad Server (subject to a separate agreement between the Parties);
- 1.5 Make the Account Data available to Publisher;
- 1.6 Calculate, report, and pay out the Commission to Publisher; and
- 1.7 Provide the Fyber Ad Mediation Platform.



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, accurate and complete Publisher Properties Characteristics, as well as accurate and complete VAT Information.
- 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 PUBLISHER IS SOLELY RESPONSIBLE FOR PROVIDING ACCURATE AND COMPLETE VAT INFORMATION DURING REGISTRATION AND FOR KEEPING THE VAT INFORMATION IN ITS ACCOUNT UP TO DATE AT ALL TIMES. PUBLISHER WILL SIMILARLY KEEP ALL OTHER ACCOUNT INFORMATION UP-TO-DATE AND SHALL PROMPTLY NOTIFY FYBER OF ANY CHANGES OF ITS ACCOUNT INFORMATION BY EMAIL. ACCOUNT ACCESS IS PROVIDED ON A PASSWORD-PROTECTED BASIS. FYBER SPECIFICALLY POINTS OUT THAT FOR SECURITY REASONS SUCH ACCESS DATA SHOULD BE CHANGED REGULARLY.
- 2.4 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 prior written (email suffices) approval.
- 2.5 Publisher may use a third party to access and manage its Account on Publisher's behalf only with the prior written (email suffices) approval of Fyber in each case (the "Authorized Provider"). Publisher must ensure that any such Authorized Provider agrees to be bound by and complies with the terms of the Agreement. Publisher must ensure and enforce that the Authorized Provider shall not access and use any Account Data for purposes other than the performance of the Agreement on behalf of Publisher. Publisher will be fully responsible and liable for all acts and omissions of the Authorized Provider in connection with the performance of the Agreement.
- 2.6 Publisher shall not allow, enable, or participate in any unauthorized use of the Account. If a third party uses the 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.
- 2.7 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.
- 2.8 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 an unauthorized third party, then, for security reasons, Fyber reserves the right at its sole discretion to either change the access data at its own discretion without prior notification or to block the Account. In such cases, Fyber will inform the Publisher without undue delay and provide the new access data upon request within a reasonable time. Publisher has no claim that the original access data must be restored.
- 2.9 If the Publisher violates its obligations under this section 2, Fyber reserves the right to terminate the Agreement for cause with immediate effect upon notice.
- 2.10 Publisher will comply at all times with all contract terms, policies, guidelines, rules and standards of third-party platforms supported by the Services that apply to the development and distribution of its Publisher Property on the applicable third-party platforms.

3. LICENSE GRANT AND PROPRIETARY RIGHTS

- 3.1 **To Publisher.** Subject to these T&Cs and for the Term, Fyber hereby grants Publisher a limited, non-exclusive, royalty-free, non-transferable, non-sub-licensable, revocable license to (a) publish and display Ads on the Publisher Properties in an unmodified form, subject to the territorial (if any) and other restrictions set out for the respective Ad campaign (e.g., display of the Ad only to Users domiciled in a specific country or not to minors under a certain age); (b) use the Fyber API, integrate and use the Fyber SDK in the Publisher Properties solely to exchange data between the Publisher Properties and the Fyber



Exchange, and to enable Publisher to receive Ads from the Fyber Exchange and to display such Ads to Users of the Publisher Properties; (c) access and use the Ad Server through its Account for self-serving of advertisements, subject to a separate agreement between the Parties; and (d) access and use the Account Data, in each case (a) to (c) for the sole purpose of Publisher's internal business operations in connection with the Services and in accordance with applicable laws and regulations.

Nothing contained in this section 3.1 shall transfer any right, title, or interest in or to Fyber Property. Except for the foregoing license, 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 Term, Publisher grants to Fyber the non-exclusive, royalty-free, and worldwide right and license to (a) select and serve Ads on the Publisher Properties in Fyber's reasonable discretion (subject to any deviating agreement between the Parties); (b) promote, market, and sell to Advertisers the Inventory for the placement of Ads in Fyber's sole discretion; and (c) to access the Publisher Properties, including any password-protected area thereof, for the purpose of serving Ads and collecting Tracking Data. Publisher grants Fyber a non-exclusive, royalty-free, worldwide, transferable, sub-licensable, and perpetual right to (a) track, collect, analyze, combine with any other data of Fyber or any third parties (including Mediation Partners) and otherwise use the Publisher Data, User Data (provided by Publisher to Fyber) and Mediation Data for providing the Services; for generally enhancing, improving, and optimizing the Services; for statistical purposes; market research and benchmarking of Fyber, including the right to provide and sublicense Tracking Data to Advertisers for their advertising purposes and to Mediation Partners of Fyber for optimization and benchmarking purposes.

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. Except for the foregoing license, Publisher and its suppliers retain all right, title, and interest in and to the Publisher Properties.

4. TERM AND TERMINATION

- 4.1 The Agreement will enter into effect either upon (i) Fyber accepting Publisher's Account registration (whereby such registration includes the acceptance of these T&Cs by Publisher); or (ii) the signing of a Publisher Agreement between the Parties. The Agreement shall continue in full force for an indefinite term until it is terminated by either Party (i) without cause for convenience upon thirty (30) days' prior written notice to the other Party; or (ii) for cause in accordance with subsection 4.3 below. Notwithstanding the foregoing sentence, in the event of such a termination, the Agreement shall continue to apply with regard to the delivery of Ads on the Publisher Properties that were scheduled for such delivery prior to the effective date of such termination and cannot be canceled by Fyber prior thereto.
- 4.2 Fyber may suspend Publisher's access to all or any part of the Services immediately, with or without notice, if Fyber has reason to believe in good faith that Publisher or any of Publisher Properties violate any term or condition of the Agreement until it has been clarified that there is no such violation.
- 4.3 Either Party may terminate the Agreement for cause with immediate effect upon written notice to the other Party if the other Party is in breach of one of its material obligations under the Agreement, provided that the breaching Party has not cured such breach within five (5) business days after receipt of a written (email suffices) notice of the breach from the terminating Party. The repetitive (i.e., at least three times) breach of one and the same non-material obligation of a Party shall be deemed a breach of a material obligation by that Party for the purposes of this termination clause.
- 4.4 Upon termination of the Agreement, whether with or without cause, all rights and licenses granted to Publisher shall immediately terminate. Publisher shall discontinue all use of the Services, deactivate and delete the Fyber SDK in the Publisher Properties, and shall have no right, interest, or title in or to any Account Data or Tracking Data (other than Publisher Data and User Data directly collected by Publisher from its Users), which shall, as between Publisher and Fyber, be the exclusive property of Fyber. For clarity, Publisher may use Account Data to the extent required for settling any open Commission or other due amounts payable by Fyber.
- 4.5 If instructed by Fyber, Publisher shall delete upon termination all copies of any Tracking Data (other than Publisher Data and User Data directly collected by Publisher from its Users), Account Data, and/or related materials. Termination of the 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 2, 4, 5, 7, 8, 9, and 11.6 will survive the termination or expiration of the Agreement.

4.6 ANY TAX-RELATED CLAIMS PURSUANT TO SECTIONS 5.3, 5.4, 5.8, 9, AND 11.6 SHALL BE TIME BARRED AND LAPSE AT THE LATER OF SIX (6) MONTHS AFTER (I) THE RELEVANT TAX ASSESSMENT NOTICE HAS BECOME FINAL AND BINDING AND NON-APPEALABLE (BESTANDSKRÄFTIG UND UNANFECHTBAR), OR (II) THE REGULAR STATUTORY LIMITATION PERIOD FOR THE RELEVANT TAX.

5. COMMISSION; BILLING; TAXES

5.1 **Fyber Exchange Commission.** Fyber shall pay Publisher the Fyber Exchange Commission 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 that is specified in the Account. Publisher's sole compensation under the 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 the case that the balance of amount(s) payable to the Publisher is less than one thousand euro (€1000) or the equivalent thereof in the applicable currency, the balance will be carried forward to the following calendar month until (a) the balance of payable amounts exceeds one thousand euro (€1000) or the equivalent thereof in the applicable currency, or (b) the Agreement is terminated. Notwithstanding the foregoing sentence, Fyber will pay out any accrued Commission amount by the end of each calendar year if the €1000 threshold is not reached by the end of the then current calendar year. The billing period for the Commission is the calendar month if not otherwise agreed between the Parties. The Commission is due and payable within forty-five (45) calendar days after the end of each billing period and in Euro, if not otherwise agreed between the Parties. Fyber may deduct from the payable amounts the costs (if any) of the wireless transfer of the payable amounts to Publisher's bank account or of such other payment method as may be agreed between the Parties.

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 the Agreement, or that Fyber shall fill any percentage of available Inventory of any Publisher Property with Ads.

5.3 **Billing.** The Commission will be settled by self-billing: Fyber will issue self-billed invoices (*Gutschriften*), and Publisher must not issue any invoices (*Rechnungen*). Self-billed invoices to Publishers are exclusively sent by email. Publisher explicitly waives any requirement or request to receiving the self-billed invoices by post. The Publisher agrees that it will not object to Fyber's self-billed invoices if the content of such an invoice is correct. The Publisher shall immediately after receipt of any self-billed invoice check its accuracy. In case of any inaccuracy (including, where applicable, any non-compliance with the requirements under sections 14, 14a of the German VAT Act), Publisher shall notify Fyber in writing (email suffices) on such inaccuracy no later than fourteen (14) days upon receipt of the self-billed invoice, and Fyber will then issue a corrected self-billed invoice. In case the Publisher does not object to the self-billed invoice within such time period, then the self-billed invoice shall be deemed approved and accepted by Publisher.

5.4 **VAT.** Any legally owed German VAT for services supplied by Publisher in Germany shall be added to the Commission in the respective statutory amount and, provided that (i) Publisher is the tax debtor of such legally owed VAT, (ii) Publisher has not objected to the respective self-billed invoice, and (iii) the respective self-billed invoice corresponds to the requirements under sections 14, 14a of the German VAT Act, paid to Publisher. If any Services supplied by Fyber to Publisher are subject to VAT under the applicable VAT jurisdiction and Fyber is the tax debtor of such VAT and, as the case may be, of any related charges accessory to Taxes, Publisher shall pay these Taxes in the respective statutory amounts to Fyber.

5.5 **Tracking.** Publisher agrees and acknowledges that all tracking of User Activities and the Commission payable will be determined solely by the Fyber Tracking Method. Fyber shall not be obligated to accept any other measurements or statistics of any kind, which shall not have any effect under the Agreement. Publisher shall duly examine the Account Data and Commission reports when provided by Fyber and shall notify Fyber, in writing (email suffices) and without undue delay, of any inaccuracy of the Account Data or the Commission that could be reasonably identified in such examination, however, no later than fourteen (14) days upon receipt of the applicable Tracking Data or Commission report. If Publisher fails to notify Fyber of any such identifiable inaccuracy within such time period, the Account Data and Commission shall be deemed correct with regard to such identifiable inaccuracy. Publisher further agrees and acknowledges that the determinations of Fyber with respect to the Tracking Data and/or Commission are final where the difference between the evidence provided by Publisher and the Account Data is less than ten percent (10%), which is considered a deviation in tracking customary in trade and therefore reasonably



acceptable by both Parties. If the deviation is 10% or more, the Parties will negotiate in good faith to find an amiable solution.

- 5.6 **Fraud.** Fraudulent activity (“**Fraud**”) includes, among others and without limitations, (a) any action taken by any person that is intended to inflate, either directly or indirectly, the Commission payable to Publisher; and/or (b) the generation of User Activities by a mechanism not approved or acceptable by Fyber, including but not limited to (i) the use of unsolicited email (SPAM) to promote Publisher Properties; (ii) applying automatic redirecting of visitors, blind text, or misleading links, forced clicks, bots, or any other automatic process or method that generates a User Activity without a conscious and willful action of a User; (iii) 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; (iv) operation of or linking to Inventory sites that display no content for the sole purpose of generating User Activities; (v) implementation of 1x1 pixels to deliver invisible advertisement; (vi) impersonating or misappropriating the identity of a Publisher and/or any other third party. 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 for Fraud.
- 5.7 **Incentives.** Publisher may set up and/or operate incentive mechanisms that reward Users for performing certain User Activities. This may consist of granting the User additional premium services within the applicable Publisher Property or crediting virtual currency to the User for use within the applicable Publisher Property that otherwise would have to be acquired. The Publisher shall not reward the User with “real” (i.e., non-virtual) rewards such as money in a currency issued by any country in the world, goods or other tangible objects or services (including digital services) provided outside the use of the applicable Publisher Property, as well as virtual rewards that have a monetary value outside the applicable Publisher Property, without notifying Fyber in advance and receiving prior written (email suffices) approval from Fyber. THE PARTIES SPECIFICALLY AGREE THAT FAILURE TO NOTIFY FYBER AND OBTAIN FYBER’S APPROVAL ACCORDING TO THIS SECTION IS A MATERIAL BREACH OF PUBLISHER’S REPRESENTATIONS AND WARRANTIES.
- 5.8 **Taxes.** SUBJECT TO SECTIONS 5.4 AND 11.6, PUBLISHER WILL BE SOLELY RESPONSIBLE FOR THE PAYMENT OF, AND WILL HOLD HARMLESS AND INDEMNIFY FYBER AGAINST, ALL TAXES APPLYING UNDER ANY LAW IN CONNECTION WITH THE SERVICES SUPPLIED BY PUBLISHER TO FYBER OR BY FYBER TO PUBLISHER UNDER THIS AGREEMENT, EXCLUDING, HOWEVER, (I) ANY VAT THAT IS ISSUED ON COMMISSION IN CASE THE TAX DEBTOR IS FYBER, AND (II) ANY TAXES OF WHICH THE BASIS IS FYBER’S NET INCOME.

6. REPRESENTATIONS AND WARRANTIES

- 6.1 **General.** Each Party represents and warrants (*versichert*) 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 the 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 law or regulation to which it is subject; and (c) the Agreement constitutes a valid and binding agreement enforceable in accordance with its terms.
- 6.2 **Publisher Representations and Warranties.** Publisher represents and warrants that all Publisher Properties and Inventory (i) complies with all applicable laws and regulations, including the criminal code, data protection, consumer law and youth protection provisions, and does not contain or promote any illegal content; (ii) does not offer any rebates, coupons, or other incentives, including cash, points, prizes, and contest entries with the sole purpose of attracting visitors to the Publisher Properties to generate Commission; (iii) does 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) does not contain any viruses; spyware; pirated software; digital rights protection circumvention or hacking tools, spamming tools 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 or any materials endorsing or encouraging violence, 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) does 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) complies with all applicable terms, conditions, and policies of application store vendors, including but not limited to 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 not offer Users any incentive for User Activities unless in compliance with the notification and approval requirements set forth in these T&Cs. Publisher also represents and warrants that the VAT Information provided at registration is true, correct, and complete in all respects.

6.3 **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; and (ii) each Publisher Property provides clear disclosure and removal policies.

6.4 **Restrictions on Use of Ads and Fyber Property.** 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; (iv) use, copy, reproduce, retransmit, disseminate, re-purpose, broadcast, or circulate any Ad other than as expressly permitted herein; (v) use the Ad in any manner that may give any false or misleading impression or attribution; (vi) disclose, sell, lend, rent, or otherwise distribute or make available or grant use of Account Data to any third party other than its Authorized Providers for the sole purpose of supporting Publisher in performing the Agreement without prior written (email suffices) approval of Fyber; (vii) modify, translate, reverse engineer, decompile, disassemble or otherwise attempt to derive any source material from the Fyber Property, or make derivative works from the Fyber Property. Information pursuant to Sec. 69e of the German Copyright Act (*Urhebergesetz – UrhG*), which is required to achieve interoperability with other programs created independently, will be provided by Fyber upon Publisher's request as part of the Services; (viii) disclose, lend, rent, sell, or otherwise distribute or make available or grant use of the Fyber Property, or use the Fyber Property for providing services to any third party, or to enable any third party to provide services, whether or not similar to the Services; (ix) remove, modify or make illegible the labels, markers or designations regarding Intellectual Property Rights of the Fyber Property or (x) circumvent, disable, or otherwise interfere with security-related features of the Ads or the Services.

7. CONFIDENTIALITY; PRIVACY

7.1 Confidentiality

- (a) 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 the Agreement.
- (b) The receiving Party will promptly return or destroy the disclosing Party's Confidential Information upon request of the disclosing Party, provided 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.
- (c) The receiving Party (i) shall not disclose any Confidential Information to any person or entity other than to its employees, Authorized Providers, and professional advisors and auditors who have a strict business need to access such Confidential Information and who agree to comply with the terms of the Agreement regarding the protection, use, and confidentiality of such Confidential Information, and (ii) may disclose Confidential Information if required to do so by applicable law, administrative process or court order; however, 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.

7.2 COPPA; Protection of Minors

- (a) To the extent Publisher makes a Publisher Property or any content relating thereto available to children under the age of thirteen in the United States, or under any other age relevant under the laws of any other country where a Publisher Property or any content relating thereto is made available to these children, this section 7.2 shall apply. Publisher represents and warrants that: (i) Publisher will comply with all applicable laws and regulations related to the Children's Online Privacy Protection Act of 1998 and its rules, as the same may be amended from time to time



(collectively, "COPPA") and with all laws, regulations, co-regulation, or self-regulation principles on the protection of minors applying in such other relevant countries; (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 or under any other age applicable in the relevant country; and (iii) Publisher shall not collect or pass to Fyber any personal information for any purpose not permitted under COPPA or under the laws applicable to minors in any such other relevant country.

- (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 7.2 are, or become, untrue with respect to any Publisher Property; however, no such notice shall relieve Publisher of its obligations pursuant to such representations until such notice is received by Fyber.

7.3 Privacy

- (a) 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 User Data or otherwise relating to privacy rights; (b) any written agreements that do not conflict with these T&Cs 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 (i.e., opt-out) procedures that may be required under applicable laws in light of the activities contemplated by the Agreement. Where any content (including any Publisher Property and Ads) 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 the Agreement.
- (b) Publisher further represents and warrants that, in addition to the foregoing provisions, it has and adheres to a privacy policy at any time that: (i) is included within each Publisher Property and on any site from which a Publisher Property is available for download; (ii) complies with all applicable laws and regulations; (iii) fully and completely discloses to Users of the Publisher Properties the practices of Publisher, Fyber, Advertisers, or other third parties with respect to the collection, use, and transfer of User Data (including, but not limited to, personally identifiable information) through the use of cookies, web beacons, and other technical methods, including for advertising and online behavioral advertising purposes, on the Publisher Properties; (iv) discloses that Publisher allows third parties, such as Fyber and Advertisers, to target Users and to serve Ads within the Publisher Property; and (v) obtains consent of the Users for the collection, use and transfer of Tracking Data from the Publisher Property by Publisher, Fyber, or Advertisers if and in the form required by applicable law; and (vi) includes a conspicuous link to or description of a mechanism by which Users may opt out of, or withdraw granted consent for (as the case may be), the collection, use, and transfer of his or her User Data for online behavioral advertising purposes.

8. DISCLAIMERS; LIMITATION OF LIABILITY

8.1 Modifications; Quality; Availability of Services

- (a) The Services, by their nature, need to be updated and developed continuously over time. Fyber may modify the Services without prior notice but only with effect for the future (i.e., not retroactively) and provided that the modification is reasonable for the Publisher taking into account its interests. A modification is, in particular, reasonable for the Publisher if it is necessary to adapt the Fyber Services to changed circumstances with regard to technological developments, market requirements, and any changes in the applicable law, and in case of any new features, functions, or services added to the Services. Therefore, the Publisher is granted a right of use only for the then-current version of the Services. If a modification of the Services is not reasonably acceptable for Publisher, 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 Services under this subsection (a).

- (b) Fyber provides the Service in accordance with the state of the art and the care of a prudent business person.
- (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. Fyber is entitled to delete data and/or refuse storage of data if the technical limits are exceeded. Fyber will notify the Publisher prior to deleting the data to the extent such actions are affecting the Publisher.
- (d) The Publisher should adequately document and report in writing to Fyber any incident identified in use of the Services. Prior to reporting any incident, 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 incident with the Service.
- (e) If Fyber cannot supply the Services to Publisher for reasons not under the control of Fyber (“**Non-availability of Service**”), Fyber will inform Publisher without undue delay, at the same time indicating – if possible – when Fyber will be able to continue the supply of the Services. If the Non-availability of Service has continued for four weeks, Fyber may terminate the Agreement upon written notice to Publisher with immediate effect. 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 Services through force majeure, 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, and attacks 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 termination of each Party in the case of such a Non-availability of Service remain unaffected.

8.2 Limitation of Liability

- (a) Subject to subsections (b), (d), and (e) of this section 8.2, Fyber shall be liable pursuant to statutory law for damages and futile expenses (jointly the “**Damages**”) caused to Publisher.
- (b) Fyber’s liability for Damages of Publisher (irrespective of the legal nature of the claim, whether under contract, tort, or otherwise)
 - (i) caused by (i) a breach of material contractual obligations of Fyber under the Agreement with ordinary negligence (*einfache Fahrlässigkeit*), or (ii) a breach of non-material obligations by employees or vicarious agents of Fyber who are not legal representatives or executive officers (*leitende Angestellte*) of Fyber with gross negligence (*grobe Fahrlässigkeit*), shall be limited to those Damages foreseeable at the time of the conclusion of the Agreement that typically arise in transactions of this nature;
 - (ii) caused by a breach of non-material obligations under the Agreement with ordinary negligence shall be excluded; and
 - (iii) caused by a defect of the Fyber Services that already existed at the conclusion of the Agreement shall be excluded, provided that the Damages were not caused by negligence or willful intent of Fyber.
- (c) A material contractual obligation of Fyber according to the meaning of the foregoing subsection (b) 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 Publisher regularly relies and may rely.
- (d) As Fyber provides the Fyber Mediation Platform to Publisher free of charge, Fyber’s liability for Damages caused to Publisher as a result of the use of the Fyber Mediation Platform shall be restricted to Damages caused by Fyber with willful intent (*Vorsatz*) or gross negligence.

- (e) TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS APPLYING IN THE COUNTRY WHERE THE PUBLISHER 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 PER ACCOUNT.
- (f) Notwithstanding subsections (b), (d), and (e) of this section 8.2, nothing said in the Agreement shall limit Fyber's 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 (e.g., under Section 1 German Product Liability Act).
- (g) The above-mentioned limitations to liability also apply to the liability of employees, executive officers, legal representatives and vicarious agents of Fyber.

9. INDEMNIFICATION

9.1 **By Fyber.** Fyber shall indemnify, defend, and hold harmless Publisher and its directors, officers, employees, and agents, including their 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 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 Services in violation of the 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 the Agreement upon written notice to Publisher.

By Publisher. Publisher shall indemnify, defend, and hold harmless Fyber, and its directors, officers, and employees including their successors, heirs, and assigns (the "**Fyber Parties**") against any liability, damage, loss (including any disallowance of input VAT deductions), 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, 5, 6, 7, or 10.1, 11.4, or 11.6 of these T&Cs; (b) Publisher's unauthorized use of the Services (not including claims for which Fyber is indemnifying Publisher); (c) Publisher Properties containing any Prohibited Content; and (d) Publisher Properties or Users' downloads, installs or any use thereof violating any law or infringing upon or misappropriating any Intellectual Property Right.

9.2 **Conditions.** As a condition of the foregoing indemnification obligations, the indemnified Party will: (a) give the indemnitor prompt written notice of the relevant 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; (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. SPECIAL PROVISIONS FOR FYBER MEDIATION PLATFORM

10.1 Publisher may elect to use the Fyber Mediation Platform that enables Publisher to review and use in its Account certain Mediation Data on the Ads served by the applicable Mediation Partners on the Publisher Properties. The use of Fyber Mediation Platform requires that (i) Publisher has a valid agreement and account with the respective Mediation Partner (the "**Mediated Account**"); and (ii) Publisher provide Fyber with the necessary access data to its Mediation Account so that Fyber can access, retrieve, and make such Mediation Data available in the Account. By electing to use the Fyber Mediation Platform and providing the access data for the applicable Mediated Account, Publisher authorizes Fyber to access the Mediated Account, and to retrieve and make available the Mediation Data in the Account. Publisher hereby represents and warrants that (a) Publisher is the authorized user of the Mediated Account, (b) has the right, under its contract with the applicable Mediation Partner, to provide Fyber with the access data to the



Mediated Account and to authorize Fyber to access the Mediated Account, and retrieve and use the Mediation Data for the purposes set out in the Agreement.

10.2 Fyber is not a party to advertising contracts and other legal relationships between Publisher and the Mediation Partners regarding the placement of advertisements on the Publisher Properties. Fyber does not assume any responsibility and is not subject to any liability regarding such contracts and legal relationships of Publisher.

10.3 Publisher shall use the Mediation Data in the Account only for its internal business purposes in connection with the other Services provided by Fyber hereunder.

11. SPECIAL PROVISIONS FOR AD SERVER SERVICES

11.1 Fyber may provide Publisher with the Ad Server as agreed between the Parties from time to time. In this case, Fyber shall provide Publisher with access to a separate account ("**Ad Server Account**") that facilitates for Publisher the administration and self-serving (i) within a given Publisher Property (such as a mobile application or a website), of advertisements for another Publisher Property ("**Cross-Promotion**"), and (ii) within a given Publisher Property, of advertisements received from independent, third party demand sources ("**Direct-Sold**").

11.2 The Fyber Ad Server is a publisher tool enabling Publisher integration of various sources of demand. The tool enables Publishers to integrate demand sources additional to Fyber and set up Direct-Sold and Cross-Promotion campaigns without needing to integrate additional software elements, allowing publishers to have their direct demand compete against Fyber Exchange and Fyber Mediation Platform. Publisher acknowledges and agrees that Publisher shall not use the Ad Server for serving advertisements from third-party demand sources that are Fyber's direct partner (either on the Fyber Exchange or as Mediation Partners) unless explicitly approved by Fyber in writing (email suffices).

11.3 Fyber is not a party to advertising contracts and other legal relationships between Publisher and Direct-Sold independent demand sources. Fyber does not assume any responsibility and is not subject to any liability regarding Publisher's relationships with independent demand sources and to advertising agreements to which Fyber is not a party.

11.4 Publisher is solely responsible for its use and operation of the Ad Server Account and for the content of advertisements that are served via the Ad Server Services. Without limiting the generality of the forgoing provisions in this section 11, Publisher represents and warrants that:

(a) It shall not use the Ad Server to serve any advertisement that (i) is unlawful, defamatory, libelous, harassing, abusive, fraudulent, obscene, or an advertisement that contains link/s to content of such nature (advertisements that are unlawful include, without limitation, those that breach any applicable laws regarding data privacy, consumer protection, advertising, trademark, unfair competition, youth protection, and illegal gambling); (ii) contains 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; (iii) are false, misleading, or deceptive; or (iv) 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**").

(b) In case an advertisement is an Advertisement of an Objectionable Nature in certain countries or regions of the world only ("**Restricted Countries**"), Publisher shall apply the Ad Server Account features to block, de-select, or otherwise exclude Restricted Countries for advertisements in which they are unlawful.

11.5 Payment

(a) Publisher will be charged a fee for the use of the Ad Server in accordance with the Ad Server Fee Schedule that is available on the Website and/or as made available to Publisher upon request for ordering the Ad Server. The applicable fees are due and payable within 30 days after submission of the respective bill by Fyber.

(b) The billing period for the calculation of Ad Server fees is the calendar month unless otherwise agreed between the Parties. Publisher shall bear the costs of the wireless transfer of the Ad



Server 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 €1000 or less. The outstanding amount will be included in the invoice Fyber issues for the subsequent billing period.

- (c) Publisher hereby authorizes Fyber to deduct Ad Server fees from Commission payments owed to Publisher under the Publisher Agreement for the same billing period. Upon Fyber's request, Publisher shall sign a netting agreement with Fyber for additional confirmation of Fyber's entitlement to set-off or transfer funds owed to Publisher as Commission to cover Ad Server Services charges.
- (d) The Fyber Tracking Method shall be decisive for tracking billable activities over the Ad Server Account as set out in section 5.5 above.
- (e) Fyber will not bill Publisher for Cross-Promotion campaigns (i.e., serving advertisement for one Publisher Property on another Publisher Property where both are owned by same Publisher).
- (f) Fyber reserves the right to update and/or amend the Ad Server Fee Schedule at any time in case of increases in costs of providing the Ad Server and upon reasonable notification to Publisher. Should Publisher disagree with the amended Ad Server Fee Schedule, Publisher and Fyber shall have the right to terminate the Ad Serving agreement with immediate effect upon written notice to the other Party. The provision of the other Services under the Agreement shall remain unaffected from such a termination of the Ad Server agreement.

11.6 Taxes

- (a) If the Ad Server services are subject to VAT under the applicable tax jurisdiction, VAT in the respective statutory amount shall be added to the agreed Ad Serves fees and, if Fyber is the tax debtor of such VAT amounts, paid together with the agreed Ad Server fees by Publisher to Fyber.
- (b) IF PUBLISHER IS REQUIRED BY ANY LAW OR REGULATION TO MAKE ANY WITHHOLDING OR DEDUCTION FROM PAYMENTS OF AD SERVER FEES TO FYBER ON THE ACCOUNT OF TAXES, THE PUBLISHER 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 PUBLISHER'S REQUEST, FYBER SHALL PROVIDE PUBLISHER 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 PUBLISHER ON THE ACCOUNT OF TAXES UNDER THE APPLICABLE TAX JURISDICTION.

12. GENERAL PROVISIONS

- 12.1 **Entire Agreement; Amendment; Severability.** The Agreement is the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all previous written and oral agreements between the Parties relating to the subject matter hereof. Further verbal or written agreements, arrangements, or commitments with respect to the subject matter of the Agreement do not exist. 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 Publisher, Fyber's employees are not authorized to enter into verbal or other agreements with Publisher or make verbal or other commitments which deviate from Fyber's agreements and commitments concluded in writing, including the Agreement. 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. 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 taken into consideration the purpose of the Agreement if they had been aware of the invalid or unenforceable provision or the omission when entering into the Agreement.
- 12.2 **Confidential.** Neither Party shall disclose the terms or conditions of the Agreement to any third party, except as permitted under section 7.1 of these T&Cs or to its professional advisors under a strict duty of confidentiality.

- 12.3 **Publicity; Case Studies.** In connection with the Parties' cooperation under the Agreement, each Party shall have the right to mention the company name of the other Party in press releases, publicly distributed promotional materials, and other public communications. Each such public communication requires the prior approval of the other Party unless at least one Publisher Property has been live on a Fyber Service for at least three calendar months prior to the date of such public communication. Notwithstanding the foregoing sentence, Fyber may identify or announce Publisher and Publisher Properties as participating in the Services in its written and oral communication to existing and potential Advertisers. Additionally, Fyber shall have the right to distribute case studies to third parties that outline business situations, problems, analysis, solutions and results in connection with Publisher's use of the Services. Fyber will cooperate with Publisher in preparing such case studies and the publication of any such case studies shall be subject to the prior approval of Publisher which shall not be unreasonably withheld.
- 12.4 **Notice.** Termination notices and notices making claims for Damages or indemnification must be made in writing and signed by the notifying Party; any other notices may be sent in text form by email. 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 and signed by that Party to the other Party during the Term. The notice 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, provided that (i) the sending Party can confirm that the email was apparently sent successfully according to its ordinary technical records and did not receive an error notice, and (ii) the email includes in the subject line "LEGAL NOTICE".
- 12.5 **Modifications to T&Cs.**
- (a) Fyber reserves the right to change or amend these T&Cs at any time effective prospectively. Any change will be announced to Publisher in a suitable manner at least two (2) weeks prior to its effective date. In general, the information about the modification of the T&Cs is announced by email and/or by display of the notice in the Account.
 - (b) Publisher has the right to object to any change or amendment of the T&Cs within two (2) weeks after the date of the notification of the T&Cs. In case of a timely objection, each Party is entitled to terminate the Agreement for cause upon notice to the other Party with immediate effect. If Publisher does not object within the objection period, then the change or amendment shall be deemed accepted by Publisher and become an integral element of the Agreement.
 - (c) In its notification, Fyber will inform Publisher of Publisher's right to object within two (2) weeks, Publisher's right to terminate the Agreement and the legal consequences, particularly the consequences of non-objection.
- 12.6 **Governing Law and Jurisdiction.** Except for the limitations of liability set out in section 8.2(e), which shall be exclusively governed by the laws applying in the country where Publisher has its seat, the Agreement, including any obligations, rights, and claims of the Parties arising out of or in connection with the Agreement, any questions regarding its valid conclusion, and any amendments hereto – irrespective of their legal grounds (e.g., under contract, tort or otherwise) – shall be exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of law provisions. The Parties will attempt to solve amicably any dispute arising under or in connection with the Agreement through direct good faith discussions. In the event that good faith discussions do not conclude with a plan for resolution acceptable to both Parties within thirty (30) days from their commencement, each Party has the right to refer any remaining dispute to the courts set forth in the next sentence. Publisher and Fyber agree that the competent courts in Berlin, Germany, shall have exclusive jurisdiction over any claim, dispute, or action arising under or in connection with the Agreement or any future amendment hereto, including disputes on its valid conclusion, irrespective of the legal nature of such dispute, claim, or action. Mandatory statutory provisions on exclusive jurisdiction of courts shall not be affected by the foregoing provisions.
- 12.7 **Assignment.** The Parties will not assign the 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 the 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 void.

- 12.8 **Independent Contractors.** The relationship of the Parties is that of independent contracting entities and nothing in the Agreement is intended to nor shall it 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.
- 12.9 **Third-Party Beneficiaries.** It is not the intention of the Agreement to create any third-party beneficiary rights in any third-party individual or entity that is not a party to the Agreement.

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